NURTURING CREATIVE INDUSTRIES IN THE DEVELOPING WORLD: THE CASE OF ALTERNATIVE SYSTEMS OF MUSIC PRODUCTION AND DISTRIBUTION

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INTRODUCTION .................................................................................................................. 602
I. THE RISE OF ALTERNATIVE SYSTEMS OF MUSIC PRODUCTION AND DISTRIBUTION IN THE DEVELOPING WORLD .......................................................... 603
   A. The Rise of Tecnobrega Music in Brazil ............................................................... 603
      1. New Directions in Tecnobrega Music ............................................................... 605
      2. Tecnobrega and Intellectual Property Paradigms:
         A State of Tension ............................................................................................... 607
         i. Tecnobrega and Written Law ......................................................................... 607
         ii. Tecnobrega and the Foundations of Classical IP ........................................... 610
      3. Before and After Tecnobrega: Historical Roots and Geographical Repetitions ................................................................. 612
   B. Kuduro in Angola ..................................................................................................... 613
      1. Parallels with Tecnobrega .................................................................................. 616
      2. Ulterior Questions Raised by Kuduro: The Absorption of Post-Colonialism IP Standards ................................................................. 616
   C. Kwaito in South Africa ............................................................................................ 617
      1. Monetizing Kwaito: Alternative Genres Meet Mainstream Channels of Distribution ................................................................. 621
II. INTERPRETING NEW EQUILIBRIA: CHALLENGES AND NEW DIRECTIONS IN MUSIC PRODUCTION AND DISTRIBUTION .................................................. 622
   A. Lessons from Tecnobrega, Kuduro and Kwaito .................................................. 622
   B. Tensions Between IP and Emerging Models of Cultural Production ............... 623
      1. Framing the Problem .......................................................................................... 623
      2. Alternative Approaches: Creative Commons .................................................. 624
      3. Looking Beyond Copyright’s Yard ................................................................... 625
         i. “Pontos de Cultura” in Brazil ......................................................................... 626
III. CONCLUSIONS ......................................................................................................... 627
   A. Conclusions Regarding Developing Countries .................................................... 627
   B. A Brief Note on Developed Countries .................................................................. 628

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INTRODUCTION

This article explores the relationship between alternative systems of music production/distribution in developing countries, intellectual property (IP), and cultural policies.

With the advent of digital technology, we have witnessed a surge of innovative models of music production and distribution in developing countries around the world. In addition to similar structural features, these systems share a common thread: they all flourish in geographical areas where IP rules are not enforced and—even more importantly—they rely on business models that deliberately challenge traditional IP wisdom.

The article starts by offering a panoramic analysis of tecnobrega in Brazil, perhaps the most studied of these phenomena, describing its roots and growth. The article will also highlight the inherent tension between several of the mechanisms on which tecnobrega relies and contemporary IP norms and policies.

The following section maps and contrasts similar phenomena in other parts of the developing world, like kuduro in Angola and kwaito music in South Africa. Endemic as they are to their own countries in their particular configuration, these models share similar premises and structures. Like tecnobrega, all models reflect the uneasiness felt by non-mainstream genre artists in an age that gives them the tools to fight conventional wisdom.

The article then focuses on strategies developing countries should consider when assessing whether their current IP frameworks are appropriate to stimulate new music industries (as well as creative industries in general) such as complementing IP policies with programs that emphasize access to creative inputs, promoting flexible licenses like Creative Commons or striking the proper balance when strengthening enforcement mechanisms.

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2. Tecnobrega is a digital-based music genre that became popular in the 1990s in Belém do Pará, Brazil. It is known for its non-reliance on IP norms and paradigms. See infra, I.A.

3. Music and dance genre originating in Luanda, Angola. It has since expanded to Portugal. See infra, I.B.

4. Music genre from the townships of Soweto, in Johannesburg, South Africa. See infra, I.C.
I. THE RISE OF ALTERNATIVE SYSTEMS OF MUSIC PRODUCTION AND DISTRIBUTION IN THE DEVELOPING WORLD

A. The Rise of Tecnobrega Music in Brazil

*Tecnobrega* is a musical genre that originated in the 1990s in northeastern Brazil, in the state of Pará, near the city of Belém. It is tributary of a genre highly popular in the 1970s and 1980s, *brega*, a word of which the full significance is hard to convey in other languages. *Brega* can mean “cheesy” or “tacky,” but also “outdated” or even “nerdy.” *Brega* songs can follow many different rhythmic patterns, influenced by different genres such as *samba*, *bolero*, or *sertanejo*, but a common feature is that all of them evoke a romantic or even über-romantic atmosphere, often overtly bordering on kitschy. During the 1980s and 1990s, musicians from Pará began mixing traditional *brega* with other musical styles, creating a myriad of *brega* derivations. While some of these sub-genres, like *brega pop* and *brega calypso*, eventually spread more or less successfully around the country, others, like *tecnobrega*—the fusion of *brega* sounds with a *techno* beat—remain a regional phenomenon. However, what sets *tecnobrega* apart from all other kinds of music in Brazil is not its rhythmic or melodic patterns, or even its unwavering popularity, but two non-musical features: 1) the business model on which *tecnobrega* artists and producers rely, a system that capitalizes on the fact that digital technologies have become available to widespread audiences at relatively low costs; and 2) the fact that the underlying *brega* songs used by *tecnobrega* DJs are not licensed.

The only “instruments” needed to create a song are electronic (the staple is a computer, often with the addition of an electronic keyboard), so the

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7. Developed in the late 1920s, *sertanejo* (from *sertão*, meaning “remote location,” or “countryside”), a Brazilian country music of sorts, remains one of the most popular genres to date.


10. See THE PARAENSE TECNOBREGA OPEN BUSINESS MODEL, supra note 5, at 24.

tecnobrega system substitutes recording studios with home-based studios. Often, studios are owned by tecnobrega DJs, who are involved not only in the production process, but also in distribution, as they have contacts with street vendors and sound system party organizers (a concept that I will develop later in this article).

The producer hands the CD—instead of the usual twelve tracks, tecnobrega albums can have as many as 115 or even 300 tracks—to street vendors, who replicate and sell them in the outskirts of Pará. Street vendors are the only individuals in the production chain who profit from the actual, physical CDs. They also play a role as promoters of musical events, while at the same time acting as distributors. Tecnobrega CDs are sold very cheaply and are “linked” to an upcoming party or sound system (think of it as a live concert) where the public can hear and dance to the songs. Therefore, under the rules of this new business model, the primary function of a CD is no longer to physically encapsulate the music of an artist, but to serve advertising purposes.

“Sound systems,” the literal translation of aparelhagens in Portuguese, are live concerts where the tecnobrega songs advertised via street-sold CDs are played. The generic name chosen to designate these concerts is in itself revealing: in the traditional concert, etymology tells us the emphasis is on “bringing together” agents or players; in tecnobrega, emphasis is on technology, on the main piece of equipment used during performance. Different aparelhagens rival each other, competing to see who has the best, most sophisticated sound system.

Logistically, there is a control booth, a sound table, computers, and speakers. The size and sophistication of the speakers dictates the size—and therefore the popularity and the revenue—of aparelhagens or sound systems. Aparelhagens are the major source of dissemination of tecnobrega music and they can be understood as the gravitational center, the “star” of the system, relegating the idea of “band” or “singer” to a secondary position. It is estimated that there is an average of over 3000 parties and 800

12. See Gary Duffy, Tecnobrega Beat Rocks Brazil, BBC News (Feb. 13, 2009), http://news.bbc.co.uk/2/hi/programmes/click_online/782316.stm (“The music starts in dozens of little makeshift studios—often just a converted bedroom where, with the help of one computer and a software program, tecnobrega performers are producing the music they hope will make their names”).

