

# The Commodification and Exchange of Knowledge in the Case of Transnational Commercial Yoga

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**Abstract:** The practice of yoga outside India and for commercial exchange (transnational commercial yoga) is a multibillion-dollar industry that has been the site of increasing formal regulation. The primary questions these regulations are meant to resolve include the following: (1) What is yoga? (2) What is its proprietary nature? and (3) Who has the right to manage its expression? Two recent U.S. federal district court cases involving the Bikram Yoga College of India, a yoga franchise based in Los Angeles, have drawn international attention to the debate on whether yogic knowledge or practice resides in the public or private domain. This article asks, if given the monetary value at stake, did the global market for transnational commercial yoga set the stage for claims to individual IPRs? Furthermore, this article analyzes how yoga, due to its unique characteristics as an embodied practice and intangible form, serves as a platform for experimentation from which new meanings of open source, IPRs, and information management strategies emerge.

## INTRODUCTION

Issues surrounding the protection and exploitation of traditional knowledge through intellectual property rights (IPRs) are increasingly debated; and the new legal frameworks developing in response will have wide ranging social, economic, political, and scientific impacts. For example, new international regimes, such as

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the trade-related aspects of intellectual property (an agreement between World Trade Organization countries), demand a minimum level of intellectual property (IP) law harmonization among member countries. However, developing countries (e.g., India and Brazil) and special-interest communities (e.g., indigenous groups and civil society organizations) are concerned that the effects of legal actions taking place in dominant states and this broader harmonization will result in the unethical and inequitable management of the traditional knowledge they claim as their own.<sup>1</sup>

Using a case study of recent IP claims to yoga, this article examines how contemporary cultural practices are subject to contestation and reconfiguration by complex interactions between private, legal, corporate, and state actors. This analysis explores how the practice of South Asian yoga is becoming the subject of globally franchised businesses and how this phenomenon provides a space for the innovative application and extension of IP management tools<sup>2</sup> by different parties attempting to place a tradition either in the public or private domain. Toward these ends I focus on transnational commercial yoga, a derivative of the modern and transnational practices described by Joseph Alter,<sup>3</sup> Elizabeth De Michelis,<sup>4</sup> and Sarah Strauss.<sup>5</sup> For the purposes of this discussion, I define the transnational commercial practice as a type of yoga that has arisen through international commercial exchange. Specifically, I will trace how transnational commercial yoga has achieved the following:

- Emerged in the legal and ethical framework of global capitalism, as exemplified by the Bikram Yoga College of India (BYCI)
- Developed into a valuable, competitive market commodity where rival actors, from individual yoga gurus to incorporated yoga schools, secure financial interests through IP claims of copyright, patent, and trademark
- Prompted local organizations in San Francisco and Bangalore to respond, using approaches reminiscent of the Open Source movement, to the privatization and commodification of what both argue is a public good
- Caused the Indian state to respond, through the construction of a digital yoga library, to what it claims is evidence of the continued piracy of its national-cultural heritage

Mapping this flow sheds light on two questions raised by moves to control transnational commercial yoga practices:

- Given the monetary value at stake in the global market, did the new forms of transnational commercial yoga set the stage for claims to individual IP rights over this former traditional knowledge?
- How do these claims and the reactions that they trigger alter understandings of the nature of yoga, IPRs, open source principles and digital libraries, specifically, and understandings of property, more generally?

## TRANSNATIONAL COMMERCIAL YOGA AND CLAIMS TO INTELLECTUAL PROPERTY

Traditionally, yoga is a several thousand years old South Asian philosophy that trains the embodied mind to accept truth through a combination of physical and mental practices.<sup>6</sup> The term yoga derives from the Sanskrit word *yuj* meaning to yoke, to join together, or union.<sup>7</sup> Yoga and related ascetic practices are linked to several religious traditions originating in the South Asian subcontinent including Hinduism, Jainism, Buddhism, and Sikhism.<sup>8</sup> Specifically, in the Hindu tradition yoga is one of six major philosophies of religious orthopraxy, also known as darsanas.<sup>9</sup> Approximately 2,000 years ago, local expressions of yoga were grouped into eight separate limbs of practice by the ancient sage, Pantanjali, who described his classificatory scheme in *The Yoga Sutras of Pantanjali*.<sup>10</sup> These limbs include *yama* (abstentions), *niyama* (observances), *asana* (postures), *pranayama* (breath control), *pratyahara* (abstraction), *dharana* (concentration), *dhyana* (meditation), and *samadhi* (trance). Each school of yoga, whether modern, transnational, or esoteric, has a distinctive style of practice that consists of a unique interpretation and blending of a particular subset of the limbs. Thus, even in India there has never been a singular traditional style or primordial yogic practice, and multiple interpretations have existed at any point in time.<sup>11</sup>

