Lion's Share

Remaking South African Copyright

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Sometimes the past is the present.

Henry Maine: *Village Communities in the East and West. Six Lectures Delivered at Oxford*. 1871

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Introduction

"We Do Not Speak the Same Language"

"We do not speak the same language." It was the conclusion to a law conference at the University of Cape Town in July 2019.[1] In a general discussion rounding off the proceedings, participants had been invited to reflect on the Copyright Amendment Bill—the latest attempt by lawmakers to remake South African copyright law. Much like the Intellectual Property Laws Amendment Act 28 of 2013 (hereafter Intellectual Property Laws Amendment Act) before, this legislation had sparked intense debate, with numerous trade associations, lawmakers of the opposition parties, nongovernmental organizations, and academics slamming the bill as what veteran copyright scholar Coenraad Visser, summing up the views of virtually the entire legal fraternity and more likely than not those present at the conference, as a "mess."[2] The verdict prompted me, in turn, as the only nonlegal scholar in attendance, to wonder out loud what the rejection of the bill might say about the rift between legal scholars and politicians, but more importantly about all of us—politicians, legal experts, and the academy at large. Hence Visser's one-liner: "We do not speak the same language."

How did we get to this point, and how does this book address this impasse? At a moment when South Africa's intellectual property system hangs in the balance—and the country as a whole appears to be in crisis—*Lion's Share* represents a modest attempt to engage the humanities and legal studies in a conversation about South Africa's ongoing project of bringing its aging copyright system in line with the profoundly altered cultural landscape of the country, and especially of the music industry, more than a quarter-century

after the end of apartheid. I approach this task with a keen sense not just of each of these disciplines' lacunae in tackling this daunting task, but I am also acutely aware of the vacuum that exists between them and the scholarship on postapartheid cultural production in general. South African musical scholarship—broadly construed as encompassing sound studies, musicology, ethnomusicology, performance-oriented cultural studies, and music-related media and communication studies—took a major turn in the early 1980s. It is then, at the height of the struggle that would end about a decade later with the unbanning of the African National Congress (ANC), the release of all political prisoners, and finally, the swearing-in of Nelson Mandela as the first democratically elected president of the country, that I became part of a small group of scholars determined to set the study of South African music on a new course of what almost three decades later would be known under the name *decolonization*.[3] Historically, the study of South African music had been dominated by a set of colonial and apartheid concepts stressing the continuity of allegedly timeless tribal forms of association and cultural traditions. Urban and westernized practices, although ubiquitous from the beginning of the twentieth century at the latest, were considered as the mere product of acculturation at best, or, simply as aberrations and signs of degeneration and, consequently, were to be disregarded as objects of serious study. In contrast, the "radical rethink," as Christine Lucia calls the new approach pioneered in those heady days, and that over time came to be recognized as a genuinely South African "new musicology," prioritized quite a different set of parameters.[4] Instead of tribes, migrant laborers and black urban elites now became the nuclei of cultural production. And tradition increasingly emerged as a construction serving vested interests rather than being frozen in a mythical time before colonization and apartheid. But, above all, the new direction, in a move that, following Paul Gilroy, one might describe as a form of anti-anti-essentialism, also retained a certain idea of shared collective identities as a precondition of a new cultural politics, whether they are framed in nationalist terms, centered around working-class consciousness, or articulated in tropes of blackness.

This shift continued to stimulate a rich vein of postapartheid scholarship published in the immediate aftermath of the birth of the new South Africa. Apart from my own writing of the late 1990s, more recent work emerging from the early 2000s added important new insights into music and other expressive forms as significant sites of the construction of new identities beyond colonialism's and apartheid's dichotomies as well as arenas of contestation in which indigenous and other marginalized populations advance

demands for justice, inclusion, and belonging.[5] Looked at with the benefit of hindsight, however, one might say that this new direction is not owed to the history of popular resistance to apartheid alone. It may also require us to adopt a new analytic—one in which struggles over subject formation and social reproduction increasingly follow a logic that is not unique to South Africa or, indeed, the Global South but is symptomatic of the massive reconfiguration of social relations occurring in late modernity everywhere. Two of these shifts are of particular relevance to the topic of this book. The first is a process in which culture—once thought of as a vital component of the imagination of homogeneous entities, such as the emerging nation-states of the nineteenth century—becomes a pivotal element in the making of what Andreas Reckwitz calls the "society of singularities." Late-modern culture, he argues, is no longer a subsystem in an all-encompassing system of instrumental rationality, as during the formative period of modernity, but is itself a global "hyperculture" in which virtually everything, "from Zen meditation to industrial footstools, from Montessori schools to YouTube videos, can be regarded as culture and can become elements of the highly mobile markets of valorization, which entice the participation of subjects with the promise of self-actualization." In other words, late-modern culture—that is, culturally endowed objects, subjects, places, events, and collectives—at its core is composed of singularities.[6]

