ACCESS TO KNOWLEDGE
IN THE AGE OF INTELLECTUAL PROPERTY

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Access to Knowledge as a Field of Activism

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Mobilizations around issues involving access to knowledge (A2K) can be seen as a phenomenon highly symptomatic of political as well as technological changes in our society. The neoliberal revolution, beginning at the end of the 1970s, and the emergence of digital media and the Internet, a central phenomenon of the past two decades, are prime examples of such shifts. Both have played a role in the contemporary trend toward the development of new and/or increasingly exclusive intellectual property rights. Since the late 1990s, this evolution triggered the mobilization of groups and individuals around the world that are now brought together under the banner of A2K—or are perceived as belonging to a general movement.

This book aims at investigating the forms that this phenomenon is taking, as well as the changes it calls for and the transformations that it might effect in our society. In this introduction, I intend to discuss the technical and political settings that have provoked or sustained the existence of this movement and to explore some of the social tensions involved. The A2K movement raises fundamental questions about the conception and production of ideas, goods, and services created in the current knowledge-based economy and about access to such ideas, goods, and services. In doing so, and in order to be in a position to challenge effectively the prevailing practices in these areas, it also questions more broadly the representations and actions that legitimate, organize, and ensure the functioning and sustainability of the existing system based on intellectual property rights. It discusses the place and role of the various actors involved in this system (the state, the corporations, the individual, the market), as well as the relations and interactions between them.

As the A2K movement structures itself, it develops and offers its own readings of the world—readings that invite us to explore new possibilities in apprehending and organizing our societies—and as such could gain from the spirit of the gleaner.
and from Michel de Certeau’s insight that “everyday life invents itself by poaching in countless ways on the property of others.”

THE DIGITAL ERA AND IMMATERIAL WALLS

Intellectual property rights protection is the main framework for the control and regulation of the production and of the use of knowledge and information. Standards of protection of intellectual property rights are established and governed in various ways: in national laws and regulations, but also via international agreements, including multilateral ones such as the TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement of the World Trade Organization (WTO), in numerous treaties of the World Intellectual Property Organization (WIPO) and the World Customs Organization, and finally by bilateral or regional agreements, treaties, or conventions. Over the years, the variety of institutions establishing the norms, rules, and procedures involved in the governing of intellectual property rights has stretched and expanded, thereby implicating an increasing number of actors and an increasing variety of aspects of social life. These developments have built on the evolution of the conception of what intellectual property rights are and what precisely can be subjected to intellectual property laws. Thus, the invention of new means of creating exclusive rights has grown all the more important in recent decades.

Though the ways in which intellectual property rights protections have been extended may sometimes seem minor—a few words added in a law, a few concepts reinterpreted, a chapter concerning intellectual property rights added to a free-trade agreement—their effects are often significant. The way intellectual property rights are handled also reflects changes in the strategies employed by intellectual property owners in the face of technological as well as political developments. They successfully have changed the goals of intellectual property law, goals ranging from authorizing private property while limiting access to materials held in common to prioritizing property and its defense. Rather than creating physical walls to protect material property, they have sought to create immaterial legal walls to enclose information and knowledge, the immaterial property of the digital age.

Information and knowledge are the raw material of which immaterial goods, ideas, and inventions are made, and as such, they are key to individual as well as collective human development and welfare. On the scale of the global economy, what is at stake in exclusive intellectual property regimes is nothing less than the control of existing stocks of information and knowledge and of their flows, along with the management and harnessing of the innovations that such information and knowledge can allow to produce. As in the current international
economy growth and competitiveness have become increasingly dependent on the production, processing, and circulation of information and knowledge, the empire of intellectual property rights was expanded. The ramifications of the intellectual property system thus extend to techniques, technologies, know-how, and skills in all sectors, whether they concern financial speculation, aerospace engineering, medical or military research, agronomics, textiles, shipbuilding, cooking, or music composition.

The Internet and the digital era have changed the relationship of users of technologies to production and creation, opening up new possibilities that quickly have translated into the emergence of new practices. On the individual level, this new technological context has contributed to the blurring of the line between consumers and creators and to the characteristic status usually allocated to each, such as passivity versus productivity, inertia versus efficiency. New technologies and new formats (VCRs, VHS, CDs, DVDs, and so on) have made it possible for anybody equipped with the proper equipment—and in the capitalist economy of wealthy countries, access to such equipment has been rapidly democratized—to copy, adapt, mix, or perform sounds, images, or motion pictures. Because the Internet facilitates large-scale and nearly instant exchanges—features that many would recognize as being specific to contemporary “globalization”—creation by means of these technologies is characterized by the marginal costs of production and the high speed and low geographical concentration of distribution. The ways in which one creates have not fundamentally changed. Creation has always been inspired and made possible by what already exists, and it continues to be, but the space and time in which the act of creating can be performed by ordinary people has been significantly transformed with the unfolding of an immaterial world in which new possibilities of creation have become increasingly accessible to many.

As Lawrence Lessig has pointed out, these technological changes have introduced the “potential to expand the reach of this creativity to an extraordinary range of culture and commerce.” First, new types of goods and products enriching the economy of the immaterial keep emerging, and their importance keep growing. Second, changes in production due to the fact that digital technologies “create and replicate reality much more efficiently than non-digital technology does” have affected not only what people can do at their own, individual level, in their private spheres, but also at the level of the economy itself. For instance, what inspires and provides incentives for economic actors tends to change. Because innovations and goods are easier to copy and more difficult to protect, providing services often becomes more economically rewarding than selling physical products. The economy of immaterial goods develops according to specific ways and via specific means that in return bear the potential to transform the functioning of
the economy as a whole. As Yann Moulier Boutang explains in an interview in this volume, digital technologies, owing to their dramatically reduced production and distribution costs, offer opportunities to revise the sharing of those costs in many different sectors. In the book-publishing industry, for instance, such changes could benefit the creator’s ability to work by allowing us to revise the way in which they are paid and thus improve greatly a manner of compensation that is largely inadequate for many of them in the current intellectual property system. Creators in general can also benefit from easier access to the works of others that facilitates potentially new forms of work and cooperation that favor research and creativity. Entire industries and economic activities, not only those specialized in immaterial goods, changed with the integration of digital tools and began to transform even more substantially with the move toward the concept of open innovation and network-based peer production. Some companies have invited consumers into the innovation process—in some cases even through challenges directly posted on the Internet to encourage people to come up with new ideas and to share them. They have used consumers as a source of inspiration for new products or designs that could attract and interest new customers and create new markets. In recent years, groups such as IBM, Proctor and Gamble, Lego, and Unilever have adopted such strategies to develop new products. These new ways of doing business have called for important transformations in traditional business models, company cultures, and management strategies. For instance, innovative strategies may shift the focus of many companies from keeping formulas, recipes, or components secret to extracting the value of ideas, increasing the speed at which products can be brought to market, reducing the cost of research and development, and improving the fit between their products and consumers’ desires or modes of consumption.

However, despite the real or potential changes that information technologies have introduced and the substantial new prospects they have opened up in the economy, widespread transformations of corporate practices still remain rare. Even companies that have incorporated a certain amount of open innovation have mostly remained intent on maintaining control of ideas as soon as they are generated. New modes of creation and consumption have emerged, but the immaterial has become essentially and only a new field in which capitalist logic can operate, and the principles on which capitalism is based have remained unchanged.

However, insofar as the interaction allowed by digital technologies offers opportunities for intense exchanges and production, as well as for new ways of commodifying goods and services, the transformation of the knowledge economy has certainly affected capitalist ways of functioning. Industrial capitalism now coexists with a new form of capitalism, called by some “cognitive capitalism,” or “knowledge capitalism,” that is both a new type of accumulation (of intellectual
capital) and a new mode of capitalist production. It corresponds to the development of an economy based on the distribution of knowledge goods in which the production of knowledge is the central element in the valorization of capital.

Changes in the means by which capital is produced and accumulated have brought about changes in the position that social groups occupy in relation to the rules of production. In knowledge capitalism, the laboring class no longer holds a central role, and capital is produced mainly by a new class composed of technocrats and people working predominantly for the service sector. This development contributes to the disruption of the preexisting social order as new tensions and power relations between social groups began to arise. With knowledge capitalism comes a reconfiguration of class interests and of the relations between classes and thus a reconfiguration of what defines them. As we will discuss later, in this context and under the rules of intellectual property protection that regulate the production as well as the use of goods, it is the issue of access that draws new dividing lines between people and groups, dividing lines that are superimposed on former divisions.

Some people have the means to exist and to thrive in the digital world, while others do not. What is necessary for participation in the immaterial world is not only a computer, the right software, and an Internet connection, which already excludes a large portion of the world population, but also the codes and filters normally acquired through education. These are indispensable for navigating this environment, because only they enable participants to locate and to make use of the resources available in ever-expanding proliferation and to take an active role in the production thereof. But the education necessary for the acquisition of such codes and filters remains a near monopoly of the privileged classes. At the same time, with the unfolding of the knowledge-based economy, the strengthening of intellectual property protections, and the central place that the market occupies in the neoliberal context, potential inequalities in access increase: Knowledge appropriation plays an increasingly important role in the economy and in peoples’ lives in general, but is also more than ever subject to market rules. Individuals with no economic and/or cultural capital generally cannot compete on an equal footing with others, and their access to knowledge is easily compromised. Thus, inequalities in access to knowledge reinforce and perpetuate social and class inequalities, while the current knowledge economy and the intellectual property regime overlay an old class structure with new tensions.