In the past five decades cosmopolitan consumers, mostly in the United States, Europe, Japan, and Australia, who are attracted to indigenous and orientalized alternative health and exercise practices, have created a market demand for transnational commercial yoga.<sup>12</sup> This market draws mostly from Hatha Yoga, a style that emphasizes the physical parts of practice; *asanas* (postures), *pranayamas* (breathing exercises), and *pratyahara* (abstraction, a preliminary practice to meditation). The objective of Hatha Yoga is to prepare the practitioner to address the further and more advanced steps of meditation and sensory withdrawal.<sup>13</sup> Specifically, the transnational commercial interpretation of Hatha focuses on the gymnastic processes of practice and the physical effects including weight loss, physical stress reduction, muscle toning, and flexibility. In this contemporary version, yoga can be conceptualized as a successful commodity that satisfies the desire to improve the physical body and health through exercise. In these new cultural contexts, yoga is generating a lucrative industry often advertised as a stress-reducing and effortless alternative to the typical gym experience. In fact, popular media often treat yoga as an efficient workout form that may easily be added at the end of an exercise regimen or performed in the kitchen “during the five minutes that it takes to boil water.”<sup>14</sup>

In 2004 the transnational commercial yoga market generated, in the United States alone, more than \$30 billion and was practiced by more than 20 million people.<sup>15</sup> In the last 10 years this industry, in part because of its rising value, has seen increasing informal and formal regulatory activity by private actors, interest groups,

and state institutions. The questions that these regulations are meant to resolve include:

- What is yoga and its practice?
- What is its proprietary nature, and does it exist in the public or private domain?
- Who has the right to manage its expression and teach a practice?

In an effort to answer these questions and preserve their control over some aspect of the profitable market, different gurus, schools, and corporations have, in the last several years, registered thousands of IP claims on yoga-related goods and services. Figures from United States IP agencies, the U.S. Patent and Trademark Office and the U.S. Copyright Office, indicate that there are 2,315 trademarks on yoga, 150 yoga-related copyrights, and 135 patents on yoga accessories presently registered in this country alone.<sup>16</sup>

Despite the proliferation of IP claims, public attention to this trend to appropriate yoga; and public outcry over it did not erupt until early 2002 when Bikram Choudhury, the founder and president of BYCI, attempted to enforce BYCI's copyrights and trademarks against "renegade" infringer studios. Since this time Bikram and BYCI have been involved in two U.S. federal court lawsuits, both of which were settled out of court under nondisclosure agreements, and they have threatened several more around the world. These cases are significant because they are the first to potentially test the validity of individual IP claims to yoga and because they have brought international attention to the question of whether yogic knowledge resides in the public or private domain.

### COMPETING CLAIMS: INDIVIDUAL VERSUS MULTIPLE AUTHORSHIP OF YOGIC KNOWLEDGE

The debate over whether transnational yogic knowledge resides in the public or private domain is influenced by international legal systems addressing property and rights regimes and the relationship between global norms and local-level actors who implement these regimes.<sup>17</sup> The eventual outcome of this debate has implications for the ability of an individual, franchise, corporation, nation, or culture to author and exercise property claims over particular forms of knowledge and knowledge production. For example, attempts to exclude cultural properties such as yoga from authorship protections indicate a naturalization of traditional practices and a denial of the effort and creativity that goes into indigenous knowledge production.<sup>18</sup> This denial is illustrated by the exploitation of native populations' knowledge by multinational corporations, such as pharmaceutical companies, that patent traditional uses of local botanical remedies and use laboratory research and documentation to justify ownership over this information.<sup>19</sup>

In the contemporary legal system control of a piece of property is assigned to an individual actor through a number of related and often contradictory fictions that also serve as the judicial institution's structuring logic. The primary of these fictions mandates independent and different entities as equals before the law.<sup>20</sup> In the area of IP this myth is bound up with Enlightenment-influenced understandings of authorship and the production of knowledge. In this interpretation of invention and creativity, an author's work is seen as the product of that individual's labor and, therefore, deserving of legal protection. Moreover, this social construction only recognizes the generation of certain types of knowledge production, primarily those that are either textual or rational-scientific. In contrast, these combined logics of person and property are unable to recognize, reward, or protect knowledge produced collaboratively.

In addition to these constraints, as an intangible entity information is understood as having a special kind of characteristic that, in comparison to material property, requires specialized attention. For example, Lawrence Lessig<sup>21</sup> and others<sup>22</sup> have promoted the idea that information is unique and differs from other types of property because it has the nondiminishing characteristic of a public good. Thus, the fact that one party has access to the good does not affect another's ability to use it or decrease the quality of the information. Furthermore, the intangible and highly mobile characteristic of information is increasingly exploited in the global corporate era in which aggressive parties assert their claims in and through legal institutions (e.g., the legislature and courts of law) provoking what some scholars have labeled a "second enclosure of the commons."<sup>23</sup> In this second enclosure, valuable information is increasingly fenced off by individuals attempting to prevent the access of others.