Much of this may not be readily discernable in current South African affairs, not only because of the persistence of strong socio-moral imperatives keeping the singularization observed by Reckwitz in check but also because it is buried under a thick layer of official discourse conjuring national unity and social cohesion as antidotes to heterogeneity and fragmentation. The argument that I develop in this book, however, goes one step further. Instead of the fixation of past scholarship on questions of identity, I wish to foreground the growing significance that property and ownership play in the postapartheid order. Ownership, I argue, has turned from a marker of racial privilege into a pivot around which virtually every aspect of South Africans' public and private lives is centered. Of course, in the context of the early history of slavery and colonization, ownership, first and foremost, refers to ownership of one's own body.[7] Yet, as the struggles over the ownership of one's body and bodily labor intensified in the run-up to the so-called mineral revolution of the late nineteenth century and later on apartheid, ownership also came to comprise the control over an ever-shrinking range of other resources—above all land and water. Finally, by the time the democratic South Africa came into being and prospects for comprehensive land

reform proved elusive, employment rates plummeted, the domestic market was flooded with cheap imported consumer items primarily benefitting a rising black middle class, and a new set of tenets operating under the name "black economic empowerment" for the first time attracted a mass following outside the ANC longing for "economic freedom," the conflicts over ownership entered a new phase.

Henceforth, the South African frontier is no longer defined solely by the epic struggles over colonial dispossession, land restitution, or the complex forms of collective belonging and identity these have afforded for centuries. Although artistic creativity and performative excellence have always been key elements of black anticolonial and antiapartheid politics, almost three decades after the demise of apartheid, ownership of one's creative work and, by extension, of a person's well-being and sense of self is emerging as a major impetus of social and cultural reproduction. And so, by asking how those older struggles have shaped the history of South African copyright and what impact the current efforts at remaking South African copyright described in this book may have on the future of cultural reproduction in the country more generally, I hope to show that copyright is more than just a major battlefield on which disputes over the ownership of works of creativity are being staged. It is, at the same time, a key site where notions of propriety, appropriation, culture, and selfhood intersect to the point of becoming indistinguishable from one another, where selves are made and remade in ever-changing configurations, where new commodities and markets of valorization and modes of accumulating "singularity capital" are created, and where a new pragmatics of citizenship is being forged.[8] The frontier has moved inwards, it seems, while becoming more dispersed in the process, drawing more people into new commercial circuits and ultimately hastening the drift toward the idiosyncratic, private, and insular as the defining features of the South Africa of the twenty-first century.

The signs of this corrosive shift and its expression in a discourse that South African journalists Rapule Tabane and Ferial Haffajee, as long ago as 2003, called "ID-ology" are hard to overlook. Although—or perhaps because—South Africa's Constitution has been celebrated as one of the most progressive and liberal in the world, offering far-reaching guarantees in regards to human *and* cultural rights, the country's political establishment struggles to stem the tide of a fractious politics of the particular that is not only irreconcilable with key premises of liberal democracy but whose reverberations in everyday life also threaten the very foundations of the new nation-state as the materialization of those premises. The list is long—

from various forms of vigilante justice allegedly rooted in "tradition" and customary law to the resurgence of ethnic divisions long deemed to have been engineered by the apartheid regime to the looting spree unleashed in July 2021 by followers of embattled former President Jacob Zuma protesting his incarceration in the wake of him having disregarded a subpoena issued by the Constitutional Court, the terrain of dissension in the last couple of decades has shifted dramatically. Even the law is getting caught up in the madness. While the tonality of the country's political discourse may have shifted from revolutionary to democratically legitimated "rights talk," the class-action suit has replaced the class struggle as the preferred medium for settling differences. Traditional leaders, nongovernmental organizations, social movements, corrupt politicians, and even crime syndicates take one another to court to make claims against one another or the state, often in ways that challenge key concepts of the rule of law.[9]