As in every capitalist model, in knowledge capitalism, the issue of the transfer of property is a key issue. One of the most salient characteristics of knowledge goods is their electronic transferability. Consequently, in the field of knowledge capitalism, to ensure ownership and control of knowledge goods and thus
benefit from the profit derived from their production and subsequent commercial exchange, one must find ways to prevent or slow down a transmission made so simple and easy by digital networks.\textsuperscript{15}

This is where intellectual property rights come into play. One might think that it is the same old game, appropriating the means of production, only taking place in a new environment. And to some extent, it is. Some argue that this is one of the problems with the term “intellectual property;” that is, the fact that it determines the granting of legal rights through the establishment of property, what James Boyle describes as the “second enclosure movement.”\textsuperscript{16} Historically, at the time of the first property enclosures, land ownership was at stake. To enforce it, apart from the use of legal acts, walls and barriers were used to delineate the property. In the knowledge-based economy, intellectual property rights holders, through their efforts to establish property rights over knowledge, are building other kinds of walls to channel access and to regulate who can benefit from what is produced in the immaterial realm. Though not as visibly obvious as physical walls erected throughout the world, in the era of globalization, they are just as determinative in the establishment of national and international social orders.\textsuperscript{17}

This enclosure effort is all the more evident as enforcement and repression become increasingly important pieces of the intellectual property right owners’ agendas. The purpose of intellectual property walls is not to demarcate space, to differentiate an inside and an outside, each having different characteristics and status, but they are far from serving a merely symbolic function. When, for example, the Chinese government sends tapes showing police raids and the destruction of unauthorized copies of DVDs to the U.S. trade representative, this theatricalization of police efforts is both a performative action intended to prove the goodwill of the Chinese government to its U.S. counterpart and a publicly demonstrated materialization of the existence of intellectual property rights and of the consequences that the act of trespassing in the immaterial world can generate. Such performances—from raids in Moroccan souks to the arrest of teenagers and other Internet users in Hong Kong, France, the United Kingdom, and the United States—are becoming more numerous and increasingly visible in public space.\textsuperscript{18}

However intellectual property walls do not always efficiently prevent access. If people are determined to find breaches, they often can. But in doing so, they will knowingly commit an illegal act and thereby run the risk of sanctions. In our societies, most of those who commit an illegal act to access a territory or a good are those who do not have the means to play by the rules or those who consider they have little to lose in comparison with what they hope to gain. Those with the resources and capital, on the other hand, are rarely refused access to a territory or a good. As a result, walls work not so much as real barriers, but as socially
polarized filters. They selectively hinder certain people and filter societies as they regulate access to information and knowledge—a mechanism that inevitably makes the issue of access political.

The second most salient characteristic of knowledge goods is what economists call their “nonrival” and “nonexcludable” nature. Nonrival goods are goods whose consumption by one person does not prevent its consumption by another. This book is a nonrival good: After you have read it, another still can. On-line, even while you read it, another can. Nonexcludable goods are goods whose consumption can’t be prevented once they have become publicly available. Architecture, such as the Cathedral of Notre Dame, is a nonexcludable good: Anybody who can appreciate it can do so for free. Because these goods can be used by multiple individuals simultaneously, it is harder, sometimes impossible, to expropriate them. Both attributes operate as constraints on capitalist exchanges and make rights holders fearful that the technology of digital copying will render their legal rights and sources of profit ineffective. The advent of digital technologies and the popularization of the Internet brought the prospect of huge financial benefits, but at the same time, uncontrolled consumption and production, which is materially limited in the physical world, also took on new proportions, given that the spaces in which these take place are numerous and ubiquitous and that the cost of enforcement is high. Who or what entity could indeed possibly observe everything taking place in every potential offender’s living room or bedroom or monitor every Saturday-night party in every small town in every country?19

Consequently, a race began between the “cops and the robbers.” As Yann Moulier Boutang describes it, “the cops never get a head start. There is a delay, and their route is full of pitfalls.”20 The enforcers have acquired new ways to locate the infringers, but the technical possibilities have intensified their interactions and exchanges. What makes the Internet a public space—a space that if not all individuals, at least many can access and inhabit and where freedom can appear—also makes it a space difficult to control.21 But along with the freedom that the Internet provides to users, it also gave rights holders a cheaper way to watch individual activities on a global scale and to monitor and locate infringements, if not when people are enjoying the use of illegally acquired material, then when they are merely acquiring it. As such, as Cory Doctorow notes, the Internet and the personal computer represent “a perfect storm for bringing ordinary peoples’ ordinary activity into the realm of copyright.”22 If activities that infringe intellectual property rights cannot be eradicated, they can be criminalized. And if the act in itself cannot be prevented, social condemnation can affect people’s behavior, repression leading to suppression.

One consequence of such condemnations is to marginalize appropriative and sharing practices and to make them disappear from public spaces. As Lessig
observes, if “we can’t stop our kids from using these tools to create, or make
them passive,” we can “drive it underground, or make them ‘pirates.’” Examining
developments in the field of copyright, he adds: “We are in the middle of . . . what
some call ‘the copyright wars.’”23 If there is war over copyrights, we should ask
ourselves who the fighting camps are. On one side stand the owners of intellec-
tual property rights. They are rather easy to identify: They sponsor laws in public
forums and pay for advertisements on TV; they promote a moral position as well
as an understanding of economics for the public to adopt; they argue that their
camp is the righteous side of the debate, the side of struggling artists who need
to be protected from dishonest plagiarists, of quality magazines endangered by
blogs and free publications. Who are their enemies? Many different profiles fit
into this category, including kids “stealing” songs or movies with their computers,
unknown artists copying and transforming very well-known ones, and individuals
using peer-to-peer platforms to share files and software.

A wide range of individuals thus started to be targeted as “pirates” for the
improper use, sharing, and production of materials using copyrighted matter, and
the more copyrights expand, the more favorable are the conditions of the produc-
tion of “pirates.” They easily fit into a political environment that is predominant
in many Western countries in which security and repression had become routine.
Increasingly, public, social, and legal resources have been encouraged to be or actu-
ally have been mobilized in an effort to enforce intellectual property protections
and to limit exchanges of protected material, resources that often seem particularly
unreasonable to deploy in many developing countries when one compares them
with the national budget of such countries and when one considers essential, but
unmet local needs. Meanwhile, the motors of innovation and creativity are jeopar-
dized by an ever more restrictive judicial and legal environment—despite the fact
that this, by definition, is contradictory to capitalist interests, which rest on the
continuous delivery and marketing of new products to generate accumulation.24

Various tensions and conflicts about the effects of and the justifications for
intellectual property rights have emerged and crystallized in the past decade. They
have taken the form of negotiations and contentious relations between states
within international organizations such WIPO, the WTO, the World Health Orga-
nization (WHO), and UNESCO, the UN Educational, Scientific and Cultural Orga-
nization. They emerged noticeably in an election context recently with the consti-
tution and election to the European Parliament of a Swedish pirate party.25 They
have resulted in lawsuits brought by people with AIDS against pharmaceutical
companies or the conviction of farmers who have campaigned against genetically
modified organisms. And they have inspired demonstrations and lobbying cam-
paings for access to medicines, against software patents, against biopiracy, and for
the mobilization of students, librarians, and researchers. They have provoked the organization of university meetings for open sources, for open publishing, and for access to knowledge. They have triggered conflicts between major corporations, lawsuits between competitors, and debates in many parliaments, senates, and congresses. Each of these contentions can be seen as expressions and elements of the formation of access to knowledge as a field of activism.

These mobilizations and the common framing of their claims manifest a willingness to give the issue of access a central position in the contestation of fundamental political and social issues today. As the A2K movement seeks to promote the visibility of challenges to access and uses the issue of access to structure its discourse, it encompasses social and political contests specific to the inequalities created by the rules governing the appropriation of value and property under the current regime of neoliberal capitalism. As such, as we will see later, A2K can be seen as the development of a response to continued efforts to extend intellectual property rights, efforts that themselves can be seen as both a political and a social mobilization.

**POLITICAL CONTEXT AND POLITICAL PRACTICES:**
**FROM INTELLECTUAL PROPERTY TO ACCESS TO KNOWLEDGE**

To understand how the interests of intellectual property rights owners became state policy, we need to look more closely at the way those advocating increased intellectual property protections have been organized and mobilized, because their strategy rests as much on their harnessing of an ideological/political context and their manufacturing of conceptual tools as on the details of the ways in which they have organized their mobilization.

The fact that the market is in the foreground of most contemporary political theories, or more exactly, that no other views than those putting it in the foreground could establish themselves successfully in the past forty years, illustrates the spread of neoliberal rationality, which “extend[ed] and disseminat[ed] market values to all institutions and social actions” across the globe. Far from being only an economic doctrine, this ensemble of political practices and institutions has enveloped the state, which has incorporated its economic logic and redefined itself according to the search for profitability, progressively linking its legitimacy to its capacity to sustain and fuel the market. The market, while remaining a “distinctive player,” has become the organizational principle that is applied to the state, as well as to individuals and society.26

Contrary to the assumption that associates neoliberalism with a weak and quasi-absent state, in this regime, the state, while it must be kept subject to the
logic of the market, has a key role to play to guarantee that the market operates properly: It needs to provide laws, regulations, and institutions that establish optimal conditions for its development. 27 Thus, far from being noninterventionist, the state actively participates in an array of domains through policy arbitration, dismantling welfare programs, and deregulating entire sections of socioeconomic life while controlling, encouraging, or criminalizing social activities and behaviors.

In this context, those representing the state and those representing private interests have started to act as partners. This rapprochement has been facilitated by the phenomenon of the “revolving door,” according to which the members of the dominant classes, including many who have been advocates for the establishment of neoliberalism, hold positions, often in tandem or succession, in both public and private institutions.

The action of advocates for an increase in intellectual property protection benefited, both literally and symbolically, from neoliberalism’s successful establishment at the end of the 1970s and 80s as the dominant political system internationally. Neoliberal rationality indeed constitutes a favorable environment for strengthening intellectual property rights. On the one hand, neoliberalism promotes individual entrepreneurship and private property, while on the other, it encourages free trade and the multiplication of agreements that have proven to be a key vehicle for the expansion of intellectual property restrictions across the world.

Of course, the maximization of intellectual property rights can also be seen as paradoxical, if not contradictory, with regard to the neoliberal doctrines, since these, in theory at least, promote competition and do not encourage institutionalized monopolies. But such is the beauty and the efficiency of neoliberal rationality that it is malleable enough to allow it to incorporate paradoxes without losing its apparent cohesion and strength. Thus, the state, while lauding free-market theory and spreading it both in discourses and through international agreements, in effect undermines it, allowing monopolies and limiting competition in order to ensure and expand the rights of intellectual property owners. 28

Besides providing intellectual property rights owners with a practical vehicle for the realization of their agendas, neoliberalism has also helped them establish their sociocultural position and direct their political actions. Ideologies are a powerful instrument in the production of legitimacy, and the laissez-faire ideology of classic economic liberalism has provided neoliberalism with the benefits of legitimacy and historical weight. Although those who advocate for increased intellectual property restrictions generally publicly condemn what they call “ideology,” which they usually associate with left-leaning political utopias, Communism, socialism and other such “evils,” the ideological domination of neoliberalism that is now (and still) understood as inevitable, having imposed itself with no
alternative and as having coincided with Francis Fukuyama’s “end of history,” has proven largely instrumental to the successes of the movement to increase intellectual property protections and the lack of questioning of the vision that it promotes. At the same time, the contributions of intellectual property advocates to the neoliberal revolution through the success with which they have promoted their own goals has helped power the rise of this broader political movement.

