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The Revolutionary Influence of Low Enlightenment:

Weakening Copyright in Developing Countries to Improve Respect for Human Rights and the Rule of Law

Martin Skladany

Abstract
Diverse groups have banded together to critique current intellectual property laws under the Access to Knowledge movement. The Geneva Declaration on the Future of the World Intellectual Property Organization, the Access to Knowledge Treaty, and the Adelphi Charter on Creativity, Innovation and Intellectual Property call for an end to further growth in intellectual property protection and demand that the World Intellectual Property Organization be more cognizant of the needs of developing countries in terms of expanding access to textbooks and other educational materials. However, the movement has yet to appreciate the value of significantly weakening copyright law in developing countries so as to maximize the flow of developed country artwork and media into developing countries. This position has been fully grasped in patent law with the calls for wider distribution of lifesaving drugs, yet the need is arguably as great with copyright; for freely accessible artwork, unlike freely distributed drugs, has the ability over the long term to alter how individuals think about human rights, freedom, the rule of law, democracy, and equality and hence to improve how countries fundamentally operate.
Introduction

The [French] Revolution was not la faute à Rousseau, and probably not la faute à Voltaire either.

—Robert Darnton

Where does so much mad agitation come from? From a crowd of minor clerks and lawyers, from unknown writers, starving scribblers, who go about rabble-rousing in clubs and cafés. These are the hotbeds that have forged the weapons with which the masses are armed today.

—P. J. B. Gerbier

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In pre-revolutionary, 18th century France, the Low Enlightenment of popular media—anti-monarchist essays, materialist philosophical treatises, social and cultural criticism, religious satire, utopian visions, pornographic novels—produced works that were not unequivocally progressive nor necessarily skillful masterpieces. Their authors—the men who wrote the best-sellers of prerevolutionary France, yet have disappeared from literary history—have been described as the Rousseaus du ruisseau (Rousseaus of the gutter). Yet Low Enlightenment works were mass consumed and often explicitly or implicitly spread worthy ideals even though they frequently appeared smutty or libelous. Their popularity made them more powerful than the canons of the High Enlightenment. In fact, Low Enlightenment artwork spread Enlightenment ideas and fomented dissatisfaction of political abuses, which helped create the conditions for the French Revolution.

This article attempts to generalize the idea of the Low Enlightenment, to take it beyond its 18th century context to designate how mass media tends to spread dominant ideologies. Low Enlightenment forces should be encouraged to be replicated today by significantly weakening, or possibly even eliminating, copyright in developing countries to allow for the freer flow of developed country artwork and media into developing countries in the hope that over the long run exposure to progressive messages in developed country artwork would inspire respect for human rights, freedom, equality, and the rule of law in a significant number of individuals within developing countries.

Low Enlightenment mass media influences are worth exploring because there are so few tools that effectively promote human rights, freedom, equity, and the rule of law, which are good in and of themselves but also fundamentally important to development, which "encom-
passes not just resources and capital but a transformation of society." The Eastern European Communist era "teaches that nothing is more potent than exposing people to the prosperity and freedoms of the world around them."

Certainly there are problems confronting developing countries that will not magically dissolve by watching movies. Also, copyright policy is not the only factor slowing down the adoption of liberal values, nor will the considerable minimization of copyright guarantee political transformation. Furthermore, this is not to claim that increasing the amount of developed country artwork in certain developing countries will have more of a positive effect than other policies or events, however unlikely they are to come about, such as having a long-standing dictatorship fall to an enlightened, democratically elected government that implements numerous programs aimed at respecting human rights, justice, and equality. The proposal expounded upon here is less than perfect, yet it is more effective and more realistic than many other methods to change values for the better in certain developing countries. Finally, it does not have to be the most effective method in order to deserve consideration because it can be but one part of a larger human rights strategy.