But this weaponization of the law is not limited to politics. Law's reach extends deep into the realm of cultural reproduction, raising urgent questions about the possibility of legal interventions to right past wrongs and the attendant need for a new theorization of the nature of conflict in postapartheid South Africa, all told. For all the talk about the imminent rise of a creative class complete with creative cities and a knowledge economy, postapartheid cultural producers are increasingly becoming resistant to narratives of the rainbow nation or the miracle of postapartheid transformation. Instead, they are finding themselves in a more ambiguous condition of fugitivity, here understood in the sense of a dialectic between the pursuit of the irregular, incalculable, or utopian and the aspiration for autonomy, security, and well-being in the given now that simultaneously embraces and refuses the mythologies of subjectivity grounded in national identity or in the individual of the liberal-democratic imagination.[10] Thus, while black cultural producers over the past twenty or so years have triumphantly reclaimed their rightful place at the center of the country's cultural affairs, the constitutional guarantees—of equality or freedom of expression, among others—that enable these endeavors of reparation, repatriation, and recuperation remain incomplete without the state delivering on the far-reaching socioeconomic rights recognized in the Bill of Rights.[11] In other words, human rights and liberal-democratic gestures of appreciation and recognition that fail to appreciably alter the conditions under which cultural producers may reap the material benefits of their creative labor can never advance racial justice. In fact, in the eyes of many of these cultural producers and large sections of the citizenry, they are perceived as a means to obscure the continuation

of the structures of the past under a different name. That is why the late Johnny Clegg, musing about his career as one of South Africa's most distinguished musical voices against apartheid, missed the mark in blaming the poststruggle generation of so-called freeborns for being "totally gripped by a materialistic world."[12] Racial, social, and intellectual property justice are mutually constitutive of each other.

On the other hand, what complicates this turn to copyright law as the idiom of choice for translating claims to equality and ownership into a "ready means of commensuration," a "repertoire of more or less standardized terms and practices that permit the negotiation of values, beliefs, ideals, and interests across otherwise-impermeable lines of cleavage," is that novelists, filmmakers, dancers, visual artists, and musicians may end up reproducing the very racialized terms that have worked against them in the past.[13] If the ownership of one's creative work is increasingly becoming a touchstone for determining a person's success in having escaped the vicious cycle of poverty, stigmatization, marginalization, and more poverty, by the same token, it may also be read as a sign of that person having modeled themselves on the liberal credo of the propertied, competitive individual and markets as conditions of a free, prosperous citizenry. Drawing on Alexander Weheliye's insight that the "entry fee for legal recognition is the acceptance of categories based on white supremacy and colonialism," one might conclude that getting even by legal means does not reduce unevenness as much as it may exacerbate it.[14]

With few exceptions, much of this has so far escaped anthropological and musical scholarship. And not just South African. Elsewhere in the Global South, scholars likewise appear to be dragging their feet in recognizing the growing significance of the culture-copyright-ownership triad as a fundamental force shaping postcolonial cultural production in the twenty-first century more broadly.[15] But, legal scholarship, in turn, hardly fares any better. Here, it is not a lack of attention to copyright per se that is at issue. After decades of neglect during which copyright law was little more than an exotic niche topic languishing in the shadow of patent and trademark law, or was ignored altogether (a fact whose repercussions are still felt in the dearth of copyright experts in the South African judiciary), a small number of South African law schools now have LLM programs in intellectual property law and have become sites of cutting-edge scholarship and vigorous debate. The problem, however, with this upsurge is that with respect to copyright, much of this energy is somewhat disconnected from the world of cultural production. While the music industry, for instance, counts a fair number of

legally trained executives among its ranks, academics with significant industry experience are far more difficult to identify.[16] Most South African legal scholars (in fact, African legal scholars in general) have yet to systematically engage with the theoretical and practical dimensions of the new forms and technologies of producing and circulating cultural goods, vastly expanded opportunities for capital accumulation afforded by digitization, and rapidly shifting aesthetic preferences and consumer tastes.[17] Last but not least, the study of copyright—and of law in general—in tertiary education still needs to disengage from the legacies of colonial legal thought and embrace the call for decolonization that has swept South African campuses under the banner of the #FeesMustFall student protests of 2015–2016.[18]

