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Arts and owners:

Intellectual property law and the politics of scale in Indonesian arts

ABSTRACT

International and national agendas are redesigning the terms of intellectual-property (IP) laws to create cultural property for developing nations. Debates over IP and cultural-property “rights” or legal needs for “protection” are critical to anthropology’s effort to reflect on how the production of knowledge, even culture itself, is variously construed to originate with, or “belong to,” particular individuals, ethnic communities, or nation-states. We explore the implications of two Indonesian legal documents to show the disjunction between discourses of regional artists who describe the ritual exchanges, relationships, and transgenerational messages their arts shape and (inter)nationalist legal initiatives that bypass artists’ concepts of process, access, and authority in an effort to disembed and control ritual-based expressions as products with exclusive owners. [*intellectual property, cultural property, law, art, tradition, globalization, Indonesia*]

Intellectual Property: Two Words that Go Together

—Slogan from promotional media show introducing the World Intellectual Property Organization (WIPO) at the Asian–African Forum on Intellectual Property and Traditional Cultural Expressions, Traditional Knowledge, and Genetic Resources, Bandung, Indonesia, June 18, 2007

If the shadow puppets want to live, we must let them [*Kalau wayang mau hidup, kita harus membiarkan*].

—Aphorism by Javanese puppeteer Tristuti Rahmadi, July 21, 2005, Solo, Indonesia¹

A key trend in the politics of global trade during the last dozen years has been the expansion of intellectual-property (IP) laws and UN “soft law” cultural-property declarations into new national zones. The rapid formulation of these laws, and their sometimes-dubious potential for enactment, invites anthropological critique about the meaning and uses of emerging claims for IP and cultural-property “ownership.” Michel Foucault (1979:141) famously suggests that the emergence of authorship in the 18th century was a key moment that naturalized the individualization of shared ideas. Stories, he notes, had successive tellers, and even writers, long before they had self-conscious authors. Current efforts to globalize IP and cultural-property discourses, we argue, now naturalize ownership of creative resources among people who not only have not asked for these “human rights” but who also draw boundaries of possession, authority, and repertoire access rather differently from those who promote such discourses. This is of direct relevance for anthropologists because it deepens our understanding about how new legal terminology and debates about human rights simultaneously misdirect and work to revise perspectives on the nature of “protection” for informally regulated local producers and their socioeconomic structures. Moreover, just as the discipline has purged itself of concepts of stable and unitary cultures (Clifford 1988), cultural-property legal provisions enjoin both indigenous groups and nation-states to reinvent them, thereby allowing the assertion of moral and economic ownership over fluid cultural practices and identities.

Anthropologists long have focused on material culture's potential to give rise to boundary-crossing biographical pathways and to polysemic interpretations (Appadurai 1986; Marcus and Myers 1995; Price 2007; Tilley et al. 2006). These approaches, which foreground an unstable "materiality," probe the changing social and economic contexts in which material objects generate contested meanings and values. Fred Myers (2004) and Haidy Geismar (2005) integrate legal issues by documenting recent uses of copyright law to renegotiate or enable indigenous artists' cultural or economic claims. Michael F. Brown (1998, 2003, 2005), by contrast, highlights vexing questions that arise about shared public knowledge and cultural boundaries when indigenous people use law to redefine elements of their cultural heritages as proprietary resources. We too ask "whether *property* was ever an appropriate mode for the negotiation of interests in resources . . . in relation to developing countries or minority groups" (Strathern 2006:449). Whereas the authors just mentioned largely restrict their purview to material culture, we turn to arts with immaterial dimensions that the new laws are working to distill into ownable objects.

A range of Indonesian ethnographic examples shows the predicaments of meaning that arise between local understandings about access to regional arts as knowledge or practices and the exclusive ownership-of-culture models set forth in national and international policies offering to enclose and delimit the use of "cultural expressions." Two legal documents draw our analytical attention. The first is Indonesia's 2002 Copyright Law, which, by claiming for the state copyright in all communal "folklore" and "works whose creators are not known," inflates inherited "culture" and its ownership to the scope of the nation. The second is a draft law on the "Intellectual Property Protection and Use of Traditional Knowledge and Traditional Cultural Expressions" that would fragment the ownership and management of culture to the level of political districts under central state aegis. Even if these two legal enclosures do not herald dispossession, they surely foreshadow transfiguration.

Reacting to global commerce pressures, some Indonesian leaders understandably fear that their "national" cultural property will become foreign intellectual property. Legal privatization of local knowledge and goods by international businesses has become a credible anxiety worldwide. Yet, knowledge about the new state laws leads artists to fear that customary access to their group's heritage could be blocked by the laws. As a Balinese dancer phrased it, "The arts of Bali are part of our local cultural tradition. . . . Imagine if our troupe wanted to perform an old work and had to ask permission of the state?" In this dancer's mind, he and his troupe have collaborative (although not necessarily undifferentiated or unlimited) rights to access and interpret their regional canon. The dances do not exclusively belong to any one of them individually, to a corporate village, or

to the Indonesian state, whether performed to earn a living or not. Knowing how and when to perform the dances for certain audiences constitutes the dancers' license. We suggest that perspectives tracking only national legal protection from globalizing commerce or only indigenous protection from national commerce miss ongoing dilemmas involving diverse concepts of heritage-arts "ownership" as they are being formulated and translated across national and regional scales. The new laws, whether they ultimately are implemented, use language that not only parses aspects of "culture" in infelicitous ways but also focuses the value of groups and nations on what they possess. Ugo Mattei and Laura Nader (2008) note how the pervasive power of laws that undergird international regulatory policies often go unnoticed by anthropologists, even those studying the local effects of such regulation. And, as Clifford Geertz puts it succinctly, laws "do not just regulate behavior, they construe it" (1999:215). We are interested here in construals of possession.

Below, we begin with an example that highlights the problems and questions at stake. Then we add background on our fieldwork, terminology, the legal initiatives, and Indonesian state policies. Further ethnographic examples illustrate how people called "traditional artists" in Indonesian legal and popular discourse work and how they describe their activities in terms of purpose, sharing, inspiration, and ethical norms. These examples suggest that bureaucrats' best-intentioned legal plans do not easily encompass artists' complex aims for art production processes and transgenerational reciprocity.² Our argument about the laws speaks in tandem with anthropologists concerned with recognizing the importance and complexity of local spaces of shared and informally managed resources (Tsing 2005; Zerner 2003). With Aisha Khan (2007), we also seek to move cultural anthropology beyond too self-assured a vision of what individual or collective "agency" looks like, and where it is to be found, by showing that Indonesian artists often locate agency across individuals and even generations.

Our argument draws attention to how value that is understood locally as generated through people's performances or the creation of graphic works as vehicles of communication and social action becomes drawn through IP legal discourse into a system newly concerned with locating "owners" of "objects" whose value can be commodified. We unfold five related themes. The first analyzes the new laws and our interviews with legislators to clarify why these particular IP laws seem desirable to them at this historical juncture. The second demonstrates how artists in many idioms seek to authoritatively establish, stimulate, and negotiate the transfer of knowledge rather than primarily to produce and commodify wealth objects. The third evinces how Indonesian artists report seeing their contributions in sociocentric and transgenerational rather than individualistic terms. The fourth contends that these artists' concepts of

multiple but heterogenous rights and debts do not fit naturally with the laws on offer to establish either individual or homogenous corporate-group rights. Nevertheless, Indonesian artists' rhetorical rejection of personal gain and individual creative genius are readily reworked to fit imported IP legal categories that push ownership of commodities into individualistic or group slots as if these were naturally bounded. We conclude by considering the historical philosophy of IP and cultural-property law and examining how their current fusion intersects with anthropological concerns about genealogies of legal discourses.

Theaters of ownership

During fieldwork visits to Indonesia between 2005 and 2007, we met with groups of government officials, university scholars, artists, and villagers of the Bugis ethnic group as they passionately discussed an international theater production called "I La Galigo," which virtually none of them had seen. *La Galigo* (or *Sureq Galigo*) is the name of a myth known in fragmentary episodes by almost every resident of Indonesia's Sulawesi Island. For some, it is a deeply meaningful set of religious verses about the creation and early events of the universe, whose partial recitation at rituals should be overseen by a transvestite priest trained to read the Old Bugis script in which its extant manuscripts are written. For others, it is more an unforgettable adventure story, told in innumerable versions, whose heroes—the first six generations of gods and their "Middle World," or human, offspring—engage in exploits that enliven familiar metaphors and models for living. Scholars describe it as both a key work of Bugis literature and a "cultural encyclopedia" detailing aristocratic Bugis ideals of ritual protocol, marriage, incest, food, and migration (Koolhof 2003).

For centuries, some noble Bugis families have kept their inscrutable manuscript fragments carefully stored and venerated, but unread (Salim 2004). Then, hearing about the myth and its related practices, the U.S. avant-garde theater artist Robert Wilson realized one strand of the tale onstage through newly composed music, ethereal dances, suspended props, and spectacular lighting. His multimedia tableau was understood by Western art critics and musicologists less as a translation than as an evocative tribute to the original Bugis epic (Cohen 2005; Rothstein 2005; Weiss 2008).

The experimental production toured Singapore, Amsterdam, Barcelona, Paris, and New York, before a long-awaited performance of "I La Galigo" was staged at the Taman Mini Theater in Jakarta, Indonesia's capital, in December 2005. Prominent Indonesian government officials protested that Wilson's production was an "erosion and distortion" of an Indonesian national literary and religious treasure. Henry Soelistiyo Budi (2005), director of the Bureau of Rights and Law in Indonesia's vice president's

office, contended that Wilson had not gotten appropriate central-government permission under Indonesia's 2002 Copyright Law (Law 19, 2002) to produce his three-hour-long stage rendition of the Sulawesi tale.

The epic's first written versions date to between the 14th and 17th centuries C.E., clearly long predating, and, thus, beyond the coverage of, conventional copyright-law provisions. But Budi argued to us that the Bugis epic exemplifies exactly the kind of "cultural product" (*benda-benda budaya*) over which the government now must maintain copyright control to prevent distortion and exploitation by foreigners. Other Indonesian officials, such as Edi Sedyawati (2005), a senior archaeologist and past director general of culture in the Department of Education and Culture, also state that the government now has a responsibility to address lack of proper attribution and compensation for use of "intangible property," just as it has created laws to protect tangible cultural resources, such as archaeological artifacts, against theft (Crystal 1994). Sedyawati favors legal solutions, including treating ethnic villages that produce "traditional arts" as business cooperatives. Budi notes incisively that "jargon" about the "common heritage of mankind" (2005:28) allows foreign capitalists to profit from Indonesian arts without regard to local cultural sanctity or economic benefit.³

But can laws that conceive ritual arts from the Indonesian periphery as "national cultural property" protect cultural facets such as myths or ancient literary verses from "predatory" globalization? Does not the very claim that these are "ownable objects" affect local and national meanings about arts and citizenship as well as the very nature of cultural representation? Our ethnographic research on a variety of Indonesian arts, including the *La Galigo* epic and local responses to its use for Wilson's theatrical adaptation, evinces that IP and cultural-property lawmaking involves far more than "protecting" a transparent set of moral or economic rights held by particular artists, "ethnic" groups, or nations.

