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(Dis)owning Bikram: Decolonizing vernacular and dewesternizing restructuring in the yoga wars

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ABSTRACT

Undertaking analysis in the area of critical yoga studies, this article identifies two strategies of anticolonial resistance to Bikram Choudhury's copyrighting of a sequence of twenty-six yoga poses. First, it examines decolonial vernacular, which contests Western commodification of yoga through the use and misuse of terms and phrases, such as "yoga piracy" and "cultural patents," derived from intellectual property rights, international human rights, and cultural property regimes. Second, it considers dewesternizing restructuring emerging from the creation of the Traditional Knowledge Digital Library, a database of information on yogic practice and medicine, which uses non-Western classification systems to interrupt the legal and economic structures through which patents and copyrights are enunciated. Together, these anticolonial strategies force intellectual property rights regimes to integrate Otherness, making space for the recognition of Indian agency in knowledge production.

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In late 2002, Bikram Choudhury, founder of the Bikram's Yoga College of India, filed a supplementary copyright registration application on a sequence of twenty-six Hatha yoga poses, or *asanas*.¹ While he acknowledged that the yoga poses were in the public domain, he asserted that he was "the first to select and arrange this particular sequence of asanas in this particular way."² Indeed, the supplemental copyright registration, which amended Choudhury's copyright registration on his 1979 book, *Bikram's Beginning Yoga Class*,³ claimed rights in the "compilation of exercises"⁴ now known as Bikram Yoga. Even before the Copyright Office accepted Choudhury's supplemental registration, he had been zealously claiming exclusive ownership of the Bikram Yoga sequence, sending over 100 cease-and-desist letters to competing studios for violations of his intellectual property and licensing rights.⁵

Choudhury filed his first lawsuit in July 2002 against Prana Yoga, a studio run by former student Kim Schreiber-Morrison. He and his wife alleged eight actions, including claims for copyright infringement.⁶ The case ultimately settled and the federal district court entered a permanent injunction barring Schreiber-Morrison from teaching Bikram Yoga.⁷ Soon after, the Bikram Yoga website made the eventually unenforceable claims that

[n]o one may teach Bikram Yoga unless he/she is a certified and licensed ... teacher. No one may teach or certify others to become Bikram Yoga teachers other than Bikram Choudhury. No one may offer obvious, thinly disguised copies of Bikram Yoga and represent to the public that it is "their" yoga.⁸

Choudhury's actions prompted an immediate and intense global response that was intertwined with then burgeoning discussions about protecting traditional knowledge (TK) from appropriation.⁹ His opponents contended that yogic knowledge should not be privately owned by anyone, whether of Indian or non-Indian descent.¹⁰

Using the term "yoga piracy"¹¹ to describe the acts of those appropriating yogic practice, individuals in India and the United States advocated for structural solutions to stop proprietary claims to TK. While the "yoga wars"¹² were not the first or only impetus for seeking such protection, they fostered a sense of urgency about the need to respond to the commodification of TK. In 1997, the US Patent and Trademark Office (USPTO) canceled a patent on the use of turmeric powder in wound healing after Indian scientist Dr. R. A. Mashelkar presented evidence that the well-known spice had been used for similar purposes in India for centuries.¹³ In 1996, Vandana Shiva undertook a similar fight; the USPTO canceled the patent for "fungicidal uses of neem oil" soon after.¹⁴

In 2001, recognizing the continuing trend of patenting TK, the Indian government created the Traditional Knowledge Digital Library (TKDL), a digital database designed to prevent the ownership and commodification of yogic and medicinal knowledge. The TKDL catalogs information related to TK, demonstrating that there exists "prior art,"¹⁵ or preexisting, publicly available knowledge that bars the issuance of a patent. In the United States and European Union, prior art documented in the TKDL has been submitted in 371 patent cases, with seventy-seven of those cases resulting in withdrawal of patent claims or cancelation of patents.¹⁶ Though some argue that the TKDL was *not* instrumental in the above-mentioned patent claim withdrawals and cancelations,¹⁷ there is little dispute that the digital database "act[s] to shape and steward future possibilities for yoga,"¹⁸ and other forms of TK reworking grids of intelligibility around TK and creating space for imagining Indian subjects as knowledge producers.¹⁹ Moreover, the TKDL embodies complex sentiments of discontent and practices of protest around the global uptake of yoga and other forms of TK.

This essay, which is part of a growing body of scholarship in the area of critical yoga studies,²⁰ identifies and theorizes two strands of anticolonial rhetorical strategies that emerge in transnational debates over the ownership of yogic knowledge: the use of decolonial vernacular to redefine central terms of art, including "piracy," "patentable," "prior art," and "public domain" in Western intellectual property rights (IPR) regimes, and the use of dewesternizing restructuring, as through the TKDL, as a means of restructuring patent classification regimes to reflect Indian TK practices. My analysis proceeds in four parts. The first part situates yoga as a cultural practice and traces the history of Bikram Yoga. The second part articulates aims, methods, and histories of critical yoga studies. The third and fourth parts theorize decolonial vernacular and dewesternizing restructuring respectively. A brief postscript explores recent developments in the Bikram Yoga case.

In addition to highlighting the need to center law as part of critical yoga studies analyses, this essay contributes to existing conversations in communication and rhetoric about race, (neo)colonialism and cultural appropriation.²¹ Raka Shome, in considering the relationship between Western wellness practices and white femininity, underscores

yoga's increasing significance as a site for the negotiation of global power hierarchies.²² The investigation here continues the process of mapping the landscape of cultural appropriation/resistance around yoga. In particular, it highlights the legal definition as a "site of discursive and political contestation"²³ through which racial hierarchies are negotiated. Indeed, "[d]efinitional arguments shape political reality and constrain rhetorical possibilities therein."²⁴ Definitions are thus mechanisms for rhetorical exclusion, a "strategy of definition that justifies taking 'whatever actions those in power deem necessary to control challenges to its legitimacy.'"²⁵ The following analysis demonstrates that individual and institutional discourses can also facilitate rhetorical *inclusion*, a strategy of definition that creates space for difference, here based on racial categories. Finally, in contextualizing the philosophical underpinnings of decolonizing and dewesternizing strategies of rhetorical inclusion, this essay contributes to larger interdisciplinary discussions around centering TK and indigenous creators in global information flows.

I use the term decolonial vernacular to discuss the deployment of legal language by nonexpert persons in ways not intended by Western lawmakers in order to contest (neo)colonial regimes of knowledge production.²⁶ Walter Mignolo speaks of the decolonial as a "delinking from coloniality, or the colonial matrix of power."²⁷ The first step in delinking decolonially is to "build knowledge and arguments that supercede the hegemony of Western knowledge."²⁸ The term vernacular considers "the discourses of the average human being engaged in the production of rhetoric,"²⁹ here in the context of legal regimes, as sites of counterhegemonic struggle.³⁰ The oppositional responses of some Indians and Indian Americans to Choudhury demonstrate the counterhegemonic productiveness of the intersections between decolonial maneuvering and vernacular rhetoric, particularly in redefining key terms in IPR regimes, which regulate the hegemony of Western knowledge. Such redefinitions create opportunities for centering TK, which is devalued and colonized by "the progressive discourse of modernity."³¹

In contrast, the Indian government's construction of the TKDL operates as dewesternizing restructuring which use the digital database as a means of confronting cultural appropriation of TK and modifying the legal and economic structures through which patentable information is defined and organized. For Mignolo, "[d]ewesternization means, within a capitalist economy, that the rules of the game and the shots are no longer called by Western players and institutions."³² In essence, dewesternization is "a political delinking from economic decisions"³³ of Western monetary and trade policy, not the logics of the growth and development economy. As a result, under a dewesternizing frame "'the idea of development' goes unquestioned; what *is* brought into question is *who* is making the decision regarding the politics of development."³⁴ I argue that in the context of IPR, dewesternization unfolds through the reworking of legal regimes advanced and enforced as part of global economic harmonization processes by organizations such as the World Trade Organization (WTO) and agreements such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Restructuring refers to discursive and material reworkings of (neo)colonial superstructures, here related to knowledge. The TKDL's contestatory power, then, comes through rewriting the International Patent Classification (IPC) system to recognize Indian TK practices.

Taken together, these two strategies of anticolonial resistance rearticulate the historical narratives that define the role of Indian subjects in global knowledge production. In addition to intervening in logics of knowledge rooted in the colonial era, decolonial

vernacular and dewesternizing restructuring reimagine contemporary Western understandings of IPR in which Asians are cast as copyright infringers incapable of original creation. This relocation of generative authority is an anticolonial move that narratively reclaims Indian subjects as active makers of knowledge instead of mere naifs who inadvertently stumble into TK or premeditating thieves who steal it from true innovators and sell it in pirated forms.