It is this uneasy, reciprocal silence that has motivated my work over the past decade and that this book seeks to break. *Lion's Share: Remaking South African Copyright* is an attempt to generate an interdisciplinary framework for thinking about copyright and cultural production in South Africa and the postcolony at large—and possibly even regenerate a dynamic, almost lost tradition of dialogue between law and the humanities more broadly—that now seems to have reached an impasse, stuck in entrenched positions, stale dichotomies, and outdated categories. To that end, the book offers an ethnographically and legally informed story about the actors, discourses, and fault lines shaping the policies, legislative initiatives, court cases, activist interventions, and public debates about a copyright law of the twenty-first century in a music industry that ranks among the tenth- to twentieth-largest markets for recorded music in the world, along with Brazil, Mexico, and Sweden. But here is the rub. While the book seeks to engage anthropologists and legal scholars in a deeper, substantive conversation about music and copyright law, it offers no proposal for how to fix copyright or how to align South Africa's ongoing efforts at remaking its copyright framework with the country's larger project of transformation and development. Nor is it a manifesto for or against any particular version of this project, be it an Access to Knowledge (A2K) paradigm, Creative Commons model, or the Africanization of copyright in the name of the philosophy of *ubuntu*. Others more qualified than me have put forward a rich variety of recommendations and blueprints for such undertakings.[19] Therefore, the subtitle *Remaking South African Copyright* is not meant to be prescriptive as much as it invites the reader to consider the project of renewing the country's aging copyright system from a more descriptive vantage—from the perspective of those who are embroiled in the long-drawn-out effort to restructure the statutes, institutions, industry structures, and practices at the heart of copyright.

But counterbalancing this studying-up perspective is also an approach in which the owner bias of copyright jurisprudence is decentered by studying sideways, in recognizing the agency of users, consumers, and the public at large in remaking copyright, be it by critiquing policy; developing alternative, nonproprietary models of cultural production; or just by undermining copyright by illegal means such as file-sharing or piracy. In other words, when talking about the current moment as one of remaking, I do not imply that South Africa's copyright mess is a problem that can be addressed by any single agent, from only one location, or on the basis of tidy precepts and visions of social order. Still less do I want to suggest that this mess is a uniquely postcolonial predicament resulting from the failure of developing countries to fully embrace core tenets of the Euro-modernist imagination, such as the rule of law, representative government, and free-market policies foremost among them. Rather, it is to query the underlying notion that disorder—a botched bill, a dysfunctional legislative process, divergent opinions, and even mutual incomprehension—can be contrasted with a world of legality and civic order, legal certainty, and social stability. The mess of the Copyright Amendment Bill and the Intellectual Property Laws Amendment Act, I argue, is part of a broader conundrum inherent in the present world order or, as South African–born anthropologists John and Jean Comaroff put it, of "a dialectic of law and dis/order, framed by neoliberal mechanisms of deregulation and new modes of mediating human transactions."[20]

Before anything else, however, the waning of certainties once held to be unassailable; constant and abrupt shifts in the most mundane aspects of our daily lives; the demise of cultural work as we knew it; the unsettling prospect of an entirely human-made, nature-free planet; and much more all call into question inherited concepts of order, rules, or method—indeed, what it means to know. But they also encourage us to explore new ways of dealing with the indefinite, unstable, and even unthinkable. In other words, remaking copyright entails more than redefining one or the other legal term, enlarging the scope of exceptions, designing newfangled categories of works, or creating as yet unknown exclusive rights. Such amendments merely work within the existing space within which arguments and debates about copyright can legitimately take place, but they do not consider the fact that the mess these amendments seek to untangle is intertwined with another mess, one that can no longer be accounted for by any reliable method or technique and that therefore calls for a different type of inquiry, a reset and going back to the drawing board, or an unmaking of received terminologies, analytics, and assumptions about what is knowable or worth knowing.[21]

The name I provisionally gather these efforts at unmaking and remaking under is the anthropology *in* law. Distinct from an older brand of anthropological inquiry into law called legal anthropology or anthropology of law, but also in (sometimes tense) conversation with more recent modulations, such as critical legal studies or critical legal race theory, I like to think of this approach as a novel way to frame the interdisciplinary study of law in which law's and anthropology's (or any other political, cultural, scientific) knowledges interpenetrate each other to a point where "speaking the same language" does not mean unconditional consensus, uniformity of codes, or what John Law calls the "singularity" of definitive sets of processes through which one may determine "discoverable entities" but an openness to a never-ending cycle of questions and answers.[22]