Intellectual property mechanisms, therefore, as derivatives of property law, assign ownership of valuable intangibles to a specific actor, usually the creator, to allow the actor to retain control of the work and the benefit derived from it. It is through the intertwining of these legal concepts that the myth of the singular author as the sole generator is fabricated.<sup>24</sup> These types of protection, however, are not regularly extended to the creators of traditional knowledge. Instead, the contributions of these authors are restricted to the public domain.<sup>25</sup> The flaw in the doctrinal construction of the individual author is that innovative generation of information and knowledge often has numerous contributing sources. This situation has been exposed by science and critical legal studies scholars who have documented the reality of multiple authors in the development of the magnetic resonance imaging scanning technology,<sup>26</sup> textual authorship,<sup>27</sup> and a French light rail transit system.<sup>28</sup> Thus, a case determining whether or not IP protections can be applied to yogic knowledge produces a complicated ethical question. An outcome respecting a traditional philosophical perspective arguably results in all variations of yoga being placed in the public domain.<sup>29</sup> At the same time, however, such a decision also results in the provincialization of Indian knowledge and unequal protection for subaltern authorial activities.<sup>30</sup>

The two U.S. federal court cases involving BYCI,<sup>31</sup> described in the following text, exemplify the actors, tensions, and ethical contradictions evoked when attempts are made to extend the coverage of IPRs to new forms of knowledge such as yoga. The claims of the parties in these disputes articulate different legal positions, both of which argue for a separate morality with regard to the treatment of not only yoga and property but also tradition and culture. Thus, it appears that an ethical treatment of yoga and other similar cultural practices cannot be discovered simply through the extension of some universal and neutral moral code. Instead, this subject inhabits a contested domain in which the myths and contradictions of the modern juridical system are exposed at many levels.<sup>32</sup> Further, this exposure requires interested parties to perform<sup>33</sup> arguments that make flexible or “purgatorial” ethical claims<sup>34</sup> regarding the nature and origin of yoga, the identity of its authors, and the rights and responsibilities of actors involved in the debate.

### *The Bikram Beginning Series and the Bikram Yoga College of India Lawsuits*

Bikram yoga, often disparagingly referred to as the McDonald’s version of yoga, is one of the most profitable styles of transnational commercial yoga and was pioneered by its notoriously aggressive guru, Bikram Choudhury. The Bikram Beginning Series involves 26 postures (asanas) and 2 breathing exercises (pranayamas) performed over a 90-minute period in a studio heated to 105°F (40.6°C). Each pose is held for a specific period of time, performed twice, and accompanied by scripted instruction from the teacher. Although the character of each studio and instructor differ somewhat—some are more akin to military drills and others have a gentler approach—there is limited room for variation and the Bikram style is readily identifiable. Official Bikram studios belong to an international network of approximately 800 franchises, the BYCI, which operates in 33 countries. To become a franchisee, a studio must agree to teach only Bikram yoga classes taught by Bikram-certified instructors, be physically set up in a programmed way, demonstrate that it is not in competition with other Bikram studios, and be owned by a Bikram-certified instructor. In addition, to become a Bikram-certified instructor, a person must be accepted into and graduate from the BYCI training program, which lasts two months, must be attended full-time during this period; the program costs approximately \$6,000 and is offered only twice a year at the BYCI headquarters in Los Angeles.

Bikram Choudhury is an immigrant from Kolkata, India, who claims to have studied yoga since he was 4 years old and to have been a world champion yogi by the age of 17 years. While recovering from a severe knee injury, he developed and refined his famous Bikram’s Beginning Yoga Series. Because of the increasing international popularity of his special series, Bikram claims to have come to the United States in the 1970s by special invitation from former President Richard

Nixon and Hollywood actress Shirley MacLaine, both of whom were his students. Bikram opened his first studio in Los Angeles where his instruction immediately drew many wealthy and famous clients. Bikram is joined in the management of BYCI by his wife, Rajashree Choudhury, also an immigrant from India. Rajashree is also a yogi credited with several championship titles and, in addition to the general BYCI program, teaches yoga programs specifically designed for children and pregnant women.<sup>35</sup>

Approximately four years ago Bikram began officially registering copyrights and trademarks based on publications, such as the book *Bikram's Beginning Yoga Class*, and images he had been producing since the 1970s. Bikram, through legal representatives, maintains that the actual yoga sequence, as a specific arrangement of postures, is eligible for copyright protection because it is similar to other choreographed performances that are aesthetic in nature, such as dance.<sup>36</sup> As part of the formalization and enforcement of his IP claims, Bikram also began sending forceful cease and desist letters to studios teaching Bikram-style yoga without his consent. These letters threatened legal action and made claims for hundreds of thousands of dollars in damages. In 2002 Bikram began his first copyright violation suit against an Orange County studio of his former student and her husband. This suit was settled out of court and, therefore, no decision was established about the validity of Bikram's claims to copyright protection. Through the course of this lawsuit, Bikram ethically justified his actions, claiming that he had authored the popular and profitable series through the investment of his own "blood, sweat, and tears." Additionally, he expressed concern that his brand name was being used by untrained, uncertified, teachers who were providing inferior instruction and potentially placing students in physical danger.<sup>37</sup>