13. See THE PARAENSE TECNOBREGA OPEN BUSINESS MODEL, supra note 5, at 28.

14. Id. at 17.

15. As Lemos and Castro point out, tecnobrega is characterized by “the increase of actors whom participate in the disks production process. The vending of CDs [is] a cornerstone of this second ‘brega movement’, mobilizing artists, studios and labels.” Id. at 21.

16. THE PARAENSE TECNOBREGA OPEN BUSINESS MODEL, supra note 5, at 71. Lemos and Castro estimate that each CD sells for about 7.46 reais (about $3.67). Id.

17. Id. at 13.
concerts per month in the Belém region.\textsuperscript{18} Highly successful musicians can perform several times a month and receive as much as 2200 reais ($1086 USD) per live performance,\textsuperscript{19} while in the state of Pará the average minimum wage is around 700 reais ($345 USD). Notice, however, that musicians depend on DJs and producers to compile and disseminate their music. Also, according to the particular philosophy of tecnobrega, the main attraction tends to be the aparelhagem, the sound system per se with its equipment and DJs, and not the performers themselves. At the end of a sound system, the recording of that night’s performance is typically available for purchase at low price,\textsuperscript{20} which constitutes yet another departure from the dynamics of traditional music industries.

Financially, the so-called “planners”\textsuperscript{21} of sound systems and parties are the key players. They finance live performances and, correspondingly, are usually the highest paid agents in the entire production/distribution system.\textsuperscript{22} Planners are also the liaison with all bureaucratic and legal aspects involved in this process.\textsuperscript{23} Although tecnobrega does not submit to the logic of IP rules, it complies with the intricate web of municipal licensing. The planner is also responsible for hiring staff for the parties, from waiters to security, and personnel who sell tickets, etc.\textsuperscript{24}

Unsurprisingly, given the dynamics of the tecnobrega model, many of the business relationships rest on family and friend connections. Traditional business relationships that mingle commercial and personal relationships are usually unbalanced and risky; in tecnobrega, however, intermingling generates a climate of informality and confidence that ultimately reduces investment risks and eases loss absorption.\textsuperscript{25} It also counterbalances the absence of formal contracts, and is probably what makes verbal contracts viable and reliable in this context.

1. New Directions in Tecnobrega Music

In recent years, there have been a few changes to the traditional tecnobrega landscape. For instance, while tecnobrega used to resort almost exclusively to popular Brazilian tunes, there are now versions of songs by bands like Queen or Pink Floyd\textsuperscript{26} that have registered huge successes.
Today it is even possible to find tecnobrega versions of many of the contemporary mainstream pop or rock celebrities, from Lady Gaga\textsuperscript{27} to Coldplay.\textsuperscript{28}

Also, a few artists (singers, bands) have sporadically achieved such a degree of success that their music has been successfully exported to Europe.\textsuperscript{29} Perhaps the most famous example is that of Gaby Amarantos,\textsuperscript{30} who (alongside producer and DJ João Brasil) made a tecnobrega cover of a Brazilian bossa nova\textsuperscript{31} classic, Águas de Março. A compilation by producer João Brasil that includes Amarantos' hit is now available on Amazon, and it is possible to download the song for $0.99.\textsuperscript{32} You can also find albums credited to Amarantos alone on Amazon and at least twenty of her songs are available for download on iTunes.\textsuperscript{33}

This expansion is an important shift. First, there is an expansion in repertory. Águas de Março would by no means be considered cheesy or tacky;\textsuperscript{34} it is a classic of Brazilian music, composed by Antônio Carlos Jobim, one of the most well respected composers (probably the most well respected composer) in the history of Brazilian music. Also, the fact that Anglo-American hits are now making their way into tecnobrega repertory brings a new layer to the genre. Will this expand the concept, and even the appeal, of tecnobrega music? Could this possibly mean that tecnobrega

\textsuperscript{27} A clip of a tecnobrega cover of Lady Gaga's Paparazzi is available at \url{http://www.youtube.com/watch?v=61f6ImqEm0}. Rafeal Ralem, Lady Gaga e DJ Rafeal Do Studio Ralem—Tecno Melody Paparazi Remix, \textsc{YouTube} (Mar. 20, 2010), \url{http://www.youtube.com/watch?v=61f6ImqEm0}.

\textsuperscript{28} A cover of Coldplay's The Scientist, using the voice of the band's vocalist, can be found here: \url{http://www.youtube.com/watch?v=oaoh5uVe6AmA}. DJ Cremoso, Coldplay—The Scientist (Dj Cremoso Remix), \textsc{YouTube} (June 13, 2010), \url{http://www.youtube.com/watch?v=oaoh5uVe6AmA}.

\textsuperscript{29} See Rodrigo Levino, Tecnobrega: A Nova Música Brasileira Tipo Exportação, \textsl{Veja} (May. 4, 2011), \url{http://veja.abril.com.br/noticia/celebridades/tecnobrega-a-nova-musica-brasileira-tipo-exportacao}.


\textsuperscript{31} Bossa Nova is a musical genre from the 1950s and 1960s, influenced by samba and jazz.

\textsuperscript{32} Águas De Março (feat. Gaby Amarantos), \textsl{Amazon}, \url{http://www.amazon.com/Aguas-Marco-feat-Gaby-Amarantos/dp/B00A26DUQI/ref=sr_1_26?ie=UTF8&qid=1359154226&sr=8-26&keywords=gaby+amarantos} (last visited Jan. 25, 2013).


\textsuperscript{34} See Elma Lia Nascimento, Calling the Tune: Which are the Best Brazilian Songs Ever? Seven Among the 10 Best Were Composed by Tom Jobim, According to a Panel of Experts. The Big Winner: Águas de Março, \textsl{Brazzil} (Sept. 2001), \url{http://www.brazzil.com/p08sep01.htm}. 
music can expand geographically, migrating from Pará to the outskirts of other metropolises in Brazil?

It is obviously impossible to know the answer to these questions, but perhaps these changes can be regarded as a suggestion that there might be potential shifts in the business model itself in a not so distant future.

These recent developments do not undermine the logics by which tecnobrega structurally operates; if anything, they open the door to future growth and should make us reconsider conventional knowledge about systems of music production and distribution even more carefully. The tecnobrega business model has reformulated the dynamics of music production and distribution: there is a redefinition of the role of many of the classical agents (such as producer, distributor, event planner or even band); there are more agents involved in the process; and, as we are about to see, the rules of intellectual property—both codified laws and the premises of incentives and market failures on which traditional IP protection is rooted—simply do not apply.

2. Tecnobrega and Intellectual Property Paradigms: A State of Tension

i. Tecnobrega and Written Law

Brazil passed its Law on Copyright and Neighboring Rights in 1998. In Chapter III, entitled Economic Rights of the Author and Term Thereof, articles 28 and 29 state that:

28. The author has the exclusive right to use his literary, artistic or scientific work, to derive benefit from it and to dispose of it.