Buying and selling yoga

“Yoga today is,” as Mark Singleton and Jean Byrne argue, “a thoroughly globalized phenomenon.”³⁵ It is the practice’s international appeal and connection to racial politics that makes yoga an important object of study and a site for understanding both (neo)colonial appropriation and anticolonial maneuvering. As Shome writes:

Yoga ... has also ended up as a modality through which privileged, affluent white women express their seeming self-worth, self-care, and connectivity to life, while all around us racial, geopolitical, military, environmental, and economic violence increasingly function to destroy life or the ability to sustain life ... for the ordinary and the poor—and particularly in the Global South.³⁶

For her, resistance to the commodification of TK, such as the TKDL, is a natural outcome of unequal knowledge systems. Shome’s work, as well as that of Singleton and Byrne, underscores the reality that yoga is not an unchanging ahistoric practice but rather a mutable cultural object under transnational negotiation which is, as Allison Fish contends, “subject to contestation and refiguration by interactions between private, legal, corporate, and state actors.”³⁷

Yoga is storied to have reached American shores in 1893, with the original “export yogi” Swami Vivekananda.³⁸ Yet the practice’s precipitous rise in popularity among the American public began in the 1950s and 1960s when countercultural icons such as the Beatles took up yoga with Maharishi Mahesh Yogi.³⁹ Choudhury, whose book *Bikram’s Beginning Yoga Class* was published in 1979, was thus a relatively late entrant in the American yoga market, following yogis such as Tirumalai Krishnamacharya and B. K. S. Iyengar.⁴⁰ The book includes the twenty-six pose sequence that later became Bikram Yoga along with detailed instructions on performing the asanas.⁴¹ Over the years, politicians and celebrities flocked to work with Choudhury but it was not until the 1990s that Bikram Yoga became a global phenomenon. By 2012, Choudhury had 330 US-based studios and 600 internationally based ones,⁴² a number that continues to grow despite recent scandals involving the yogi. At the center of Choudhury’s success—and later his legal troubles—was Greg Gumucio, who, after their meeting in 1996, quickly became the yogi’s star student and close friend. In the 2000s, Gumucio began embracing multiple yogic styles in his teaching, thus deviating from the Bikram Yoga system. His decision fractured the relationship with Choudhury, whose characteristically extreme and sexualized response was “[y]ou cannot be a fucking prostitute. You cannot have your foot in two holes.”⁴³

Choudhury’s statement is emblematic of the yogi’s belief that he has created the ultimate form of yoga, which ought to remain pure and proprietary.⁴⁴ Together, Gumucio and friend, John McAfee, created Open Source Yoga Unity (OSYU) which, as its reference

to free and open source software suggests, became instrumental in contesting Choudhury's copyright. Gumucio's Yoga to the People (YTTP), which he started in New York and expanded to several major US cities, charges an average of \$8 per class,⁴⁵ compared with Choudhury's \$20–25.⁴⁶ The YTTP mantra, a clear response to Choudhury's Bikram Yoga philosophy, reads in part:

There will be no correct clothes
 There will be no proper payment
 There will be no right answers
 No glorified teachers
 No ego no script no pedestals
 No you're not good enough or rich enough
 This yoga is for everyone⁴⁷

In 2005, OSYU sued Choudhury in *Open Source Yoga Unity v. Choudhury* claiming that Choudhury's copyright in the Bikram Yoga asana sequence was invalid.⁴⁸ The federal district court refused to grant summary judgment for OSYU despite affirming that "yoga is an ancient, physical practice ... the individual *asanas* that comprise the Bikram Yoga sequence have been in the public domain for centuries."⁴⁹ It explained that while "it ... seems inappropriate, and almost unbelievable, that a sequence of yoga positions could be any one person's intellectual property,"⁵⁰ the selection, compilation, and arrangement of information in the public domain can sometimes be sufficiently original to merit copyright protection. Relying on *Feist Publications, Inc. v. Rural Telephone Service Co.*, which afforded phonebooks "thin" copyright protection,⁵¹ the court concluded that Bikram Yoga may be copyrightable because it selects twenty-six poses out of hundreds of thousands and places them in a particular order.

In relying on *Feist* to validate Choudhury's copyright, the judge in OSYU discursively colonizes yogic knowledge, justifying the ownership of public domain *asana* sequences by rereading their legal status through Western legal principles. The work of thousands of Indian and non-Indian yogis is rendered secondary to compilations, selections, and arrangements approved by American courts as yoga is transformed into a raw material for propertization in a Western, neoliberal information regime.⁵² Yoga's embodied, practiced evolution is erased as the practice is equated with encyclopedic information. Further, through the reference to yoga as an "ancient physical practice," the court objectifies a living, breathing tradition, suggesting that it is authorless, ahistoric information instead of a continually evolving social formation rooted in South Asian cultural practice. The court recenters the case on "two competing principles of copyright law" instead of the history of yoga.⁵³ Within this framework, yoga becomes a thing to be perfected in its commodity form, transformed by those with the "expertise" and "authority" to organize factual information, through Western frames of cultural and legal practice.

I am not suggesting that only Indians contribute to the development of yoga or that all Indians seek to protect the practice from (neo)colonialism. Many Indian yogis, including Choudhury, are interested in using Western modes of IPR to protect their own unique styles of yoga. Nonetheless, some practices of owning and promoting yoga, such as Choudhury's, are heavily criticized among Indian publics.⁵⁴ For many, Choudhury is "inauthentic with regard to the Indian traditions [he] claims to transmit"⁵⁵ because of the wealth he has amassed, his tendency to disclaim his Indian heritage, and the allegations

of rape and sexual harassment against him.⁵⁶ Becoming a Bikram Yoga instructor costs at least \$11,400, payable directly to Choudhury,⁵⁷ bringing the yogi's net worth to at least \$7 million.⁵⁸ When asked about his ever-growing profits, Bikram stated, "They ask me ... [w]hy do you not live like the poor Indians?' I tell you why ... I have been in that gutter!"⁵⁹ Thus Choudhury's actions, specifically his business tactics coupled with allegations of sex crimes, have transformed him into the *persona non grata* of the yoga world and an icon for all that is wrong with yoga in the West.

Despite the ease with which Choudhury can be made into a villain in the yoga wars, it is important to remember that his actions might also be read as potentially decolonizing and/or dewesternizing. Indeed, Choudhury is arguably an export yogi who is thwarting Western exploitation through manipulation of IPR doctrine. Similarly the TKDL can certainly be read, as I do here, as pushback against appropriative commodification of TK. Yet, as Fish demonstrates, the content of the TKDL itself is politicized and hardly represents all TK or creators effectively or equally.⁶⁰ Some go so far as to argue that "[r]epresenting South Asia as the birthplace of a mythical homogenous culture is a crusade of the chauvinistic upper-caste Hindus" that idealizes Indianness and Hindu-ness and fuels xenophobic Indian nationalism.⁶¹ Moreover, the question of how to equitably share the information in the TKDL is a complicated one that is still under negotiation.⁶² The aim of this piece, then, is not to make definitive claims about the rightness of Choudhury or the TKDL but rather to identify types of anticolonial praxis and examine the yoga as a site for theorizing complex and layered (neo)colonialities, particularly vis-à-vis IPR. In the next section, I situate this essay in the burgeoning area of critical yoga studies.

Critical yoga studies

As recent controversies demonstrate, yoga is a cultural practice through which the meanings of bodies are articulated with respect to race, (neo)coloniality, gender, sexuality, disability, and class, among other categories of difference.⁶³ Those I cite here are representative of a growing area of scholarship in critical yoga studies which is characterized by the use of interdisciplinary critical/cultural methods to engage such controversies and interrogate the cultural, social, political, and economic histories and implications of yogic practice. Questions of identity, access, and ownership, including those around race and (neo)coloniality, are central to critical yoga studies.⁶⁴ Moreover, academic scholarship complements and engages moves in social justice groups, exemplified by the *Race and Yoga* community on Facebook and the *Decolonizing Yoga* blog, which attempt to address in tangible ways the inequalities and access issues that arise in the context of yoga. Implicit in critical yoga studies is the treatment of the practice as a complex, globalizing phenomenon which constitutes and is constituted by myriad individuals, cultural practices, and institutional superstructures.