In response to Bikram's legal threats and obvious willingness to enforce them, several yoga studios throughout the United States either stopped offering Bikram-style classes or changed them significantly (e.g., changing the name to "Hot Yoga" and altering the sequence of asanas used). Despite these changes Bikram continued to aggressively threaten legal action. At this point two groups, the Hot Yoga Alliance and the Society for the Betterment of Humanity, merged into one organization: Open Source Yoga Unity (OSYU). The mission of OSYU is to protect "the public nature" of yoga, bring Bikram to court to defeat his IP claims, and "ensure [yoga's] continued natural unfettered practice for all to enjoy and develop."<sup>38</sup> The OSYU organization was started by a San Francisco lawyer and includes studio owners, yoga teachers and students, and other lawyers. This group collectively argues that "yoga has always been open source and regulated either by social norms (for example, you can't just claim to be a shaman if you were not trained by a known shaman) or by guild-like organizations."<sup>39</sup> According to an OSYU member, although the organization is based on the philosophy of open access to yogic knowledge, the group does not actually employ the specific approaches of the Open Source movement. For example, OSYU does not advocate for the creation of a legal written "license" as does the Free Software Foundation and the

Creative Commons. Also, OSYU does not necessarily advocate a formal mechanism to ensure that “improvements” in yogic knowledge are available on the same terms as the public domain yoga from which they are derived. Instead, Open Source was an attractive name and probably “only two founders of OSYU understood what Open Source meant . . . the rest of them just liked the sound of it.”<sup>40</sup>

Through its suit this organization, which does not claim to include any experts in South Asian cultures, justifies its position on the basis that yoga, in all its expressions, naturally exists in the public domain. Thus, OSYU believes that yoga should not be the subject of private ownership, whether at its most abstract, comprehensive level or as a specific series of postures. The OSYU argument for a public domain yoga is, debatably, a position that remains true to the philosophical and spiritual root ethics of this traditional practice. However, this argument is problematic in another sense because it rests on the perception of yoga as a kind of knowledge that contrasts with the legal treatment of a modern and individualized intellectual authorial activity, which legally exists in the private domain and does merit individual IP protections.<sup>41</sup>

In early April 2005, OSYU and Bikram settled their dispute out of court and under a nondisclosure agreement. Little is known about the terms of the agreement. Members of OSYU agreed to stop teaching the Bikram Beginning Series and, in return, Bikram agreed not to pursue lawsuits against the yoga teachers and studio owners who were registered members of the plaintiff organization. Additionally, since the settlement, both OSYU and BYCI have dismantled the portions of their web site related to the lawsuit, leaving only a statement that the case has been settled in a manner satisfactory to both parties.<sup>42</sup> Some yoga communities that had previously supported OSYU and its mission to defeat Bikram’s claims received the news of the settlement with cynicism. Entries to online yoga discussion groups and newspaper and magazine articles suggested that the intentions of OSYU and its membership had always been business centered and motivated by a desire to avoid being sued themselves. These critics suggested that OSYU’s argument, that the ethics of yoga demanded its characterization as a public domain good, was strategically formulated to take advantage of public sympathies and assumptions about a South Asian traditional knowledge.

I argue that the application of IP protections to transnational commercial yoga practices was inevitable given the monetary values at stake, but was substantially enabled by the corporate-style of structure and management, and the interpretations of practice used to attract students. The BYCI, as the most profitable yoga corporation in the world, and its president and founding guru, Bikram Choudhury as a native Indian yogi, represent the prototype for transnational commercial yoga. Specifically, the BYCI model of management is a franchise system whose day-to-day functioning and expansion is directly dependent on the will of Bikram Choudhury. This level of control, when combined with the Bikram series and the conditions under which it is performed, are so highly specialized that it is difficult, if not impossible, for the average student-consumer to repro-

duce in any other setting. Thus, the typical student is reliant on Bikram and the teachers, who he selects and binds to him through contract, for continued practice. With each lesson the student purchases and consumes a bounded and finite segment of yogic knowledge. Bikram has positioned himself as the sole and original author of this valuable product. Furthermore, because he has never ceded its absolute control, Bikram is best situated to make the case that this instance of yogic invention is legitimately subject to private IP protections. In this context, he successfully constructs this argument despite the seeming impropriety of such a move given preexisting interpretations and assumptions regarding the nature of yoga as a spiritual practice.