In the Bugis heartland of South Sulawesi, we heard an eclectic mix of praise and criticism for Wilson's production. Wilson hired Sulawesi performers, scholarly experts, and even a transvestite ritual specialist (Bugis, *bissu*) as participants among the nearly 50 all-Indonesian cast members. In contrast to the nationalist critique posed by Jakarta officials, many Sulawesi residents lauded Wilson for his efforts to obtain local consent and involve local performers, meaning ethnic Bugis rather than Javanese or others from Jakarta. The most numerous and powerful ethnic group in Indonesia, the Javanese have dominated programs for national development since independence from the Dutch was declared in 1945. Bugis people invariably expressed appreciation for how Wilson's production raised national and international awareness of Sulawesi's little-known epic, and new efforts were made to teach its Bugis script verses to children.



Figure 1. In this early scene of Robert Wilson’s “I La Galigo,” the supreme god of the Upper World commands his son to descend a ladder to the Middle World, wed the daughter of the Lower World’s supreme god, and sire humans for the earth, specifically, the first Bugis kingdom on Sulawesi Island. Bugis ritual specialist (bissu) Puang Matoa Saidi sits on a platform at lower left. Photo by Ken Cheong, courtesy of Change Performing Arts, Milan, and Esplanade Theaters on the Bay, Singapore, 2004.

A familiar rivalry between Bugis and Javanese emerged in the local versus national rhetoric, although the fact that Javanese and artists from a few other islands were hired to compose the music, dance, design costumes, and assist Wilson’s European production team gave the drama something of a pan-Indonesian (as well as international) flavor. (See Figure 1.)

Some Bugis scholars we met noted the sacral quality of the pentasyllabic-meter epic, which is comparable to the Hindu *Ramayana* and *Mahabharata* in length and tone. It would run to some 300,000 verses if all remnants were assembled. Being sensitive to the epic’s religious significance for some Bugis, Wilson’s team engaged a bissu priest to be present and to be seen and heard chanting prayers at every performance. By the end of 2006, Indonesian officials proposed addressing the continuing potential for commercial “misuse” of sacred cultural materials such as *La Galigo* by drafting new laws to protect traditional knowledge (TK) and “traditional cultural expressions” (TCEs), which we discuss below. Although the ritual integrity of the epic’s use was a genuine concern for some Sulawesi people, it did not prove to bear directly on Wilson’s production, which was staged only outside Sulawesi Island. On Sulawesi, as elsewhere, we found Indonesian artists and communities notably unconcerned about potential misuse of their works when presented to distant outsiders. Many people told us that any “incorrect” use of their arts by foreigners elsewhere would not concern them. Such use, some said, would

be a matter for the foreigners’ own ancestors or gods to judge.

Bugis scholars also emphasize the lack of standardization among *La Galigo* versions and interpretations. Three different Sulawesi regions possess dozens of manuscript sections written in Old Bugis script. No single “complete” text exists, or perhaps ever existed. Most people only know bits of the story about the epic’s popular hero, Sawerigading, but they still consider *La Galigo* to be their origin myth. Yet their informal claims of heritage identification with the story are not (as yet) exclusive or rivalrous ones. Their comments suggest that any bureaucratic effort to define the boundaries of the myth’s cultural “ownership” at either the regional or national level would become contentious.

When we asked a group of knowledgeable critics whether they would have wanted Wilson’s production prevented by a law, they said, “No. We just would have liked additional small performances using local artists staged here in Sulawesi for our population’s benefit. Unfortunately, Wilson’s producers said that would be too expensive.”⁴ Apparently, the production was never profitable, despite the allegations of Jakarta officials to the contrary. Aesthetic complaints about Wilson’s production existed, and surely different performance arrangements might have been negotiated. Yet the diverse and messy objections we heard did not logically lead to the planned solutions of either national or district legal “ownership.” Nor did they resonate with the “erosion and distortion of a national treasure by

foreigners” complaint voiced by some Jakarta officials. Notice that Sulawesi people said they wanted more presentations and versions of the epic, not fewer. Formerly, any offenses related to the use of arts or ritual practices might have been taken up in discussion by local elders. Now, distant officials in Jakarta perceive new kinds of national problems and turn to foreign property law to protect their unwary citizens from global capitalism, as if legal protection equals “preservation,” and a foreign artist’s theatrical exploration of mythology, drawing on elements from a Bugis epic, can violate Indonesians’ relations to the 400-year-old verses themselves.⁵

The spread of IP law (including copyright, patent, trademark, industrial design, and other related legislation) has been advanced by corporate interests from the United States, Europe, and Japan under the rhetoric of improving “international standards” of trade and business. The globalist rhetoric obscures socioeconomic inequalities and divergent interests between and within nations (Drahos and Mayne 2002; May 2000). It also, under the purview of UN World Intellectual Property Organization (WIPO) initiatives, introduces and conflates older models of intellectual property with newer cultural-property provisions that are being taken up by legislatures throughout Asia and Africa.⁶

Our analysis expands anthropological groundwork by Brown (1998, 2003) on indigenous (mis)uses of property law, by Rosemary J. Coombe (1998) on the Western commercial biases of IP law, and by Marilyn Strathern and colleagues, who have unpacked European and Melanesian understandings of property, creativity, and law (Strathern 1999, 2006; see also Hirsch and Strathern 2004; Kirsch 2007). We also offer a revised reading of the critical insights of James Clifford (1988) and Sally Price (1989), who describe how Western productions, which are labeled “art” and are assigned to individual intentionality, come to be contrasted with “primitive” productions, which are labeled “artifact” (or “folklore”) and are assigned to unreflective and repetitive communal output. Whereas most who continue that line of inquiry (e.g., Errington 1998; Myers 2006) concentrate on historical Western epistemological biases and polysemic or hybrid interpretations of material products that are consumed, we turn to how discourses about creative production reimagine activities as ownable products through the movement of legal models across political scales.

Our project foregrounds an ethnographic testimony about Indonesian art practices in which, we argue, local authority, obligations, and access are distributed, meaning that they do not rest fully in the hands of individuals or with any group of people to which the new property laws would assign “ownership.” Intellectual property is always a boundary-making project, but indigenous local rights of authority over property production or caretaking may not entail Europeans’ rights of disposal (Hirsch and Strathern

2004). We are interested not only in new definitions of property (Maurer 1999) but also in institutional views of cultural acts and processes as property. We suggest that the problematic object-ownership language in the new policy guidelines and laws, including UN terms such as *TCE*, introduce visions of exclusive and transactable “property” into cultural arenas and groups formerly more concerned with communicating knowledge and defining relationships from which material ownership flowed.⁷

When international institutions such as WIPO speak of using IP legal solutions to protect “local” knowledge and cultural expressions, they, in fact, mean “national” ones. They generally employ no more refined sociopolitical unit of analysis, which thereby homogenizes the interests of diverse people within plural nations. Standardized IP laws (and compliance) are what multinational businesses want. Cultural-property laws are what the international community seems set to offer developing nations in return, claiming that such legal protection will ensure the “international objectives” of “preservation of traditional knowledge (TK) and traditional cultural expressions (TCEs)” (Taubman 2007:9).

The ways lawyers, legislators, and judges grapple with particular problems of IP rights become encoded in emerging “moments in law,” which, in turn, exert influence over future national and international legal trajectories (Sell and May 2001). Jane Anderson (2004) observes that Australian national frameworks of legal action develop in tandem with international efforts to define IP problems. Thus, Australia’s groundbreaking *Bulun Bulun* cases, which used existing copyright law to adjudicate against the unauthorized use of an Aboriginal artist’s paintings and clan imagery on commercial textiles such as tea towels, dramatically focused trends in future strategies and remedies (see also Coleman 2004; Myers 2004).⁸ Such cases have allowed IP laws to provide satisfaction as cultural-property protection to indigenous groups in “settler societies” such as Australia and the United States. But, we find that in a nonsettler nation such as Indonesia, a “traditional” versus “modern” model arises. IP debates, then, replay colonial-era and past developmental discourses even as they prepare ground for the legal imposition of new capitalist ownership regimes.

A recurrent element of Indonesian regional artists’ own claims is that their sources of creativity transcend any physically present individual human being or community—including, inconveniently, the nation-state planning the laws. We see this articulation, locally phrased in terms of “traditional practice,” not as describing passively transmitted replication but, rather, as finding an open channel for access and authoritative parlance. Whereas advocacy of “tradition” may, indeed, be linked with old regional hierarchies (and with outmoded anthropological discourse), in the model of “Unity in Diversity” (Old Javanese, *Bhinnéka Tunggal Ika*) that informs the Indonesian nation-state,⁹

such advocacy becomes a subaltern voice for challenging culturally homogenous assertions by the pluralist state (Handler 1988; Khan 2007). Advocating local principles of “tradition” and morality also resists the wholesale and often externally driven commodification of ritual arts.

Transformative legal debates such as Indonesia’s are significant for anthropology’s efforts to add new ethnographic dimensions to what Anna Lowenhaupt Tsing calls the “politics of scale,” meaning “how articulations among globalist, nationalist, and regionalist projects bring each project to life” (2005:76). In this context, IP decisions that seem reasonable at a larger political scale sometimes appear unwarranted and intrusively encompassing at a smaller one. By contrast, informal negotiations that work locally are hard to expand effectively to a national legal framework. To advance our arguments, we compare statements about shared motifs, imitation, and attribution made by individuals whom Indonesians call “traditional artists” (*seniman tradisional* or *orang seni tradisional*) with those of legislators.¹⁰

The fieldwork and legal project interface

Our collaborative ethnographic research engaging IP-law questions in Indonesia began in conjunction with a three-year multinational legal project (2005–07), which organized field meetings in ten different cultural regions in eight Indonesian provinces: Central Java, Bali, West Java–Jakarta, South Sulawesi, East Nusa Tenggara, West Kalimantan, North Sumatra, and West Sumatra.¹¹ The first author already had worked in Indonesia on arts, religion, and national development issues over a period of 20 years, and the second author had specialized in IP issues in Melanesia and Europe. The invitation to join a multidisciplinary research team that would engage with lawmakers, artists, and NGO leaders offered an intriguing comparative opportunity, although the investigation began under limited time constraints.

The first author experienced some initial skepticism about the project’s potential and its urgency of practical application because Indonesia in 2005 seemed to have many more pressing legal issues than intellectual property. Moreover, laws in Indonesia—as in many nations—often are ignored or are eluded by those who can pay to do so. Many Indonesians engage in passive resistance to legal authority, and the state has been known not to implement some laws. Nevertheless, Indonesian and foreign lawyers, as well as NGO representatives on the team, argued that momentous IP decisions were being formulated, and that drawing in ethnographic data was preferable to assuming that laws do not matter because they inevitably will be stalled or circumvented.¹² As the project developed, we also saw wider theoretical ramifications for anthropological discussions of cultural ownership and recognized that WIPO’s re-

cent initiatives, with their lockstep platform linking traditional knowledge, genetic resources, and TCEs, promise to revise many aspects of local knowledge practice and transactions, not just in Indonesia but in all UN-member developing nations.