Perhaps it is this openness that the African proverb that when asking questions, you cannot avoid answers refers to. Different, unexpected answers, as I understand it. Answers that you may not like and therefore provoke more questions such as the following: How do we make sense of the new power imbalances that have arisen in the democratic South Africa and that seem to displace or mask the persistence of older dichotomies, such as those between state power and grassroots forms of political and cultural practice? To what extent is the seismic shift in postapartheid politics from the militant rhetoric of *revolution* and *liberation* of the apartheid era to a more measured vocabulary stressing *rights* and *citizenship* reflected in, and perhaps also impacted by, the arts and the South African creative industries more broadly? Did the past twenty-some years of copyright reform align South African cultural life with the broader objectives of restorative and distributive justice espoused after apartheid? Or will the Intellectual Property Laws Amendment Act and the Copyright Amendment Bill perpetuate old divides and possibly even create new ones? What, if any, are the unforeseen effects of the reform process that resist being packaged into government betterment programs, political manifestos, academic paradigms, and legal prescriptions? And who will reap the lion's share?

It will be up to the reader to decide what additional questions might arise from reading the book and, especially, what answers they might generate that I did not think of while writing it. But here, at least, are some suggestions as to the possible lines along which the project of "speaking the same language" might proceed. First of all, *Lion's Share* is not a musical ethnography. Although the South African music industry forms much of the book's backdrop, musicians, musical genres, or musical aesthetics hardly matter. Nor do particular geographic regions or cities, demographic groups,

ethnicities, or racialized groups figure prominently. In fact, the book is not concerned with the more traditional mainstays of ethnography—identities, communities, or spaces—to begin with. If anything, over long stretches, *Lion's Share* is about fragile, multiplex, asynchronous relations interlinking mundane, unexciting, and understudied techniques, procedures, classifications, forms, protocols, infrastructures, scripts, contracts, legal norms, and, yes, occasionally also music. And it is about how all these actors perform, mediate, and sustain legal norms and processes, identities, and spaces in uncertain, contingent ways.

But if the book is about relationships rather than music or any other a priori given domain, does law not also count as a domain—perhaps more than any other, delineated and insulated from everything around it? The short answer is that law may actually be the quintessential relational form that *binds* people, things, and actions through webs of rules, norms, rights, and obligations. But this assertion does not tell us much about how the law goes about weaving these webs. Nor does law's built-in relationality give us any indication as to the purpose of this weaving beyond strengthening normative ideas. To be sure, most legal practitioners and, perhaps, a substantial number of scholars, irrespective of jurisprudential affiliation, would probably subscribe to the functionalist notion that the purpose of the law is to somehow improve or otherwise better human relationships according to agreed-upon social and cultural norms. Consequently, they might also expect a book about the remaking of copyright in a country crying out for fundamental transformation like no other to offer, if not a new prescription for a different legal framework, at least some empirically grounded and theoretically informed sense of how these norms are intertwined with the broader sociocultural order that sustains and is constituted by them. Others, especially those in the academy, will vehemently contest this assumption, pointing instead to the role of law in encoding and legitimizing asymmetrical power relationships. As a result, they will consider any attempt at lending cohesion and credibility to law as a viable analytical category to be politically futile, intellectually bankrupt, or both.

The long answer to the question above—or the proverbial string of answers—may come as somewhat of a surprise. While indeed concerning itself with law as a set of relations, *Lion's Share* is beholden to neither of the above views. I do not conceive of law as a means to an end, where the end is for another discipline, method, or way of thinking to define—be it anthropology, sociology, or economics. Nor do I accept the notion that law can be reduced to ideology. Not only do both approaches fail to grasp the unpre-