At present, IP law operates under a division between individualized IPs, which can be authored and owned, and cultural knowledge properties, presumably in the public domain. As innovators of traditional knowledge like Bikram become recognizable and influential authors and when this recognition lends credibility to claims of ownership, the “boundaries of the public [and private] sphere[s] are increasingly blurred.”<sup>43</sup> Attempting to put the *OSYU v. Bikram* case in context shows the legal and ethical complexity of these new instances. This case further confuses the public/private dichotomy when an understanding of the facts is combined with an understanding that both sides are consciously positioning themselves by fashioning an ethical terrain within the legal system. Thus, OSYU asserts that yoga has existed in the public domain for thousands of years and that the enforcement of individual ownership is in stark contrast with its most basic tenets. Bikram, however, emphasizes his identity as an authentic Indian guru who was taught from an early age by the celebrated masters of the early twentieth century. Additionally, Bikram argues that yoga has never maintained a homogenous style and that his creation of a successfully commodified form should be considered an immigrant success story. From these constructed vantage points, the parties are creating appealing, and therefore powerful, legal narratives that highlight certain characteristics of themselves, the opposing party, and the subject of litigation. Furthermore, it is important to understand and consider that these narratives are consciously designed to play on both popular and legal assumptions, embedded within the structure of the court system, that privilege some kinds of knowledge while denying others.

### *Reactions to the Bikram Yoga College of India Lawsuits: Digital Libraries and an Open Source Patent*

Because the logic behind claims to own yoga seemed incongruent with both its philosophical tenets and IP law’s usual treatment of traditional knowledge, and because the scale of the transnational commercial yoga industry is enormous, the Bikram lawsuits received significant international attention. During the course of the lawsuits (2002–2005), popular yoga media such as the *Yoga Journal* and *The Bend Bulletin* and internationally respected news venues such as *60 Minutes*, *The Economist*, *USA Today*, the *L.A. Times*, *The Times of India*, *The Wall Street Journal*,

*The Economic Times*, and Chandigarh's *The Tribune* featured articles and editorials discussing the issues at stake. Gradually, in step with and documented by this publicity, several groups came forward with positions on the issue of whether yoga should reside in the public or private domain. These groups include those organizations described earlier, most yoga schools, and the nation of India. Two of these actors, the Indian government and the Art of Living (AoL) Foundation share a common perspective on this issue. Both believe that yogic knowledge, given its historical context and its nature, is and should remain, in all its forms, subject to open access. However, because certain entrepreneurs are moving to *own* specific aspects of yoga, and some countries are allowing this to occur by registering IP claims, there is no other choice but to act likewise.

### Reaction 1: Using Intellectual Property Rights to Ensure Public Access to a Breathing Technique

The AoL Foundation is an international nonprofit organization headquartered in Bangalore, India, that maintains satellite centers in both North America and Europe. This charitable foundation, whose primary purpose is spiritual, claims to have affected the lives of over 20 million people. Additionally, AoL claims to be active in more than 140 countries and have the largest volunteer base of any nonprofit organization in the world. In early February 2006, during AoL's 25th anniversary celebration, the organization's head guru, Sri Sri Ravi Shankar participated in an interview with journalists from *Rediff India* that appeared as the article, "Knowledge Should Be Free For All."<sup>44</sup> It is from this article that the majority of the information in this section of the discussion derives. During the interview Shankar discussed the organization's stance on the commodification of information and AoL's controversial decision to register IP claims to its specific form of yogic practice. For Shankar the decision to apply for IPRs was against the ethos of AoL's spiritual objectives. However, he felt that the organization faced the real possibility that it would lose the ability to control and teach the core part of AoL's style of yoga, the art of *Sudarshan Kriya*. In particular, leaders within AoL were concerned that a profit-motivated competitor might register private IP claims over *Sudarshan Kriya* and block the organization's use of this technique.

Through techniques of yoga and meditation, the AoL Foundation teaches its followers how to eliminate sources of stress from everyday life. At the core of these practices is the *pranayama* technique of *Sudarshan Kriya*, which roughly translates to English as "healing breath technique." The AoL Foundation claims that this rhythmic breath practice reestablishes the balance of life "as it simultaneously floods the cells of the body with oxygen and energy . . . [and having] a profound effect of the mind, body, and spirit . . . by linking the mind-body system in a specific way, that rids the system of accumulated stress and toxins, releasing negative emotions and rejuvenating the body."<sup>45</sup>

According to Shankar the application of IPRs to spiritually based knowledge, "is not a healthy practice," and he is, "really not for it." Shankar believes that "knowl-

edge should be free for all . . . . Commercial organizations take up these things and start patenting, so then NGOs and charitable organizations are forced to patent so that they can continue with their work.” Shankar goes on to say that teachers within the AoL Foundation decided to register IP claims to protect the method from other parties who might do so themselves in an attempt to block free and open access to the method.

This use of a mixture of IP claims to ensure public access to *Sudarshan Kriya* is an interesting move that appears similar to and may be inspired by the copyleft techniques pioneered in the Open Source community. However, unlike Open Source, the AoL technique is protected primarily through the form of the patent. The modern patent system, unlike copyright, is characterized by the logic of disclosure. Under this scheme inventors are rewarded with monopoly rights of limited duration in return for sharing the invention with the rest of society. Thus, the inventors places their knowledge in a publicly accessible place (e.g., in the United States this is the U.S. Patent and Trademark Office) and receive compensation from those who use these creations. In other words, patents are available to the public for a price that produces royalties for the inventor.<sup>46</sup> Thus patents help to ensure open, but not necessarily free, access to the protected knowledge or invention. Given this understanding of patents it is, therefore, questionable whether AoL's strategy to patent *Sudarshan Kriya* will meet the organization's stated objectives.