However, one currently undertheorized aspect of yoga's relationship to identity, particularly race and (neo)coloniality, is its intersection with law, including IPR regimes. As of 2007, nearly a decade ago, the USPTO and US Copyright Office had issued 150 yoga-related copyrights, thirty-four patents on yoga-related products, and 2,315 yoga trademarks.⁶⁵ Thus this essay, in invoking critical yoga studies and examining the yoga wars as sites for anticolonial resistance, focuses on "exploring law *culturally*"

and “studying culture *legally*,”⁶⁶ particularly in the tradition of critical intellectual property scholars such as Rosemary Coombe, Keith Aoki, Margaret Chon, Ann Bartow, Rebecca Tushnet, Olufunmilayo Arewa, Sonia Katyal, and Kevin J. Greene, among many others, who understand IPR as fundamentally raced, gendered, and classed.⁶⁷ Moreover, it understands law, IPR regimes, and culture as fundamentally rhetorical endeavors through which identities are constituted and reconstituted.⁶⁸ Read in this light, the yoga wars are discursive negotiations through which legality and identity evolve in ways which include some and exclude others.⁶⁹

The concepts of decolonial vernacular and dewesternizing restructuring advance the project of critical yoga studies by examining how minoritarian groups combat processes of legal and rhetorical exclusion, particularly through definitional negotiations. In doing so, they heed Wanzer’s call for a “decolonial corrective”⁷⁰ to rhetorical studies which considers the complexities of modern/colonial logics by using Mignolo’s distinctions between the complementary and sometimes contradictory approaches of postcoloniality, decoloniality, and dewesternization.⁷¹ They also engage Madhavi Sunder’s call for critical intellectual property scholars to “expressly recognize and contend with the plural values at stake in cultural production and exchange”⁷² in ways which, drawing on Mignolo’s framework, reject “the West’s claim to epistemic privilege.”⁷³ The remainder of this essay thus focuses on decolonial and dewesternizing practices around yoga. I contend that, instead of resulting in the “provincialization of Indian knowledge and unequal protection for subaltern authorial activities,”⁷⁴ both represent the reformation of the very notion of authorship and inventorship, empowering non-Western creators to reconceptualize Western-dominated IPR regimes.

Decolonial vernacular

Studying vernacular—the “concrete, material, and immediate needs of ordinary human beings”⁷⁵—is a means of democratizing the study of rhetoric and moving beyond expertise-focused discourses. As Latinx scholars have treated it, decolonial vernacular is a mechanism for liberation from colonial oppression “through an availing of agency”⁷⁶ often by way of bodily resistance. Here, I attend to discursive forms of decolonial vernacular, a particularly important move in the context of legal rhetoric, which is often so jargon-filled as to be opaque. In the yoga wars, “the ways in which ordinary citizens contribute to the production of public knowledge,”⁷⁷ particularly how the media, lay persons, and non-IP lawyers engage in the productive *misuse* of language to rewrite IPR’s core narratives, shapes IPR regimes themselves. Moreover, it is decolonial practice that operates by “delinking from the web of imperial/modern knowledge and from the colonial matrix of power.”⁷⁸ Decolonial vernacular, as I theorize it, actually *remakes* legal language in a manner that redefines core legal terms of art. I specifically highlight two examples of the decolonization of legal language: the inversion of narratives of piracy and the use and misuse of terms of art derived from IPR, international human rights law, and cultural property regimes. The former renders legible often elided social justice issues implicit in global IPR regimes while the latter disarticulates the field from Western cultural narratives, embracing new visions of ownership and cultural property based in TK.

Reimagining “piracy”

In response to Choudhury’s copyright claims, *The Times of India* began calling for systematic protections against “yoga piracy,”⁷⁹ a term that epitomizes decolonial vernacular. The idea that someone who is claiming exclusive ownership over yoga is pirating the centuries-old practices makes several ideological moves that challenge Western understandings of knowledge production. Just as with the term “biopiracy,” which Shiva first used to describe the patenting of traditional medicine,⁸⁰ yoga piracy inverts dominant IPR relations, identifying those who claim ownership over non-Western knowledge as exploiters of that which has already been discovered, as opposed to creators of that which did not previously exist. Inherent in this identification is the recognition of racial Others as subjects with their own positionalities which can and should inform international legal regimes. Through the term “yoga piracy,” Indian yogis are transformed into authors and agents instead of mere copiers and practitioners. This rhetorical move interrupts the hegemony of the category of authorship, which Jane Anderson argues “functions as a means for maintaining hierarchies of knowledge production by reducing indigenous and non-European subjectivity.”⁸¹ Identifying purported authors as pirates demonstrates the internal incoherence of categories of creatorship, rendering visible the flaws in Eurocentric understandings of knowledge production. In this sense, the framing of the TKDL as a response to piracy unmakes legal categories in a manner that is important to protecting TK from cultural appropriation.⁸²

Piracy, according to Adrian Johns, is “the commercial violation of legally sanctioned intellectual property.”⁸³ In other words, the pirate violates the limited monopolies granted by governments to the creators of certain inventions and creative works. Further, the model of piracy that Johns describes remains inextricably linked to Enlightenment conceptions of inventorship and authorship as the solitary acts of individuals who deserve exclusive rights in their works.⁸⁴ Lawrence Liang argues that the Western conception of piracy “produces a series of anxieties.”⁸⁵ Among these is the linkage of piratical activity with antinational and antidemocratic sentiment as well as antineoliberal excess. The myth of the American Dream, which works in tandem with IPR narratives, is based on ideals of creativity, innovation, and entrepreneurialism, which are interrupted by piratical theft, an act that is contrary to the ideological and commercial interests of the nation. Indeed, piracy enforcement is part of a Western Enlightenment narrative which privileges distinctly European ideals of creativity.⁸⁶ Nonetheless, pirates can sometimes be redeemed, usually through proof of creative contributions embodied by copyright law’s embrace of transformativeness.⁸⁷ Embedded in the narrative of redemption, however, is a racial component. Liang continues, “[o]ne of the narrative [strategies] is then to redeem the acts of ‘ordinary’ American citizens, and what better way to do this, than through the discursive construction of an ‘other,’ in this case an ‘Asian’ other.”⁸⁸ Unlike Westerners who value the hard work and innovation that goes into the production of knowledge, Asians are commonly presented as lacking the creativity or initiative needed to produce transformative works.

The term yoga piracy, however, turns the often repeated narrative of Asian copying on its head. Put simply, pirating yoga presupposes an act of inventive authorship that supersedes the rights of those asserting IPR in yogic knowledge. The term yoga piracy thus confronts the narrative that Asian Others are opportunistic thieves who steal from

Westerners. Instead, it reconstitutes the racial Other as creator situated in non-Western histories of knowledge production and innovator navigating urban spaces which embody Ravi Sundaram's conception of "pirate modernity," the contemporary condition in which IPR infringement acts as a means of destabilizing media practices, disrupting traditional notions of property, and enabling creativity,⁸⁹ Patrick Burkart's notion of "pirate politics," the disruptive and countercultural approach to contemporary public culture, and Martin Fredriksson's idea of the "multitude of copyright resistance," the ongoing, multi-faceted resistance to IPR regimes.⁹⁰

At a broader level, yoga piracy interrupts a powerful narrative of American (neo)colonialism, the Doctrine of Discovery, which originated with the US Supreme Court land ownership case, *Johnson v. M'Intosh*. Chief Justice John Marshall wrote the unanimous opinion, which held that private citizens could not claim title to land purchased from indigenous peoples. He reasoned that, as uncivilized peoples with no system of property ownership, Native Americans hold only a right of occupancy that is superseded by European property law. Colonizers may thus assume title to *any* land they discover because "discovery gave title to the government by whose subjects, or by whose authority, it was made, against all other European governments, which title might be consummated by possession."⁹¹ The Doctrine of Discovery laid the groundwork for an implicit corollary in the context of IPR: TK is unrefined and undeveloped information, not yet transformed into a commodified intellectual work. Like the land in which indigenous peoples only hold a right of occupancy, TK is a disordered space that must be tamed and honed by Western science. As Halbert observes, the encounters of Westerners with TK were "quickly obscured by the fiction of colonial superiority and the original genius of the Western scientist and explorer,"⁹² creating a de facto understanding of TK as in the public domain. The narrative of yoga piracy confronts IPR's desire to refine TK, moving beyond narrow understandings of "scientific colonialism"⁹³ and biopiracy as related to patented inventions, and focusing on the colonization of nonscientific forms of cultural property. While "cultural property" often resists translation into IPR regimes,⁹⁴ the term yoga piracy speaks in a parlance familiar to Western IPR adherents, identifying yoga as "real" and protectable knowledge.