29. The express prior authorization of the author of a literary, artistic or scientific work shall be required for any kind of use, such as
   I. complete or partial reproduction;
   II. publication;
   III. adaptation, setting to music or any other transformation; . . .
   V. incorporation in a phonogram or in an audiovisual production;
   VI. distribution where it is not provided for in a contract signed by
       the author with third parties for the use or exploitation of the work;
   VIII. the direct or indirect use of the literary, artistic or scientific work in
       one of the following forms:
       (a) performance, recitation or declamation;
       (b) musical performance
       (c) use of loudspeaker or comparable systems;
       (d) radio or television broadcasting;
       (e) reception of a radio broadcast in places frequented by the public;

Whenever a song goes through the full cycle of the tecnobrega business model, there is almost always a violation of the copyright on the underlying song (the brega song), as DJs and music producers usually fail to obtain the proper license before creating the tecnobrega version. In the (extraordinary) cases of tecnobrega singles that have reached platforms like iTunes a licensing fee has been paid to copyright holders. But we should bear in mind that the overwhelming majority of songs and albums, those meant for consumption within tecnobrega’s geographical boundaries, remain unlicensed.

Tecnobrega and Brazilian copyright law are therefore at odds and the lack of copyright enforcement in the region of Pará is almost puzzling. A justification for this phenomenon might be that tecnobrega arose, both as a genre and as a business model, at a time where national attention shifted towards other focuses of interest.

As a genre, tecnobrega is very successful at a regional level, but by no means has it achieved nationwide popularity. Unlike kwaito in South Africa, which has outgrown the boundaries of the suburban area where it initially developed, tecnobrega remains a local genre, incapable of setting national trends. If we consider the fact that the levels of copyright awareness in Brazil have only recently started to rise, it is likely that, during the early stages of tecnobrega, former brega artists and copyright holders were either unaware of the unauthorized uses of their songs or simply did not care. Tecnobrega is not an industry whose players have deep pockets either: most of them need to have other jobs to supplement direct revenue from tecnobrega. A study about a sound system owner showed:

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37. For an in-depth discussion of piracy and tecnobrega, see THE PARAENSE TECNOBREGA OPEN BUSINESS MODEL, supra note 5, at 65-71.
38. Id.
39. Duffy, supra note 12. As Duffy points out, this “tolerance for piracy . . . costs Brazil jobs and billions of dollars in tax revenue.”
40. See THE PARAENSE TECNOBREGA OPEN BUSINESS MODEL, supra note 5, at 1.
41. See infra, I.C.
42. The Brazilian Hit Parade Top 10 for February 2012 does not include any tecnobrega singles. See Top 10 Songs on the Brazilian Hit Parade, DEEP BRAZIL (Feb. 24, 2012), http://deepbrazil.com/2012/02/24/top-10-songs-on-the-brazilian-hit-parade/.
44. See THE PARAENSE TECNOBREGA OPEN BUSINESS MODEL, supra note 5, at 51-52.
84% [practice] other professions, related or not to tecnobrega. The most
cited were: commerce owners, painters, construction workers, vendors,
carpenters, and electricians. (. . .) [O]nly 10% of Pará’s tecnobrega sound
system owners have their income exclusively from the sound systems and
the remaining 6% are retirees.45

As a business model that relied on systematic IP violations, tecnobrega
was also able to fly under the radar of federal and national enforcement
agencies.46 While this might seem strange, a review of Brazil’s strategic
copyright policies shows us that institutional interest is directed elsewhere.
In 2004, for instance, Brazil created the National Council against Piracy and
Intellectual Property Crimes (CNCP), a public-private entity responsible for
strengthening enforcement and promoting copyright awareness.47 CNPC’s
first report, in 2005, stated “[t]he fight against piracy is just one battle in the
fight against organized crime.” Framing might therefore have played a role
in allowing tecnobrega to elude the reach of entities like CNPC: when
national policies are focused on broad, socially-charged concepts like
“organized crime,” then it is easier for smaller, regional phenomena with
less substantial economic impact to grow in the shadows of IP law and
policy.

At this stage, it is impossible to bring tecnobrega into full compliance
with written law without raising transaction costs in a way that would
destroy tecnobrega as a business model and perhaps even as a genre.49
However, as part of the tecnobrega repertory seems to be expanding into
new digital markets like iTunes and Amazon, it is not impossible that
substantial changes in tecnobrega’s essence might occur, some of which
might imply complying with the licensing requirements that tecnobrega has
so long avoided.

45. Id.
46. Michael Astor, Piracy Fuels Brazil Techno Scene, THE ASSOCIATED PRESS (OCT
19, 2007), http://www.washingtonpost.com/wp-dyn/content/article/2007/10/19/AR20071019
01639.html.
iew=%7BD6459A18-45AF-4FD7-B3C8-5013078ECE73%7D&BrowserType=NN&LangID
=pt-br&params=itemID%3D%7B7B78C7CF7F%2DAECB %2D49DE%2DB93F%2D694C38
FFCB35E%7D&UIPartUID=%7B2868BA3C%2D1C72%2D4347%2DBE11%2D2A26F70F4
CB26%7D (last visited Feb. 12, 2013).
48. Ricardo Pinho, Brazilian National Council of Repression Against Piracy and
Crimes Against Intellectual Property Releases its First Report, 60 INTABULLETIN n018 (OCT.
=1&ved=0CC8QFjAA&url=http%3A%2F%2Fwww.jdsupra.com%2Fdocuments%2F5988f0
4b-0159-436b-9d1b-1ca19b8f3329.pdf&ei=B0z0UJmSFcuH8OG8xYDgBQ&usg=AFQjCN
E6zJ7rImg4SzyjvdNkX1mPbZBhA&bvm=bv.1357700187,d.eWU.
49. THE PARAENSE TECNOBREGA OPEN BUSINESS MODEL, supra note 5, at 129.
ii. Tecnobrega and the Foundations of Classical IP

If there is an irreconcilable tension between the tecnobrega business model and copyright law, there is yet a deeper clash between the operational dynamics of tecnobrega and traditional justifications for the existence of IP in general, and copyrights in particular. In *Good Copy Bad Copy*, a Danish "documentary about the current state of copyright and culture," a tecnobrega producer states: "The [tecnobrega] artist himself does not care about copyright. He doesn’t want to make money out of copyrights, but from the live performance in which he is to appear." This is a partially revolutionary concept. The element of surprise is the musicians’ complete disregard for intellectual property—not so much for written IP per se, but for the foundations on which IP regimes were built. Traditionally, copyrights have been regarded either as an incentive to create new works or as a reward for the creation of new works or both.

The theory of incentives explains the existence of IP systems as artificial monopolies that are necessary to cure market failures. In the case of copyrights, we think of books, films, and songs as akin to public goods, in the sense that we rely on the artificial assumption that many of these works would not be produced if potential authors did not get a copyright over the book they wrote, the film they made, or the song they composed. Conversely, the public will have some access to a new work that might not have been created in the absence of the author’s exclusive right. It has always been a debatable proposition—one can always argue Shakespeare did extremely well without copyright—but it has nonetheless become accepted conventional wisdom and the working paradigm from which IP regulation stems.

A slightly different view, displaying more personalistic concerns with the process of intellectual creation, frames IP as a reward given to the author for the work he or she produces. Echoing Locke’s formulation of

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51. *Id.*

52. Astor *supra*, note 46.


the labor theory of property, this view replaces the market failure with the figure of the author, the romantic author, who has left an utterly personal imprint in the book, song or film he or she has made. According to this theory, IP exists more as deference to that personal imprint than to any other utilitarian concerns.