But if the strategy of intellectual property rights owners has benefitted from their harnessing of an ideological/political context, it also has rested on the way they have manufactured conceptual tools and organized their mobilization. At first blush, it may seem like a misconception to treat advocacy for intellectual property rights as an organized social movement. After all, those who advocate for increased restrictions on intellectual property rights tend to belong to the dominant class, and what is usually considered as an alliance consisting of a group of property owners, a network of industries, or a cartel of multinationals has a priori no need for mass mobilization and the confrontational tactics that most organized social movements rely on in order to persuade states to act in their interests.

However, it worth noting that, like other social mobilizations, intellectual property right owners do not employ the traditional political means of representative politics to further their agenda. Of course, they soon succeeded in making the state a partner in realizing that agenda, rather than a source of opposition to it, and while confrontations between intellectual property interests and the state do occur, for instance when intellectual property advocates lobby and even threaten governments, these confrontations take a very different form from those expected from typical social movements. Nevertheless, a number of features central to the concept of a contemporary social movement do seem to describe the mobilization for increased intellectual property protection.

A social movement is a product of its time and reflects actions and reactions to a particular political and economic condition, or what some social scientists refer to as a political opportunity structure. The emergence of the movement in favor of increased protection of intellectual property rights, taken as such, offers insights into evolution of the information society and into the constraints and opportunities that such an evolution has presented to intellectual property owners as the basis for their mobilization.

Strategically, as is the case in numerous social movements, success has rested on building a common identity that goes beyond the interests of one group and on mobilizing collective action that encompasses a range of tactics that goes well beyond merely lobbying those who govern. Using an emphasis on the concept of property as the basis of this shared identity, promoters of increased intellectual property protection successfully incorporated the project of a handful of
corporate executives into international trade negotiations, U.S. government policy, and even international trade rules. An initiative launched by a specific segment of society, but couched in terms of social progress (that is, of increased social welfare and development) thus successfully achieved changes in basic social and political norms.

The A2K mobilization integrates and responds to the specific ways of doing politics that the movement for greater intellectual property protections has used. This is undoubtedly inevitable, because A2K advocates are engaged in discussing and criticizing the effects of intellectual property rights, and consequently, they incorporate the legal language that articulates those rights and engage with the institutional frame that produces them. Participants in the A2K movement are keen to monitor their counterparts’ moves, and they take inspiration from the manner in which the movement for intellectual property restrictions has successfully incorporated its agenda into the state’s agenda. Consequently, they regularly employ the technical and legal language of the various institutional contexts where they try to counterbalance the effect of their opponents or where they try to intervene before their opponents do so, whether at the WHO, WTO, or WIPO, during the negotiations of bilateral trade agreements, during negotiations over the United Nations Millennium Development Goals, or in negotiations over national regulations and laws. Furthermore, A2K advocates of necessity employ the dominant economic logic when they seek to promote a balance between public and private rights based on criticisms of the way the market functions, for example, or when discussing the need for competition, the effect of monopolies, or the exclusive impact of prices. The two opposing movements can thus be seen as adverse forces at one moment in history, which also implies that they to some extent share a common culture and experience.

Both movements likewise participate in and exploit the effects of globalization. Globalization in the neoliberal context both results from and in turn provokes transformations of the existing power structure and the practices of power. Internalizing the context of globalization, both movements elaborate their actions inside and outside national borders. Both contribute to the ways that politicization occurs outside the framework of representative politics and to what results from it. Both compete to influence the state’s performance and what its role should be. As much as neoliberalism rests on state intervention and control to strengthen and facilitate market logic, claims for an open and protected public domain hold the necessity of an active power structure that bears responsibilities for public interests and that enforces rules.

All of these factors affect the movement for access to knowledge as a field of activism, determining its concrete strategies and tactics. For many A2K advocates,
opposing intellectual property extremism in public debates and concretely establishing optimal conditions for the creation of new things and for socioeconomic prosperity requires reviving awareness of the social value of spaces where all people can share and make use of knowledge produced there and of the need to secure such spaces. This process involves questioning the arbitration performed by those who govern and who mediate between the public and private spheres and between public and private interests. Facing the alliance between the state and multinational corporations, A2K advocates are confronted with a particular power structure and the form of governance established thereby. In this context, the issue to debate is not so much the intrinsic capacity of the state to control resources or whether the state or the market works better at doing so, largely because these two entities are no longer in opposition with one another. Rather, the discussion concerns the objectives that the state pursues, its priorities, and the ways it operates within neoliberal rationality, all of which call for A2K advocates to develop a critical understanding of the role of neoliberalism in the development of the global intellectual property regime. More broadly, A2K advocates interrogate not only the role and place given to the governing powers, but also the role and place given to the individual and the relation between the two of them, as well as the relations between individuals themselves. They thus address fundamental and age-old issues regarding the governing of societies, as well as current transformations of power and the legitimate expectations that individuals can experience as a consequence.

WHAT IS A2K?

In 2004, the term “access to knowledge” emerged as a common umbrella under which individuals and organizations could denounce inequalities and injustices related to intellectual property. But it remains a fair question to ask whether this gathering is more than the pooling of problems and demands, more than a juxtaposition of identities that have provisionally focused their energies on a common hindrance.

A consideration of the trajectory followed in terms of commitment by the individuals who today take part in A2K mobilizations provides a useful understanding of the emergence of the phenomenon. Some describe their participation as a logical evolution of their involvement in other political issues. Indeed, many A2K advocates have been or are currently active on other fronts. Analyzing the mechanisms at the heart of the problems they focused on is often what led them, at the end of the day, to describe those problems in terms of inequalities in access to knowledge, giving rise to the recognition of an underlying cause and the formulation of a common framework around which others could be rallied. In a typical example of this
process, one activist may have joined mobilizations to end discrimination against HIV-positive people. This initial effort may logically have turned into a campaign for access to drugs in developing countries. And such a campaign might, as a matter of course, lead him or her to denounce the negative effects of intellectual property protections, which bar access to such medicines. As the activist intensified his or her critique of the dampening effect such protections have on the generation of medical innovation, key critiques surrounding access-to-knowledge issues would begin to be formulated. The activist would soon find that, perhaps even almost unwittingly, he or she had joined the A2K mobilization.

A2K does not look like a mass movement. It does not rely on massive street demonstrations as a constitutive means to confront the power structures that it challenges. Perhaps a more massive form of mobilization and a more cut-and-dried political stand would do a better job of advancing the purposes of A2K. Or perhaps the A2K movement could better serve itself by drawing on what it already possesses, which is a composite form of mobilization that provides the potential to cement together a multitude of actions.

As in a Venn diagram, movements fit into one another and overlap, each one bringing its own obsessions, tactics, networks, and savoir-faire. A2K can be seen as a movement of movements, resting on the capacity of its participants to hear and share their various messages or, more specifically, the common denominators within their messages, without allowing their differences to develop into obstacles. The A2K umbrella is large enough to allow for an intense variety of participants, issues, and actions, as well as to allow creativity to express itself through various modes without being limited by the hierarchical structures that often hamper conventional organizations. This is not unlike the form of political activity witnessed throughout the course of Barack Obama’s presidential campaign: a general rhetoric not only coexisted with, but was actually energized and shaped in the eyes of the public (or in the eyes of enemies) by a variety of actions from individuals and networks stepping forward from multiple places. The very qualities that gave this movement its blurry outlines also enhanced its force by enlarging its federative power. Within the A2K movement, individuals bring whatever they have to the table, be it their handicaps or their positions of privilege, and draw upon them as resources for collective action in order to formulate political questions. When an HIV-positive person asks for access to life-saving medication or a visually impaired person asks for access to educational material, their point cannot be easily dismissed publicly or ignored by political leaders. Meanwhile, when an academic from a prominent U.S. university presents an analysis of knowledge gaps or business models, his opinion is likely to be heeded and to be echoed in political spheres and media circles.
Although each element within the collective may have its priorities or its particular raison d’être, the movement as a whole does not impose a hierarchy of matters of concern. It sustains a plurality of claims and actions without undermining the particularities or the autonomy of individual groups or national coalitions. A campaign for the local production of generic drugs in Brazil or South Korea takes place simultaneously alongside a movement at WIPO for access to reading material for visually impaired persons. At the same time, an international mobilization takes place to defend a professor of philosophy taken to court in Argentina for putting Spanish translation of texts by Jacques Derrida on the Internet, and a backlash is organized against the European Commission for allowing its customs arm to block the transit through its harbors of life-saving drugs from India to other developing countries.

At some levels, a dampening out of particularities, singularities, and diverse priorities or choices normally occurs in favor of the vision of those within a movement who enjoy certain advantages, whether by speaking a dominant language, having a higher level of education, associating with upper-class social networks, or possessing greater financial resources. But although the consequences of such power relations are by no means absent within the A2K, so far, this has not seemed to affect the apparent cohesion of the movement. So far, the A2K model of activism allows for such heterogeneity without sacrificing the capacity to function as a common entity advancing a common cause. Each protagonist may be focused on one particular issue or may be involved in several different fights at the same time. However, as a member of the A2K mobilization, he or she agrees to represent a collective identity—whether it is in a very active or less committed way—thus becoming part of an entity that transcends the elements that constitute it, a movement that contributes to the emergence of a common imaginary.

Intellectual property rights affect and encompass a variety of issues that are diverse and separate in nature. Paradoxically, the reification of intellectual property rights as one coherent concept that embraces copyrights, patents, and trademarks has enabled the emergence of an extremely diverse A2K front. Opposition to institutions with so wide a footprint as the WTO or to policies with such far-reaching effects as the TRIPS Agreement or free-trade agreements favors the coalescence of groups or movements originally focused on specific and discrete concerns because such groups oppose entities that structure interconnections between domains. Each A2K actor not only addresses a specific effect of the strengthening of intellectual property rights, but, as a member of a collective, embraces multiple issues, becoming sensitive to the echo and similarities between their causes and taking into consideration the broader logic and structure
manifested in the specific legal provisions they oppose. The nature of the enemy determines the organization of the resistance mobilized against it, forcing it to become more systemic. In order to make the best of collective action, A2K advocates therefore cannot limit themselves to a juxtaposition of diverse demands or criticisms, but must instead develop an integrated common agenda, or at least try to do so. If this is not yet where the A2K movement is, it is definitively a trend along which it tends to evolve. A2K advocates are pushed to formulate a global vision for society, rather than simply denounce legal dispositions or policies, and the time frame in which they plan their actions to serve longer-term objectives expands accordingly.