"Patenting" yoga and the public domain

One high-profile example of the outcry that occurred after Choudhury's copyrighting of the Bikram Yoga sequence was the "Take Back Yoga" campaign designed by the Hindu American Foundation (HAF). Aseem Shukla, Co-Founder of the HAF, argues that "[t]he severance of yoga from Hinduism disenfranchises millions of Hindu Americans from their spiritual heritage and a legacy in which they can take pride."⁹⁵ Claiming that Hinduism suffers from "overt intellectual property theft, absence of trademark protections and the facile complicity of generations of Hindu yogis, gurus, swamis and others that offered up a religion's spiritual wealth at the altar of crass commercialism," Shukla concludes that "Hindus must take back yoga and reclaim the intellectual property of their spiritual heritage."⁹⁶ His controversial introductory essay elicited a vehement and cheeky response entitled "Sorry, your patent on yoga has run out" from Oprah-endorsed, new-ager Deepak Chopra, who told the HAF to "lighten up."⁹⁷

The “Great Yoga Debate,” as it came to be called, prompted countless responses, igniting disputes about the ownership, branding, and origins of yoga. Commenters frequently observed that “[n]obody owns yoga”⁹⁸ and critiqued the HAF’s position as pseudonationalist.⁹⁹ They also criticized Chopra for his own exploitation of Indian spirituality.¹⁰⁰ Many Indians in India—self-identified in comments and interviewed in Indian media sources—sided with Shukla while desecrating cultural appropriation by invoking concepts around patents, culture, and heritage. Ashok Jain, a lawyer for the Indian Supreme Court, said “[t]he government of India should be filing for cultural patents ... In 10 years, copyright will be a big issue.”¹⁰¹ Sudha Gopalakrishnan, the Mission Director for the National Mission for Manuscripts, noted that “[f]oreigners come to study our ... medicine, art ... and file for patents in their home countries ... [o]ur ‘intangible’ heritage is in grave danger and needs to be protected,” while dancer Sonal Mansingh expressed her opposition to IPR on choreography, stating that only Americans want to “patent everything.”¹⁰²

The “Take Back Yoga” campaign and related conversations highlight the increasingly common vernacular use—and misuse—of terms derived from IPR, international human rights law, and cultural property rights in debates over TK. While a number of scholars have studied the complex relationship between those areas of law, including the potential for treating IPR as international human rights,¹⁰³ the vernacular use of phrases such as “intellectual property of their spiritual heritage,” “cultural patents,” and “yoga patents” indicates that their legal intersections also inform debates between nonexperts, here in ways which facilitate the creation of new vocabularies for talking about the ownership of TK. For instance, Shukla’s phrase “intellectual property of their spiritual heritage” combines conventional notions of IPR with the concepts of “intangible cultural heritage” articulated by the United Nations Educational, Scientific and Cultural Organization¹⁰⁴ and “spiritual heritage” defined by Protocol Additional to the Geneva Conventions.¹⁰⁵ Shukla’s combination of terms synthesizes IPR, international human rights law, and cultural property rights, implicitly arguing for yoga’s protection under the new conceptual framework. Similarly, Jain’s reference to “cultural patents” and copyright merges multiple, distinct bodies of law, both of which have limited applicability to yoga,¹⁰⁶ forcing the reader to contemplate the intertextual relationships between yogic knowledge, inventorship, and authorship. Gopalakrishnan and Mansingh make similar rhetorical moves by highlighting patent law as central to attempts to exploit TK, even in the realms of dance and choreography.

Though it is easy to dismiss calls for yoga patents and IPR on spiritual heritage on the grounds that they are legally inaccurate, irrelevant, and/or lost in translation, these statements are not simply missives. Instead, they exemplify how legal and rhetorical cultures,¹⁰⁷ such as those that link IPR, international human rights, and TK, develop and evolve. Liang’s term “porous legalities” aptly describes the manner in which the vernacular use of language, here across transnational borders, can reinvent legal concepts in productive and evolutionary ways. Law is discursively and performatively porous—and thus capable of evolution—insofar as it encompasses “myriad forms of legality, from state legalities to non-state legalities and from individual acts of legality to social networks that transgress the law.”¹⁰⁸ While Liang speaks of piracy as emblematic of the struggle over control to define legality/illegality, I am concerned with how the appropriation of language creates productive conceptual porosity. The juxtaposition of legal concepts drawn from IPR, international human rights, and cultural property, even when not legal cognizable,

highlights the historical omissions and power disparities that influence the ownership of TK and points to the need to create new terms to theorize and practice regulation of the former. In a move similar to the kind that metaphors make in comparing two types of phenomena, concepts such as “yoga patents” are examples of decolonial vernacular through which the audience is forced to reexamine, from the position of the (neo)colonial subject, legal structures which govern the ownership of TK.

Further, implicit in the above arguments for responding to the appropriative commodification of TK is a decolonial critique of the common narrative of the “public domain.” Practically speaking, information in the public domain is unowned and thus available for use in works of authorship and invention. Individuals such as Shukla, Jain, Gopalakrishnan, and Mansingh complicate the notion that yoga is unowned through their identification of its historical and cultural roots. In other words, they assert that yoga has a long but often invisible history of individual and collective ownership that precludes its proprietization.¹⁰⁹ Invoking notions of cultural property and heritage alongside IPR highlights the tendency of Western definitions of the public domain to ignore questions of difference and erase racial histories. As Kimberly Christen points out, “[i]ndividual creators are privileged even as they build on knowledge sets from the past and work from biased (not neutral) technologies, knowledge practices, and economic structures. The rhetoric of freedom—free of restrictions—replays the structure of enclosure, open for some closed for others.”¹¹⁰ Shukla, Jain, Gopalakrishnan, and Mansingh, then, through their decolonial vernacular make visible the tendency of Western definitions of the public domain to deprive marginalized subjects of credit or control in the creation of knowledge, asserting an implicit counterhistory which militates against the appropriation of yoga.

Dewesternizing restructuring

The TKDL, the combined effort of the Council of Scientific and Industrial Research and the Department of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH), is a collection of information about more than 1,500 asanas and ayurvedic treatments that would otherwise be largely inaccessible to global audiences.¹¹¹ Because the United States, Canada, the European Union, Australia, and Japan recognize the contents of the database as proof of prior art, the TKDL offers a means of blocking the grant of certain patents derived from TK.¹¹² Dr. V. B. Gupta, Director of National Institute of Science, Communication, and Information Resources at the Council of Scientific and Industrial Research and the creator of the TKDL contends that recording *asanas* prevents certain IPR claims on yoga. He states that “[y]oga was created in India as early as 2000 BC. Copyright doesn’t exist on anything after 50 years, and [yoga] is in the public domain ... So someone claiming yoga as their own and charging franchise money is not acceptable.”¹¹³ While Gupta’s statement is practically untenable because yoga sequences are not copyrightable, it nonetheless asserts India has a legally cognizable prior historical claim to yoga—one which precedes the Doctrine of Discovery and IPR.

The TKDL, as Gupta imagines it and through its practical operation, is a mechanism for an anticolonial process I describe as dewesternizing restructuring. Put simply, the TKDL operates to disrupt Western hegemonies of patent classification and attendant IPR regimes, rewriting the rules of neoliberal capitalism via amendments to legal classification

structures. Dewesternization, as Mignolo defines it, accepts the framework of neoliberal capitalism while simultaneously asserting the equal right of non-Western nations to make economic decisions, often in and through global financial and trade organizations, independent of the (neo)colonial agendas of the United States and European nations. He writes:

[D]ewesternization means economic autonomy of decision and negotiation in the international arena and affirmation of the sphere of knowledge, subjectivity. It means, above all, deracialization: it is the moment in which ... the “other” has become “the same” but with a difference: the wounds inflicted over time by the imperial difference.¹¹⁴

IPR regimes are intimately intertwined with Western global free trade and economic harmonization agendas. While a historical discussion of the intersections of IPR and Western development agendas is beyond the scope of this paper, a wealth of scholarship has already explored the role of TRIPS in exploiting developing nations through its fundamentally European conceptions of discovery, invention, patenting, and piracy.¹¹⁵ TRIPS—and the WTO in enforcing the agreement—reflect a knowledge production regime in which “white men of letters and science ... were the gatekeepers of Western and modern knowledge.”¹¹⁶ Further, the IPC, the world’s most widely used IPC regime, has a distinctly European history: the classification system was created and largely promulgated by Western nations.¹¹⁷ India’s move to rewrite IPC categories thus operates as a notable dewesternizing intervention which asserts both the importance of non-European knowledge and the right of non-Europeans to create classification regimes.¹¹⁸ Unlike the critiques of Shukla, Jain, and Gopalakrishnan which center yoga ownership as a problem in itself, the TKDL’s approach aims less at critiquing neoliberal capitalism and more on structurally forcing IPR to protect Indian TK.