Of course, this is not to imply that all developing country elite would be convinced to govern well or that everyone's prejudice would be erased if they were introduced to progressive messages in artwork. For example, the late Kim Jong-II's love of Hollywood, demonstrated by his collection of allegedly as many as 20,000 films, did not convince him to grant much if any freedom to North Koreans. Yet he clearly understood the power of developed country artwork because he refused to allow his fellow citizens the opportunity to view it. Kim Jong-II and other megalomaniacs aside, over time exposure to art and media that directly or indirectly champion equality, freedom, and human rights will positively change some individuals' perceptions on these fundamental issues. Such recognition of liberal and democratic values "eventually leads to their realization; lack of recognition continues the subjugation of the poor."

Furthermore, the proposal that developing countries consider sizably curtailing copyright is not as radical as it first may sound. Why should the existence of copyright for 70 years after an author's death be the presumed default or normal setting by which every other policy is judged?

Numerous studies in the patent field demonstrate that firms in most industries,
Besides the pharmaceutical and chemical industries (Big Pharma), do not view patents as effective tools for safeguarding their competitive advantage. Firms in most industries instead view being first to market, clever marketing, and good customer service as more effective strategies. Thus, much of the justification for patent law appears to not be effective for most industries—a point even made in testimony by the former president of Yale University to a joint hearing of the Department of Justice and Federal Trade Commission. If copyright is not helping those in need in developing countries, we must seriously reconsider its structure and possibly its existence in developing countries.

Some developed countries desire to limit dialogue and commerce. For example, in the field of intellectual property (IP), most publicity on the harmful effects of stringent IP protection of U.S. exports to developing countries has focused on patents for agricultural products and lifesaving drugs. Yet large or powerful copyright holders (Big Copyright) have taken the same restrictive export approach in developing countries. These copyright holders have for decades essentially dictated the U.S. government’s stance on copyright both domestically and internationally. Not only has Big Copyright been largely unwilling to accept more relaxed copyright regimes in developing countries, it has forcefully lobbied the U.S. government to use trade negotiations to pressure developing countries to adopt ever more stringent copyright regimes. In this vein, trade sanctions have been instigated against and trade concessions withheld from developing countries that have not lived up to Big Copyright’s stringent expectations. Jagdish Bhagwati agrees that:

a ‘selfish hegemon’ such as the United States, reflecting its own lobbies’ agendas, pushed for a common, coordinated policy of excessive intellectual property protection at the WTO. In short, a socially harmful policy may be imposed, under the pretext of coordination or the provision of what economists call public goods, by powerful nations in an interdependent world.


21 See Levin et al., supra note 20.


23 While the scope of my argument applies equally to all developed countries, for convenience’s sake I will sometimes refer only to the United States.


25 Throughout this article I will interchangeably use “Big Copyright,” “Hollywood,” “large or powerful copyright holders,” “large copyright holders,” and “powerful copyright holders” to refer to large or powerful copyright holders.

26 This proposal is not anti-international trade in general. Trade exposes developing countries to new products and ideas, which can be beneficial. Unlike laws governing conventional physical goods, copyright needs to be weakened to maximize the exposure of developing country individuals to foreign artwork. Maximal exposure obviously would not work for physical goods because of the costs involved, but as is widely noted this constraint does not exist for certain art forms that can be copied and distributed at miniscule cost.


Big Copyright has also been a driving force behind increasing IP protection across the world. Through the U.S. government, Big Copyright pushed for the 1994 World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), mandating all WTO members to increase their domestic IP protection, and also coerced other countries to join the 1996 World Intellectual Property Organization (WIPO) Copyright Treaty (WCT), an optional agreement further strengthening copyright, during bilateral trade agreement negotiations. Just as Big Pharma became villains in the eyes of much of the world—ironically thanks in part to the efforts of Hollywood, which pursues the same strategies—so might Big Copyright suffer for refusing to dramatically share its products with the poor.