cedented complexity of cultural reproduction in the twenty-first century, but they also do not seem to have at their disposal the kind of theoretical and methodological toolkit required to engage the vastly changed circumstances under which anthropology might relate to law in a new way. What I call the anthropology in law is thus an attempt to sketch the outlines of such an approach. It departs from the notion that even as the law appears to ever-more-forcefully penetrate every recess of our public and private lives, throughout its long relationship to anthropology, it has always figured as another—its incorporation into anthropology's canon and condition of possibility being contingent on various strategies of marginalization, functionalization, and reification. To know law has been, and to some extent continues to be, subject to a peculiar, Janus-faced episteme. For example, during legal anthropology's formative phase, scholars such as Lewis Morgan, John McLennan, or Henry Maine posited that law's "relation to modern ideas," as the subtitle of Maine's classic *Ancient Law* words it, was always already dichotomous, opposing nineteenth-century scientific rationality to the irrationality of status and brute force.[23] But by the same logic, Maine also managed to frame the ascent of law toward reason as a process of evolution toward contractual relationships forged among reasonable actors. The new anthropology of law emerging in the 1980s in the wake of the decolonization of the colonial world likewise, if rather more tacitly, rested on an existing separation between the social as a space of power conflicts and disorder and anthropology's superior epistemic power to reveal the structure underpinning that space along with law's ordering capacity. Even the critical anthropology of the more recent past took long to arrive at an understanding of anthropology as every bit as culturally contingent as some of the signifying, cultural forms provided by the law to apprehend the world.

So, how can we anthropologically think *in* law? Many of the answers to these questions can be found in a commitment to what one might call joint ethnography—that is, a synergy of the methodologies of anthropological fieldwork and the attention to technicality, form, and process at the heart of legal practice. *Lion's Share* differs from other contemporary projects to reground the interdisciplinary study of law by attempting to disentangle the layers of law from the inside out in a search for compatibility and the pursuit of a new type of relationality. The anthropology in law I grasp for no longer assumes that law is a self-contained body of knowledge always prepositioned as an object of these disciplines' gaze. But conversely, it also relinquishes any pretensions to completeness and interpretive authority. In this way, it exemplifies, perhaps, more a performative process of building

rather than an affirmation of an already existing relationship. Building on the rich body of experimental ethnographies that have appeared in recent years on topics and locations as diverse as South African social medicine, *ngoma* dancing, and pharmaceutical laboratories, I therefore draw together and constantly circle back among a wide range of material sources and discursive formats from statistics, policy documents, and legal briefs to royalty statements, audio recordings of parliamentary debates, crime dockets, and personal narratives.[24] Consequently, I deliberately eschew any claim to methodological uniformity, drawing eclectically on actor-network theory, science and technology studies, thing theory, critical development studies, organization studies, and many others. The aim of such an incestuous intermingling is to further the notion that an ethnography of the kind offered here can be anything but a tidy story. Understood thus, ethnography resembles what in the physics of light or acoustic waves is referred to as diffraction, a bending of waves as they move around an obstacle. In this sense, ethnographic diffraction allows the researcher to better attend to the interference that occurs when different and possibly even radically incompatible practices, epistemologies, and viewpoints come into contact with one another, producing unforeseen effects as a result. But for this to happen, both fields need to question some of their most ingrained habits. At a very fundamental level, one cannot but notice a profound discrepancy between the undercontextualized abstraction, formalism, and obstinate faith in the progress of legal reasoning on the one hand and anthropology's antiessentialist, antimodernist impetus to debunk legal categories such as "property" or "author" as ciphers for asymmetrical power relationships on the other. Where legal scholars may invoke received and largely exhausted categories of social analysis, anthropologists are all too prone to gloss over the nitty-gritty of legal doctrine and practice. As I will show in the following chapters, the attempt to remedy this sort of mutual paralysis and propose a model for folding together diverse epistemologies and methodologies does not necessarily entail relinquishing the gains made by either of these earlier developments or ceasing to think like a lawyer. For instance, dispute resolution, among the hallmarks of early legal anthropology, informs parts of chapter 2. In some way or another, most chapters also echo the concerns of the older law-in-action paradigm by shifting the emphasis from state law to the vagaries of litigation strategies—all the while decentering the courtroom as a normative space for conflict resolution and replacing it with a wider range of institutional settings and forms of social control. Still, other chapters address the subtle disparities between jurisprudential univer-

sals, international norms, and their local reinterpretations that animate current debates about justice. Finally, reverberating throughout the book is the signature achievement of critical legal studies of the 1980s and 1990s: reorienting our long and troubled preoccupation with law as a system of propositional enunciations toward law as a power-laden discourse.