The TKDL uses a “novel classification system” called the Traditional Knowledge Resource Classification (TKRC) that is modeled on the IPC. The TKRC creates 207 subgroups of TK, listed under the three categories of South Asian medical practice Ayurveda, Unani, Siddha, and yoga¹¹⁹ for easy search and access to prior art documentation.¹²⁰ While it may be true that “[t]o classify is human,”¹²¹ the processes of classification, including the questions of who has the right to create and populate categories, are power-laden ones.¹²² The Indian government, then, in creating the TKDL and the TKRC, is exercising its power to classify and asserting control over a process that has previously been historically dominated by modern/colonial logics. Put differently, the TKDL and the TKRC assert the *right* to classify TK in IPR regimes and *authority* over the content of internationally accepted categories of patent classification, which are central to Western capitalism. In doing so, the TKDL and the TKRC enact “a strategy that tries to transform [the] cultural logic from within, always laboring to enact permanent structural change.”¹²³ The TKDL and TKRC can thus be read as important tools for centering non-European nations in economic and trade decisions, particularly those around IPR, and contesting the narrative of Asians as noncreators or infringers, situating them instead as authors and cultural stewards of knowledge and information infrastructures.

The responses of the US and Europe to the TKDL affirm its dewesternizing impact. In a move that acknowledges India’s importance in identifying prior art, the European Patent Office (EPO) stated it would use information in the TKDL in examining its patent applications:

the 30-million-page database will help to correctly examine patent applications relating to TK ... “examiners have improved access to background information at an early stage of patent examination” ... The process to challenge the granted patents proved lengthy and cumbersome ... With the advent of the TKDL ... the once onerous process has been transformed into an organized and objective system.¹²⁴

What was once understood as raw material for commodification has become “an organized and objective system” to be respected in defining prior art. While on its face the language of organization and objectivity can be read as the appropriating TK, it also represents the integration of Indian knowledge into IPR regimes. The TKDL is recognized as an official source, thus acknowledging both the creativity and agentic capabilities of Indian creators. The EPO also admits its own deficiencies, specifically its need to rely on the TKDL to “correctly examine” patent applications and remedy an inability to engage with “Sanskrit or other ancient writings.” Here, the embrace of the TKDL rhetorically functions to highlight the incompleteness of Western classification systems and the creative powers of the indigenous creator.

In another significant move, the United States Copyright Office dramatically changed its position on the copyrightability of yoga. In 2011, after Choudhury sued YTTP for copyright infringement, the Copyright Office issued a statement clarifying the term “compilation authorship.” It stated:

[T]he Office will not register a work in which the claim is in a “compilation of ideas,” or a “selection and arrangement of handtools” or a “compilation of rocks.” Neither ideas, handtools, nor rocks may be protected by copyright (although an expression of an idea, a drawing of a handtool or a photograph of a rock may be copyrightable).¹²⁵

The Copyright Office also criticized Choudhury’s own blurring of copyright law and patent law through claims about Bikram Yoga’s role in improving health. It stated:

While such a functional system or process may be aesthetically appealing, it is nevertheless uncopyrightable subject matter ... a copyright will not extend to the movements themselves ... the section 102(a) categories of copyrightable subject matter ... serve to limit copyrightable subject matter as well. Accordingly, when a compilation does not result in one or more congressionally-established categories of authorship, claims in compilation authorship will be refused.¹²⁶

While the Copyright Office refused to revisit past cases,¹²⁷ the implications of its decision were clear. YTTP declared victory over Choudhury after a nondisclosed settlement agreement, stating, “yoga remains in the public domain, truly accessible to everyone.”¹²⁸

At a superficial level, the comparison of yoga to hammers and rocks reads as the opposite of anticolonial rhetoric.¹²⁹ Nonetheless, the analogy is support for treating yoga *asanas* as culturally constituted objects that are not copyrightable under US law. The recognition of the materiality of yoga and its histories challenges the appropriation of TK and moves beyond OSYU’s treatment of *asanas* as facts to be manipulated. Moreover, it affirms Indian yogic practice as something other than public property that can be “improved” through selection and arrangement. Indeed, yoga is defined as akin to culturally embedded social practices such as exercise, dance, and sport.¹³⁰ Further, the Copyright Office acknowledges the limitations of the selection and arrangement doctrine, which in this case protects cultural property. Though arguably the responses of the EPO and the Copyright Office expand the biopolitical control of yogic knowledge, they also dewesternize yoga, a practice

already subject to intense legal, social, and economic negotiation. By making TK accessible to copyright and patent offices, the TKDL works as “an explicit challenge to the revised conceptions of sovereignty that have been invented to accommodate the dreams of the new imperial order.”¹³¹

Conclusion

In this essay, I have taken an approach I locate as part of a growing body of scholarship in critical yoga studies to examine the contours of anticolonial resistance to the cultural appropriation and privatization of yogic knowledge. Decolonial vernacular and dewesternizing restructuring are strategies which contest Western IPR regimes for managing TK such as yoga and centering Indian subjects as creators. The recontextualization and misuse of legal terms as well as the cataloging of TK are situationally productive mechanisms for opposing IPR’s (neo)colonial functions. In the context of the yoga wars, they have helped to create counternarratives to dominant narratives in IPR as well as restructure IPC systems through digital databases. Contrary to the prevailing narrative of TK, which posits Western colonizers as the civilizing forces that refine the haphazard mass of information that colonized peoples cluelessly possess, oppositional discourses in the yoga wars situate Indian subjects in the history of knowledge production and confront the erasure and devaluation of racial Otherness from the landscape of IPR. Moreover, they position often objectified marginalized subjects as active agents with inventional authority and the innovators of increasingly valuable commodity forms. Nonetheless, while these rhetorical strategies are productive ones, I do not wish to present them as cure-alls for the state of TK in IPR. Though they create space for interventions into the discourses and superstructures of IPR, the rhetorical strategies I have identified here do not negate the need for consideration of issues around the motivations for protecting TK, the implications of digitizing non-Western knowledge, and the sustainability of underlying economic models.¹³² Indeed, these questions must be addressed to truly decolonize TK.

Postscript: Pirating Bikram Yoga

Despite the Copyright Office’s 2011 clarifying statement, Choudhury continued to enforce his copyright. In late 2012, a federal district court decided *Bikram’s Yoga College of India, L.P. v. Evolation Yoga, L.L.C.*, in which Choudhury sued Evolation Yoga for the unauthorized use of the Bikram Yoga sequence.¹³³ The court held that Choudhury *never* held a copyright in his sequence, only in the creative work that described it, i.e., his book. Moreover, it found that the Bikram Yoga sequence is neither a copyrightable compilation nor a choreographic work. Rather, *asanas* are individual exercises, as described by the USCO, that fall into the category of unownable “facts and ideas.”¹³⁴ The affirmation of *asanas* as facts and ideas builds upon the USCO’s statement and offers a powerful end to this story. Historically, (neo)colonial empires operated by monopolizing the management of knowledge—colonial subjects were not granted the authority to create fact or idea.¹³⁵ In India in particular, “colonial knowledge generated ‘facts’ that constituted traditional India within a conceptual template that would be progressively theorized within modern world history.”¹³⁶ The court’s decision, however, recognizes yogis as creators of facts and ideas with articulable histories, creating space for reimagining Indian subjects

as agentic producers of knowledge. Moreover, it situates Indians in ways which promote the recognition and acceptance of knowledge production from previously devalued subject positions.

After revisions on this article were completed, the Ninth Circuit Court of Appeals decided *Bikram's Yoga College of India, L.P. v. Evolution Yoga*. While a complete discussion of the case is beyond the scope of this paper, it is noteworthy that the Ninth Circuit affirmed the lower court's decision, agreeing that granting a copyright on Bikram Yoga would protect a process for ameliorating health as opposed to the expression of an idea. A few observations about the decision are in order. First, like the federal district court's opinion, the Ninth Circuit makes comparisons between Bikram Yoga and healing arts, such as surgery and detailed process descriptions, such as recipes. The Ninth Circuit observes that "the beauty of the process does not permit one who describes it to gain, through copyright, the monopolistic power to exclude all others from practicing it."¹³⁷ In a remarkable change of tune from the initial Bikram Yoga cases, it continues, quoting *Baker v. Selden*, "[b]ut this object would be frustrated if the knowledge could not be used without incurring the guilt of piracy of the book."¹³⁸ Ultimately, the Ninth Circuit concludes that "copyright protection for the Sequence would prevent the public from engaging with Choudhury's idea and building upon it."¹³⁹ In a qualified decolonial triumph, the Ninth Circuit recognizes yoga as a collectively owned practice, which constantly evolves and changes, not the private property of any one individual.