Regardless of what view one might choose to adopt, and even if we reconcile both, tecnobrega and other recent phenomena\textsuperscript{56} challenge traditional justifications for IP. To state there is an author, a musician that "does not care about copyright,"\textsuperscript{57} undermines both traditional explanations with a single blow. It implies the musician would have created the work even in the absence of copyright protection and that he or she is seeking the reward (whether it is recognition or remuneration, or both) elsewhere. Clearly, the classic grounds for granting copyrights are no longer universal.

In their comprehensive study about the tecnobrega business model, Ronaldo Lemos and Oona Castro, stressing the importance of the "individualistic conception"\textsuperscript{58} of IP, argue the dissemination of digital technologies, combined with the emergence of collaborative models of cultural production like tecnobrega, have undermined the logics of classic IP:

[W]e should ask if this artist protection model [based on traditional IP logics] is adequate to our contemporary times. Technological upgrades and the use of the Internet suggest other paths, allowing the possibility of a new business model for the entertainment world. The tecnobrega music market has shown us another logic, in which singers, who are also composers, do not utilize from the vending of CDs and DVDs [sic] as their main source of income from music. For that reason ( . . . ) most tecnobrega band singers, 51%, support a lot or ( . . . ) [a] little the vending of the CDs and DVDs by the ISVs, for they see this street vendors as promoters of their music, and not as competition for their sales.\textsuperscript{59}

Lemos and Castro's arguments are part of a larger and ever-growing debate concerning the adaptability of old-fashioned IP standards to digital technologies.\textsuperscript{60} Calls for more balanced IP frameworks that would stimulate the co-existence of fully proprietary, partially proprietary and free regimes,  

\textsuperscript{56} These phenomena—from tecnobrega to the other musical genres and business models described in this paper—as well as examples outside the music industry, are a product of the emergence and expansion of the digital era.  
\textsuperscript{57} See Good Copy Bad Copy, supra note 41.  
\textsuperscript{58} LEMOS & CASTRO, supra note 5, at 65. ("The creation of copyrights was expressed by an individualistic conception, that is, the piece-of-work was "an individual's property because it was made by an individual's brain." (citation omitted)).  
\textsuperscript{59} Id.  
are not new. But, as it has been pointed out, infusing “balance” into rigid normative structures is easier said than done. Tecnobrega is increasingly alluded to as an example of a viable alternative model of cultural production and dissemination. Keeping in mind that it is nonetheless a regionally-limited successful model, perhaps our next step should be to ask how to encourage the emergence of other alternative models elsewhere in the developing—and perhaps even the developed—world.

3. Before and After Tecnobrega: Historical Roots and Geographical Repetitions

If the tecnobrega model can be considered partially revolutionary because it encapsulates a universe where copyright’s traditional dynamics play no role—and it remains undoubtedly the most prominent of micro-cosmoi that develop in the shadow of proprietary regimes—it is nonetheless true that tecnobrega is not the first historical locus where a shift in platforms for music production and distribution was registered.

In the 1950s, an embryonic version of the “sound system” model appeared in the impoverished suburbs of Kingston, Jamaica. Closely associated with dub music, a variation of reggae, remixed versions of popular songs were played in street parties in which trucks loaded with a generator and speakers would provide music for people who were able to pay a small amount to be granted access to the party, but that otherwise would not have enough money to afford buying new records. These parties attracted very large crowds, and they prompted DJs to start creating their own songs, eventually contributing to the development of a new genre.

Jamaica’s sound systems ended up becoming partly politicized, but a large number of Jamaican emigrants were able to replicate the Kingston

63. See generally PEDRO N. MIZUKAMI & RONALDO LEMOS, FROM FREE SOFTWARE TO FREE CULTURE: THE EMERGENCE OF OPEN BUSINESS, IN ACCESS TO KNOWLEDGE IN BRAZIL: NEW RESEARCH IN INTELLECTUAL PROPERTY, INNOVATION AND DEVELOPMENT (2008).
64. See infra III.A.
65. See infra III.B.
66. For an ethnography of dub music, see MICHAEL VEAL, DUB: SOUNDSCAPES AND SHATTERED SONGS IN JAMAICAN REGGAE, Wesleyan (2007).
67. Dub is defined as “essentially reggae in the raw, this cultish, perennially popular form strips out the majority of the music’s melody at the mixing desk, leaving behind the rhythm section (‘drum ‘n’ bass’ music in reggae parlance) and the residue of other instruments, often with massive layers of echo.” Dub, CENTROHD, http://www.centrohd.com/biogra/d2/dub_essentially_reggae_in_the_ra.htm (last visited Feb. 18, 2013).
68. See VEAL supra note 66, at 5.
business model fairly successfully in England during the 1960s and 1970s.69 These historical antecedents teach us two lessons: what is happening in Brazil is not an isolated successful experiment, as it has precedents and can be seen in a historical continuum, and as we will see in the case of kuduro music in Angola or kwaito in South Africa,70 business models like tecnobrega reemerge in other developing landscapes, where they adapt surprisingly well.

B. Kuduro in Angola

Like Brazil, Angola is a former Portuguese colony. Unlike Brazil, which unilaterally declared its independence in 1822, the former Portuguese colonies in Africa were politically, legally, and culturally bound to Lisbon until 1975—a bind that, in the case of Angola, was broken by a guerilla war.71 The same year the war for independence ended in Angola, a civil war began that lasted until 2002. Angola’s civil war took a huge toll on Angola’s society and economy.72 Development rates in all former Portuguese colonies fell drastically after 1975, but in the case of Angola the aftermath was particularly harsh. According to the United Nations’ Human Development Index, Angola, to this day, remains a country with a “low human development”73 level.

Angola has a rich musical tradition, influenced not only by Portugal and Brazil, but also by Congolese sonorities.74 Experts point to Congo and Angola as examples of countries where music has played an important role in “keeping conflict-ridden and poverty-stricken societies together.”75 It is in this context that kuduro music appeared, in the poor neighborhoods in the outskirts of the capital, Luanda. While kuduro lyrics do not specifically target social or economic issues, there is a concept of “angolanidade”76 (an idea that roughly means “angolaness,” a sense of belonging to the country) associated with kuduro music. It is characterized by an electronic fusion of

69. Id. at 45-94.
70. See infra l.C.
different genres, from traditional Angolan semba\textsuperscript{77} and kizomba\textsuperscript{78} to Caribbean soca\textsuperscript{79} and zouk.\textsuperscript{80} The rhythmic pattern, in a tight upbeat, lends a palpable tension to the music and there is a raw quality to the kuduro sound. Social commentary is explicitly evoked by the dance movements that usually accompany the music, which have been described as

graphic theatrical movements such as crawling on the ground as if in a battle, dancing on the thighs as if the legs were amputated, dancing with legs turned inwards as if on crutches, dancing on crutches, with missing limbs or mimicking media images of ‘starved Africans.’\textsuperscript{81}

The rise of kuduro in Angola began in the late 1980s.\textsuperscript{82} DJs produced tapes (and later CDs) that would be distributed through street vendors. For almost two decades, a very rudimentary business model of distribution was in place: candongueiros, the same minivans that circulate around Luanda and the suburbs as taxis, would park at a street corner and then turn into a “sound system” of sorts: music would blast out of the candongueiro and kuduro performances would start.\textsuperscript{83}