Additionally, there are two interrelated concerns raised by the different uses of patents versus copyrights to maintain open and free access to the varied array of cultural practices that have come to circulate globally. The first concern is jurisdictional. As noted by Niva Elkin-Koren, copyleft approaches originally developed in the United States have required significant revision to adequately function in other jurisdictions.<sup>47</sup> However, and this is the second concern, reverse copyright strategies are solely focused on creative works that, no matter the social or cultural context, can be represented in a textual manner at some basic level. This leaves other forms of knowledge that are more effectively conveyed through other modes of representation unaddressed by the Open Source movement. Thus, there has been little work directly aimed at maintaining free and open access to these types of creative cultural production. For this reason the AoL situation provides an interesting case study. Yogic knowledge, as an embodied practice, has a unique form; and this provides a distinctive platform for experimentation by those interested in maintaining and expanding open access to information. Thus, whether or not AoL's IP claim to *Sudarshan Kriya* is valid or effective in accomplishing the organizations goals, it is important for another reason. Specifically, it suggests that the logic of patent claims may be reversed and used to ensure the free and public nature of a cultural practice in the form of a bodily knowledge.

Finally, the AoL example also suggests that when one party, such as Bikram, attempts to own and enforce his rights to a single expression of a widespread practice, such as yoga, the effects may have unexpected and rippling consequences. Schools that desire to maintain their styles of practice as public must act to pre-

vent its privatization by others. Paradoxically, one of the most effective methods for the prevention of privatization appears to be the proactive registration of IP claims. Thus, yoga organizations such as AoL feel that they are forced to make private claims on the very practices that they desire to remain public.

## Reaction 2: The Indian State's Creation of Traditional Knowledge Libraries

On a cursory review of events, it appears that the government of India only became concerned with the potential drawbacks of the global circulation and private registration of IP claims to yoga after the Bikram lawsuits. However, the following discussion will argue that this is not the case as the government's concern for the privatization of yogic knowledge can be linked to the Indian state's anxiety over the piracy of its national-cultural heritage, which dates back to the late 1990s. This concern was triggered by a number of IP claims on traditional Indian uses of agricultural and botanical products. Specifically, multinational corporations (MNCs) registered patents in the United States and Europe for basmati rice; the neem plant; and turmeric, a spice and medicinal plant. These patents did not necessarily prohibit the production of these goods for personal consumption and noncommercial purposes. However, they did bar parties other than the MNCs from engaging in the commercial trade of basmati, neem, and turmeric. Given that the commercial trade of these three products was important to the livelihood of many South Asian people, the Indian government decided to contest the patent claims. In doing so the Indian state established the Task Force for the Preservation of Traditional and Cultural Knowledge. Over several years the task force did work to successfully challenge the MNC's patent claims to basmati rice, turmeric, and neem in most jurisdictions. However, this effort took the Indian government several years to develop the sufficient legal evidence and cost several million dollars.

Because contesting the patent claims proved expensive, the Indian state decided to act to prevent similar future incursions. In doing so the Indian government decided to create and disseminate a Traditional Knowledge Digital Library (TKDL). The TKDL, created by the Indian National Institute for Science Communication and Information Resources, will be a comprehensive database dispersed to IP agencies in countries around the world on its completion. This database will then serve as a reference for the three legal patent criteria of nonobviousness, innovation, and usefulness. The Indian government's expectation is that an application for a patent on an item already documented within the TKDL should be rejected on the grounds that it would fail to meet both the legal standards of innovation and nonobviousness. The TKDL is one of the first project of its kind to receive significant attention from the World Trade Organization, the World Intellectual Property Organization, and academics interested in IPRs.<sup>48</sup> It also marks a critical turning point in arguing that a traditional knowledge originating in a particular region such as the Indian-Pakistan border where basmati rice is grown, can be conflated to identify with an entire nation and is, therefore, subject to that state's control and stewardship.

The TKDL originally contained a small section on yoga. In 2002, a year after the Bikram lawsuits began, however, the Indian government announced its intention to create a separate digital yoga library. On completion the digital yoga library will contain thousands of ancient texts translated into five languages and illustrations of more than 1,500 postures.<sup>49</sup> Once finished this library, intended to be an important source of authentic yogic knowledge, will be sent to IP agencies around the world like the TKDL. Yoga, similar to Ayurveda, a South Asian holistic health system, is often regarded as a symbol of both the Indian nation and the Hindu religion.<sup>50</sup> Thus, the Indian state-sanctioned codification and interpretation of this knowledge can impact its practice both locally and globally. Additionally, the digital ordering and representation of information can shape the generation of knowledge in unique ways.<sup>51</sup> Therefore, the political and social processes relating to the production of the Indian state's digital library are integral to understanding the future shape of yogic practices.