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Notes

1. William Patry, "Bikram and Supplementary Registration," *The Patry Copyright Blog*, August 29, 2005, <http://williampatry.blogspot.co.uk/2005/08/bikram-and-supplementary-registration.html>
2. *Open Source Yoga Unity v. Choudhury*, 2005 U.S. Dist. LEXIS 10440, at *1 (N.D. Cal. 2005) (hereinafter OSYU).
3. Bikram Choudhury, *Bikram's Beginning Yoga Class* (New York: Tarcher, 1979).
4. *Bikram's Beginning Yoga Class*, Copyright Registration No. 5-624-003, October 2, 2002.
5. "Face Value: The Litigious Yogi," *The Economist*, June 17, 2004, <http://www.economist.com/node/2765973>
6. First Amended Complaint, *Choudhury v. Schreiber-Morrison* (C.D. Cal. 2002).
7. The court also ordered Schreiber-Morrison to pay licensing fees and apologize to Choudhury.
8. Jacob Reinbolt, "Bikram Obtains Copyright Registration for His Asana Sequence," *Bikram Yoga*, July 30, 2003, <http://www.bikramyoga.com/press/press19.htm>
9. The World Intellectual Property Organization defines TK as "knowledge, know-how, skills and practices that are developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity." World Intellectual Property Organization, "TK," <http://www.wipo.int/tk/en/>

10. Kounteya Sinha, "Yoga Piracy: India Shows Who's the Guru," *The Times of India*, February 22, 2009, http://articles.timesofindia.indiatimes.com/2009-02-22/india/28017121_1_patent-offices-yoga-postures-patanjali
11. Ibid.
12. Jacob Goldstein, "Yoga Wars! India Blocks Patents On Poses," *NPR: Planet Money*, August 23, 2010, <http://www.npr.org/blogs/money/2010/08/23/129381241/india-yoga-patents-html>
13. The Patent Act states: "[a] person shall be entitled to a patent unless—(1) the claimed invention was patented, described in a printed publication, or in public use, on sale, or otherwise available to the public before the effective filing date of the claimed invention." 35 U.S.C. §102 (2013).
14. Shayana Kadidal, "Subject-Matter Imperialism? Biodiversity, Foreign Prior Art and the Neem Patent Controversy," *IDEA: The Journal of Law and Technology* 37, no. 2 (1997): 371–404.
15. 35 U.S.C. § 102 (2012).
16. K. P. Prabhakaran Nair, "Safeguarding India's Ancient Wisdom," *The Hindu*, December 9, 2012, <http://www.thehindu.com/opinion/open-page/safeguarding-indias-ancient-wisdom/article4179011.ece>
17. See Prashant Reddy, "TKDL: A Success—Really?" *Spicy IP*, April 20, 2012, <http://spicyip.com/2012/04/guest-post-tkdl-success-really.html>
18. Allison Fish, "Authorizing Yoga: The Pragmatics of Cultural Stewardship in the Digital Era," *East Asian Science, Technology and Society* 8, no. 4 (January 1, 2014): 457.
19. Michel Foucault, *The History of Sexuality: An Introduction* (New York: Vintage Books, 1990), 93.
20. Though I came to the term critical yoga studies independently, I am not the first to use it. See Jennifer Musial, "Yoga & Social Justice," *Jennifer Musial, PhD*, 2014, <http://jennifermusial.com/yoga-social-justice/> and Judith Mintz, "Welcome to YogaCultures," *YogaCultures*, 2014, <https://yogacultures.wordpress.com/2014/05/30/welcome-to-yogacultures/>. Both Musial and Mintz highlight yoga in practice, paying particular attention to access issues, and cultural appropriation of yogic knowledge in articulating critical yoga studies.
21. See for example Mary Grace Antony, "On the Spot: Seeking Acceptance and Expressing Resistance through the Bindi," *Journal of International and Intercultural Communication* 3, no. 4 (2010): 346–68.
22. Raka Shome, *Diana and Beyond: White Femininity, National Identity, and Contemporary Media Culture* (Urbana: University of Illinois Press, 2014).
23. Ibid.
24. Ibid.
25. Danielle Endres, "The Rhetoric of Nuclear Colonialism: Rhetorical Exclusion of American Indian Arguments in the Yucca Mountain Nuclear Waste Siting Decision," *Communication and Critical/Cultural Studies* 6, no. 1 (March 2009): 43.
26. The concept of decolonial vernacular, as I use it here, draws upon similar themes as Sonia Katyal's "semiotic disobedience," which she defines as the recoding of corporatized space through the remaking of symbols in the tradition of the Situationist International's detournement and Lawrence Lessig's remix. Sonia Katyal, "Semiotic Disobedience," *Washington University Law Review* 84, no. 3 (2006): 489–571. However, while Katyal draws on European anticapitalist literature, I am interested in anticolonial tactics which center non-Western philosophies, knowledge production models, and theories of resistance. Keith Aoki foreshadows the need for highlighting Otherness in the context of global intellectual property regimes. "Neocolonialism, Anticommons Property, and Biopiracy in the (Not-So-Brave) New World Order of International Intellectual Property Protection," *Indiana Journal of Global Legal Studies* 6, no. 1 (1998): 11–58. Zahr Said offers a discussion of how postcolonial theory can aid in the rewriting of copyright law's fair use test to acknowledge creative rewritings Otherwise. Zahr Said Stauffer, "Po-mo Karaoke or Postcolonial Pastiche? What Fair Use Analysis Could Draw From Literary Criticism," 31 *Colum. J.L. & Arts* 43 (2007).

27. Walter Mignolo, *The Darker Side of Western Modernity: Global Futures, Decolonial Options* (Durham, NC: Duke University Press, 2011), xxvii.
28. Christopher Mattison, "Delinking, Decoloniality & Dewesternization: Interview with Walter Mignolo (Part II)," *Critical Legal Thinking*, May 2, 2012, <http://criticallegalthinking.com/2012/05/02/delinking-decoloniality-dewesternization-interview-with-walter-mignolo-part-ii/>
29. Marouf Hasian Jr. and Fernando Delgado, "The Trials and Tribulations of Racialized Critical Rhetorical Theory: Understanding the Rhetorical Ambiguities of Proposition 187," *Communication Theory* 8, no. 3 (1998): 248.
30. Gerard A. Hauser, *Vernacular Voices: The Rhetoric of Publics and Public Spheres* (Columbia: University of South Carolina Press, 2008), 25.
31. Mattison, "Delinking, Decoloniality & Dewesternization: Interview with Walter Mignolo (Part II)."
32. Walter Mignolo, "Epistemic Disobedience, Independent Thought and Decolonial Freedom," *Theory, Culture & Society* 26, no. 7–8 (2009): 161.
33. Mattison, "Delinking, Decoloniality & Dewesternization: Interview with Walter Mignolo (Part II)."
34. Ibid.
35. Mark Singleton and Jean Byrne, "Introduction," in *Yoga in the Modern World: Contemporary Perspectives* (New York: Routledge, 2008), 1–14.
36. Shome, *Diana and Beyond*, 185.
37. Allison Fish, "The Commodification and Exchange of Knowledge in the Case of Transnational Commercial Yoga," *International Journal of Cultural Property* 13 (2007): 190.
38. Mark Singleton, "The Roots of Yoga: Ancient + Modern," *Yoga Journal*, February 4, 2011, <http://www.newyorker.com/tech/elements/who-owns-the-patent-on-nutmeg>
39. Andrea R. Jain, *Selling Yoga: From Counterculture to Pop Culture* (New York: Oxford University Press, 2015), 23, 55.
40. Ibid., 39.
41. Choudhury, *Bikram's Beginning Yoga Class*.
42. Rebecca Moss, "The Hot Yoga War," *Village Voice*, July 18, 2012, <http://www.villagevoice.com/2012-07-18/news/the-hot-yoga-war/>
43. Ibid.
44. Ibid.
45. Kal Raustiala and Chris Sprigman, "Why Is It Easier to Copyright an Unhealthy Yoga Routine than a Healthy One?," *Freakonomics*, December 8, 2011, <http://www.freakonomics.com/2011/12/08/why-is-it-easier-to-copyright-an-unhealthy-yoga-routine-than-a-healthy-one/>
46. "Admission Fees," *Bikram Yoga*, 2012, <http://www.bikramyoga.com/TeacherTraining/Admissionfees.php>
47. "Mantra," *Yoga to the People*, 2011, <http://yogatothepeople.com/about-us/mantra/>
48. OSYU, 2005 U.S. Dist. LEXIS 10440, at *6–7.
49. Ibid.
50. Ibid.
51. "Thin" copyright means individuals may not copy phonebooks exactly but are permitted to use the same set of uncopyrightable factual information they contain in a different format and/or layout. Ibid at *13. *Feist Publications, Inc., v. Rural Telephone Service Co.*, 499 U.S. 340 (1991).
52. For a critique of "raw materials" metaphors, see Andrew Gilden, "Raw Materials and the Creative Process," *Georgetown Law Journal* (Forthcoming, 2016).
53. OSYU, at *6.
54. Allison Elizabeth Fish, "Laying Claim to Yoga: Intellectual Property, Cultural Rights, and the Digital Archive in India" (University of California, Irvine, 2010). A recent holding by the Delhi High Court provides additional evidence for the cultural presumption against the ownership of yoga. L. Gopika, "No IPR Protection for Modern Yoga Techniques," *Spicy*