Operating primarily through word-of-mouth, kuduro became increasingly popular: in the mid-1990s it was broadcast over the radio for the first time and later began circulating informally via the internet.\textsuperscript{84} Today, it is so popular—it is so pervasive that it has been dubbed “the music of Luanda”—that there are staged kuduro performances, organized by sponsors and covered by national media.\textsuperscript{85} The latest trend is to have kuduro played in the capital’s upscale nightclubs.\textsuperscript{86} There are four main neighborhoods in Luanda’s suburbs that have established themselves as well-known centers of kuduro production: Ragel, Sambizanga, Viana, and

\begin{itemize}
\item \textsuperscript{77} An early 20\textsuperscript{th} century genre associated with belly-dance, similar to umbigada in Brazil. \textsc{The Oxford Dictionary of Music} (Michael Kennedy & Joyce Bourne eds., 2d ed. rev. 2006).
\item \textsuperscript{78} A version of semba, danced in a slower tempo. \textit{See} ADEBAYO O. OYEBADE, \textsc{Culture and Customs of Angola} 156 (Toyin Falola ed., 2007).
\item \textsuperscript{80} Zouk is a genre that emerged in the mid-'80s in the West Indies, which means “party” in English. Monique Desroches, \textit{Martinique, in 2 The Garland Encyclopedia of World Music: S. Am., Mex., Cent. Am., and the Caribbean} 914, 918 (Dale A. Olsen & Daniel E. Sheehy eds., 1998).
\item \textsuperscript{81} Alish & Siegert, \textit{supra} note 76.
\item \textit{id.}
\item \textit{id.}
\item \textit{id.}
\item \textit{id.}
\item \textit{id.}
\item \textit{id.}
\end{itemize}
Cazenga. For the first time in the history of *kuduro* music, there are albums being fully produced by labels operating in these neighborhoods.

*Kuduro*—or at least a version of *kuduro*—became popular in Portugal in the first decade of the twentieth century. In Portugal, *kuduro* is also a phenomenon geographically associated with the outskirts of the capital, where a large Angolan population was drawn to during and after the war years. In fact, the most famous of all *kuduro* bands, Buraka Som Sistema, bears the name of one of Lisbon’s peripheral neighborhoods (Buraca).

The band was founded in 2006 and rose to prominence in the next two years with consecutive singles that were hits in Portugal. In 2008, Buraka Som Sistema won an MTV Europe Music Award and, in 2009, a European Borders Break Award, an award created by the European Commission. Their 2012 North American tour included stops in New York, Los Angeles, and San Francisco.

Buraka Som Sistema’s producer was actually born and brought up in Lisbon, a fact that has been criticized by some *kuduro* purists. Only one of the members of the band was born in Angola—but lived there only as a child. The band went to Luanda in 2007 for the production of the video of “Sound of Kuduro,” a sign that seems to indicate intent to keep their music rooted in the original environment it was imported from. The sad irony in the otherwise mostly successful story of *kuduro* music, however, is that it was precisely the fame of Buraka Som Sistema that turned the international spotlight on Angolan *kuduro* proper. Without the Lisbon-based assimilation or reinvention of *kuduro*, it is highly probable the sponsored performances of *kuduro* in Luanda, or the emergence of the first Angolan labels devoted to *kuduro*, would not have been a reality.

Nonetheless, it is only fair to acknowledge that Buraka Som Sistema single-handedly paved the way for the emergence of other *kuduro* bands in Portugal. Together, they now form the core of the “*kuduro progressivo*”

87. The most well known is “Ghetto Produções.” These neighborhoods, called “musseques” in Angolan Portuguese, do not fit the technical description of ghettos, because they lack the distinctively segregational component. It is interesting to note that *kuduro* producers and performers nonetheless relate strongly to this concept. South African *kwaito* music, on the other hand, is truly a product of the ghetto-like environment of Soweto. *Id.*


91. *See Alisch & Siegert, supra* note 76.

92. *Id.*

93. *Id.*
(progressive *kuduro*) movement, already a sub-genre of the Luanda-based music. Although the main hubs of *kuduro* music are Luanda and Lisbon, it can now be heard in dance floors around the world. Outside the Portuguese-speaking countries, it has achieved some notoriety in London, Berlin, and New York. 94

1. **Parallels with Tecnobrega**

From a business model perspective, there are undeniable parallels between Brazil’s *tecnobrega* and Angola’s *kuduro*. The most striking of all is the fact that, in both cases, the most relevant stage is anchored in a “sound system” performance. However, *kuduro* cannot be properly understood as a perfect small scale duplication of the Brazilian phenomenon, as some of the agents involved in the production and—especially—the distribution process are missing, not to mention that *kuduro* is based on much looser structures. 95

As far as intellectual property is concerned, Angola’s copyright laws—as much of the legislation of this former colony—are modeled after Portugal’s codified IP regime. 96 Like *tecnobrega*, *kuduro* grew as a genre and as a business model in the shadow of IP rules and rationales. As in the case of *tecnobrega*, this should make us question the overall validity and contemporaneity of classical assumptions regarding the concepts of incentive and reward in traditionally IP-dependent industries.

2. **Ulterior Questions Raised by Kuduro: The Absorption of Post-Colonialism IP Standards**

A specific question raised by the phenomenon of *kuduro* is whether it is wise for developing African countries (most of them former European colonies) to insist on adopting IP legislation that is so close to their former colonizer’s legal regime.

European IP law is essentially harmonized international law, arguably tailored to the needs and worldviews of highly industrialized, developed countries. 97 It is, in substance, very similar in Europe, North America, and in industrialized Asian countries like Japan. This should almost automatically mean that it *should not* be the substantive law of poor, developing countries with completely different needs. 98

95. Id.
96. See infra I.B.
stronger mechanisms in place to enforce IP laws—a rather fictitious scenario when one looks into the past, but one that must be contemplated when looking ahead—\textit{kuduro} would have been stifled at birth.\textsuperscript{99} \textit{Tecnobrega}, incidentally, would have known a similar fate, and yet it survived to prove that it is a viable alternative to existing, calcified business models. Both \textit{kuduro} and \textit{tecnobrega}, in their different dimensions and idiosyncrasies, will continue to evolve and change. \textit{Kuduro} in particular needs more fine-tuning to maximize its potential in an extremely impoverished and lacking economy. In the future, it is important to be aware of the obstacles that might lie ahead, especially those traps hidden under written laws, such as when laws do not set flexible frameworks, allow for trial and error, or provide the same space that was granted in Brazil to \textit{tecnobrega}.