Particularly important is the concern that, because India is the internationally imagined source of yoga, representations in this electronic compendium will be given primacy in determining an *original* form of practice. The library will contain a few thousand postures and their explications, a limited number when compared with the overall total. For example, members of the Bihar School of Yoga claim to use tens of thousands of asanas in their style of practice. The choice of which asanas are included and which traditions of yoga are represented in the digital library is a decision of inclusion and exclusion. Thus, these decisions are also political choices that can determine what is thereafter considered authentic yogic knowledge within both local and transnational communities of practice. Finally, by only incorporating translations of ancient texts and asanas, the digital library is omitting and deemphasizing several branches of yogic practice and sources of yogic knowledge that also have equally ancient origins. The aspects included in the digital library are solely tangible, the texts, or physically enacted and visible, the asanas. The selection of these two aspects is interesting because it emphasizes those parts of the knowledge that transnational commercial practitioners have offered as the essential representations of yoga.

## DISCUSSION

In her discussion of the trajectories, interpretations, and institutionalization of Ayurveda Jean Langford<sup>52</sup> discusses the concept of mimesis in analyzing the role of western consumers. For Langford, the effect of the back-and-forth between Indian Ayurvedic healers and westerners has resulted in new interpretations of practice. These interpretations take into account the foreign consumers' notions of health, medical legitimacy, and understandings of the body. As a result, modern assemblages of Ayurvedic knowledge and the institutions that manage this knowledge, such as hospitals and professional communities, reflect these influences.<sup>53</sup> A

similar process is at play in the transnational commercial yoga industry, as the emergence of new interpretations of traditional practice reflect and incorporate the understandings of cosmopolitan consumers. However, unlike Langford's study of Ayurveda, which focuses on events within India, the emergence of transnational commercial yoga is taking place at different world locations in tandem with legal innovations related to the management of IP.

Transnational commercial yoga, as I have defined it, is a body of essentialized forms that emphasizes easily communicated aspects, primarily postures and breathing, selectively drawn from rich South Asian ideological traditions of spirituality and practice. Bikram Choudhury and the franchised purveyors of his choreographed program of 26 postures embody the ultimate commodification of yoga. In this version of practice, students become repeat consumers of a style of yoga that is controlled by a lucrative international structure under exclusive license. Although earlier claims to property rights were on record, Bikram's challenge to unfranchised practitioners of Hot Yoga brought IP issues into the spotlight and into the courtroom. The opposing parties constructed positions in a new and evolving sociolegal and ethical terrain of IPRs when they attempted to answer the question of whether yoga resides in the public or private domain. These positions exemplify the contradictory conceptualization and application of IP when knowledge that is rooted in cultural traditions circulates and is consumed globally.

Furthermore, the debate sparked by the Bikram case has repercussions beyond the ethics and legalities of transnational commercial yoga. It has set in motion a further chain of reactions. These reactions suggest, even if with imperfect legal logic, two new avenues for securing public access to cultural practices while simultaneously developing new mechanisms of control over information. These are the *reverse* patent and the digital library. With regard to this case study of transnational commercial yoga, these mechanisms have the potential to transform the relationship between tradition and property law both in the country of origin and internationally. Already sensitized by IP claims on the traditional usage of plants, the Indian government embarked on the codification of cultural traditions and is now expanding the official state documentation of yogic knowledge. In the case of transnational commercial yoga, this effort necessarily reflects the practicalities of digital representation and communication for nontextual and embodied forms of knowledge. Recognition and codification of delimited entries will likely have unanticipated consequences for dynamic traditions of yogic practice that were marked, until now, by distinctive local expressions. Finally, both the individual IP claims and the nationalist responses have created circumstances that may channel the future development of yogic knowledge within digitally and legally imposed bounds.

## ENDNOTES

1. See Mashelkar, "The New IPR Regime"; and Sinjela, "Should Cultural Creations?"
2. In this article the innovations in information management tools to which I refer include the following: The use of copyright, patent, and trademark by a private party to claim individual pro-

prietorship over a specific yoga series and its instruction; the application and modification of Open Source approaches to ensure public access to yoga; and the creation of a digital yoga library by the Indian state to catalog, preserve, and prevent the piracy of its national-cultural heritage.