Background on international guidelines and Indonesian national laws

National legal initiatives such as Indonesia’s, which build on recent international principles (the protection of so-called content industries and protection of cultural heritage from exploitation), technically conform to both multinational business and UN indigenous-rights goals. They also add provisions aimed at generating needed state revenue and promoting nation-building visions of common heritage. These features make them attractive to Indonesian bureaucrats who aim to display international leadership credentials as they increase revenue and manage Indonesia’s periodically tenuous unity. In this respect, IP laws are seen as a way of addressing Indonesia’s longtime center-periphery problem and as part of an ideological effort to manage the nation’s ethnic disparities.

The 1994 Agreement on Trade Related Aspects of Intellectual Property (TRIPS) was enforced by the World Trade Organization (WTO), which pressured developing nations to draft new sets of IP laws to achieve compliance by a 2005 deadline. The TRIPS agreement requires signatory states, including Indonesia, to formulate legislation with “high standards” of IP protection or risk retaliatory trade sanctions (see Drahos and Mayne 2002; May 2000). The new laws are intended to foster an ethic of “inventor’s rights” and curtail “piracy,” especially of digital media and software.¹³ International pressure also drives common legal solutions to the three legally circumscribed domains of the creative arts (“traditional cultural expressions”), botanical pharmaceuticals (“traditional knowledge”), and agrobusiness and medical engineering (“genetic resources”). In June 2007, international representatives to WIPO met in Bandung, Indonesia, for the Asian–African Forum on Intellectual Property and Traditional Cultural Expressions, Traditional Knowledge, and Genetic Resources to work toward a common developing-world approach to consistent national laws for what, from a local or analytical perspective, often are (but sometimes are not) three socially and economically different domains of “resources.” The Indonesian government complied with TRIPS through a set of planned new laws on patents, trademarks, trade secrets, industrial design, circuit design, and copyright, despite recognition by some Indonesian academic lawyers that these cookie-cutter laws did not arise from the desires of Indonesian people and might be detrimental to domestic interests if not reworked for local suitability (Sardjono 2006a, 2006b). (See Figure 2.)



Figure 2. International representatives watching Indonesian music performance at the Asian–African Forum on Intellectual Property and Traditional Cultural Expressions, Traditional Knowledge, and Genetic Resources, Bandung, Indonesia, June 18, 2007. Photo by L. V. Aragon.

Indonesia’s 2002 Copyright Law, like earlier national iterations, awards Indonesian artists who practice Western-style individualistic arts, such as painters, authors, choreographers, and music composers, a version of standard Euro-American copyright protection. Depending on the type of work created, the period of Indonesia’s copyright lasts for 50 years after the work is publicized or 50 years after the death of its creator. But cultural-property provisions appear in Articles 10, 11, and 31 in which copyright jurisdiction for “folklore and people’s cultural products” [*folklor dan hasil kebudayaan rakyat*] are awarded to the state in perpetuity, whereas copyright in publicized anonymous “works whose creators are not known” [*ciptaan tidak diketahui penciptaannya*], is held by the state “on behalf of the interests of the creator” for 50 years after the work is made known to the public [*diketahui umum*]. This atypical section of the law, as some of its architects explained to us, is based on ideas that Indonesian “common people’s cultural products” [*hasil kebudayaan rakyat*] are valuable national goods vulnerable to “erosion and distortion” [*erosi dan distorsi*], especially by foreigners recording or adapting them, as in the “I La Galigo” epic dramatization described above (Budi 2005:19, 23–24).¹⁴

The 2002 Copyright Law states that “Indonesia is a state that has [*memiliki*, lit. owns] varied ethnic groups and cultures rich in art.” This wording places citizens and their art as assets belonging to the state rather than situating the state as an institution that is owned and directed communally by its creative citizens (Siagian 2005). Moreover, much

local rhetoric maintains that it is the ancestors who really “own” the land and knowledge traditions and who provide all descendants rights of access, subject to permission from elder custodians, ritual fulfillment, or oral contractual precedents.

Indonesia’s legal system was inherited and revised from Dutch-colonial civil-code law, as opposed to U.S. and British common law, which is based more on precedent. Yet, the 2002 Copyright Law combines dogged fidelity to TRIPS with a small measure of retaliation aimed at commercial uses by foreigners. Through the law’s enactment, Indonesian politicians also seized the moment to try to extend IP control over widely dispersed cultural practices (“works whose creators are not known”). The 2002 Copyright Law’s Articles 10 and 11, however, were never followed with specific implementing legislation. Instead, following models provided by WIPO, senior Indonesian officials, including Sedyawati, convened a closed committee of government lawyers to draft a new *sui generis* cultural-property law.¹⁵

In late 2006, a *sui generis* draft “Law on the Protection of Traditional Cultural Expressions” emerged.¹⁶ The most recent draft “moral rights”-type law aims to regulate any “Expression of Traditional Culture” [*Ekspresi Budaya Tradisional* (EBT)] that is preserved or practiced by a “community or traditional society” [*komunitas atau masyarakat tradisional*]. It would regulate most reproductions or adaptations of Indonesian regional material arts, music, theater, and dance as well as stories and ritual ceremonies, regardless of their date of origin.¹⁷ It is unclear—even to numerous

Indonesian government lawyers we interviewed—how Indonesia's 2002 Copyright Law will fit with, or be superseded by, the TK and TCE law, if the latter is ever passed. What is clear is that, if enacted, the law would entail escalated bureaucratic supervision of local expressive practices plus many practical challenges based on its arguable concepts of culturally bounded, homogenous ethnic communities.

The UN Educational, Scientific, and Cultural Organization (UNESCO)-influenced concepts of the draft law use WIPO's current term of choice, *TCEs*, to refer to both tangible and intangible cultural property. This discloses a Geneva-Jakarta axis of lawmaking collaborations. The same WIPO model, as well as EU funding, is being proposed to all Association of Southeast Asian Nations (ASEAN) member states as well as the entire Asia-Africa UN consortium. Indonesia's draft bill epitomizes what Brown (2005:40) notes is a "radical broadening" in the concept of "cultural property," a term that once designated only threatened architectural monuments or portable artworks.¹⁸

The draft law also parallels the model of a 2003 Australian draft "Indigenous Communal Moral Rights Bill," despite Indonesia's rejection of the kind of separate category and status of indigenous or Aboriginal citizenship used by Australia for the purpose of affirmative action. Indonesia historically has put hundreds of ethnic minority groups (*suku-suku*) into special policy categories at various times called "isolated" (*terpencil*), "foreign/strange" (*terasing*), or "backward" (*terbelakang*).¹⁹ Essentially, then, the choice of an Aboriginal moral-rights framework, criticized even in Australia (Anderson 2004), to "protect" Indonesians seems in need of explanation.

The moral-rights framework may allow the Indonesian government to show that it is protecting the rights of its "traditional cultural communities" even as it legally encloses them for regulation and future economic transactions. Being labeled "indigenous" might qualify groups to make claims for the return of lost land. Being labeled "traditional," instead, qualifies them for tourism or development projects. Legislators justify their planned intervention into local processes of cultural exchange and performance by publicizing the alleged dangers posed by mercenary foreign entrepreneurs from whom Indonesia's "traditional communities or societies" [*komunitas atau masyarakat tradisional*] need legal protection. Whereas heritage-protection laws in nations such as the United States, Australia, and New Zealand are designed to address colonial-era misuse of "indigenous" people by European settlers, Indonesian initiatives, which rest on a traditional-versus modern-people dichotomy, obscure ethnic, religious, class, and rural-urban dimensions.

The preamble to the January 2007 version of Indonesia's draft "Law on the Protection of Traditional Cultural Expressions" explains the law's rationale in economic-development terms that parallel the nation's approach to

exploiting natural resources. It notes that Indonesia has a "wealth of cultural heritage" [*kekayaan warisan budaya*] that needs protection so that prosperity can be increased not only for communities that "own" TCEs but also for the nation-state. The preamble states (arguably) that, although all known IP law is based on originality of individual creators, communal interests are primary in the context of Indonesia's TCEs. It adds that, protection of Indonesia's TCEs does not require that they demonstrate originality and novelty, that their creators usually are not known, and that they are copied and used from generation to generation. With these words, Indonesian regional arts are made into objects ("wealth") that are bereft of innovative contributions and disconnected from any identifiable persons who are considered capable of holding executive authority to adequately direct their management. So, it becomes the government's burden to act for the absent or feckless native citizen.²⁰

In sum, Indonesia's 2002 Copyright Law and the draft law propose to regulate TCEs as if they were all tangible objects, like natural resources, from which the state should profit. TCEs are viewed as commodifiable "cultural products" and national patrimony. Their use is properly supervised by the state and also, by moral right, subject to contracts with designated subsidiary "owners and/or custodians" [*pemelik dan/atau kustodian*] from "traditional societies" (whose members or boundaries are unspecified), rather than overseen by those who produce them. Ownership is set by law at the scale of the political community, in the perceived absence of individual creators. In this way, arts management is legally subjected to group-ownership identification. Next, we consider the political history of these proposals to remove authority from the interactive spaces of local-society negotiations in which Indonesian ritual artists locate it.

Key concepts and the Indonesian politics of "traditional arts"

The art idioms considered in our research include both tangible material idioms such as carving and textiles and initially intangible performance idioms such as theater, music, and dance. We recognize that definition of these cultural expressions as "arts" or "theater" versus "crafts," "ethnic artifacts," or "rituals" is political and contextual (Clifford 1988; Marcus and Myers 1995; Myers 2006; Price 1989; Smith 1988). We use the term *arts* here as a general category whose historical uses avoid denigration of utility ("crafts") and highlight learned skills and discipline, as in the classical Latin (*ars*) and Greek (*techne*) usages (Kristeller 1965; Williams 1983). Like Alfred Gell (1998), we view art theoretically as a system of social action intended to affect the world in certain ways. We do not imply any necessary presence or absence of the explicitly autonomous and reflective criteria

required of “Western modern art” (Danto 2005), and we observe that different autonyms are used among various kinds of Indonesian arts practitioners.²¹

Indonesian arts, like all arts, developed in specific social and ritual contexts. They include weavings worn as clothes to signal kinship, gender, age, rank, and lifecycle transitions, and songs sung at harvest, marriage, and funerary feasts. Earlier meanings associated with these idioms derive from precolonial rituals related to procuring kinship alliances, fertility, and ancestral aid. These meanings now may be overshadowed by contemporary political structures, enhanced technologies, and imported scriptural religions, but they usually are not fully erased. Indonesian arts are inherently sensitive to social and political contexts, which is how and why some very old idioms continue to be meaningful to their participants even as they incorporate novel features.