C. \textit{Kwaito} in South Africa

The Afrikaans word “\textit{kwaai}” is usually translated as “angry” or “aggressive.”\textsuperscript{100} A more contemporary interpretation brings this adjective closer to the concept of “cool,” a slang expression popular among young South Africans who witnessed the emergence of a new musical genre in the early 1990s, a sort of blend of a slow tempo \textit{house} music with \textit{hip hop}.\textsuperscript{101} This electronic, urban-based music began developing in the outskirts of the capital, Johannesburg, in an area known as Soweto.\textsuperscript{102} Literally, Soweto stands for South Westerns Townships, and its population has always been predominantly black. It has also been one of the poorest areas in greater Johannesburg, having endured years of restrictive regulations that prevented it from growing into anything else but a giant dormitory with limited infrastructure. In the early 1990s, Soweto’s black youth, who had never been taught how to play an instrument or read music, started taking advantage of the latest improvements in technology and created a new sound reflecting the reality of their upbringing.\textsuperscript{103} In a time and place where profound social changes were reshaping South Africa’s identity, the youth called this new genre \textit{kwaito}.\textsuperscript{104}

\textsuperscript{99} See infra III.A.
\textsuperscript{100} See Sizwe Satyo, \textit{A Linguistic Study of Kwaito}, 50(2) \textit{THE WORLD OF MUSIC} 91-102 (2008), for an in-depth study of the linguistic aspects of kwaito music.
\textsuperscript{101} Id.
\textsuperscript{104} Id.
Kwaito’s first hit was 1994’s “Don’t Call me Kaffir,” by Arthur Mafakote.105 “Kaffir” is an ethnic slur used to designate black people. The song became historically important106 not only from a musicological point of view, having codified the standards of a new genre, but also because of its theme and lyrics, which were especially relevant in a time in which South Africa was taking its first steps towards a post-apartheid107 society. Kwaito was born and developed during the same period that witnessed the release of Nelson Mandela after twenty-seven years in prison (1962-1990), Mandela’s 1993 Nobel Peace Prize, and the first fully representative democratic election in the country, which culminated with Mandela becoming South Africa’s first black president (1994-1999). It is therefore understandable that kwaito, which is paradoxically often (and perhaps inaccurately) described as an apolitical genre, is strongly associated with themes that are dear to the black youth of the townships.108

Arthur Mafakote went on to become “the king of kwaito” and subsequently founded his own label entirely dedicated to promoting new kwaito artists. He named it 999 Music Record, after his address in Chiawelo, Soweto, where he lived and where his home studio was located.109 To this day, 999 Music Record is still the most prominent kwaito label in South Africa.110 This convergence of home and studio is akin to the one found in the tecnobrega business model. The birth of kwaito is inextricably tied to the emergence of the post-apartheid society in South Africa,111 and it relates to the way in which kuduro dancing functions as social commentary on the aftermath of the war in Angola. As in kuduro, dance is also a key component in kwaito performances.112

For a long period, kwaito was essentially an underground genre geographically confined to the streets of Soweto. Recalling the origins of kwaito, DJ and producer Oscar waRona told BBC journalist Grant Clark that:

“It [kwaito] came from house [music], but we needed to put an African feel into it, so we added our own melodies, congas and basslines,” he [Clark] told me at his home recording studio. ‘We started the Boom Shaka band and went on the road, and people just started getting into it. But record companies weren’t interested and they all turned us down. We had to sell

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105. Id.
106. Id.
109. Mhlambi, supra note 103.
110. Id.
111. Id.
112. Id.
Nurturing Creative Industries in the Developing World

Having been forced to adhere to the informal channels that characterize underground business models was perhaps more of a boon than a bane to the development of kwai\textit{t}o music. Navigating those loose structures helped kwai\textit{t}o artists shape their identity, as “flying under the radar” provided them with wiggle room for experimenting and for trial and error. Bongo Maffin, a popular kwai\textit{t}o artist who became famous for inserting Latin beats into kwai\textit{t}o songs, notes that:

‘When we performed [a Latin-inspired] song at a free show in Soweto, 15 thousand people were going crazy to the latin beat, said band member Stoan. “The response was just deafening. People ask us how we came up with the song. How did we go so far and bring it back home.”

\textit{Kwaito}, which initially relied on bootlegged cassettes or improvised shows on street corners, with (often stolen) cars blasting the music to passers-by, grew informally as a genre and as an industry.\textsuperscript{115} It soon expanded to free shows like the one Maffin describes above, as well as parties where DJs played the most recent hits.\textsuperscript{116} The kwai\textit{t}o DJ shares many of the characteristics of the tecnobrega DJ, both of whom are more powerful figures in the production and distribution business than a traditional DJ. Like tecnobrega DJs, who are often producers, which means that they can also be studio owners, kwai\textit{t}o DJs have a strong say in shaping Soweto’s musical landscape.\textsuperscript{117} Under kwai\textit{t}o rules, parties are not as attached to the concept of a “sound system” as markedly as in Brazil. Having good equipment is undoubtedly an advantage for the organizers, but rivalry between organizers is not as fierce as in Pará’s suburbs. Today, kwai\textit{t}o is a pervasive genre in South Africa’s culture, having crossed geographical and racial boundaries:

Now [kwai\textit{t}o is] everywhere in black South Africa—booming out of minibuses, taxi ranks and clubs. Like rap and hip-hop, it is spawning its own fashion culture that gets absorbed—albeit much later—by suburban white culture. The ubiquitous “sportie,” a soft-brimmed hat, has moved from kwai\textit{t}o parties to white shopping malls. And blond girls are wearing

\begin{flushleft}
\textsuperscript{114} Id.
\textsuperscript{115} Mhlambi, supra note 103.
\textsuperscript{116} Id.
\textsuperscript{117} Id.
\end{flushleft}
their hair with a straight line of bangs wet and pushed to the side, a style popular with black women several years ago.\(^\text{118}\)

This is not to say that *kwaito* is no longer a ghetto-based black genre. It remains very much so, but it has made an imprint in music and culture at the national level, which is particularly remarkable given the frail economic climate of Soweto. *Kwaito* managed to evolve into a full-fledged, fully functional industry, and those who do well are able to capitalize on their success and invest in the expansion of the industry that launched them in the first place.

The $130 million-a-year *kwaito* industry offers a way out of the township and into the money. The major artists are all black. The major labels, radio stations and production companies are all black-owned and operated. Groups like Arthur and TKZee started their own labels, and now Triple 9, Guz Records, Kalawa, MDU and Ghetto Ruff churn out hit groups and records each year. 'There’s a whole bunch of people who have bettered themselves' through *kwaito*, says McGahey. 'Kwaito star Ishmael, for example, used to be a street kid. Now he’s driving a big white Mercedes-Benz.'\(^\text{119}\)

As any other musical genre, *kwaito* is not a universal ticket out of poverty, but it does illustrate the possibilities for social improvement and economic development that the growth of music industries can bring about.\(^\text{120}\) *Kwaito* is still expanding geographically within South Africa. The genre is not as popular elsewhere as in the Johannesburg area, but it keeps reaching new markets:

Cape Town-based *kwaito* group Dantai had a No. 1 hit, “Pajama Jam” (…). But since they’re from Cape Town, a much smaller kwaito market than Johannesburg, the group’s members can’t afford to quit their day jobs just yet. Dantai’s rappers, Goggi and Diggy Bongs, work as DJs; their singer Pam is a receptionist for a public-transit company.\(^\text{121}\)

*Kwaito* remains largely a South African phenomenon. There are a few kwaito bands and artists in Namibia,\(^\text{122}\) but the lack of an effective system of music production and distribution is, for the time being, an insurmountable obstacle to the further development of Namibian *kwaito*.


\(^{119}\) Id.

\(^{120}\) Clark, *supra* note 113.

\(^{121}\) Id.

\(^{122}\) The most famous of Namibian kwaito musicians is Martin Morokey known as The Dogg. His reputation is now beginning to expand outside the country, mainly into South Africa. See Faith Kavamba, *The Dogg Does Namibia Proud*, *Windhoek Observer* (Jan. 17, 2013), http://www.observer.com.na/entertainment/788-the-dogg-does-namibia-proud.
Tecnobrega, kuduro and kwairo have altered the configuration and power dynamics between agents both at the production and distribution levels. In the case of kwairo, however, the widespread success that the genre has come to enjoy in recent years has attracted attention from traditional players in the music production and distribution business.