Yet, for all the innovative ideas and critical attention to new contexts, social settings, structures of domination, and counterhegemonic practices, there is still one area, one constant, in the existing literature that seems irreconcilable with the larger project of an anthropology in law. Most ethnographic accounts relate legal developments and their relationship to the extralegal sphere as though they are already part of a small set of surprisingly simple and ready-made storylines, such as the emergence of global capitalism, the fetishization of the law as a panacea for everything from poverty to the HIV/AIDS crisis, the international homogenization of law, and so on. Rather than positioning these totalizing processes as the a priori of the quotidian, makeshift, unsought, and unpredictable events that incite the ethnographer's instinct, I question the very premise that the main purpose of attending to such events is to validate the totalizing nature of that which they are entangled with. The totality is just as transient, unpredictable, unstable, and, hence, worth of ethnographic study. At the same time, to practice an ethnography of copyright is not only to decenter law; ironically, it also compels us to take law more seriously as a protagonist of its own account of what the world outside itself is like and to recognize law's agency by meticulously attending to that which constitutes it—form, technicality, procedure. But, conversely, if law's entire raison d'être rests on an *is-ought* dichotomy between tidy facts and even tidier visions of what should be, my ethnography emphatically comes down on the messy side of the *is*.

Here, then, is what is in store over the coming pages. In each of the book's five chapters, I propose a different modality of pursuing an anthropology in law. The first is introductory and lays the groundwork for those that follow. In addition to offering an overview of some of the key issues in current South African copyright debates, I attempt to outline a future history of South African copyright in the context of the country's creative industries and introduce a series of conceptual tools to foreground the relational, networked nature of my anthropology in law. In chapter 2, I revisit the internationally celebrated 2006 settlement between the heirs of Solomon Linda and Walt Disney, Inc. for the latter's unauthorized use of the song "Mbube" in the blockbuster musical *The Lion King*. This account offers what is perhaps the first-ever in-depth look at how a case is put together

by following the countless hoops and hiatuses it encountered on its way to resolution. While on the surface, the theoretical framework may hark back to a law-in-action paradigm, at a deeper level, it utilizes this case to probe the twin legacies of colonial and imperial law and their precarious continuity within postcolonial transformative justice.

Chapter 3 is about lawmaking, specifically the making of the Intellectual Property Laws Amendment Act. Having shadowed the Portfolio Committee on Trade and Industry and having worked through the resulting mountain of policy documents, draft legislation, minutes, and expert opinions, I examine the act's cultural imaginary and its production in the legislative process. Although the act has been roundly rejected as unworkable and potentially unconstitutional, my primary concern is not its perceived failings but the way it assembles the indigenous by undoing it. By turning indigenous communities into the authors of traditional cultural expressions, it creates a whole new rights-based domain of belonging, one that reproduces past categories of exclusion more than it creates new opportunities for inclusion.

Chapter 4 addresses the enforcement of copyright by so-called public-private partnerships involving a variety of state agencies, such as the South African Police Service (SAPS), and trade associations like the music industry's trade association Recording Industry of South Africa (RiSA) and the film industry's South African Federation Against Copyright Theft (SAFACT). The broader rationale of this strategy is to promote the public interest by protecting the rights of copyright owners. Having followed these organizations as they engage in education campaigns, police raids on suspected pirates, forensic analysis of infringing copies, and collection of statistical data, I question the public interest narrative as concealing decidedly unpublic industry strategies and the reproduction of the socio-spatial order bequeathed by apartheid.

In chapter 5, I offer a case study of the Southern African Music Rights Organization (SAMRO), one of South Africa's three so-called collecting societies for music-related rights, whose principal function is to collect royalties for the public performance of works owned by its members. Much like the other bodies I examine in this book, SAMRO imagines itself to be a staunch champion of copyright and a vital contributor to the country's economic and cultural well-being. However, many of the society's members and critics have vigorously contested this narrative by suggesting that its status as a de facto monopoly is detrimental to both their own interests and those of the public at large. Indeed, SAMRO has been embroiled in controversy and rocked by numerous scandals since its inception in 1961. Nevertheless,

I approach the conflicted nature of collective management organizations like SAMRO from a slightly different angle. Having interned in SAMRO's Licensing and Sales department for some time, I offer an ethnographic account of how the dissonance between private and public interest constituting SAMRO's very raison d'être is less the result of insufficient regulation than it is intrinsic to its internal modus operandi.