This dynamic usually carries benefits for movements: an increased presence in forums and political spaces, the capitalization of resources, networks, and the benefits from specific actions, the ability to move back and forth between the grassroots and the political spheres, and so on. At the same time, the trend toward integration and consolidation can weigh down an organization and raise problems within it, disrupting the specific culture of action that characterizes it, potentially blurring their initial objectives, and creating internal tensions. Contesting the specific effects of the intellectual property system without abandoning larger A2K claims in terms of creativity, innovation, and access certainly has the potential to take activists further than they first decided to go, to get them involved in politics in a more totalizing way than they intended when they first demanded a right or denounced what they identified as an injustice.

By identifying themselves as A2K constituencies, individuals and groups show an interest in defining themselves and in being perceived not simply as contradictors or opponents of the intellectual property system, but as promoters of a positive and cohesive agenda—something bigger than mere opposition. Though they were originally brought together by objections to a common enemy, a conscious strategic move was made by many A2K advocates for the purpose of allowing them to reframe the issues outside of the logic of the intellectual property rights system. Whether they invoke notions of the public domain or knowledge goods and knowledge spaces as commons, A2K actors are trying to formulate a debate outside of the dialectic of opposition, in a discursive space in which they can set at least part of the terms and in which intellectual property represents only one among several options.

Not only does A2K not look like a mass movement, but many of its advocates are not very radical, and, as a whole, the movement is rather utilitarian. Finally, A2K is not as confrontational as many other social mobilizations. Most A2K advocates so far seem interested in withdrawing from the dialectical logic of direct power struggles, either with the state or with industry. Members of the A2K
constellation are not constituted as activists through a confrontational relation with “the” public, the way mobilizations of minorities can be, for instance. The aim of people who recognize themselves in the A2K discourse is mostly not to mark themselves off from the general public. They do not wish to materialize “subaltern counterpublics” dedicated to the formulation of “oppositional interpretations of their identities, interests, and needs,” but instead seek to alter the cultural horizon represented by the dominant vision and in doing so transform the main discursive arena and constitute an alternative general public.  

The A2K movement is not so much based on a claim of the “unity” of all people and their struggles, but rather on the effort to convince others that they are affected, should be concerned, and should act accordingly. A2K constituencies are mobilized against a peculiar enemy, but they are organized in the name of a “shared” interpretation of their interests and needs, which is understood to extend to the interests and needs of the public. Individual particularities (disabilities, privilege, or status) are used by the collective to establish or legitimate its political power, but its dynamic is not based on the affirmation of particularities the way identity politics are. It seeks to increase awareness of the various problems and various needs of specific groups, but it also attempts to have a structural effect on the system as a whole by promoting equality of access. It thus also participates in the articulation of political claims for redistribution and recognition within a politics of justice such as the one Nancy Fraser advocates.

Herein lies an interesting tension, however. Even as there are minorities among its ranks speaking in the name of their own individual experiences (the visually impaired, AIDS patients, and so on), that is, from their “situated knowledge,” to use Donna Haraway’s formula, the claims that A2K advances (the defense of a public domain or of the commons, for example) are presented as possessing a universal range. The A2K movement does not try to construct a “universal” subject, as “unity” movements sometimes do, but it does succeed in allowing the translation of knowledge between communities and the realization of alliances between multiplicities. Without prejudging the A2K movement’s success or its future efficacy, we can observe that, for now, it manages to compose a collective interest that can be seen and presented as universal. Considered in this light, the A2K movement resembles the “multitude” that Michael Hardt and Antonio Negri describe as “singularities acting in common,” a heterogeneous collective inheriting its intentionality in the progression from the singular to the common in which the concept of access becomes itself a dispositive of the organization of singularities.

The A2K movement presents itself and is being seen as a nongovernmental force. It offers a critique of the standard decision-making processes—that of pressures exerted on legal and executive institutions by the private sector, of the willingness
of these institutions to surrender to these pressures—showing how they exclude, dissipate, or neglect. But instead of emphasizing a position of exteriority, it incorporates the logic of governments, institutions, and industries and actually even also includes, in a very open way, individuals working for governments, as well as for private multinationals, in hopes of integrating these into something larger that it will have itself contributed to designing. The A2K movement occupies well-established institutional political spaces such as the WTO or WIPO and, at the same time, also seeks to create new political spaces and to legitimize them by co-opting institutional representatives from traditional political and economic power structures. It contributes to a blurring of the lines between genres through its ubiquitous and rather flexible ways of being and of engaging in debates. At the same time, it demonstrates the clear willingness of its constituencies to acquire a say in debates and to make use of what Hannah Arendt called their “power of speech” to establish themselves as political actors.45

GOVERNANCE AND RESISTANCE SEEN THROUGH THE PRISM OF ACCESS

The field of A2K inequalities is a composite: It includes new types of inequalities, significantly increased preexisting inequalities, and those brought to light by the structuring role of the market in knowledge capitalism. A2K targets issues specifically posed in the new digital society, but fundamentally, it raises classical problems, such as inequalities in the distribution of resources, or social justice. What is novel is the prism used to analyze the problems, as well as the manner in which they are addressed—the modes of organization of political action that the A2K movement employs.

As I’ve noted, the A2K movement comprises a diversity of references, political traditions, and forms of mobilization. Consequently, the phenomena and actions that A2K activists find intolerable and the reasons that spark their reactions are very diverse. As such, the movement illustrates and fits very well within the larger and more general movement of civil-society actors engaging in nongovernmental politics.46 This new conceptual field of political mobilization emerged in relation to two different trends in politics. On the one hand, beginning in the early 1970s, there was an increasing public demand for government accountability. On the other, attacks led by Margaret Thatcher and Ronald Reagan on the welfare state and on anticapitalist institutions such as labor unions and class-based political parties moved people away from traditional representative politics in the 1980s. Like other types of nongovernmental mobilizations, the A2K movement can be seen as the extension of politics “beyond the realm of representation” in reaction to “dysfunctions of the political realm.”47 Individuals and groups involved in the
A2K movement share a common concern with the way intellectual property governance is exercised and more generally question the way in which they and we are governed.

Those who hold the reins of the dominant power structure try to convince people and societies that the established rules are made to guarantee equality of opportunity between individuals, as well as to ensure progress and wealth within the society. In the face of these attempts, organized denunciations put forward by social movements expose inequalities, hierarchies, and power relations that then cannot always easily be justified publicly, even if they are rationalized and validated within privileged circles. A2K advocates denounce the divergence between the theoretical promotion of innovation, a value commonly accepted by all and invoked by those who govern to legitimate their policies, and the actual effect of the rules of intellectual property protection. They seek to “question the social norms that enable governing bodies to call upon unimpeachable principles in order to justify objectionable policies.” From the alliance between claims to rights of access and utilitarian criticisms of the intellectual property system thus emerges a movement generating its own particular politics: a politics of access. As such, the A2K movement illustrates an evolution in the culture of mobilization and collective action.

Using the prism of access, the A2K movement attempts to reveal the dissonances in what James C. Scott calls the “public transcript,” the “open interaction between subordinates and those who dominate,” of the dominant powers regarding matters of equality and democracy. It analyzes the asperities lying beneath supposedly calm political surfaces, thereby rendering possible the perception of injustice, as well as the moral questioning of it. Refusing to accept the normalization of restrictions on access, the A2K movement makes needs visible and imposes upon political leaders the duty to meet them. Its existence tends to prove that despite—or perhaps because of—the willingness of the dominant powers to see inflexible intellectual property rules adopted and implemented, they fail in their attempt to naturalize social inequities regarding access. On the contrary, the issue of access is particularly useful and efficient as a way to catalyze questioning of the dominant powers and their regimes.

However, one could argue that the act of voicing criticism and complaints against a situation that is perceived as having been imposed upon individuals by stronger forces (be it their leaders or their gods) is simply one aspect of a technique adopted in order to withstand a situation perceived as inevitable. So when movements or individuals denounce the intellectual property system and the inequalities that result from it, they contribute to a background noise of criticism whose existence does little more than reveal a power relation within the established order, following Foucault’s idea that every power goes hand in hand with a form of resistance.
to it. Yet the fact that the dominant power structure is continuously trying to legitimize itself and its political decisions does not mean that these efforts are effective. That is, efforts to persuade the dominated do not necessarily lead to their consent. And as James C. Scott points out, the level of effort invested in maintaining a given power structure also provides one element that allows us to estimate the level of instability of this regime. Thus, when it is possible to elude the hypnosis that the dominant power structure aims to induce, decoding the means that it uses to maintain its hegemony and to make acts of resistance invisible informs the observer of both the weaknesses and the limits of the hegemonic power.

One of the strengths of the A2K movement thus is the way in which a large number of different issues lead directly to questioning of the claims made by dominant powers and their regimes in order to legitimize themselves and their actions. When merely a small percentage of the people with HIV/AIDS across the world had access to the only drugs that could keep them alive, questions about access were raised and political tensions resulted. This phenomenon can be explained by the existence of a crisis situation (an uncontrolled and deadly pandemic) and the fact that the issue is a matter of life or death. But where access is in question, contention forms and gains legitimacy in situations and on issues that do not necessarily correspond to what are generally viewed to be people’s most vital needs, such as the enjoyment of the arts or access to educational material, aspects that prove to be indispensable to the well-being, the wealth, and the stability of individuals and societies.

As Lawrence Liang notes, some needs, as they are understood according to common representations, do not necessarily conform to the “essential character” of what Gayatri Spivak calls the “subaltern subject.” Subalterns are usually seen as “the poor” in wealthy countries, “people from developing countries,” and anybody who is discriminated against and essentialized as being inferior and consequently thought of as having mainly rudimentary needs. For these populations, needs that coincide with their desire to improve their well-being or their position in society—and hence needs that possibly go with tendencies to question or transgress the established order—tend to be easily disqualified. Similarly, regardless of what is stated by international declarations or conventions, what constitutes human rights often varies depending on whose rights are being discussed. A2K advocates question what qualifies as “primary” or “essential” needs or rights. They hold a variety of conceptions of needs and rights, from the need to save lives to Amartya Sen’s notion of positive freedom and the necessity of taking into account a person’s concrete ability to be or do something beyond the mere existence of theoretical “rights.”