- IP, January 29, 2014, <http://spicyip.com/2014/01/no-ipr-protection-for-modern-yoga-techniques.html>
55. Singleton and Byrne, "Introduction," 4.
 56. Moss, "The Hot Yoga War." See also "Rape Accusations Against Bikram Choudhury," *Yoga Journal*, May 9, 2013, <http://blogs.yogajournal.com/yogabuzz/2013/05/rape-accusations-against-birkram-choudury.html>; Clancy Martin and Rebecca Greenfield, "The Overheated, Oversexed Cult of Bikram Choudhury," *Details.com*, February 2011, <http://www.details.com/culture-trends/critical-eye/201102/yoga-guru-bikram-choudhury?currentPage=3>
 57. "Admission Fees."
 58. Emily Wax, "Yoga Wars' Spoil Spirit of Ancient Practice, Indian Agency Says," *Washington Post*, August 23, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/08/22/AR2010082203071.html>
 59. Martin and Greenfield, "The Overheated, Oversexed Cult."
 60. Fish, "Laying Claim to Yoga."
 61. Prati Patankar, "Ghosts of Yogas Past and Present," *Jadaliyya*, February 26, 2014, <http://reviews.jadaliyya.com/pages/index/16632/ghosts-of-yogas-past-and-present>
 62. Nicola Twilley, "Who Owns the Patent on Nutmeg?" *The New Yorker*, October 26, 2015, <http://www.newyorker.com/tech/elements/who-owns-the-patent-on-nutmeg>
 63. See, e.g., Justin Wm. Moyer, "University Yoga Class Canceled Because of 'Oppression, Cultural Genocide,'" *Washington Post*, November 23, 2015, <https://www.washingtonpost.com/news/morning-mix/wp/2015/11/23/university-yoga-class-canceled-because-of-oppression-cultural-genocide/>; #WhitePeopleDoingYoga, 2014 <http://whitepeopledoingyoga.tumblr.com/>; Jen Caron, "It Happened to Me: There Are No Black People in My Yoga Classes and I'm Suddenly Feeling Uncomfortable With It," *XO Jane*, January 28, 2014, <http://www.xojane.com/it-happened-to-me/it-happened-to-me-there-are-no-black-people-in-my-yoga-classes-and-im-uncomfortable-with-it>; Kate Dries, "Lululemon Founder Sorry He Said Your Fat Body Was Fucking Up His Pants," *Jezebel*, November 12, 2013, <http://jezebel.com/lululemon-founder-sorry-he-said-your-fat-body-was-fucki-1463219018>
 64. The Race and Yoga Working Group, established in 2011 through the Center for Race and Gender at the University of California, Berkeley and advanced by scholars including Musial, Tria Andrews, Evelyn Nakano Glenn, Sabrina Strings, and Jacqueline Shea Murphy, is one early and rapidly developing example of critical yoga studies. Its new e-publication, the *Race and Yoga Journal*, and annual conference aim to address a range of issues related to yoga, identity, and power. Other representative scholarship includes: Pirkko Markula, "Reading Yoga: Changing Discourses of Postural Yoga on the Yoga Journal Covers," *Communication & Sport* 2, no. 2 (2014): 143–71; Fish, "Authorizing Yoga"; Jean-Paul Gaudilliere, "An Indian Path to Biocapital? The Traditional Knowledge Digital Library, Drug Patents, and the Reformulation Regime of Contemporary Ayurveda," *East Asian Science, Technology and Society* 8, no. 4 (2014): 391–415; Sarah Banet-Weiser, *Authentic: The Politics of Ambivalence in a Brand Culture* (New York: New York University Press, 2012).
 65. Suketa Mehta, "A Big Stretch," *New York Times*, May 7, 2007, http://www.nytimes.com/2007/05/07/opinion/07mehta.html?_r=1
 66. Rosemary Coombe, "Critical Cultural Legal Studies," *Yale Journal of Law & Humanities* 10 (1998): 473. My emphasis.
 67. This list of critical intellectual property scholars is representative but certainly not exhaustive. Questions of diversity in IPR are developing rapidly, see, e.g., Irene Calboli and Srividhya Ragavan, eds., *Diversity in Intellectual Property: Identities, Interests and Intersections* (Cambridge, UK: Cambridge University Press, 2015).
 68. James Boyd White, "Law as Rhetoric, Rhetoric as Law: The Arts of Cultural and Communal Life," *The University of Chicago Law Review* 52, no. 3 (1985): 684–702.
 69. See Rosemary Coombe, *The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law* (Durham, NC: Duke University Press, 1998) and Endres, "The Rhetoric

- of Nuclear Colonialism” for a discussion of processes of rhetorical exclusion in IPR regimes and nuclear policy, respectively.
70. Darrel Allan Wanzer, “Delinking Rhetoric, or Revisiting McGee’s Fragmentation Thesis through Decoloniality,” *Rhetoric & Public Affairs* 15, no. 4 (2012): 652.
71. Mignolo, *The Darker Side*, xxvi.
72. Madhavi Sunder, *From Goods to a Good Life: Intellectual Property and Global Justice* (New Haven, CT: Yale University Press, 2012), 3.
73. Wanzer, “Delinking Rhetoric,” 653. Boatema Boateng in her work on Ghanaian textiles and Laura Foster in her research on translation of legal regimes across borders consider the types of questions that Sunder gestures towards. Boatema Boateng, *The Copyright Thing Doesn’t Work Here: Adinkra and Kente Cloth and Intellectual Property in Ghana* (Minneapolis: University of Minnesota Press, 2011); Laura Foster, “Critical Cultural Translation: A Socio-Legal Framework for Regulatory Orders,” *Indiana Journal of Global Legal Studies* 21, no. 1 (2014).
74. Fish, “The Commodification and Exchange,” 193.
75. Hasian Jr. and Delgado, “The Trials and Tribulations,” 248.
76. Michelle A. Holling and Bernadette M. Calafell, “Tracing the Emergence of Latin@ Vernaculars in Studies of Latin@ Communication,” in *Latina/o Discourse in Vernacular Spaces: Somos de Una Voz?* (Lanham, MD: Lexington Books, 2011), 23; see also Darrel Enck-Wanzer, “Race, Coloniality, and Geo-Body Politics: ‘The Garden’ as Latin@ Vernacular Discourse,” *Environmental Communication* 5, no. 3 (2011): 363–71.
77. Hasian Jr. and Delgado, “The Trials and Tribulations,” 252.
78. Mignolo, “Epistemic Disobedience, Independent Thought,” 178.
79. Sinha, “Yoga Piracy: India Shows Who’s the Guru.”
80. Vandana Shiva, *Biopiracy: The Plunder of Nature and Knowledge* (Boston, MA: South End Press, 1997). Leah Ceccarelli also explores narratives of biopiracy and bioprospecting. See Leah Ceccarelli, *On the Frontier of Science: An American Rhetoric of Exploration and Exploitation* (East Lansing: Michigan State University Press, 2013).
81. Jane Anderson, “Anxieties of Authorship in the Colonial Archive,” in *Media Authorship*, ed. Cynthia Chris and David A. Gerstner (New York: Routledge, 2013), 230.
82. *Ibid.*, 232.
83. Adrian Johns, *Piracy: The Intellectual Property Wars from Gutenberg to Gates* (Chicago: University of Chicago Press, 2010), 6.
84. James Boyle, *Shamans, Software, and Spleens: Law and the Construction of the Information Society* (Cambridge, MA: Harvard University Press, 1996).
85. Lawrence Liang, “Piracy, Creativity and Infrastructure: Rethinking Access to Culture,” SSRN *Working Papers*, 2009, 10.
86. Martin Fredriksson, “Copyright Culture and Pirate Politics,” *Cultural Studies* 28 (2014): 1–26.
87. *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994).
88. Liang, “Piracy, Creativity and Infrastructure,” 13.
89. Ravi Sundaram, *Pirate Modernity: Delhi’s Media Urbanism* (New York: Routledge, 2009).
90. Patrick Burkart, *Pirate Politics: The New Information Policy Contests*, The Information Society Series (Cambridge, MA: The MIT Press, 2014).
91. *Johnson v. M’Intosh*, 21 U.S. 543, 573 (1823).
92. Debora J. Halbert, *Resisting Intellectual Property* (New York: Routledge, 2006), 136–37.
93. Johan Galtung, “Scientific Colonialism,” *Transition* no. 30 (1967): 10.
94. See Rosemary J. Coombe, “The Expanding Purview of Cultural Properties and Their Politics,” *Annual Review of Law and Social Science* 5, no. 1 (2009): 393–412.
95. Aseem Shukla, “On Faith Panelists Blog: The Theft of Yoga,” *Washington Post*, April 18, 2010, http://newsweek.washingtonpost.com/onfaith/panelists/aseem_shukla/2010/04/nearly_twenty_million_people_in.html
96. *Ibid.*