In its early stages, kwairo used to be dismissed as “ghetto music.” Radios refused to play it for a long time, but in 1997 a new radio station based in the Johannesburg area, forced to comply with the new government regulations that established quotas for local music, started using kwairo material. At the time it was a way of gaining access to cheap music that could potentially draw in young, urban listeners who would connect with this contemporary genre. Analysts at the time predicted that this station, YFM, would not be able to get more than 70,000 listeners during the first year. YFM, however, managed to maintain an average of 611,000 listeners per week in its initial twelve months and went on to become South Africa’s biggest regional radio. According to the latest data, it now has 1,552,000 listeners per week, it has been publishing a lifestyle magazine since 1998, and YFM DJs—several of whom where homeless in 1997—now have the power to have their own albums published.

A similar phenomenon occurred with South African record companies. The major players in this market are Gallo, Tusk, Teal, EMI, and BMG. In the wake of kwairo’s growing popularity, EMI South Africa (often through its subsidiary CCP) began licensing and distributing kwairo music, actively partnering with Soweto artists/entrepreneurs. It called this strategy the “model for operating in the township music market” and it proved successful, as some of the releases sold over 100,000 copies. In 2004, EMI South Africa released a compilation of kwairo hits, entitled Kwairo South African Urban Beats, destined exclusively for the international market. Today, the album is still available through Amazon and other online retailers.

124. Id.
126. Id.
127. Id.
128. Bishop, supra note 123.
130. Bishop, supra note 123.
131. See JJC, Africa on Your Street, BBC.CO.UK (Mar. 2004), http://bbc.preview.some
The South African experience can yield helpful lessons for the music industry in other developing countries. In the case of Angola, it shows that it is possible to successfully monetize incipient genres that arise in impoverished suburban areas, like kuduro. While it is true that there is a larger pre-existing music industry in South Africa that one does not find in Angola, kuduro itself has proved to have a certain degree of international appeal. This can also mean that the pool of record companies that might become interested in distributing kuduro records might be larger than expected.

In the case of Brazil, kwaito teaches tecnobrega, which is slowly expanding into new platforms, that a viable growth plan might imply resorting to traditional channels of distribution. If the new trend is to use Lady Gaga or Coldplay songs, then the branch of tecnobrega artists that choose this path will have to bend to the rules of the licensing game. My guess, however, is that "classic" tecnobrega will continue to exist, with an emphasis on brega and similar components, and, in that case, it is necessary to search for other ways of maximizing the possibilities that digital technologies afford music producers and distributors today.

II. INTERPRETING NEW EQUILIBRIA: CHALLENGES AND NEW DIRECTIONS IN MUSIC PRODUCTION AND DISTRIBUTION

Tecnobrega reaches unprecedented levels of regional success in Brazil as it faces changes brought about by digital technology, the same technology that did away with traditional recording studios and allowed the genre to flourish in the first place. Kuduro leaps to Portugal, prompting a wave of interest in Angolan kuduro proper. Kwaito emerges from the ghetto to conquer South Africa, both musically and by entering mainstream channels of distribution. What lessons can we take from the emergence of "sound system" industries in the developing world?

A. Lessons from Tecnobrega, Kuduro and Kwaito

Although tecnobrega, kuduro, and kwaito flourish in very different environments—ranging from an extremely impoverished country like Angola, to a giant in Africa (South Africa is the most developed African country) and a giant in the world (Brazil is often referred to as part of the BRIC group, keeping company to Russia, India, and China, all of them having made significant economic progress in the last decades)—they illustrate the rise of alternative regional models of music production and

distribution in impoverished regions. These examples indicate that there is room for experimenting and for co-existence with traditional, dominant music industries.

Owing their existence to the emergence of digital technologies, these genres may, in the future, struggle to embrace the opportunities that those same technologies now offer in terms of widespread distribution: if tecnobrega artists want to be on iTunes they have to license the underlying songs, but licensing fees undermine the economics of tecnobrega as we know it. On the other hand, tecnobrega's flirtation with iTunes and Amazon seems to entail a certain amount of transformation of the genre (in the sense that by replacing brega songs with contemporary or more famous songs, artists and producers are willingly doing away with one of the identifying, genre-specific features of tecnobrega), in which case it would not be a big surprise if the business model itself were to change as well.

Equally or perhaps even more important than the future of tecnobrega is the fact that the business model had time to grow and mature, as did kuduro and kwaito. In a world that is getting smaller every day, and where these phenomena are increasingly reported and studied, how do we prevent future genres from being stifled at birth, either by too quick an absorption into mainstream channels of production and distribution or by submission to rigid legal frameworks?

While a comprehensive answer to these questions is beyond the scope of this article, I will address the IP-related aspects in the following section.

B. Tensions Between IP and Emerging Models of Cultural Production

1. Framing the Problem

What do the three examples described above tell us about the relationship between alternative systems of music production/distribution and IP? To begin with, they are clear indicators that copyrights can no longer be ubiquitously regarded as the balancing mechanism that acts as both a propulsive engine and a safeguard for creativity. New, viable, self-sustaining models emerge in the shadow of IP regulation and their survival and growth illustrate that there is a space for industries that operate under different paradigms. At some point, regulators and policymakers will have to decide whether it is worth it to preserve these spaces; the success of the Brazilian and African experiments seems to indicate that it would be a shame not to seize this opportunity to do so.

In reflecting on these issues, however, policymakers should be careful about the way they frame the problem. The mere existence of alternative systems of music production and distribution in developing countries does not automatically imply that developing countries in general—nor the ones where these systems arise in particular—should do away with existing regimes operating under traditional IP. If we think of tecnobrega, for instance, we see a localized phenomenon and certainly not a mainstream one. It co-exists with mainstream systems of music production and distribution, where traditional IP principles are firmly encrusted. Tecnobrega, kuduro, and kwando cannot therefore be seen as new transversal paradigms. But the emergence—and above all the sustainability—of tecnobrega can be used as a powerful argument in building a case for a world where new, evolving business models can and perhaps should be allowed to co-exist with traditional, proprietary regimes. Fostering this co-existence will depend on a set of overarching non-IP measures and devising flexible legal instruments that accommodate partially proprietary or even non-proprietary models of cultural production, a thought that I will return to in the next section.

Finally, when addressing the problems creative industries in developing countries face, strengthening copyright enforcement structures and copyright awareness is always a critical concern. It is especially important to frame the problem adequately in the music field: if the fight against piracy is framed merely as one akin to “fighting organized crime,” for instance, anti-piracy and awareness programs risk being impeded. Many of the agents involved in the tecnobrega business would concede that they are not respecting IP rights, but it is highly doubtful that they would regard themselves as members of organized crime. It is equally as doubtful that they would be regarded as such by society—and perhaps even by regional governments alike.