Some Indonesian arts idioms, such as certain eastern Indonesian graphic motifs, manifest prehistoric Austronesian elements (Bellwood 1997), whereas others, such as East Javanese proletarian theater (*ludruk*; Peacock 1987), are of more circumscribed and recent creation. The range and variety of Indonesia’s expressive idioms are vast given that the nation is a 3,500-mile-wide archipelago with over 4,000 populated islands and historically complex migration and trade patterns. Although the government’s views of Indonesian arts and popular culture tend to be narrow, standardized, and dominated by foreign or aristocratic Central Javanese elements, any actual survey of Indonesian arts will encounter a cornucopia of genres and repertoires (Yampolsky 1991–99).²²

The Indonesian government has long engaged in the attempted political regulation of “fine” arts such as painting and music (George 1997; Yampolsky 1995) as well as the micromanagement of regional or “ethnic arts,” including ritual dances, songs, and textiles of outer-island minorities (Acciaoli 1985; Aragon 1996, 1999). Much of the rhetoric about regional arts and traditions formalized by the Indonesian state during the New Order regime of President Suharto (1966–98) was developed from, and in opposition to, pre-WWII colonial scholarship. Whereas Dutch scholars emphasized the great regional diversity of Netherlands Indies *adat*, or “customary traditions” (an emphasis that now often is viewed as part of the colonial divide-and-rule strategy), Indonesia’s first president, Sukarno, promoted a vision of a common Indonesian culture (*budaya*). Indonesia’s second president, Suharto (1966–98), strategically melded these unity-in-diversity approaches by admitting regional traditions but framing them according to province divisions or other nationally administered political units.

The Suharto state promoted ideas of discrete province-based ethnic groups with matching sets of clothes, houses, dances, and music. As an element of strategic nation-building, these regional ethnic affinities were illustrated for

the citizenry in theme parks (Pemberton 1994), on postage stamps and currency, in museum displays, and on colorful posters still available in bookshops throughout the archipelago. Regional arts also have been promoted in ways that reinforce national ideologies of ethnic superiority, with only the idioms of politically dominant groups, such as Central Javanese and Balinese, considered worthy of the appellation “peak” national arts (Yampolsky 1995). Javanese features routinely are elevated to a superordinate, national status, and Javanese factories even have been said by government officials to produce more “beautiful” (and, hence, more profitable) versions of Sumatran batik styles (Aragon 1999). The Suharto regime attempted to neutralize the recognition of ethnic inequities by incorporating revamped versions of other groups’ regional arts into glitzy cultural shows. The state’s depiction of minority cultural symbols in national venues sought to disguise its fundamental Javacentrism and justify the co-optation of economically profitable regional products (Adams 1998; Kipp 1993). In virtually all cases, however, the Suharto regime presented regional practices or “traditions” as if they were discrete and static.²³ (See Figure 3.)

Bureaucratic reorganization at the end of the Suharto regime also hinted that ideologies about culture were shifting in ways that might be even more uncongenial to local arts practitioners. Under Suharto, Indonesian “culture” (*kebudayaan*) was under the purview of the Department of Education and Culture. But, by 2002, “culture” was detached from “education” and relocated behind “tourism” and “art” under the Department of Tourism, Art, and Culture. This move signaled an expanded state desire to manage culture’s interface with commerce. During the same period, Indonesia experienced rapid growth in its provincial museum system (Taylor 1994). The new museums, some transformed from old colonial-era forts or local sultans’ palaces, are understood by most provincial residents less as welcoming sites for educational visits than as strongholds encasing state-appropriated heirlooms or power objects (*pusaka*) that proclaim as well as bolster tight central control over potentially unruly provinces.

Suharto state officials were not yet vocal claimants of IP rights over the nation’s folklore and its “works whose creators are not known.” That descriptive phrase studiously ignores the ease of locating named contemporary practitioners of (and innovative contributors to) most regional arts throughout Indonesia. It tends to lead to a conflation of “works” with “motifs” or “styles,” and it denies personal identities in a way comparable to the way museums present “primitive art” as belonging to homogenous and timeless cultural groups (Clifford 1988). The recent legal linguistic shift from the idea of anonymous works to that of TCEs is an even larger gambit, potentially encompassing a vast range of cultural productions such as clothing, cuisine, architecture, and mythology. Indeed, one of the practical problems



Figure 3. Indonesian poster of “traditional” dances of the nation, one dancer per province. Photo by L. V. Aragon.

of the draft law, were it to be implemented, would be to precisely identify the legal “owners” (*pemilik*) of a visual motif, song melody, or recipe that might be shared with some variation over many villages, districts, provinces, or islands.

Arts idioms are transported by migrants as well as developed independently across the porous state borders into Malaysia and the Philippines. We periodically encountered fear of what our team called the “Malaysian menace,” a seemingly new and state-supported anxiety or ac-

cusation that Indonesian batik, weaving motifs, and even popular food recipes such as tempe or West Sumatran beef curry (*rendang*) were being illegitimately produced and exclusively claimed by Malaysians. Thus, postcolonial states such as Indonesia can use IP legal “threats” to publicly defend their arbitrary geographical boundaries from “heritage pollution” by neighboring states that, in fact, have common cultural genealogies and overlapping ethnic group distributions.²⁴

Many Indonesian arts, both past and present, include local and nonlocal trade dimensions. Air transport and increased tourism have made this latter aspect more prominent, and contemporary Indonesians living in commercial-tourism zones such as Bali, Central Java, Sumba, Toba Batak, and Toraja are “well versed in the marketable dimensions of their ancestral culture” (Adams 1998:330; Causey 2003; Forshee 2000). Thus, wider political economies enter into the matrix of what gets defined as traditional in local contemporary contexts.

Knowing how past Indonesian governments targeted regional arts for nationalist political work, our research asked artists themselves to describe their genres’ normative local practices. What we encountered and describe in the next sections are productions, sometimes interpretations or adaptations, that are not anonymous, not claimed fully by an individual producer, but also not conceded to the authority of any living, clearly defined homogenous corporate group. Such practices are inscrutable to the planned laws.

Authorship, inspiration, and proprietary interests

When we discussed Indonesia’s arts with officials in Jakarta, they frequently spoke about the need to preserve the sacred integrity of Central Javanese court dances that many had observed as children. Their concerns implied a continued elevation, even fossilization, of the Javanese sultanates’ “peak culture” and a narrow vision of traditional arts within the nation space. Yet such examples also derive from bureaucrats’ own lack of opportunity to leave Java and directly

encounter different societies on other islands. Because citizen consultation was never implemented, most legislators do not know much about the diverse range of “traditional arts” they are writing laws to protect. Few arts practitioners from the archipelago’s over 350 ethnolinguistic groups have heard about the new laws. Even fewer expressed desires for increased state regulation. Instead, artists’ statements about how they conceived of matters such as copying, innovation, and appropriation led us along different paths of discussion.

We looked to see whether some regional artists now are inclined to claim individual rights of authorship or, alternatively, authority conferred by some form of communal rights of ownership that might be expressed in terms of ancestral tradition. The former would be more compatible with a Western-style copyright regime, whereas the latter might suggest some formal suitability for the kind of communal “moral rights” protections endorsed by the United Nations and drafted for both Australia and Indonesia. What we heard, however, were artists’ statements that claimed individual authority and new contributions yet did not attribute these contributions to the ownership of a single creator or group. Instead, individuals spoke of devotion to heritage repertoires enlivened by novelties that emerged, either intentionally or serendipitously, during the process of creation in social context. (See Figure 4.)

Java and Bali are famous for several forms of puppet theater, especially *wayang kulit*, in which intricately carved flat leather puppets are manipulated by a single puppeteer to create complex shadow scenes of ancient epic dramas that are enlivened by gamelan-orchestra music (Becker



Figure 4. Behind-the-screen view of gamelan instruments, leather shadow puppets, musicians, singers, and puppeteer Ki Purbo Asmoro performing for public audience in Solo, Central Java, Indonesia, July 2005. Photo by L. V. Aragon.

1979; Keeler 1987; Mrázek 2002). A Javanese puppeteer and scriptwriter for other puppeteers' shadow-theater plays told us of his youth spent in Indonesia's infamous political prisoner camp on the island of Buru. His narrative, in slightly condensed form, ran as follows:

In the 1960s, I was just an ordinary person. I am not some great man or artist. There were terrible political problems then. I don't want to go into that; I am not Pramoedya.

I was only fourteen years old when I was put in exile. In the first year, I was confused. In the second year also. In the third year, I realized I was to be a shadow puppet master [Javanese, *dhalang*]. We performers were just farmers then, not looking for payment. It was an issue of teaching community morality. There is a rift between moral and money issues. Shadow puppet theater is an art. It is a moral matter. I felt just like [the Hindu hero] Arjuna who landed in a terrible situation. I had no tape recorder. I just kept the epic stories in my head. I saw it as God's will that I become a puppeteer.

In 1979, I was freed. But I was still not free because I was not allowed to perform as a puppeteer or be a teacher. How could I make a living? I ate anything I could. Then a famous, well-connected puppeteer, who did not scorn me for my past, made me his assistant. I wrote scripts for him and others over the next twenty years. My name is not on the scripts, but there is a secret emblem indicating which ones I wrote. This was God's plan. This was just to earn me a bowl of rice. I don't want to be angry about my suffering.

In 1999, another recognized puppet master invited me to perform. Suddenly my style was seen as something new. From that bitter experience of my youth, my perspective is relevant. I saw God and he told me "I can use your knowledge, but not your [political] ideology."

Since 1999, I now perform differently. Sometimes I include flashback scenes from Buru prison camp. Three and a half years I spent in a cell three meters long. I lost 20 kilos. I rarely had any rice to eat and only sometimes was loaned a jacket. There is always a shadow play character who has experienced such suffering. It is not an end. What is the end of such suffering? I expect it will be a blessing.²⁵

The puppeteer's artistic career grew out of such difficult personal experiences under the early Suharto regime that it is no wonder he sees his practice as one that must be severed from all worldly politics. Prior threats or abuse by the state may incline many Indonesian artists toward a depoliticized vision of their art. Like many artists we met, the puppeteer described the payments he receives for his work as a matter of survival, not as proceeds from a profit-

minded business or sale of commodities. The puppeteer essentially became a scriptwriter after his imprisonment, a new pursuit among Javanese puppeteers and a profession eminently suited to individualistic modes of regulation such as copyright. Yet the puppeteer said he has no interest in copyrighting his scripts, even though he is fully aware it might lead to additional income in the form of royalties.

Instead, the puppeteer positions himself as someone chosen by God to dramatize ancient epics that teach morality. Other puppeteers describe how Central Javanese puppeteering usually is taught by talented fathers to talented sons (or through analogous kinship links), and some puppeteer families can track such transmission back a dozen generations. The puppeteer quoted above said his rewards will come eventually and that they will arrive unrequested.²⁶ He achieves local authority not by actively appearing to seek personal gain or tit-for-tat reciprocity but by doing work that will benefit his fellows and so guarantee proper recompense in the long run.

This puppeteer described how, for one of his screenplays, he changed the moral character of one of two brothers in an ancient Hindu epic. Asked by an Indonesian on our team whether his version still qualified as the traditional story, he answered, "Yes, it is still traditional. I didn't change the shadow puppet theater tradition." The puppeteer suggested that his innovation accorded with the essence of the canon; it did not threaten a theatrical repertoire that exists independently, beyond his contribution. The puppeteer added, however, that he disapproves when other puppeteers introduce new characters to the plays because the old ones are already great. Shadow-puppet theater, he said, "follows a natural pattern." He claims himself an authority on that pattern but not an "owner" of that canon.