Endeavors to politicize otherwise accepted situations and to promote what A2K advocates see as the legitimate expectations of individuals or of societies are
all the more necessary because in a taken-for-granted hierarchy of needs, vital, but unmet needs systematically operate to obscure others that are perceived as less important. For example, the need for life-saving medicines obscures the need for cultural goods. By the same token, obvious price barriers that prevent people from meeting their basic needs mask the effect of less noticeable and less tangible obstacles: The effect of the high prices of books trumps the effect of copyright regimes. Moreover, most affected people do not necessarily have a clear understanding of their own exclusion, for the principle underlined by Pierre Bourdieu operates fully: As cultural deprivation increases, the awareness thereof actually decreases. Interviews investigating barriers to access to knowledge in Thailand revealed that “ordinary people” (by this I mean people who have no special interest in or knowledge of intellectual property) often have a difficult time identifying the concrete effect of intellectual property in their own daily lives. The study found that a mother was quicker to blame changes in the curriculum at her child’s school that required her to buy brand new books for her second child, instead of using the ones her first child used, than she was to identify the many barriers instituted by the enforcement of intellectual property rights. As Bourdieu has noted, for such people in such situations, “the problem is that, for the most part, the established order is not a problem.” It is the characteristic of power structures to dissemble the problems that they author and/or condone. Therefore, an important goal for the A2K mobilization is to educate people and encourage them to insist upon their needs and rights and the redefinition of them, rather than relinquish them in the face of situations that tend to obfuscate the true sources of their frustration.

The A2K mobilization bears the political forms of an organized and formal movement confronting institutionalized powers, and it has been increasingly considered as such. It also includes concealed individual acts of resistance and everyday-life actions that occur under the radar of the usual observers of social movements. Many such acts would be considered utilitarian, rather than as the result of a concerted or deliberate effort of resistance, but still, they contradict the rules of the dominant power. Music exchanges between friends, the occasional purchase of copies of DVDs or CDs in street markets in New York or Casablanca, the sharing of software among students and colleagues—each of these, albeit mostly unwittingly, constitutes grains of sand in the cogs of the system of intellectual property rights. New potentialities derived from changes in the production of wealth provide tools that allow ordinary people to resist domination discretely through simple daily actions, even while appearing to be mere passive and accepting subjects. These are the unstructured, hidden acts of resistance that belong to what Scott calls “infrapolitics.” Most individuals throughout history and still today have not
enjoyed the luxury of becoming part of an organized and public political movement. However, a vast array of sporadic and often almost invisible political actions is commonly undertaken by subalterns in order to embellish their everyday life within the system or in order to weaken the forces of oppression, injustice, and repression. Their actions are the subversive ways of being that are the province of the dominated: poaching, escaping, finagling, pirating, getting around the law when they are outcasts, or trying to use loopholes in the law, leaking documents when they are government agents.

One of the challenges for the A2K movement is to help “ordinary people” realize that they have an interest in engaging in these battles and that they have the means to do so. This is how the conditions of the reproduction of domination—including the fact that they appear legitimate to the dominated themselves—can be disrupted. In encouraging resistance by ordinary people, the A2K movement can take advantage of the possibilities resulting from the alliance of new technologies with the new aspirations that have emerged with them.

PERSPECTIVES AND REPRESENTATIONS SEEN THROUGH THE A2K PRISM

The potential success of the A2K movement thus depends not only on its ability to make visible and emphasize the social dimensions and effects of the protection of intellectual property, but on its ability to help individuals to perceive the world differently.

A2K scholars and activists try to give a higher profile to concepts such as the “commons” or the “public domain,” concepts that offer resources and alternatives in the organization of society on a pragmatic level and that also provide individuals with ways to question and rethink their relations to their economic, social, and political environment. This means undoing, to some extent, prevailing conceptions and beliefs by digging breaches in the imaginary established by the advocates for increased intellectual property restrictions and by summoning references and knowledge ignored or disregarded in the current system.

Many of the questions that are discussed by A2K advocates, such as the commons or the role of the public domain, have been raised in the past. However, the memory of these previous discussions seems to have been lost, and the terms of the debates have been reversed. Contrary to discussions in the eighteenth and nineteenth centuries, today, the ultimate fear is not seeing the public domain eviscerated, but rather seeing intellectual property contravened. Reflection and analysis are massively focusing on how to create new exclusive rights and how to enforce them, while needed debates on how the commons can be organized and managed, for instance, occupy a small minority of people. For things to be
different, an inversion of perspectives is required, something that would shake up the realm of representations. Doing so requires the movement to be able to question the social values inculcated in the system in which we live—values at the origin of the production of representations and of behaviors.

I won’t discuss in detail here the arguments and concepts employed by defenders of access to knowledge and their critiques of the claims advanced by advocates of intellectual property extremism. They appear throughout the book and are discussed in depth in Amy Kapczynski’s introductory essay, “Toward a Conceptual Genealogy of Access to Knowledge.” Rather, I will conclude here by exploring what is at stake in the maintenance and reproduction of the representations and social values that underwrite the effort to preserve and extend intellectual property restrictions and in the A2K movement’s efforts to disrupt those representations and appeal to other values.

The conversion into privately owned goods of goods and ideas that once constituted property held in common or that were not included in the realm of property diminishes the sense of the role commons or public goods play in society, because valorizing private property depreciates the value of goods accessible by all. Thus, the emergence of the concept of intellectual property and the exponential growth of the protection of intellectual property rights have accompanied the relinquishment of the belief in the “productive power of the commons” and has inhibited recognition of the possibility that types of economy based on something other than the possession and exploitation of private property are viable. Meanwhile, the logic of privatization, together with the rationality claimed for markets, both of which are fostered and publicly praised by neoliberals, largely have helped undermine the values attributed to all that is public. These developments slowly, yet profoundly change the way that societies are organized, as well as their dynamics of consumption, the relationship between individuals, and even individuals’ understanding of themselves. At the time of the first enclosure movement, the privatization of the land was claimed to be a way to limit “strategies of overuse and underinvestment,” and the transformations of economies that it generated were often viewed as progressive and beneficial to society. Although these assertions are debatable, the notion that “this innovation in property systems allowed an unparalleled expansion of productive possibilities” still prevails without being subject to direct discussion in most cases. Those are beliefs that accompanied the establishment of the current intellectual property system and on which claims for the apparent superiority of the model since then have rested.

In today’s society, some A2K advocates argue that a second enclosure movement, in the form of increasing restrictions on intellectual property, immaterial property, and other forms of information and knowledge mostly favors strategies
that “undermine processes of abundance intrinsic to nature” and thus organize “artificial scarcity” while ultimately harming the innovative potential of individuals and societies. Some believe that the technological changes that took place in the past several decades should lead to radical change in the way the knowledge economy is thought about and organized, including the ways that intellectual property rights are conceived and used. As critics point out, for instance, nonrivalrous goods are increasingly involved in human activities, and there can be “no tragedy for nonrivalrous goods left in the commons,” because by definition, “a nonrivalrous resource can’t be exhausted.” Such evolutions require a general reassessment of attitudes and laws regarding property, because what may have been seen as predominantly beneficial to societies in the past and in the context of mercantile or industrial capitalism leads in the context of today’s knowledge economy to dead ends and dangerous imbalances in economic distribution. Developments such as these are in themselves favorable to the emergence or reemergence of alternative visions to the escalation of the protection of intellectual property rights.

For the A2K movement, ideology is perceived as a trap, either because it is a label placed upon the movement to undermine its credibility (when it is called “Communist” by its enemies) or because it is seen as a dogmatism that does not correspond to the movement’s flexibilities and aspirations to inclusiveness. The A2K movement therefore bases its legitimacy on other things in order to promote the desired transition from the intellectual property regime to the A2K paradigm. However, in this time of global financial, economic, and ecological crisis, which may contribute to dispelling the illusion of the efficiency and cohesion of the neoliberal state and undermine its credibility, alternative propositions for society might find a better environment for their development and reception. Under present conditions, it may become possible to question the dominant discourses and make other fictions intelligible, other possibilities comprehensible.

From the struggle over intellectual property emerges the common understanding that creativity, whether it is used as a justification for intellectual property rights or sought simply for its own good, represents an ultimate goal and a shared value in our contemporary world. Of course, A2K advocates and the defenders of copyrights and other exclusive rights remain opposed regarding the issue of what makes creation possible and of how creation takes place. Here, the conflict is between those who deem that the best way to meet this goal is through more control over intellectual property and those who, on the contrary, think it is through increased freedom.

One of the major criticisms of the proprietarian approach is that it in fact fails to fulfill what it promises: the promotion and guarantee of innovation. Instead, while shrinking the public domain, it actually jeopardizes or “cripples” creativity, to use Lessig’s eloquent expression. The first thing that property rules limit
is indeed that freedom to assimilate and transform knowledge, a freedom that is critical to creation, whether it be achieved through direct copying or mere quoting. Extremist intellectual property positions tend to banish totally the possibilities of quotation and borrowing. This is the case with audiovisual technologies, for example, for which the right to quotation is almost nonexistent, in spite of the fact that it has always existed for other media and disciplines. To take a commonplace example, imagine what science would be like if scientists couldn’t quote and use each other’s work and thereby expose and criticize or improve preexisting assumptions or demonstrations. At the other end of the spectrum of quoting practices, the collection of quotations assembled by philosopher and critic Walter Benjamin, which was at the center of his work, provides a good example of how the montage and rearrangement of existing pieces of text can generate original creation, reveal hidden aspects of what has been taken for granted, and forge novel understanding of reality: “Benjamin’s ideal” was to produce “a work consisting entirely of quotations, one that was mounted so masterfully that it could dispense with any accompanying text... The main work consisted in tearing fragments out of their context and arranging them afresh in such a way that they illustrated one another and were able to prove their raison d’être in a free-floating state, as it were.”