2. Alternative Approaches: Creative Commons

The fact that international agreements and national legislations impose the grant of traditional copyrights does not mean that they must be the only legal tool used to protect creative works. A recent example of copyrights receding, without disappearing or losing their enabling strength, is the co-existence between Creative Commons (CC) licenses and traditional proprietary rights. CC licenses are voluntary and they enable copyright
owners to break the bundle of copyright protections and choose which ones they want to keep for themselves and which ones they do not mind giving away. The goal of CC licenses is to build, through "the combination of our tools and our users," a "vast and growing digital commons, a pool of content that can be copied, distributed, edited, remixed, and built upon, all within the boundaries of copyright law."137 This is a balanced, sustainable perspective—using copyright law to foster the digital era’s remix culture. Brazil, in spite of a few bumps along the way,138 has been particularly active in implementing these licenses and promoting them as tools in the country’s cultural policies.

Developing countries seeking to foster creativity-friendly legal environments should consider a similar approach—be it in the case of systems of music production and distribution or other cultural industries.

3. Looking Beyond Copyright’s Yard

Fixing the shortcomings of the systems of cultural production in developing countries involves considering many other fields beyond the sphere of IP (from fixing infrastructural shortcomings to finding capital, etc.). One caveat to keep in mind is that each country will require tailored solutions to its specific needs. As the United Nations Conference on Trade and Development has repeatedly stressed, it is necessary to find a "holistic development approach that considers their [developing countries’] different cultural identities, economic aspirations, social disparities and technological disadvantages."139 A one-size-fits-all approach is therefore inadequate—and ultimately counterproductive.

Also, while strictly legal solutions—such as resorting to Creative Commons licenses or strengthening enforcement mechanisms—are always crucial for the construction of adequate creative environments, developing countries should also consider broader strategies that indirectly promote creativity. The case that I am about to describe, coming from Brazil, stemmed out of the notion that increasing access to internet equaled increased access to creative inputs, and therefore, the government developed a system of state-funded programs that promoted access to creative resources.

137. Id.


139. UNCTAD, supra note 100, at iii.
i. "Pontos de Cultura" in Brazil

In a country with a declining but nevertheless high poverty rate (around 25% for the year 2010), Internet usage is concentrated in cities and encompasses around 45.6% of the population. Access to the Internet has grown impressively over the last few years, having risen from 14.1% in 2005 to 22.8% in 2007, 34.4% in 2008, and now being close to half of the country. Brazil now ranks seventh in Internet usage in the world.

Given the fact that many of the new platforms of collaborative research and creation that have emerged in the past decade rely heavily on digital media, the federal government decided to create Pontos de Cultura (Points of Culture), which are described by the Ministry of Culture as “entities recognized and financially and institutionally supported by the Ministry” with the scope of “pursuing social and economic goals in their communities.” They are basically places where people can meet to have access to the Internet and the Ministry does not require them to follow a particular model or agenda. In fact, the Ministry of Culture’s website emphasizes that the only common denominator of all the Pontos is that they promote “culture and their management is divided between a public power and the community;” “they can be located in a church, a school, a recreation society or even the home of a volunteer.” The Ministry gives each Ponto $R 185,000 (around $111,000) in five installments, and a minimum of $R 20,000 ($12,000) of the first one must be used to purchase a computer and other electronic equipment for the Ponto (the non-exhaustive examples provided by the Ministry include digital cameras and equipment to create a mini CD recording studio). An additional requirement is that all Pontos use open source software. This is leading to the creation of ‘equipes’ (teams) of software developers in each Ponto and enhancing interaction between teams from different Pontos. In 2010, there were 2500 Pontos in 1122 cities.

Recent economic literature is exploring the possibility of applying the concept of the Pontos to small and medium-sized enterprises (SMEs) and SMEs clustering: because Pontos arise in response to specific local needs and are shaped accordingly, and because they are linked by “digital

141. Id.
143. Id.
144. Id.
ecosystem technologies," they can become "incubators of new activities." SMEs, on the other hand, can flexibly collaborate and share experiences and knowledge while keeping at the same time their independence. They are therefore elastic enough to adapt their strategies to the market needs and they may have the capability to develop new products and solutions through common activities like R&D, distribution, etc. From this point of view, therefore, the Pontos de Cultura can be a stimulus to the implementation of clusters of SMEs, starting from the local level with the goal to become more mature, extended and dynamic.

Pontos are the flagship of the Brazilian government's Cultura Viva (Live Culture) program. As part of this program, the government is now planning to create a nation-wide register of Pontos de Cultura (Cadastro Nacional de Pontos de Cultura) in an effort to simplify interaction "between cultural entities and the government." The register would also contribute to a more efficient "exchange of resources" and simplify the taxation framework applicable to each Ponto. A recent development is the creation of Pontões de Cultura (literally large Points of Culture), which function as coordinating entities between Pontos at a regional level.

III. CONCLUSIONS

A. Conclusions Regarding Developing Countries

Looking at the Brazilian, Angolan, and South African experiences shows that there are alternative business models for the production and distribution of electronic-based musical genres in developing countries. This means that the music industry of these countries can no longer be seen as a united system, but rather as an environment of co-existing systems operating under different rules and philosophies.

These alternative music industries have so far developed in the shadow of copyright laws and policies, challenging classic IP assumptions and suggesting that the advent of digital technology has somehow upset the grounds on which contemporary IP legislation rests. It is unlikely, however, that these industries will be able to avoid confrontation with IP for much longer. Developing countries should therefore pay increasing attention to
existing normative frameworks that might impact these and other creative industries, as well as to cultural and innovation policies in general.

Furthermore, developing countries should consider additional strategies, such as promoting flexible licenses like Creative Commons, complementing IP policies with programs that emphasize access to creative inputs and strengthening enforcement mechanisms without demonizing every kind of unauthorized borrowing. A further realization developing countries might come to is that they do not necessarily need to import IP laws and standards from the developed world—particularly when these developing countries are former colonies whose legal regimes were modeled perhaps a little too closely after their former colonizer’s own legal regimes. Developing countries’ experiences with music industries operating under alternative parameters indicate that they should reassess the level of copyright protection according to their domestic needs—not their former colonizer’s—to strike the appropriate balance between incentives, protection, access, and opportunities of creation.

B. A Brief Note on Developed Countries

*Tecnobrega, kuduro*, and *kwaito* are examples of electronic-based genres. As such, they rely heavily on sampling\(^{151}\) techniques and would have been stifled at birth if existing copyright laws had been enforced. There is abundant literature\(^{152}\) showing that if contemporary IP standards and laws had been applied earlier in the twentieth century, in what we now call the developed world, then today we probably would not know the meaning of the word *jazz*—or the names of other musical genres that favor borrowing techniques, like *rap*—because the songs *jazz* musicians were borrowing from were not licensed, and therefore, the genre itself would have been illegal.

It is outside the scope of this article to suggest reforms concerning IP laws and policies of the developed world, but as a final suggestion I would note that perhaps developed countries, who adhere primarily to proprietary business models, should consider the cases of *tecnobrega, kuduro*, and *kwaito* when analyzing the strengths and shortcomings of their policies concerning IP regulation, cultural policies, and music industries. In the U.S., the Pixies were the first band to record their concerts and sell CDs as the public walked out of the concert venue that same night.\(^{153}\) Their strategy

\(^{151}\) The Oxford Dictionary of Music PP (Oxford University Press, 2013), defines sampling as "[a] process in which a sound is taken directly from a recorded medium and transposed onto a new recording."

\(^{152}\) See, e.g., James Boyle, Enclosing the Commons of the Mind 122-59, 236-37 (2010).

was considered groundbreaking. This was 2004 and, by then, *tecnobrega* sound systems had been exploring this business model—living off of it, in part—for a number of years.

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