Most importantly for the issues we pursue here, the puppeteer claims authority from the shadow-puppet tradition to make the alteration he initiates. Authority over repertoire in this case is not a democratic right homogeneously owned by all community members, as cultural-property laws would suggest. It is less the province of individuals, even elders (much less the state) than it is a matter of debate by a changing set of master artists and their respective local audiences with reference to inherited status and repertoire guidelines.

Of significance here is the way the puppeteer's proprietary feelings about his artistic endeavors or "screenplay products" seem to matter less to him than his artistic investments in the social process of "teaching community morality." That the puppeteer put a "secret emblem" on the scripts he wrote for other performers, who received public credit for them, indicates that he is not insensitive to his own individual contributions to the dramatic canon. At the same time, he told us he does not mind if others photocopy his scripts or imitate his work without acknowledgment because he changes his stylistic techniques all the

time and, besides, he wants to see the idiom of shadow-puppet theater flourish. Thus, he said, the more people who copy his example, the better. The puppeteer's words and deeds present a logical challenge to those who imagine that IP laws should defend self-conscious individualistic authorship or that cultural-property laws should shield heritages based in undifferentiated communal "ownership." Indeed, when Indonesians say, "In Indonesia, copyright means the right to copy," this is more than mischievous word-play alluding to what foreign companies deem IP "piracy." The witticism, instead, highlights the mutual frustration between developed nations' expectations of knowledge or brand "ownership" and those of societies, such as Indonesia or Vietnam (Vann 2006), that view the easy reproduction of copyrighted or trademarked items as no different than other accepted and familiar paths of distribution for social knowledge and useful goods.

Individual or communal artists: The only choices?

Many Indonesian artists we met refused to define themselves as the "creators" of their works. Hindu and Muslim artists said they were just "followers" (*penyusul*) of their ancestral tradition, that the term *creator* (*pencipta*) is applicable only to God.²⁷ Some observers might propose that these statements merely evinced modest piety or conventional rhetoric. Being devout or a conservator of tradition is a respectable claim in Indonesia. Yet these artists were not shy about claiming authority as rightful judges of the works of others or of those works' violations of canonical boundaries. Artists frequently described cases in which others had combined visual, musical, or plot elements that "should not be mixed."²⁸ Invoking one's fidelity to tradition allows one a convenient and unassailable position from which to criticize rivals. Although Indonesian "traditions" (*adat*) surely began as flexible and pragmatic sets of ideological and behavioral principles with real-world outcomes, they often have been described by both adherents and observers as if they were timeless and transcendent structures (Aragon 2000:158–163; Steedly 1993).²⁹ Such words also could imply a view of a fixed canon devoid of individual claims, something communal that the state legitimately could inventory and hold copyright in. But how does the timeless view, either in government or popular rhetoric, accord with artists' actual practices or legal interests?

All artists we encountered expressed a desire to strengthen local audiences' interest in new works based on ancestral canons. Many asserted that the way to achieve that end was both to imitate (*meniru*) and to add novelty (*menambah yang baru*) through disciplined mixing and matching. They described a pastichelike strategy, an intended stylistic hybridity. Various kinds of artists—batik designers, musicians, painters, weavers, dancers, and puppeteers—said they felt proud (*berbangga*) or even joyful

(*bergembira*) if others wanted to imitate their styles. Some composers said they felt this pleasure even when audiences mistakenly believed their new compositions were works of anonymous ethnic or regional heritage. Many stated it was artists' responsibility (*kewajiban*) to produce new works to teach novel versions of wisdom-laden epics to new generations. They described well-honed paths of apprenticeship, which support open access and imitation before pupils become more daring senior artists.

Cosmopolitan areas of Indonesia, notably Bali and parts of Java, long have been exposed to European styles of "fine art" associated with an individualized, "creative genius" role for artists. In fact, Indonesia is a lively scene for world-class composers, modern-dance choreographers, fine-arts painters, and literary figures with international reputations (Fischer 1990; Foulcher and Day 2002; George 1997, 1999). If some present ritual artists understand themselves as bearing creative genius, then that might motivate them to avoid having their work seen as just another stone in an age-old road of communal tradition. Copyright laws might become attractive to them. Indeed, we encountered some wishful thinking concerning copyright among a minority of artists we met as well as some diversity of opinion on the subject of individual authority (see also Perlman 1999). A few young shadow puppeteers mistakenly thought that copyright laws could garner them royalties for very minor innovations they made in new stagings of old dramas (changes in lighting angles, colors, etc.). Yet they and their colleagues also insisted that theater was for all, that its purpose was spiritual edification and social cohesion, not individual gain or glory. Similarly, we met Balinese epic painters who never sign paintings unless foreign tourists specifically request it. Thus, ideas about and identities based in "solo creative genius" appear far less widespread than claims about apprenticeship, adherence to tradition, and the informal ethnic identity of genres.

Andrew C. McGraw (2000:88–89) points out that, although musical change in the United States is often positively positioned in terms of "revolution or discontinuity," the same amount of structural musical change in Indonesian areas such as Bali is presented as continuous with tradition. He suggests that this difference now may be linked to economic realities such as tourists' interest in watching "traditional" Indonesian performances, in contrast to the interest of U.S. audiences in hearing something new and original—innovation being a critical criterion by which Westerners define artistic significance. Yet, even in Indonesian regions that do not draw tourist attention and that are largely beyond the sweep of national media propaganda, cleaving to local traditions is a more frequent claim, advanced more positively than it is in most Western societies. Not surprisingly, rituals and statements that celebrate ancestors also are more widespread, linked to kin-based social forms.

One member of a group of Central Javanese academic musicians and composers noted that the group's standards of musical aesthetics must be considered relative to the needs of the artists' particular communities. He and his colleagues said that the moral philosophy of their orchestral music (gamelan) is collective, not individual, and that is why they are proud to have their styles imitated by others. Such statements could seem to invite "community ownership" regulations such as those proposed in Indonesia's 2007 draft legislation on TCEs. That artists say their own productions will not reorient their canon also might suggest that some view inherited traditions as complete or as something from which they must—at least for purposes of economic survival in current market conditions—dissociate themselves to appeal to younger generations of Indonesian audiences. Moreover, if some ancestral arts really are seen as static from a local viewpoint, and contemporary artists are just using elements from the established canon to generate a "modern" style, that too might suggest that the 2002 Copyright Law is the appropriate way to protect both contemporary, individualistic artists and ancient, anonymous traditions.

But this is not what we found. Rather, Javanese musicians and theater performers said that, even among a group of experts, it is "dizzily difficult to distinguish" [*sulit pusing untuk membedakan*] what should be called "traditional" versus "modern" versions of their genres. The musicians' confusion is understood theoretically by the proposition that an artwork is never traditional or innovative in absolute terms. Its gestalt form can only be considered a "retention" or a "protention" of repeated features in a long-term cultural assemblage when viewed from backward- or forward-glancing perspectives (Gell 1998:256).³⁰

So, considering the total set of discussions we heard from a range of artists, both the individualistic-author and the community-property legal visions of Indonesian regional arts become problematic. The lines of reasoning just explored also identify the objects of claims solely as the artistic works, thereby missing a more significant analysis concerning the social processes of arts. Indigenous art practices give aesthetically interesting sensory form, or embodiment, to the communication of fluid cultural ideas and negotiated relationships. We argue below that what all artists and communities seek can be characterized as locally autonomous access to, and culturally normative use of, their arts canon, not exclusive and legalized ownership of any objectified elements within those canons.

Art processes, selfhood, and attribution

In addition to delighting the senses and supporting some producers' livelihoods, Indonesian regional arts engage fluid and polysemic ideas about social hierarchies, group identities, and cosmology. Arts have an instrumental and

performative nature. They "do" as well as "mean" through their production or exchange (Austin 1975; Bauman and Briggs 1990; Kapferer 1986; Keane 1997). Ongoing co-optations and contestations over authority continuously revise and redefine art's significance across social boundaries (Adams 2006; Marcus and Myers 1995). Yet, many artists' statements about cultural knowledge production and transmission warn against the legal impulse to propertize their arts.

Indonesian art practices facilitate thinking, social claim making, and communication through reworking and embellishing elements of past repertoires.³¹ Art is not simply objects or fixed rights of people with respect to objects. Rather, it entails abilities to communicate through varied sensory modalities about relationships with one's environment, fellow humans, predecessors, or deities. As the Javanese puppeteer whose words began this article told us, shadow puppets' voices can emerge from "outside" the puppeteer.³² Similarly, in Bali, people say that the world of illusion constructed by the puppeteer is "also the 'real' world of the gods and his own inner reality. . . . The puppeteer animates the puppets, but, in another sense, they animate him, since they represent the powers that create both the inner and outer worlds" (Lansing 1995:61).

The artists' claim here is over the relational positioning of elements and discipline that allows the genre to "come alive." That suggests why we got no strong statements about personal or group ownership of the object or style created. It is also why we were told that people should respect artists' work and position through voluntary attribution and locally appropriate compensation. Debts and attributions are involved, but they are not assuaged through claims of exclusive individual or group ownership of art expressions as commodities. If others do not follow local attribution and compensation practices, the artist may feel irritated or upset (*kesel*), but artists say not much should be done to rectify this.³³ The artist or some of his or her supporters might visit transgressors and remind them of the artist's work and presence. Ultimately, even if credit does not come in the desired economic forms, artists emphasize that, at least ideally, more important goals and rewards are at stake. "I know my scripts are photocopied exactly and sold," the puppeteer and scriptwriter told us, "but even if a thief gets the money, I get the blessing from God." Such stoicism could open the door to unwarranted government usurpation of control, but the artists' modest statements are founded in claims of their ethical authority, not in abdication thereof.

Without certain textiles, carvings, or performances, people's weddings, funerals, and other types of lifecycle rites literally cannot happen (Barnes 1994). Substitute items sometimes may be accepted as proper bridewealth or burial shrouds, for example, but in other cases, the absence of certain ritual items either stops or alters the nature of ritual accomplishment itself, which is about identifying or

transforming relations. Weavers, like other kinds of artists in the Indonesian archipelago, often speak of their relations with ancestral spirits, God, or others whose presence they experience when designing, tying, dyeing, and weaving their family's cloth. When theorists or policy makers focus too narrowly on "the meaning" of art elements, envisioning ownership of visual or aural elements (that evoke meaning within works) as property becomes easy. But, if regional arts in ritual contexts do as well as mean, then property ownership can be seen as a skewed application of the claims involved. The analytic distortion of applying conventional IP regimes to Indonesian arts is based on the straightforward idea of legalizing creators' claims over "things" (art works, motifs, and styles) when the primary claims are over relations and conduct that those art forms, through their representational and performative capacities, index or regulate in performance or transaction.