The book concludes with some brief reflections on the furor that greeted the Copyright Amendment Bill mentioned at the beginning and how it exposed the mutual incomprehension among lawmakers, legal scholars, and the broader public. Much like the Intellectual Property Laws Amendment Act before it, the bill is not only plagued with numerous issues, but it also tests the boundaries and possibilities of what it means to speak *in* law.

NOTES

Introduction

1 The event in question was the Third Annual Conference of the South African Association of IP Law and IT Law Teachers and Researchers (AIPLITL) held at the University of Cape Town in 2019.

2 For a useful compilation of documents, internet links, and other material relating to the Copyright Amendment Bill see: https://libguides.wits.ac.za/Copyright_and_Related_Issues/SA_Copyright_Amendment_Bill_2017.

3 Among the first and most influential of these pioneering scholars are David Coplan, an anthropologist who later became a professor at the University of the Witwatersrand, and Christopher Ballantine, a musicologist and head of the music department of what was then known as the University of Natal.

4 Lucia, *World of South African Music*, xxii. Apart from an astute introduction, Lucia's anthology gathers in one convenient place some of the most important writing, both past and more recent.

5 See especially Erlmann, *African Stars*; *Nightsong*; and *Music and the Global Imagination.* Also see Meintjes, *Sound of Africa*; Muller, *Rituals of Fertility*.

6 Reckwitz, *Society of Singularities*, 17, 63.

7 In fact, as Stephen Best argues, the two developed in tandem. Best, *The Fugitive's Properties.* Note here, too, that this close relationship between copyright and personhood stands in marked contrast with the labor justification of copyright prevalent in South African copyright jurisprudence.

8 Reckwitz, *Society of Singularities*, 84. On the "pragmatics of citizenship" see Comaroff and Comaroff, "Reflections on Liberalism."

9 Robins, *From Revolution to Rights*, 2, 7; Comaroff and Comaroff, *Law and Disorder*, 27.

10 Here I am in dialogue with one of the foundational texts of fugitivity: Stefano Harvey and Fred Moten's *The Undercommons*.

11 As some legal scholars have argued, the fact that the socioeconomic rights in the Bill of Rights are interspersed with other rights rather than grouped under their own rubric shows that they are indivisible from these rights.

12 Coetzer, "Johnny Clegg," 42–48.

13 Comaroff and Comaroff, *Law and Disorder*, 32.

14 Weheliye, *Habeas Viscus*, 77.

15 Allingham, "From 'Noma Kumnyama'"; Ballantine, "Song, Memory, Power." Examples elsewhere are Röschenthaler and Diawara, *Copyright Africa*; Eckstein and Schwarz, *Postcolonial Piracy*; Feld, "Sweet Lullaby"; Seeger, "Traditional Music"; Perlman, "From 'Folklore'"; Skinner, *Bamako Sounds*; Stobart, "Rampant Reproduction."

16 Some of the key music industry institutions, such as the collecting societies SAMRO and SAMPRA, are led by lawyers.

17 Notable exceptions are Gani, *Creative Autonomy;* and Okorie, *Multi-Sided Music Platforms*.

18 Sindane, *Call to Decolonise*; CHE, *State*, 54; Modiri, "Transformation."

19 To name just a few prominent examples of the past decade, I am thinking of Perzanowski and Schultz, *End of Ownership*; Patry, *How to Fix Copyright*; Sunder, *Goods to a Good Life*. In the South African context, de Beer et al., *Innovation & Intellectual Property*.

20 Comaroff and Comaroff, *Law and Disorder*, 5.

21 For more on this, see Law, *After Method*.

22 Law, *After Method*, 9.

23 Maine, *Ancient Law*.

24 Neely, *Reimagining Social Medicine*; Meintjes, *Dust of the Zulu*; Pollock, *Synthesizing Hope*.

Chapter One. Aspirations and Apprehensions

1 Coombe, *Cultural Life*, 18.

2 Sunder, *Goods to a Good Life*, 91.

3 Halbert, *State of Copyright*, 4.

4 Sunder, *Goods to a Good Life*, 91.

5 Coombe, *Cultural Life*, 18.

6 Halbert, *State of Copyright*, 4.

7 Boyle, "Second Enclosure Movement."

8 Mbembe and Nuttall, "Writing the World," 351.