Similarly, the creative function of quoting and borrowing has always been essential to music composition. Citations, manipulations “à la manière de,” and blatant references to preceding masters have figured throughout the classical music composition that marked the eighteenth and nineteenth centuries and the movie soundtracks of the twentieth century, to mention only two examples. Today, artistic and intellectual production using digital technologies continues to be dependent on the ability to copy and to borrow. Perhaps in an even more obvious manner than before, previous works are the raw material of future creation. As Cory Doctorow notes: “if copying on the Internet were ended tomorrow, it would be the end of culture on the Internet too. YouTube would vanish without its storehouse of infringing clips; LiveJournal would be dead without all those interesting little user-icons and those fascinating pastebombs from books, news-stories and blogs; Flickr would dry up and blow away without all those photos of copyrighted, trademarked and otherwise protected objects, works, and scenes.”

But the freedom to use existing things affects not only our ability to produce, determining the number of tools and quantity of raw material that we access, but also the ways we comprehend things and relate to them. The act of quoting allows us to place ourselves and our discourses within a heritage, a continuity. Thus, the sphere of immaterial public goods or immaterial commons involves more than just sources of inspiration or mere material resources of creativity. It offers individuals
shared landmarks that inscribe them in a common temporality that is a present
time, but also a common past. One who subtracts material from the public field
disrupts and impoverishes the collective memory and in so doing affects the
capacity of individuals to think for themselves, collectively as well as individually.
As Hannah Arendt put it, what Walter Benjamin called the “collector’s attitude”
results in the withdrawal of things from the public and with them “all kinds of
things that were once public property” as a way to establish himself in the past.71
Consequently, others are deprived of the opportunity to make the same kind of
connection, because the act of withdrawing goods from the public domain can be
compared to the act of removing elements of a common past, thereby foreclosing
the possibility of common relationships to them that otherwise would be allowed
to the rest of society. Public goods are made of a common past shared in the pres-
ent, and access to partial or truncated material limits not only individuals’ ability
to act and to create in that present, but also their relationship to the past, to their
culture, and to their history. It is through material traces left by others that the
past is made accessible, allowing history to play its proper social role and position-
ing individuals as cultural mediators.

The cultural losses, impoverishment, and amnesia that occur in the name of
progress and innovation also occur in a geopolitical dimension. In developing
countries, and that means many countries of the world, portions of their cultural
heritage are lost at the hands of the macroprocesses associated with capitalist pres-
sure that favors the spread of Western culture, as well as by virtue of the limited
means (financial, technological, or legal) available in these countries to store and
share their cultural resources. This is not to say that there is necessarily an extinc-
tion of the cultures that fail to qualify as dominant, or that these cultures do not
disseminate ideas and works on a global scale, as well, or even that globalization
necessarily transforms people in non-Western countries into simple consumers of
imported cultural goods. Indeed, appropriation and transformation processes take
place everywhere. They happen when Indians watch, enjoy, and reinterpret Amer-
ican TV shows, when Americans shoot movies that aim at portraying the reality of
Indian cities in a more authentic way than Bollywood does, and when the booty
bass music from U.S. ghettos becomes the baile funk of the Brazilian favelas before
being adapted by Italian musicians and distributed by German producers at Pari-
sian parties. But the control by intellectual property rules of access to technologies
and resources surely favors certain flows and certain directions for these flows.
It limits or harms the preservation and transmission of certain cultural produc-
tions. At the same time, knowledge that is privatized and removed from the public
domain in wealthy countries or anywhere else on the planet is thus made inacces-
sible to most people in these countries, since the only way to access resources is
then to pay for access. “As in the relation between colonized and colonizer, knowledge is anything but symmetrical.”

This is what is called cultural domination. And if it has implications for the production of and access to knowledge, it can also interfere with the conceptual work of the A2K movement itself. For example, despite the best of intentions, use of a notion such as the public domain might reinforce existing cultural domination. As Carlos M. Correa and Jeffrey Atteberry mention in this volume, advocating the defense and expansion of the public domain applied to traditional knowledge or biodiversity can also allow corporations to seize whatever knowledge or resources they want, while indigenous people remain once more without control over the means needed to protect their own resources and the ways in which they are valued and employed.

This is where the A2K constellation might want to consider its geographical positions and contours with caution, for tensions over the issues of intellectual property are produced not only in the context of exploiting or opposing the operations of capitalist logic, but also in the context of exercising or resisting the exercise of imperialist logic. To serve the equality or universality sought by A2K advocates, their own practices of conceptualizing what they consider to be desirable ends must constantly be reflected on and questioned, taking such contexts into account. A dominant culture “tends to produce the representations through which it is perceived (whether rejected or imitated) by others,” which naturally affects the criticisms that are formulated against it and the solutions called upon to facilitate emancipation therefrom. In the process of elaborating “its own representations of the dominant culture,” any struggle against this domination needs to question the values that the critics of the dominant culture themselves promote and the way they define and use them, whether the topic be property, private ownership, or the concept of the commons or the public domain. It is particularly what constitutes their common share, the metal of the two faces of the coin that unites proponents and opponents of the dominant culture, that requires meticulous questioning.

Cultural domination has many ways to influence people’s behaviors and their comprehension of what is possible and what is not. Fear is an essential element employed in the arguments for intellectual property rights protection and in the discourses of neoliberal rationality as a means of influencing people’s choices and behavior. We live in an era when, at least in Western countries, the fear of getting in trouble for having encroached upon others’ property (even when the boundaries that define it are invisible) is almost omnipresent. Penalties are involved: Minor encroachments can make you liable for damages, subject you to social opprobrium, and even lead to legal punishments. But in a less draconian manner, we’ve been
taught to fear that unless you’ve paid well for what you acquire, you can end up less well off than you were before, due to the possibility that what you are getting is “bad” by nature: It is of poor quality, won’t last, and/or it is harmful. This follows as a matter of course from the “wisdom” that holds that if you want quality, you have to pay for it. As Lessig has noted “lurking in the background of our collective thought is a hunch that free resources are somehow inferior.”76 Bad quality for instance, will have consequences on your health if what you are getting is medicines, and it can damage your computer or make you lose all your data if it is software.

As Wendy Brown has put it, in the neoliberal context, the state “attempts to construct prudent subjects through policies that organize such prudence.”77 And people are forced to choose sides. Antipiracy advertisements remind us in blunt terms of the choice that is offered: If you buy copies of DVDs or software, “you are either for terrorism or support the war on terror.”78 Under the current dominant political rationality, what is considered “property infringement,” “piracy,” and “terrorism” seem easier and easier to equate with each other and assimilate to each other. Professionals who work in the copyright field can testify that this conflation of infringements of intellectual property rights with terrorism is not only propaganda intended for the general public, but a message that shapes policy making. It is indeed becoming common to hear people in national policy-making or international meetings equating piracy with terrorism without hesitation or any sense of restraint. In the end, the result is a vicious circle: Even if enforcement policies cannot pin down each act of infringement, the scarecrow effect of criminalization fuels fears and suspicions that deter people’s infringing behaviors.

In Argentina in 2002, workers took control of the Zanon plant in an occupation that continued for several years. The plant, a ceramics factory that had been closed by an owner who no longer considered it profitable, had previously received millions of dollars in public subsidies as part of the corporate welfare program of the Carlos Menem government. The workers decided to reject their fate and called for the expropriation of the plant in the name of the public investment made, declaring Zanon “of the people.”79 They exercised the “right to reappropriation” of the multitude that, according to Hardt and Negri “is first of all the right of reappropriation of the means of production.”80 They decided to seize control of the engine of production and render it the common property of those who actually operated it. In the face of this attempt to impose an alternative way of being, Menem declared that “we will impose order . . . we will impose respect of the state of law. Among other things, the right to private property.”81

In this episode, two ethics conflicted. In the end, as force was deployed by the state, the right to private property prevailed in most of the plants. But it is certainly easier to enforce property rights and hunt down pirates in the physical
world than in the digital one. In the immaterial realm, reappropriation does not necessarily require expropriation. It is use that is the key. Thus, the terms of the confrontation may change.

Use per se can be subversive. If beliefs and fears do not curb it, the use that people make of protected material can open breaches in immaterial barriers and render them useless as filters, taking away from them the power to confer profit and social position. Massive use by individuals of data covered by intellectual property rights can easily become uncontrollable, and organized digital networks can impose a commons by simple virtue of producing and making available their production. To refuse the manufacturing of illegality and criminalization appears in itself as a legitimate and useful horizon for the A2K movement, starting with questioning the definition of what is illegal by performing threatened acts and challenging the hold of fear.

But what the issue of use determines is also the way questions are politicized. With the advent of a world in which the production of immaterial goods is increasing can also come new ways to conceptualize and formulate politics as well as to elaborate political action, because in such a world, possession is not exactly the same thing as ownership. The conflict over the Zanon ceramics plant was staged over the material means of production. Where immaterial goods are involved, benefiting from capitalist appropriation does not necessarily require possessing the means of production. Instead, it involves having control over what is to be given value—goods and elements that in fact cannot anyway be materially owned. In this context, it is access that needs to be controlled, rather than the strict ownership of goods. That is why access is such a central issue, why it is at the center of so many conflicts today.

The issue of access is a central issue because it is a product of its time. Yet emphasizing it is also a strategic choice: The machine that we are ourselves is obviously more complex than a machine in a plant. So are its relationships and interactions with the material and immaterial environments that surround it. Thus, the agency that is involved in its use challenges control in many ways and can more easily evade it, as the ever more repressive attempts to enforce intellectual property rights demonstrate. Thus, seen through the prism of access, the terms that crystallize political mobilization differ. They no longer begin with the distinction between public and private property. When attention is focused on access, what is invoked is justice, equality, or freedom, without directly confronting the issue of property.

But of course, the issue of property cannot so easily be liquidated. On the contrary, the current struggles over access to knowledge reopen a debate over property. Through efforts to build social rights based on the new, emerging possibilities
for sharing and an ideal of access, the movement questions property and the role it should play in our societies. It is a whole field of contests that open along new lines of conflict. Meanwhile, as in other contexts, to exercise freedom—here, the freedom of use—requires being in the position to do so, and thus, there is no escape from the issue of the conditions necessary to exert freedom.