Present understandings of Indonesia's authorized scriptural religions, here reinforcing older cosmologies, also underlie artists' lack of outrage over what outsiders might call "piracy" of their works. For many Indonesian artists, a more-than-human being always is involved in the creation of life and its attendant aesthetic productions. Early on, J. Stephen Lansing recognized the challenge of Balinese artistic production ethics to Western concepts of self, authorship, and IP. He observed how priests, poets, dancers, and puppeteers commonly incorporate preexisting verses and episodes into their own works with no concern for the "rampant plagiarism" involved (Lansing 1995:57). He located this attitude in ideas of charismatic performances that overlap with concepts related to household shrines (Balinese, *taksu*), where artists pray to ancestors for enlivened performances. It is, in fact, the intensified moment of relational connection with that otherworld entity that is sought by many artists and revered by audiences. This mode of creativity is a way to keep social norms among permeable selves, and, sometimes, the broader cosmos, firmly in view. These alternate perspectives on selfhood and creativity are well documented in the ethnography and ethnomusicology of Java, of Southeast Asia, of Melanesia, and of Polynesia, more generally (Becker 1993; Gell 1998; Roseman 1990; Thomas 1995; Weiss 2003; Wong 2001). The immaterial world's multiple echoes in the form of aesthetic mimicry are what make producers' works efficacious. Thus, they are largely desirable rather than something to be avoided, much less legally prosecuted.

Rural weavers, bounded transactions, and transgenerational authority

Textiles are the most elaborate and diverse two-dimensional art form in Indonesia. Whereas brush painting, except on some barkcloth clothing and calendars,

is a relatively recent cosmopolitan enterprise, textiles have incorporated formally intricate designs and narrative elements for centuries (Gittinger 1979, 1989; Taylor and Aragon 1991). The Balinese customary village (*desa adat*) of Tenganan is famous for its secretive production of a rare form of double ikat weaving (*gringsing*), which includes intricate motifs adapted from first-millennium cloths traded from India (*patola*). This textile type is considered by Balinese, inside and outside Tenganan, to offer protective power, which is drawn on for rituals such as the tooth-filing purification rite that many Hindu Balinese undergo prior to marriage.³⁴

Gringsing textiles feature designs in three natural dye colors: red, blue-black, and yellow-white, which the village's ritual leader in 2005 linked to power channeled from the Hindu gods Brahma, Vishnu, and Siva. The textiles' painstaking tricolor dye and design production process, by contrast, is dependent on social relations with an outside village (the source of the indigo dye) as well as a strict patrilocal marriage and village endogamy system, which classifies and reproduces the only individuals eligible to learn the secrets of Tenganan's textile production. When every question we asked about protecting and controlling textile creation was met with an answer about kinship and lifecycle rituals, we understood that these textiles were about the construction of relationships seen as ensuring the continued health, reproduction, and survival of the bounded ritual village.

The answers pointed to the kinship structure of the village: design techniques and dye recipes were shared and retained through endogamous marriage practices. Textiles' value was likened to the generation and maintenance of flows of substance and vitality along specific relational lines. The process of textile production is not just analogous to, but actually is part and parcel of, the process of social reproduction for these people. The value of cloth made in the correct way by, and for use of, the right people was asserted forcefully. Some textile types were not customarily for sale to outsiders. It is difficult not to equate, this time as an analytic analogy, the production of valuable cloth essential to kinship alliances in the village with the production of children themselves—entities more clearly essential for the ongoing transgenerational vitality of an endogamous village. (See Figure 5.)

Although Tenganan's ritual head acknowledged the contemporary need for tourism to provide villagers with economic self-sufficiency, he added that, "for us, this is not just a business. This is a matter of tradition [adat]." Sacrifice of quality control for some tourist souvenirs was of no grave concern. Even the recent proliferation of gringsing knockoffs (imitation cloths produced quickly by other villages with single rather than double ikat techniques) was more an annoyance requiring a shift in marketing strategies than a serious threat to the group. The man's greater



Figure 5. Weaver of double-ikat ritual textiles in Tenganan Village, Bali, Indonesia, July 2005. Photo by J. Leach.

concerns were that economically strapped villagers would emigrate rather than weave and that they might sell key examples of heirloom cloths or reveal dyeing secrets to outsiders. Losing local control over the lengthy procedures of gringsing cloth production would signify the end of villagers' ability to reproduce themselves as a cohesive ritual community as well as any special status they hold in the Balinese tourist itinerary. The ritual leader concluded all he wished to tell us by saying, "We don't want to be naked [by revealing all our secrets to outsiders]. We are a small republic." He said that any attempt by the government to protect Tenganan's IP or cultural-property interests that considered textiles only as a national business matter would be misguided. For villagers, the production of their textiles involves local cultural reproduction, binding the generation of people and cloth into a single ideological process.

We encountered comparable attitudes elsewhere in Indonesia. Backstrap-loom weavers we met in West Kalimantan and Timor provinces said that their evaluations of particular textiles are based not on size, material costs, labor time, or technical difficulty but, rather, on a cloth's "story," which is "read" according to nested design patterns. In West Kalimantan, we visited ethnic Desa' and

other Ibanic women who learn to tie and dye red warp-ikat designs in particular sequences. What we might call their most difficult or intricate weaving designs they call their most "dangerous" ones. Weaving certain animal or human figures requires years of training by female elders and aid from ancestral spirits, who are said to visit weavers in their dreams. Such cases, in which artists invoke deities or spirits of the dead as sources of power and authorities for new productions mock the positivist vision of national laws awarding copyright in works to particular individuals, assigning ownership corporately to political units, or seizing copyright authority over "anonymous folklore" for the state.

Conceptual gaps between law and life

The philosophical roots of Euro-American IP law generally are located in John Locke's (1960) exposition of labor-based property ownership rights, in conjunction with a vision of individual creative genius traced to 18th- and early 19th-century Romantic authors (Jaszi and Woodmansee 1996; Woodmansee and Jaszi 1994).³⁵ The Lockean view imagines the value of art, or any created work, as emanating from the individual, via labor, and entering the work through the mechanical process of its creation. Romantic authorship as a model suggests that individual genius transforms ordinary human experiences into extraordinary original art. The artwork, now a detached possession or event, is considered inanimate, manifesting, but not containing, the creativity of its producer (Leach 2004), much less a larger social tradition. Its source of value can be translated, through the notion of "labor," into economic recompense. In this model, the artwork may "move" those who encounter it, but its greater effects, or revelation of a deeper reality, are, in the Kantian philosophical tradition, an interior experience, individual to each perceiver, not conceived as a matter of holistic or interactional transformation. The models present relations between artist (or audience) and created object, that is, personal relations over things, not relations among people with respect to things.³⁶

An outgrowth of conventional IP law, the more recent notion of "cultural property" has come to refer in international policy arenas to a variety of objects, places, and, now, practices attributed to a homogenous cultural or ethnic group. The notion covers both tangible and intangible "objects" (the latter being made into objects through their expression) that allegedly should not be alienated from a group. Cultural property is said to include elements of a group's identity (UNESCO 2001:preamble). Thus, cultural-property debates have a distinctly ethical cast (Brown 2003; Greenfield 1996; Leach 2003a, 2003b; UNESCO 1978, 1984, 2001) and can lead to moral-rights laws such as Australia's and Indonesia's draft resolutions to regulate TCEs. But to be viewed in this way, expressions have to be made tangible.

One cannot own a distinctive form of creative practice but only the discrete expressions of that practice. It is these expressions that UNESCO leaders (whose influence has defined WIPO's models of cultural property) focus on when they recommend that "each State Party shall draw up, in a manner geared to its own situation, one or more inventories of the intangible cultural heritage present in its territory" (UNESCO 2003).

Cultural-property manifestos follow the possessive logic and targets of intellectual property as current U.S. and U.K. legislation defines them: objects that demonstrate creative work, innovation, and added value. Innovation, creativity, and the intellect itself are central but are not protected. How can one protect an idea or potential? Yet this way of defining what can, and cannot, be owned through an opposition between creativity and practice and the objects and forms that emerge from the artistic process eliminates the possibility of recognizing alternative modes of creative practice and value generation. Locally respected artists across a range of genres and islands in Indonesia understand the acts of circulating or exchanging ideas to be the sites at which value is generated. Their emphasis on the coherence of "tradition" stems from a sense that knowing the repertoire of their group's genres allows more accountable and sustainable creative engagement with their fellows or "audiences." This is an activities- or process-based achievement of creation, communication, and relational positioning. It cannot be distilled simply to things made. Over lifetimes and across groups, repetition, circulation, and recycling make for memory and revitalization within art. Moreover, knowledge about production (sometimes resulting in "things") is neither a matter of original genius nor an equally distributed right within an "owner" group. It is a matter of transgenerational discipline and the exchange or variegated transmission of cultural experiences. Marcel Mauss (1990) in his theory of gifts grasped these kinds of processes and values nearly a century ago.³⁷

The European and U.S. history of IP regulation is centered in a recurring tension between exclusive but time-limited monopolies favoring powerful individuals, sovereigns, or corporations and a "public-regarding intent to free the flow of information" (Sell and May 2001:468) in the interest of societal benefits or competition. Free dissemination of information is now seen to come at some cost to the rights of an individual creator. In Indonesia, by contrast, the free flow of ideas through "traditional arts" generally is not perceived by the artist to come at a personal cost or to be "rivalrous," as Lawrence Lessig (2001) puts it. In fact, as many artists told us, they desire, and consider it a moral responsibility, to share and promote replication of their arts. Although they do not actively seek to spread them into other regions, most also see little need to restrict them from flowing elsewhere. In short, these art idioms serve internal social reproduction or educational processes and some-

times connect people to advantageous external alliances or markets.

Digital reproduction technologies and transnational commerce have introduced a new potential for both real and perceived misappropriation and misuse of arts and "traditional knowledge," which we do not seek to minimize. Indonesian artists, however, currently are more concerned with access to repertoires, autonomous production control, and the enhanced local distribution or flow of their arts than with bureaucratic legal restrictions in the service of commodification or moral protection from "artistic distortions." The new laws force people to choose between privatized individual or communal ownership of profitable things. They do not as yet offer legal slots for customary distributed access to art practices that entail intertwined enactments of cultural education, ritual community reproduction, and identity cohesion structured, at least partially, through the economics of delayed reciprocity.

The arts we researched in Indonesia, as in the arts of Papua New Guinea, tend to obviate the distinction between the process of making, on the one hand, and having an effect through the finished object that is made, on the other hand (Leach 2002, 2006). This distinction is crucial to IP law, as it makes a split between idea and expression, with the expression as that which can be protected by law. Under this logic, such protection is appropriate because it is the expression, not the concept or the process of making, that has the effect. The creation of value through social transactions, moreover, is not recognized outside of a commodity exchange. Such IP law makes new realities that require new actions, as the law becomes a mediator for identifying and interpreting indigenous knowledge (Anderson 2005; Merry 1988). As Lawrence Rosen phrases it, law is "an inexhaustible resource for understanding how, in any given circumstance, we come to tell these stories about ourselves in ways that build the very reality that they must, in turn, address" (2006:xii–xiii).