3. Alter, *Yoga in Modern India*.
4. De Michelis, *A History of Modern Yoga*.
5. Strauss, *Positioning Yoga*.
6. Alter, "Modern Medical Yoga."
7. Strauss, *Positioning Yoga*.
8. Flood, *An Introduction to Hinduism*.
9. Flood, *An Introduction to Hinduism*; Strauss, *Positioning Yoga*.
10. *The Yoga Sutras* is considered the most significant early categorization and description of yogic practice. Scholars such as Elizabeth De Michelis (2004), whose work traces the development of Modern Postural Yoga, note its influence on contemporary practice.
11. Alter, "Modern Medical Yoga"; De Michelis, *A History of Modern Yoga*; Strauss, *Positioning Yoga*.
12. Mashelkar, "The New IPR Regime."
13. The Hatha style of yoga is not necessarily, nor originally, commercial and is considered an introductory level of practice. From "Basic Concepts of Yoga" (no date). A brochure published by the India's Department of Ayurveda, Yoga & Naturopathy, Unani, Siddha, and Homeopathy.
14. Natural Health "Yoga in the Kitchen."
15. David Orr, "Pirates' Copycat Pose Puts Yoga on the Mat" *Sydney Morning Herald* (<http://www.smh.com.au/news/world/yoga-pirates-on-the-mat/2005/09/20/1126982062524.html>) (September 21, 2005) accessed September 16, 2006; Weir, "India Puts Foot Down."
16. David Orr, "India Adopts Fighting Position to Hold Onto Ancient Yoga Poses." *London Telegraph* (<http://www.telegraph.co.uk/news/main/jhtml?xml=news/2005/09/18wyoga18.xml&ssheet=news/2005/09/18/ixworld.html>) (September 18, 2005) accessed on September 16, 2006.
17. Merry, "Constructing a Global Law"; Riles, *The Network Inside Out*.
18. Brown, *Who Owns Native Culture?*
19. Hayden, *When Nature Goes Public*.
20. Collier et al., "Sanctioned Identities"; Trubek, "Max Weber on Law."
21. Lessig, *The Future of Ideas*.
22. Bettig, *Copyrighting Culture*; Boyle, *Shamans, Softwares, and Spleens*.
23. Boyle, "The Second Enclosure Movement."
24. Jaszi, "On the Author Effect"; Woodmansee, "On the Author Effect."
25. Coombe, *The Cultural Life of Intellectual Properties*.
26. Dumit, *Picturing Personhood*.
27. Halbert, *Resisting Intellectual Property*.
28. Latour, *Aramis*.
29. Alter, *Yoga in Modern India*; Coombe, *The Cultural Life of Intellectual Properties*.
30. Brown, *Who Owns Native Culture?*; Chakrabarty, *Provincializing Europe*.
31. The two federal court cases involving the BYCI are: 1) *Bikram Choudhury v. Kim Schreiber-Morrison, Mark Morrison, and Prana Incorporated*, case No. SA02-565 DOC (ANX) (USDC Central District of CA, Southern Division) and 2) *Open Source Yoga Unity v. Bikram Choudhury* case No. C 03-03182 PJH (USDC Northern District of CA, San Francisco Division). Despite settlements out of court, the two cases took almost three years to resolve as the first case was filed on June 17, 2002, and the second case was concluded on May 3, 2005.
32. Collier, *Sanctioned Identities*
33. Butler, *Bodies That Matter*; Mahmood, *Politics of Piety*.
34. Cohen, "Where It Hurts."
35. This information comes from the 2004 BYCI web site and advertisement literature. For more see (<http://www.bikramyoga.com>).
36. This understanding was countered by opposing parties' counsel in both lawsuits involving the BYCI described in the following text. In both cases the opposing parties maintained that the yoga series developed by Bikram was similar to an algorithmic practice and, as such, did not merit pro-

tection. There is some evidence that yoga, as a Hindu spiritual tradition that emphasizes orthopraxy, depends on its nature as a practice that is, in fact, a performance. For more on the issues of Hindu performance versus practice and orthopraxy see Eck, *Darsan*, and Flood, *An Introduction to Hinduism*. However, because the cases were quickly settled, the validity of such claims was never addressed by the court.

37. This information comes from documents filed in the two Bikram lawsuits.

38. Mission statement of OSYU (2002).

39. Correspondence with member of OSYU (2006).

40. Correspondence with member of OSYU (2006).

41. Brown, *Who Owns Native Culture?* Coombe, *The Cultural Life of Intellectual Properties*.

42. Prior to this time both organizations had maintained elaborate web sites related to the controversy with OSYU publishing all documents related to and entered by both parties with the court and BYCI publishing warnings to all certified teachers and students to stay away from renegade-infringer studios.

43. Coombe, *The Cultural Life of Intellectual Properties*, 243.

44. Saisuresh Sivaswamy and Nikhil Lakshman, "Knowledge Should Be Free For All." In *Rediff News* (<http://www.rediff.com/news/2006/feb/22inter1.htm>) (February 22, 2006) accessed March 26, 2006.

45. Art of Living Foundation, "Art of Living Foundation."

46. Dutton, *The Patent System*.

47. Elkin-Koren, "Exploring Creative Commons."

48. Brown, *Who Owns Native Culture?*; Sinjela, "Should Cultural Creations?"

49. Mashelkar, "The New IPR Regime"; Orr, "Pirate's Copyright Pose."

50. Alter, *Yoga in Modern India*; Langford, *Fluent Bodies*; and Strauss, *Positioning Yoga*.

51. Bowker, *Sorting Things Out*; Fortun and Fortun, "Scientific Imaginaries and Ethical Plateaus."

52. Langford, *Fluent Bodies*.

53. Langford, *Fluent Bodies*.

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