CONCLUSION

The global increase and strengthening of norms of intellectual property protection in the past decades is symptomatic of the emergence of information technologies and attempts by capitalist entrepreneurs to benefit from these changes. Because we are in a phase of intense globalization of economic exchanges and communication in which the materiality of property dissolves, capitalists, seeking accumulation, have tried to define, categorize, and make the most of immaterial property. But in the knowledge economy, old models have become obsolete on many levels. Intellectual property rights owners do not seem to realize it, but cognitive capitalism relies on forms of creation and innovation derived from new modes of production. The production process is increasingly based on “a new relationship between production and consumption,” and as Maurizio Lazzarato points out, “what is ‘productive’ is the whole of the social relation.” In the end, this new relationship may advance the legitimacy of the A2K movement more than anything else, and rights owners may simply prove unable to adapt: To date, their responses to the major technological changes that have altered the functioning of capitalism have prioritized the pursuit and the fortification of old strategies. Attempts to maintain these models by criminalizing and forbidding human behavior, although they fit well the ways of neoliberal governance, appear obsolete, poorly adapted to the current reality, and redolent of the “putrid and tyrannical obsolescence” that Hardt and Negri evoke. As Immanuel Wallerstein says about the future of the United States, it may be that factors that originally worked to establish the intellectual property system’s hegemony will ultimately bring about its end.

New forms of communication and production also influence the way people interact with each other and engage in the production of culture and information. The free and open-source software movement shows the efficacy of these social practices of production, sharing, and distribution. Such practices are not in themselves new, but exercised in the current technological and political context, they bring new potentialities in terms of individual capacities and collective action and may contribute to the production of the conditions for the emergence of a new political subjectivity. They represent a power in the capitalist world on which the A2K movement can rely to promote a new politics and new ways of doing
politics. The relational aspects of creation and knowledge production imply a form of equality in the process through which individuals contribute and exchange. This equality is both a practice of creation (the “horizontal” communication and collaboration allowed by new technologies and formats, such as blogs and social-networking sites) and a political value promoted by A2K advocates who take into account the various needs and particularities of specific groups of individuals. Because of the nature of digital goods, the exercise of the freedom of use represents a possible course of action for movements and a key value to them. The A2K movement thus corresponds to a form of mobilization that can conciliate an inheritance from identity politics and more traditional claims for social justice. In that respect, the A2K movement represents an evolution in the modes of social mobilization.

The alliance between new forms of production based on new approaches to cooperation, on the one hand, and ways to conceptualize politics developed and brought to the forefront by the A2K movement, on the other, may provide an opportunity to oppose intellectual property extremism. More broadly, such a development also offers the chance to act outside of the immaterial walls erected by intellectual property protection and to exit at least intermittently from the constraints of neoliberal rationality, even perhaps causing the state to act in a different manner, as well.

The neoliberal form of colonization is a cultural and political attempt at subjecting every individual. A2K advocates are looking for a way out, promoting a morality based on values they wish to see emerge in politics. In the eyes of those in the movement, the current system is not good for two main reasons: It does not fulfill its own objectives in terms of innovation, and it is not fair in terms of access. As a field of activism, the A2K movement fights on both of these fronts and articulates one to the other, one preceding the other according to the context of the discussion within political spheres or in public debate. While the utilitarian concerns of the A2K movement anchor it in the capitalist system, its social justice claims reinject a moral dimension into the discussion, because the issue of access offers a new way to consider the issue of property. A2K advocates make use of the issue of access to rally many different constituencies, taking advantage of the flexibility of the notion to elude a number of pitfalls, whether these be representations they want to evade (dominant ideologies, political labels) or political traditions they do not want to identify with or be identified with because they seem outdated and do not appear to offer successful avenues for change.

The use of the issue of access makes it possible to avoid such pitfalls, but ultimately, it also leads in its own way to a critique of property. If everybody can access a good, the benefit of property instantly crumbles. The other side of the
coin is that in the immaterial world, the control of access de facto replaces ownership. Thus, the political result of the A2K strategy may lead to greater disruptions than what many actors were anticipating when they first became involved in this battle. This is where a new politics of access to knowledge starts.

NOTES

The author is grateful to Harriet Hirshorn, Karyn Kaplan, and Tunde Oyewole for their assistance in translating this piece into English.

1 David Harvey, A Brief History of Neoliberalism (New York: Oxford University Press, 2005).

2 For a cinematic illustration of the spirit of the gleaner, see Les glaneurs et la glaneuse (The Gleaners and I, 2000), written and directed by Agnès Varda, where gleaning can be seen both as a possible choice for individual existence in our consumer societies as a way to create in the context of the digital technologies. Michel de Certeau, The Practice of Everyday Life, trans. Steven Rendall (Berkeley: University of California Press, 1984), p. xii.


4 For a detailed discussion of information and knowledge and the implications of the differences between the two terms for the A2K movement, see Amy Kapczynski’s essay “Access to Knowledge: A Conceptual Genealogy” in this volume.


6 On the global scale, for example, the volume of financial exchanges is fifty times greater than the volume of exchanges of concrete products in the real economy.


8 See Gaëlle Krikorian, “Interview with Yann Moulier Boutang,” in this volume.


11 In cases where the control of creation through exclusive rights remains part of the business strategy, changes in business models and practices nevertheless call into question and revise the exact role and place given to intellectual property protection and the types of protections that are more adapted for a given product or context—patents or brands, for example.
Sorting information is a key issue for many in the virtual world. You may be surrounded by information and still not have access to knowledge or be in a position to enjoy it or use it if you cannot sort and select the information you need or the appropriate knowledge. It is not for nothing that strategies to counter censorship of the Internet are in part based on the camouflaging of pertinent information in an accumulation of useless data, forcing would-be censors to lose as much time as possible in the search for “subversive” content. For example, these tactics were used by individuals trying to communicate inside and outside Iran during the presidential election in June 2009. See Blondeau Olivier and Allard Laurence, “L’Iran ou la guerre des proxies: Vers une culture publique de la sécurité informatique?” Fondation pour l’Innovation Politique, available on-line at http://www.fondapol.org/les-travaux/toutes-les-publications/publication/titre/liran-ou-la-guerre-des-proxies-vers-une-culture-publique-de-la-securite-informatique.html (last accessed January 26, 2010).

Another problem is that behind the use of the term “intellectual” as an umbrella adjective to characterize legal rights that concern disparate intangible assets in forms and natures lies an ideological manipulation to legitimize a political move dedicated to serve simultaneously the interest of a heterogeneous set of industries. James Boyle, “The Second Enclosure Movement and the Construction of the Public Domain,” Law and Contemporary Problems 66, nos. 1–2 (Winter–Spring 2003).

Electrified fences, concrete blocks, thermal, metric, and biometric detection systems, sensors, and other devices, such as those built in Palestine, Cyprus, around Ceuta and Melilla in the western Sahara, on the border between the United States and Mexico, in Kashmir, or on the border of Botswana, are only a few contexts in which these physical walls were built. For an analysis of the multiple functions of contemporary walls in neoliberal globalization during the contemporary decline of sovereignty, see Wendy Brown, Walled States, Waning Sovereignty (New York: Zone Books, 2010).

The strategy of the Recording Industry Association of America (RIAA) for example, consists of picking a sample of individuals (around forty thousand) out of a pool of millions who have been identified as sharing music, then claiming copyright infringement and threatening to take them to court. In August 2007, four major music labels, the Universal Music Group, Warner Music Group, EMI, and Sony Music, filed a suit against Joel Tenenbaum, a graduate student, for file downloading and illegal sharing. Tenenbaum, along with Jammie Thomas-Rasset, were then the only persons in the United States accused of illegal file sharing to have their cases taken before a jury. The vast majority of people when contacted by copyright owners claiming copyright infringement agree to pay the requested financial settlement. In June 2009, Thomas-Rasset was found liable for copyright infringement and ordered to pay nearly $2 million. In July 2009, Tenenbaum was condemned to pay $675,000 for illegally downloading and distributing thirty copyrighted songs. He decided to appeal. See Joel Tenenbaum, “How it Feels to be Sued for $4.5m,” guardian.co.uk Music Blog, available on-line at http://www.guardian.co.uk/music/musicblog/2009/jul/27/filesharing-music-industry (last accessed January 26, 2010).
accessed January 26, 2010). Meanwhile, file sharing and illegal file downloading are common practices. A research into the music consumption of fourteen-to-twenty-four-year-olds commissioned by the British Music Rights (BMR) organization and carried out by the University of Hertfordshire showed that, 95 percent of those surveyed had copied music illegally and that on average, half of the content on their MP3 players was downloaded illegally. A study also indicated that uploading music for others to share was seen by them as “altruistic” behavior. See Rosie Swash, “Half the Music on Average Teenager’s MP3 Player is Illegal,” guardian.co.uk, June 16, 2008, available on-line at: http://www.guardian.co.uk/music/2008/jun/16/news_rosieswash3 (last accessed January 26, 2010).


20 Moulier Boutang, in “Interview with Yann Moulier Boutang” in this volume.

21 It would be worth discussing at length whether the Internet can be seen as a public space in Hannah Arendt’s sense and whether the public domain can be understood as being equivalent to the political domain. The political implications of this question are important for the issue of the preservation of public space and as a context for the ability of individuals to realize political action. According to Arendt, a public space is a space that allows active citizenship, a space in which individuals can gather and encounter one another to deliberate about matters of collective concern. In such political spaces, each citizen is in a position to exercise the powers of agency, to develop the capacities for judgment, and to develop concerted action aiming at political efficacy. Initiatives such as the Web site www.nosdeputes.fr, dedicated to the observation by citizens of the activities of the members of the French Parliament, the sharing of political information, and the pooling of citizens’ comments, resemble an attempt to create such a space.

22 Doctorow, “Why I Copyfight.”


24 Moulier Boutang, Le capitalisme cognitif.

25 With 7.1 percent of the votes in its country, the Swedish Piratepartiet won two seats in the European Parliament during the European election on June 7, 2009. The party, which was created three years earlier, claimed around fifty thousand members and emerged as a new political force—it was ranked third during the election in Sweden. Philippe Rivière, “Après les élections européennes: Emergence du pouvoir pirate,” Le Monde Diplomatique, June 12, 2009. This mobilization can in part be explained as a reaction to the condemnation by a Swedish court of The Pirate Bay in April 2009. The Pirate Bay offered a search engine making copyright-protected files accessible for illegal file sharing via the Piratebay.org Web site, one of the most visited BitTorrent destinations in the world. The Stockholm District Court sentenced four persons who contributed to the development of the Web site, Gottfrid Svartholm Warg, Peter Sunde, Fredrik Neij, and Carl Lundstrom, to one year each in prison and assessed $3.6 million in penalties to pay to the record and film companies whose rights were infringed.