Indonesian artists we met repeatedly made claims. But the claims they made were rarely about being the individual authors of particular works or of being exclusive owners of idioms, styles, or genres. Many see the "genius" of what they do as emanating from an ancestral tradition and see themselves in part as authorized vehicles rather than sole and ordinary sources of creativity. Their physical art—in the form of textiles, songs, dramas, dances, or carvings—is not their only achievement, as human sensory perceptions, commodified earnings, or property law could imply. Rather, their work, as either material art or performance, is also the communicative sign and physical realization of their relational accomplishment, their ability to master and continue their group's practices for the pleasure of living (and sometimes nonliving) cohorts.³⁸ The value of what they create does not reside only within the work produced, any more than creativity resides solely within a single human creator

or an amorphous cultural unit. Artists we encountered expressed confusion over, and reluctance to embrace, the claims of either Indonesia's 2002 Copyright Law or the draft bill because local practices already prescribe autonomously administered codes of stylistic sharing, imitation, acknowledgment, and reciprocity. Most resisted the idea of their local social activities being managed by the government as a form of commercial property.

Properitization as the core assumption of IP regimes pushes ownership and control either to the individual producer or to state authorities, once European sovereigns, now postcolonial states. Indonesia, with its draft law, suggests ethnic or district-level group ownership of property as an additional kind of solution. As Strathern notes, international debates over individual versus communal rights have become deadlocked in ready-made "bundles of concepts" rendering the contrasts "prone to exaggeration" (2004:97). We maintain that the Indonesian legal solutions proposed, both individual and communal, generally imagine only distortions of actual Indonesian claims and arts practices. When the legal space of entitlement to cooperative contributions is not appropriate for the complexly layered claims, then legal ownership runs back to the state. This potential danger relates directly to the object-and-owner architecture of both conventional copyright and cultural-property regimes. The laws act as default trajectories for anything that falls into the gaps between possessive individualistic conceptions and the overarching governmental system that regulates them.

Developing states complying with UN and WIPO guidelines are likely to pick up things that fall through two critical conceptual gaps in Euro-American-derived IP law. One conceptual gap is between a kind of human isolate, the imagined communityless, "acultural" creator or "author," and the political state within which this person resides. The other is between an anonymous "traditional" creative work of "folklore" and a "modern" uniquely attributable creation called "art." But those conceptual gaps, which deny the basic facts of what anthropologists call "cultural learning," are exactly the spaces in which the generative processes of most heritage art forms exist. Herein lies another point of comparative anthropological relevance for this critique: Translating the language of ritual arts or cultural heritage into the language of Euro-American IP law or newly envisioned cultural-property laws regulated by states is a kind of cultural alchemy or transforming work likely to replicate Western states' "specific forms of power and subjection" (Asad 1993:13).

Even without malicious intent, the state, in its default role of legal protector, could ensure that some artists are deprived of rightful, place-based source materials or that incentives of litigiousness foster disharmony among communities for whom heritage arts are currently a source of positive social relations and identities. Because copyrights

are transferable, they often lead to control by powerful persons or firms not directly involved with cultural productions. IP laws create new economic incentives, for example, replacing community reciprocity with state-supervised royalties, which can lead to increased disputations among producers themselves. In 2005, we found that hundreds of Central Javanese "classic" batik textile designs had been newly patented at a local government office as the privileged intellectual property of particular contemporary manufacturers. Smaller family producers of batik cloth suddenly feared that if they painted these old designs, they might be sued by the large companies. Threats of legal sanctions alone can affect behavior. Viewing aspects of shared cultural heritage as commodities rather than sources of negotiable identity or ideas realized through production gives rise to anxieties as arts producers feel pressed toward competitive market values and privatization (Siagian 2005). Similar events can be expected to transpire in other states signatory to the TRIPS agreement and in the over 100 nations currently participating in WIPO negotiations.

Anthropologists increasingly "study through" and reexamine analyses of the creation and implementation of international and national policies concerning technology, ethics, environmentalism, and law (Barker 2005; Bowen 2007; Brosius 1999; Coombe 1998; Hoeyer 2005). We have shown here how the social processes that allow ritual art idioms to flow can be recast and potentially narrowed by IP regimes and their attendant assumptions about personhood, creativity, authorship, and "possessive individualism" (Handler 1991; Macpherson 1962). IP laws focus on the exclusive disposal rights of individuals and corporations over particular works and, thus, are poorly designed to support patterns of localized access and distribution of partially shared activities, styles, methods, or motifs. Cultural-property solutions used recently to address heritage-rights issues on behalf of marginalized groups create new problems of defining ethnic or stylistic boundaries and rely on a potentially inappropriate "property" model of creative activities (Brown 2003). And, unlike in settler societies such as the United States, Australia, or New Zealand, where legal cases have been driven by indigenous-rights activists or artists in response to intrusive commerce, virtually all the pressure to bolster IP regulations in Indonesia is top down. Although seeming to offer new "modern rights," the laws promise to revamp local authority over behavior through state regulation and legalize a stark modern-versus-traditional dichotomy of rhetoric in place of a discourse supporting indigenous or minority concerns. At present, we doubt that Indonesia's new laws could allow a beneficial merger of "international and indigenous reckonings of entitlement within [a local] understanding of copyright, simultaneously capitalizing on and blurring commonly understood conceptual, economic, and sociopolitical divides" (Geismar 2005:437). Instead, we encounter a simplifying

legal discourse that expands or parses cultural heritage in political ways to suit nation-building projects.³⁹

As Price notes, “arts adjust” (2007:603). Yet, just when many small-scale “non-Western primitive artists” have moved creatively into the international arts mainstream and reconfigured their arts worlds (Morphy 1998; Myers 2004), it is surely no coincidence that large-scale, modern IP law has spread outward along the same channels in reverse motion. With its spread, complexities regarding how knowledge is circulated and controlled among indigenous groups are “sheered off in order to uphold a logic about property and ownership in knowledge” (Anderson 2005:367). Although Brown concludes that the crux of Native American and Australian indigenous people’s heritage anxieties concerns issues of mutual respect and “does not lie in irreconcilable views of ownership, even where these exist” (2003:10), we find the “incommensurable” (Povinelli 2001) perspectives about “ownership” explored here to be conceptually and politically significant, especially because the property discourse is driven by institutions of power rather than by Indonesian minorities or artists.

The cultural-ownership models arising in these debates are not collaborative or porous in ways that would support the prevailing concerns of politically marginal peoples. The new laws understate local claims and expand the idea of “exclusive possession,” applying it to a homogenized national vision of cultural groups in a way that approximates Western legal treatment of individuals and corporations. In such contexts, conventional IP-rights rationales do not scale down unless gross misunderstandings about creators’ intentions and practices are introduced. The new laws draw their force from the apparent (and potentially real) encompassment of one creative and economic production scale by another, and they invite scholars to denaturalize the categories and conflations of cultural processes and products that they introduce.

Notes

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views, findings, conclusions or recommendations expressed in this publication do not necessarily reflect those of the National Endowment. All foreign-language terms included are standard Indonesian, except where otherwise marked. The first author bears responsibility for ethnographic quotations and translations from Indonesian.

1. In many linguistic contexts, including this one, the Indonesian language does not mark for singular versus plural nouns, so this phrase could refer to any single puppet (“a puppet”), a specific puppet being handled (“the puppet”), or the entire set, usually well over 100, being used for a dramatic performance (“the puppets”).

2. We understand art and aesthetics in a broad sense as referring to disciplined, communicative, and often instrumental cultural activities that invite attentive intellectual excitement, sensory involvement, emotion, and potentially contested moral vision: “probes for meaning, prods for thought” (Bernstein 1997:41). Our relational perspective on art is explored further below in the text.

3. Budi and Sedyawati are Javanese, so their concerns are nationalistic rather than based in any possible Bugis heritage offense.

4. For the comfort of the foreign producers, “I La Galigo” rehearsals were moved from South Sulawesi to Bali, and the final elaborate production, requiring a large stage, suspended props, and expensive lighting equipment, was not performed for Sulawesi residents.

5. As elaborated below, the draft law, if implemented, would necessitate that a foreign producer, such as Wilson, research and negotiate with ethnic Bugis communities throughout Sulawesi to identify a single community or set of communities as the contractual “owner” of the *La Galigo* epic.

6. We do not repeat in full here the recent history of UNESCO and WIPO deliberations and decisions to combine IP and cultural-property rights. That history is described concisely in Strathern 2006 and also discussed in Brown 2003. UNESCO and WIPO’s common decision to address “folklore” dates to the late 1970s, but the newer focus on the rights of “indigenous people” to own all their “traditional knowledge” emerged in the 1990s after the 1993 Daes report (see Daes 1997). The recent legal fascination with “traditional knowledge” also pertains to its newly perceived commercial potential, particularly for pharmaceutical research and development (see Boyle 1996).

7. WIPO documents define TCEs as “tangible and intangible forms in which traditional knowledge and culture are expressed, communicated and manifested” (Wendland 2007:2). These “include traditional music and songs; names and words; symbols; designs; narratives and poetry; performances and rituals; handicrafts; architectural forms” (Wendland 2007:2). The conceptual and legal problems with melding the tangible and the intangible as well as the TCE concept’s vastly encompassing reach (“names and words; symbols”) are stunning. WIPO documents also specify cultural knowledge “preservation” and legal “protection” as twin international objectives, implying that the former inevitably will follow from the latter.

8. The cases resulted in no new legislation but set new precedent when Australia’s copyright law was used not only to protect the painter John Bulun Bulun’s rights to his painted images but also to find he had a fiduciary relationship with his clan such that clan leaders became eligible to sue over the unauthorized use of clan designs on commercial textiles if the painter failed to do so.

9. This Old Javanese phrase is Indonesia’s national motto. Literally it glosses, much like *E Pluribus Unum*, “Out of Many, One,” emphasizing the teleological union of the nation, but it generally gets translated as “Unity in Diversity,” which concedes the Indonesian nation’s exceptional ethnolinguistic diversity in a public way.

10. We use the term *traditional artists* and related terms such as *tradition* and *traditional communities* when they relate to popular or state discourses in Indonesia or to the UNESCO and WIPO legal discourse on TCEs. This article is not directly addressed to the general theoretical debates around the status or validity of such terms (see Handler and Linnekin 1984; Hobsbawm and Ranger 1983; Keesing 1989; Li 2000; Williams 1983). But, as our argument unfolds, we do address relevant implications of the terms in their political and conceptual deployment by both arts practitioners and the Indonesian state.