97. Deepak Chopra, "Who Owns Yoga?," *Huffington Post*, December 1, 2010, http://www.huffingtonpost.com/deepak-chopra/who-owns-yoga_b_790078.html
98. Paul Vitello, "Hindu Group Stirs Debate in Fight for Soul of Yoga," *New York Times*, November 27, 2010, Comment 156, <http://www.nytimes.com/2010/11/28/nyregion/28yoga.html?pagewanted=all>
99. Ibid.
100. Shukla, "On Faith Panelists Blog."
101. Nona Walia, "Kissa Copyright Ka," *The Times of India*, July 9, 2004, <http://timesofindia.indiatimes.com/city/delhi-times/Kissa-copyright-ka/articleshow/771448.cms?>
102. Ibid.
103. See, e.g., Rosemary J. Coombe, "Intellectual Property, Human Rights & Sovereignty: New Dilemmas in International Law Posed by the Recognition of Indigenous Knowledge and the Conservation of Biodiversity," *Indiana Journal of Global Legal Studies* 6, no. 1 (1998): 59–115.
104. Convention for the Safeguarding of the Intangible Cultural Heritage art. 2, Oct. 17, 2003, 2368 U.N.T.S. 1. For an in-depth discussion of intangible cultural heritage, see Michelle L. Stefano, Peter Davis and Gerard Corsane, *Safeguarding Intangible Cultural Heritage*, (Woodbridge: The Boydell Press, 2012).
105. Protocol Additional to the Geneva Conventions of August 12, 1949, Relating to the Protection of Victims of Non-International Armed Conflicts art. 16, June 8, 1977, 1125 U.N.T.S. 3.
106. Because sequences of yoga *asanas* are not "inventions" under the terms of the US Patent Act (or likely any patent act), they do not qualify as patentable subject matter. Shamnad Basheer, "Stretching IP: Yoga, Suketu Metha's Op-Ed and Prof Sampat's Response," *Spicy IP*, May 21, 2007, <http://spicyip.com/2007/05/stretching-ip-yoga-suketu-mehtas-op-ed.html>; Krishna Ravi Srinivas, "Intellectual Property Rights and Traditional Knowledge: The Case of Yoga," *Economic & Political Weekly*, 47 (27), July 14, 2007, 2866–2871. Attempts to circumvent the unpatentability of *asanas* have been unsuccessful. Vera Ranieri, "October's Very Bad, No Good, Totally Stupid Patent of the Month: Filming A Yoga Class," *Electronic Frontier Foundation*, October 30, 2014, <https://www.eff.org/deeplinks/2014/10/octobers-very-bad-no-good-totally-stupid-patent-month-filming-yoga-class>. Nonetheless, some goods used for yoga are patentable.
107. Marouf Hasian, Jr., Michelle Condit, and John Lucaites, "The Rhetorical Boundaries of 'The Law': A Consideration of the Rhetorical Culture of Legal Practice and the Case of the 'Separate but Equal' Doctrine," *Quarterly Journal of Speech* 82 (1996): 323–42.
108. Lawrence Liang, "Porous Legalities and Avenues of Participation," in *Sarai Reader* 5, ed. Lawrence Liang et al. (Delhi: The Sarai Programme, 2005), 15.
109. For commentary on the erasure of creators of "poor people's knowledge" and economies of local knowledge see Madhavi Sunder, "The Invention of Traditional Knowledge," *Cultural Environmentalism* 70, no. 1 (2007): 97–124; Amit Basole, "Whose Knowledge Counts? Reinterpreting Gandhi for the Information Age," *International Journal of Hindu Studies*, November 18, 2014.
110. Kimberly Christen, "Gone Digital: Aboriginal Remix and the Cultural Commons," *International Journal of Cultural Property* 12, no. 3 (2005): 333.
111. Mehta, "A Big Stretch."
112. Twilley, "Who Owns the Patent on Nutmeg?"
113. Susanne Hiller, "Hottest Yoga in Town: At 100 Degrees You Feel the 'Bikram Glow.' It's Not Pretty," *National Post*, March 12, 2003, A12.
114. Mignolo, "Epistemic Disobedience, Independent Thought."
115. See, e.g., Ikechi Mgbeoji, *Global Biopiracy: Patents, Plants and Indigenous Knowledge* (Vancouver: UBC Press, 2006).
116. Mignolo, *The Darker Side*, 45.
117. For a history of the IPC see World Intellectual Property Organization, *The First Twenty-Five Years of the International Patent Classification, 1971–1996* (Geneva: WIPO, 1996).

118. P. N. Thomas, "Traditional Knowledge and the Traditional Knowledge Digital Library: Digital Quandaries and Other Concerns," *International Communication Gazette* 72, no. 8 (2010): 659–73.
119. "TK Resource Classification," 2013, <http://www.tkdil.res.in/tkdil/langdefault/common/TKRC.asp?GL=Eng>
120. Nair, "Safeguarding India's Ancient Wisdom."
121. Geoffrey Bowker and Susan Leigh Star, *Sorting Things Out: Classification and Its Consequences* (Cambridge, MA: MIT Press, 2000), 131.
122. Bowker and Star, *Sorting Things Out*.
123. José Esteban Muñoz, *Disidentifications: Queers of Color and the Performance of Politics* (Minneapolis: University of Minnesota Press, 1999), 11–12.
124. European Patent Office, "India's TK Digital Library: A Powerful Tool for Patent Examiners," September 6, 2010.
125. "Registration of Claims to Copyright," *Federal Register* 77, no. 121 (June 22, 2012): 37605–8.
126. Ibid.
127. Ibid.
128. Greg Gumucio, "YTTP Open Letter to Students Re: Bikram," *Yoga to the People*, December 3, 2012, <http://yogatothepople.com/wp-content/uploads/2012/12/Greg-Letter-Bikram-Settlement.pdf>. However, YTTP nonetheless stopped using the Bikram Yoga sequence.
129. Ania Loomba, *Colonialism/Postcolonialism*, 2nd Ed. (New York: Routledge, 2005), 114.
130. The Copyright Office makes clear that it views yoga as an exercise and "a compilation of exercises would not be copyrightable subject matter." "Registration of Claims to Copyright."
131. Paul Gilroy, *Postcolonial Melancholia* (New York: Columbia University Press, 2005), 3.
132. For consideration of some of these questions, see, e.g., Sita Reddy, "Making Heritage Legible: Who Owns Traditional Medical Knowledge?," *International Journal of Cultural Property* 13, no. 2 (May 2006); Chidi Oguamanam, "Documentation and Digitization of Traditional Knowledge and Intangible Cultural Knowledge: Challenges and Prospects," in *Intangible Cultural Heritage and Intellectual Property: Communities, Cultural Diversity and Sustainable Development*, ed. Toshiyuki Kono (Antwerp: Intersentia, 2009), 357–83; Amit Basole, ed., *Lokavidya Perspectives: A Philosophy of Political Imagination for the Knowledge Age* (New Delhi: Aakar Books, 2015).
133. *Bikram Yoga College of India LP v. Evolution Yoga, LLC*, 2012 U.S. Dist. LEXIS 177671 1 (C.D. Cal. 2012), at *2–3.
134. Ibid., at *1, *9–14.
135. Christopher Alan Bayly, *Indian Society and the Making of the British Empire* (Cambridge, UK: Cambridge University Press, 1988), 89; Zaheer Baber, *The Science of Empire: Scientific Knowledge, Civilization, and Colonial Rule in India* (Albany: State University of New York Press, 1996), 152.
136. David Ludden, "Orientalist Empiricism: Transformations of Colonial Knowledge," in *Orientalism and the Postcolonial Predicament: Perspectives on South Asia*, ed. Carol Appadurai Breckenridge and Peter van der Veer (Philadelphia: University of Pennsylvania Press, 1993), 259.
137. *Bikram's College of Yoga, L.P. v. Evolution Yoga*, 2015 U.S. App. LEXIS 17615 (Ninth Cir. 2015), at *27.
138. Ibid., at *19.
139. Ibid., at *16.