28 Peter Drahos discusses the moves of the industry and its collaboration with governments in “‘IP World’—Made by TNC Inc.” in this volume. And in “Free-Trade Agreements and Neoliberalism: How to Derailed the Political Rationales that Impose Strong Intellectual Property Protection” in this volume, I develop the relationship between neoliberalism and the transformations triggered by the industry regarding intellectual property rights. As Michel Feher notes, however, the motivation for the neoliberal state to support industry is not systematical. It is mostly fueled by the political gain that the state can foresee in the crisis of sovereignty that it is facing in its desire to optimize its “residual power.” For a discussion of the functioning of neoliberalism see the analysis developed by Michel Feher in Vacarme, starting in Vacarme 51 (Spring 2010) and continuing in the following issues. If that proves true, despite the social determinism that influences actors and other class interests at stake, an interesting avenue could open to A2K advocates, as long as they succeed in framing what they would like the state to do in a way that convinces it that such actions will serve to shore up its political power. This is something that has begun to happen to some extent with environmental issues: The adoption of policies in favor of the environment has become politically rewarding. Former vice president and presidential candidate Al Gore’s campaign against global warming is probably both a trigger and an illustration of this trend. See, for example, the movie An Inconvenient Truth, which revolves around Al Gore’s travels and his efforts to educate the public about the climate crisis.

29 Comparing the range of modes of action employed by the A2K movement and the advocates of increased intellectual property protections, one notices that most of them are the same. In addition to lobbying and trying to infiltrate political arenas, both use media, public actions, and the denunciation of state policies. Advocates of increased intellectual property protections benefit from public actions by activist groups, as was the case when an unknown group that started to be called “the Red Shirts” by AIDS activists because they wore red shirts during their actions, took the floor in support of the big pharmaceutical companies on several occasions during an international AIDS conference in Bangkok in 2004. They also occasionally resort to aggressive campaigns in newspapers. USA for Innovation, an NGO advocating for the pharmaceutical company Abbott, published harsh attacks against the Thai government when it issued compulsory licenses. Although intellectual property advocates do not organize public marches, the difference between the registers of intervention that they employ and those of the A2K movement is mostly a matter of proportion, not of kind.


31 See Amy Kapczynski’s discussion on the gravitational pull and discursive effects that law

32 Just as, according to neoliberal views, the market cannot exist “by itself,” in nature, there cannot be a commons or public goods left free, untouched by rules or regulations. For them to exist and be accessible implies that some agent or agency establishes them through an act of sovereignty and keeps them free.

33 The status and the conditions of definition, occupancy, and use of these spaces are grounds for discussion and vary greatly depending on the model proposed, whether it is patent pools, Creative Commons licenses, open source collaboration, or something else.

34 Irrespective of debates about the condition or the future of nation-state or of state sovereignty, note that our discussion concerns the state because, even if its mode of operation and its relations with other social actors change over time, it currently represents the dominant model of governing and of power. Such a focus by no means denies the possibility that competing or alternative governing forms may emerge.

35 However, the existence of these power relations raises the question of what it is that the A2K movement excludes or truncates, besides its capacity to welcome issues and individuals. The essays by Carlos Correa, “Access to Knowledge: The Case of Indigenous and Traditional Knowledge,” and Jeff Atteberry, “Information/Knowledge in the Global Society of Control: A2K Theory and the Postcolonial Commons,” in this volume, provide elements to reflect on this issue, notably on the issue of traditional knowledge.

36 See Gaëlle Krikorian, “Fabrication non gouvernementale de traités internationaux: Entretien avec James Love,” Vacarme 34 (Winter 2006): p. 102, available online at http://www.vacarme.org/article537.html (last accessed January 29, 2010). To refuse to define oneself with regard to one’s enemy bears in itself an attempt to question the use of the term “intellectual property.” Scholars and activists have discussed the conceptual effect of imposing this term to designate, under one appellation, copyright, patents, trademarks, industrial design and undisclosed information. The term was manufactured and imposed as an ideological vehicle by the movement of private interests promoting exclusive rights. See James Boyle, “The Second Enclosure Movement and the Construction of the Public Domain.” The common use of the term “intellectual property” disseminated the notion of embedding forms of knowledge in the realm of physical property. See Richard M. Stallman, “Did You Say ‘Intellectual Property’? It’s a Seductive Mirage,” available online at http://www.gnu.org/philosophy/not-ipr.html (last accessed January 29, 2010). Stallman argues because of the fact that copyright, patent, and trademark laws are very different from property laws, the use of the term “intellectual property” creates an artificially coherent category. This is why some groups are campaigning for the term to be abandoned.


38 In doing so, their approach tends to differ from, for example, controversies over patents or criticisms that were made during the eighteenth and nineteenth centuries by Adam Smith, Thomas Jefferson, or Thomas Babington Macaulay. These focused on the effects of exclusive rights and monopolies and as such contemplated possibilities mostly from within this system. See Boyle, “The Second Enclosure Movement and the Construction of the Public Domain,” p. 57. Meanwhile, contrary to what was assumed about property rights in the eighteenth or nineteenth centuries, the A2K movement cannot count on the then commonplace view that
intellectual property rights, while they are needed, also have to be controlled, limited, and sometimes abrogated.

39 This does not mean that A2K advocates are not keen to organize the theatrical and unequivocal public condemnation of corporate industries and to capitalize on these campaigns to increase their own political power, the same way that groups from the environment movement do. To take only one recent example among many, consider the AIDS activist protest campaign outside the headquarters of Roche in September 2008, “Roche: Feasting on Our Dead Bodies,” depicting the pharmaceutical company as a hyena and stating in French, “If you have a monopoly, you don’t need to be human.” See http://www.flickr.com/photos/hughes_leglise/2909698636 (last accessed January 29, 2010).


41 In this, too, it distinguishes itself from the identity-based and minoritarian movements that have been described as being “new social movements.”

42 Nancy Fraser and Axel Honneth, Redistribution or Recognition?: A Political-Philosophical Exchange (New York: Verso, 2003).


48 Ibid., p. 17.


52 See Lawrence Liang, “Beyond Representation: The Figure of the Pirate,” in this volume.

53 See for instance Amartya Sen, “Equality of What,” in Robert E. Goodin and Philip Pettit (eds.), Contemporary Political Philosophy: An Anthology (Oxford: Blackwell, 1997), pp. 476–86. Of course, the choice of the terms used to frame the discussions is not neutral or meaningless, and to use a rhetoric of rights, of needs, or of positive freedom corresponds to different political conceptions or strategies. Within the A2K movement, such claims coexist without one dominating the others—yet.


These interviews were conducted by Consumers International in the context of a study carried on in Thailand and finalized in 2006 in the Project on Copyright and Access to Knowledge. See http://www.idrc.ca/en/ev-67263-201-1-DO_TOPIC.html (last accessed January 31, 2010).

Bourdieu, Pascalian Meditations, p. 178.

This is also a common tactic of political leaders, lately excessively used by the right wing in France, for example: putting the blame for people’s social and economic difficulties on scapegoats (immigrants, poor) and/or obstacles or enemies (the poor who are unionized, for instance) whom the dominant power wants to eliminate politically. See Mona Chollet, Rêves de droite: Défaire l’imaginaire sarkozyste (Paris: Zones, 2008), pp. 41 and 93.

Scott, Domination and the Arts of Resistance, p. 183.

Boyle, “The Second Enclosure Movement and the Construction of the Public Domain,” p. 8. We can see an evolution in the functioning of capitalism: for instance, enrichment is not solely based on the physical appropriation of resources and the means of production and capitalism is increasingly based on the allocation and transfer of credit, not on the production and sale of goods. (For a discussion of entrepreneurial neoliberalism and the functioning of capitalism, see the analysis developed by Michel Feher in Vacarme, starting in Vacarme 51 [Spring 2010] and continuing in the following issues). However, at the base of this system and in the distribution of social positions that it produces still remains the ownership of property, be it only the potential to own: Some people are powerful in this system without materially possessing capital in the form of property, but for many reasons, they are believed by others to retain the capacity to do so. Of course, at the end of the day, “rich” people, even if they make use of huge volumes of immaterial assets that they don’t in fact possess, in most of the cases also own a lot of both tangible and intangible resources. Nevertheless, ownership is socially constructed and based on others’ perceptions.


See Gaëlle Krikorian, “Interview with Yann Moulier Boutang,” in this volume.


Bourdieu, Pascalian Meditations, p. 178. Such alternatives came into play in what happened when the HIV/AIDS crisis contributed to making intolerable the inequalities in access to medicines between rich and the poor countries.

See Liang, “Beyond Representation”: “Underlying much of copyright’s mythology are the modernist ideas of creativity, innovation, and progress. The narrative conjunction of these ideas is represented as universal, and indeed, it is shared by both advocates of stronger copyright and advocates of the public domain.” The differences between creativity, innovation, and progress and the different political ranges with which they can be associated could be discussed. The French pirates, for instance, while they call for the liberation of creation, reject the term “innovation,” which they assimilate to the notion of progress, as an acceptable horizon for their mobilization.


Doctorow, “Why I Copyright.”


Ibid.

Brown, “Neoliberalism and the End of Liberal Democracy,” p. 43.

See Liang, “Beyond Representation,” in this volume.

See The Take (2004), a documentary directed by Avi Lewis and Naomi Klein.


Carlos Menem, quoted in The Take.

Jeremy Rifkin, The Age of Access: The New Culture of Hypercapitalism, Where All of Life is a Paid-for Experience (New York: J. P. Tarcher/Putnam, 2000). For a discussion of the condition of neoliberalism and the role of the issue of access, see the analysis developed by Michel Feher in Vacarme, starting in Vacarme 51 (Spring 2010) and continuing in the following issues.

Pirates, for example, challenge the merging of economic and security issues as established by neoliberalism. See Wendy Brown, “Souveraineté poreuse, démocratie murée,” Revue internationale des livres et des idées, no. 12 (July 2009). They also undertake practices of freedom that may help erode the culture of fear and prudence, and when these practices rest on transformative production, they can offer fruitful routes to opening breaches in dominant representations.

See Rifkin, The Age of Access.


Hardt and Negri, Empire, p. 410.


In the course of the conversations that unfold through the act of sharing in the knowledge society, even one’s relationship to the self and the other is revisited. See Lawrence Liang’s essay “The Man Who Mistook His Wife for a Book” in this volume.