11. During the first (2005) phase of that larger project, we joined a 13-member team composed of lawyers, arts scholars, ethnomusicologists, community-rights activists, and an archivist. We were the only anthropologists on the 2005 team, whose members originated from Australia, Great Britain, India, Indonesia, and the United States. The initial team mandate was to consider how the 2002 Copyright Law might affect Indonesian regional arts, with our analyses offered to interested organizations and the Indonesian government. The 2005 fieldwork focused on better-known, and, indeed, geographically and politically central, art idioms. They were Javanese batik, Balinese weavings (single and double *ikat*), and Central Javanese and Balinese gamelan orchestral music, dance dramas, and shadow-puppet theater (*wayang kulit*). The second (2006) and third (2007) fieldwork phases utilized smaller teams, which traveled further in geographic, cultural, and political terms. Fieldwork in 2006 included work with musicians, dancers, carvers, and weavers in South Sulawesi, Flores, Timor, and West Kalimantan as well as with Balinese painters. Fieldwork in 2007 involved research with Toba Batak and Minangkabau musicians, dancers, and weavers in Sumatra. During all phases, team members also spoke with “modern artists” in Jakarta and Bali who adapt regional idioms or themes for urban audiences. The fourth grant phase culminated in a technical legal report (Jaszi 2007) and workshop in Jakarta on June 16, 2007, and the team’s attendance as observers at the Asia–Africa World Intellectual Property Organization forum in Bandung. Each year during the project team members held workshops with government and NGO representatives.

12. Indonesian legal experts confirm that many draft laws are designed to please particular vocal constituencies but later are allowed to expire quietly on parliamentary desks.

13. The United States pressed especially hard for the TRIPS agreement to protect against unlicensed copying of entertainment products, computer programs, pharmaceuticals, and chemicals. Indonesia, like many developing countries, is considered a net importer of intellectual property. When Singapore bowed to international pressures to close down its foreign tape duplication industry in the mid-1980s, Indonesia quickly (although briefly) emerged as the world’s number-one exporter of “pirated” audio- and videotapes (Uphoff 1991:27).

14. The theoretical significance and potential practical difficulty of distinguishing old works of unknown individual authorship (requiring a 50-year state protection) from old works of communal folkloric authorship (requiring state protection in perpetuity) seem to go unrecognized in the legal wording.

15. *Sui generis*, an increasingly popular legal term drawn from the Latin “of its own kind,” signals no prescribed content but suggests a specially tailored law, which may or may not follow known forms of legislation.

16. Initially, two separate companion laws were to be drafted, one on traditional knowledge and one on genetic resources but, in 2007, legal protection of traditional knowledge was simply moved into a revision of the draft law on TCEs. Indonesia cast itself in the IP vanguard of developing nations by assuming the presidency of WIPO’s Intergovernmental Committee, drafting the *sui generis* laws, and hosting the 2007 WIPO-sponsored Asian–African Forum

on Intellectual Property and Traditional Cultural Expressions, Traditional Knowledge, and Genetic Resources.

17. The draft law provides narrow exceptions to this regulation for education, research, journalism, and charity, but there must be no economic returns involved, even to defray production expenses. It requires both Indonesians and foreigners to negotiate use agreements with “owner communities” and file these with district, and in some cases also provincial and national government offices. In addition, foreigners must obtain licenses from district, provincial, or national agencies, which provide for income sharing with the government. Income sharing with the “owner communities,” by contrast, is not stipulated. Improper attribution, offensive uses of TCEs, or failure to obtain agreements and licenses would lead to civil or criminal penalties. A vaguely specified national expert commission would advise the government further.

18. Additional efforts to create nationally administered inventories and cultural-heritage protection, as advocated by WIPO, are problematic when local cultural groups are disjunctive with national ones and when minorities whose ways of life are to be “protected” are, often by design, declining rapidly because of mainstreaming cultural education, economic pressures, lost forest lands, and other national and transnational initiatives (see, e.g., Duncan 2004).

19. Recently, the Indonesian government decreed that all native-born Indonesians, whether from majority or minority groups, are, by definition, indigenous, thus thwarting efforts by indigenous-rights networks to aid disadvantaged minorities (see Duncan 2004).

20. Because of these “facts,” the preamble states, a unique or *sui generis* law is required, and it must include mechanisms to clearly regulate (1) all uses of TCEs, (2) benefit-sharing agreements with “owner communities,” (3) government registration of all agreements, (4) government permits for uses by foreigners, and (5) penalties for violations. In its last paragraph, the preamble states that the aim is to “regulate and increase the uses of TCEs while still guarding their value or sacredness, along with guaranteeing implementation of appropriate benefit-sharing for traditional communities owning TCEs.” The goal of “sacred commodification” appears to be something of an oxymoron?

21. Practitioners working in some of the more cosmopolitan Indonesian areas or genres refer to themselves as “artists” (*seniman* or *orang seni*) who make “art” (*kesenian*). Most Indonesian rural arts practitioners, though, refer to themselves, as they would have in the past, as “doers” of their specific activity genre, such as “musicians,” “dancers,” “weavers,” or “puppeteers.” Although many practitioners we met modify their activity-genre word with the Dutch- or English-derived Indonesian term *tradisional*, some also incorporate the older Arabic-derived term *adat*, which similarly refers to learned, transgenerational customs and sometimes is glossed literally as “ways of the elders–ancestors” in local Indonesian languages.

22. Philip Yampolsky (2001:175) describes Indonesian music that uses obvious European, Indian, or Arabic scales, rhythms, and formats as falling at the “non-traditional” end of a continuum and those without so many obvious foreign elements he calls more “traditional.” Yampolsky is aware that Indonesia’s political borders, essentially set by the footprint of Dutch colonialism, are culturally porous, yet he works within this partly geographic, partly arbitrary national frame. We agree with Yampolsky that the key issue here is reduced artistic diversity resulting from the hegemony of foreign standards, particularly recent ones (such as pop or Bollywood music genres), not the denial or denigration of cultural borrowing or hybridity per se.

23. Bureaucrats documented and showcased government-authorized lists of expressive practices and artifacts generally produced by local aristocracies from particular islands or populous

regions (see, e.g., Departemen Pendidikan dan Kebudayaan 1985). WIPO's planned cultural inventories might resurrect these kinds of textual curiosity cabinets.

24. All that separates parts of Indonesia from parts of Malaysia and the southern Philippines are Dutch versus British versus Spanish (and U.S.) colonial rule and their respective post-WWII national trajectories. The problems here are twofold. First, cultural continuities are widespread, making claims by either side potentially moot. Second, any laws established in Indonesia (or Malaysia) will have only domestic jurisdiction unless future multilateral treaties are created and enforced. Thus, the proposed draft law likely entails more nationalist bark to impress home constituencies than fangs that will ever bite beyond the borders.

25. Anticommunist purges began in Java and Bali after the attempted coup that ultimately deposed Indonesia's first president, Sukarno, in September 1965 (Cribb 1990; Robinson 1995). Many political prisoners, including the family of this artist, were sent for decades to prison camps on the eastern Indonesian island of Buru in the Moluccas (Maluku). The preeminent Indonesian writer Pramoedya Ananta Toer, mentioned by the puppeteer, has described the hardships and torture he and his fellow prisoners endured (Toer 1999).

26. Anyone familiar with Indonesia knows that this man's community should be conscientious enough to support him when he needs help, without his direct request, as reciprocity for the "gift" of his art.

27. For bureaucratic purposes, including school registration, marriage, and issuance of residence identity cards, Indonesia requires its citizens to choose among a set of authorized scriptural religions, although it does not generally police their daily practices. Official records state that roughly 88 percent are Muslims, six percent are Protestants, three percent are Catholics, two percent are Hindus, and one percent is Buddhist or Confucian. Indigenous cosmologies are not recognized as proper religions (*agama*) by the government, although a few can be registered under the rubric of Hinduism.

28. One senior musician said, "Javanese gamelan cannot be turned into *dangdut* [an Arab and Indian-influenced Indonesian pop genre]. That's impossible!" Marc Perlman (1999) describes debates over classical gamelan music's inclusion of what many view as unorthodox accretions.

29. No matter how "tradition" is described by insiders or outsiders, we recognize that it is not, as Paul Ricoeur notes poetically, "a sealed package we pass from hand to hand, without ever opening, but rather a treasure from which we draw by the handful and which by this very act is replenished" (1974:27).

30. Problems with forged signatures on Indonesian fine-art paintings finished in atelier-type cooperative workshops (George 1999) also demonstrate that claims of solo art authorship and of a divide between "modern" and "traditional" arts in Indonesia are fraught ones.

31. Communication does not necessarily imply transparency of message. What is communicated may be indirect, multivalent, opaque, or even incomprehensible in linguistic content, yet the practice itself generates intense feelings and knowledge of social principles and relative statuses (Aragon 1996; Becker 1979; Keeler 1987; Perlman 2004).

32. Eighteenth-century texts from Java record that this fusion ideally is experienced also by the audiences who watch puppeteers (or masked dancers) and their characters (Weiss 2003; Zoetmulder 1995).

33. In anthropological literature, Central Javanese, especially those aspiring to high status, are famous for their desire to conceal

or suppress strong emotions, especially negative ones (Geertz 1960; Heider 1991; Pemberton 1994). Similarly, to appear very eager for personal gain is considered unrespectable. Thus, for artists to tell us that improper attribution or compensation made them feel a little upset or irritated likely entails some understatement.

34. In Balinese *gring* means "hurt" or "sick," and *sing* means "not." The combination often is glossed as "healthy" or "healed," suggesting to many that the cloth has beneficial powers. Tenganan people's ability to create such protective power is linked to their perceived descent from Bali's indigenous inhabitants.

35. Historical accounts indicate that many other economic and political motives were at play in Europe and the United States (Sell and May 2001), but what we discuss here are only philosophical rationales that now have become widely internalized and thus seem to justify the way laws are designed and legal debates are mounted.

36. These generalizations about a more complex and contested series of philosophical positions seem justifiable here because our critique is about the hegemonic simplification (the rendering of complex realities as all following the same logic) that IP law effects.

37. UNESCO (2001:Article 8) has begun to recognize its platform's problems with the commodification issue, yet its focus on preventing alienation and fostering repatriation make objects themselves appear to be the essence of both group identity and creativity. Value still is placed mainly in objects, sites, or codifiable (i.e., static) practices. In most cultural-property renderings, claims people make over owning their own traditions are viewed as claims to objects that maintain their internal integrity and, thus, their possibility for future innovation and development.

38. The idea that regional arts in Indonesia are relational is not unexplored, particularly for Java. See Ward Keeler's (1987) sophisticated ethnography of Javanese puppet theater and its sometimes-inattentive audiences, and A. L. Becker's (1979) argument that the primary audience for puppet dramas, conveyed mostly in unintelligible ancient languages, is not living humans but ancestors.

39. For those interested in academic voices on policy, our team recognized that some artists and officials had realistic concerns about unauthorized commercial reproductions and falsely attributed knock-off products. But we advocated a cautious "toolkit approach" that proposed targeted solutions, some legal, many not, for specific problems, rather than sweeping property-law approaches that would impose an alien logic and revised authority structures on local artists' activities. In 2005, our legal specialists proposed possible increased support for laws of trade secrecy, performers' related rights, ethical conduct-code protocols, and voluntary marks of attribution or geographical indicators. By 2007, following introduction of the draft law on TCEs, new suggestions were added, including administratively simple methods for registering complaints about misappropriation, national support for collective marks of production origin, support for creating informed-consent and benefit-sharing contracts, and the possible creation of Wiki-based regional art inventories for use in contesting others' false claims of exclusive ownership (Jaszi 2007).

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