Diverse groups—from access-to-medicine advocates, to farmers resisting the licensing of seeds by multinational corporations (MNCs), to individuals promoting free software and open licensing under Creative Commons—have banded together to critique current IP laws under the Access to Knowledge (A2K) movement. The A2K movement’s primary copyright concerns are a lack of access to educational material, not developed country media, and providing flexibility for developing countries to determine their own copyright needs. Subsidiary copyright criticisms are similar to critiques of copyright within developed countries and center around how copyright’s scope, breadth, and length have become extreme. They focus on how


(A) to further promote adequate and effective protection of intellectual property rights, including through—

[I](A) ensuring accelerated and full implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights referred to in section 1011(d)(15) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(15)), particularly with respect to meeting enforcement obligations under that agreement; and

(ii) ensuring that the provisions of any multilateral or bilateral trade agreement governing intellectual property rights that is entered into by the United States reflect a standard of protection similar to that found in United States law;

(ii) providing strong protection for new and emerging technologies and new methods of transmitting and distributing products embodying intellectual property;

(iii) preventing or eliminating discrimination with respect to matters affecting the availability, acquisition, scope, maintenance, use, and enforcement of intellectual property rights;

(iv) ensuring that standards of protection and enforcement keep pace with technological developments, and in particular ensuring that rightholders have the legal and technological means to control the use of their works through the Internet and other global communication media, and to prevent the unauthorized use of their works; and

(v) providing strong enforcement of intellectual property rights, including through accessible, expedient, and effective civil, administrative, and criminal enforcement mechanisms;

(B) to secure fair, equitable, and nondiscriminatory market access opportunities for United States persons that rely upon intellectual property protection; and

(C) to respect the Declaration on the TRIPS Agreement and Public Health, adopted at the Fourth Ministerial Conference at Doha, Qatar on November 14, 2001.


36 See generally Creative Commons, http://creativecommons.org/ (last visited Jan. 20, 2013).

37 See generally ACCESS TO KNOWLEDGE IN THE AGE OF INTELLECTUAL PROPERTY (Gaëlle Krikorian & Amy Kapczynski eds., 2010).

38 See generally ACCESS TO KNOWLEDGE IN AFRICA: THE ROLE OF COPYRIGHT (Chris Armstrong et al. eds., 2011).

copyright limits artistic freedom through overly restrictive practices against borrowing from other artists, a process that is widely acknowledged as critical to the creative method. This critique has numerous forms. Overly expansive copyright is denounced for dulling the pace of innovation, inhibiting free speech, stifling political participation with regards to allowing the public the opportunity to define political vocabulary and delineate salient political values, to confining the commons.

The A2K movement not only embraces issues broader than copyright, but is also diverse in terms of the interests involved and the IP subject matters at stake. In 2004 the A2K movement pressed the WIPO to be more responsive to how IP issues affect developing countries. Toward this effort many scientists, academics, and nonprofits signed the Geneva Declaration on the Future of the World Intellectual Property Organization, an important precept of which was focusing "more on the needs of developing countries" and also viewing "IP as one of many tools for development—not as an end in itself." The A2K movement quickly followed with a draft Access to Knowledge Treaty and the Adelphi Charter on Creativity, Innovation and Intellectual Property.

However, none of the Geneva Declaration, the A2K Treaty, or the Adelphi Charter advocate for the dramatic reduction in copyright's scope and length or contemplate the possible need to abolish copyright in developing countries. The Geneva Declaration states unequivocally that the A2K movement is not against intellectual property; rather, what is needed is "striking a balance between the public domain and competition on the one hand, and the realm of property rights on the other."

These documents call for an end to further growth in IP protection and demand that the WIPO be more cognizant of the needs of developing countries. While I am sympathetic to such appeals and recognize that the A2K movement consists of many groups with varying positions, I am concerned that the movement has yet to appreciate the value of significantly weakening copyright law so as to maximize the
flow of developed country artwork into developing countries. This position has been fully grasped in patent law with the calls for wider distribution of lifesaving drugs, yet the need is arguably as great with copyright; for freely accessible artwork, unlike freely distributed drugs, has the ability over the long term to alter how individuals think about human rights, freedom, the rule of law, democracy, and equality and hence to improve how countries fundamentally operate.\textsuperscript{52} Copyright is not inherently bad; neither is it an end in and of itself. It is a tool that is only sometimes helpful. In the case of developing countries, having its scope and length substantially lessened would do the most good for the poor.

Developing country artwork can provide all these benefits to citizens but often fails because the message is repressive, the facts are wrong or biased, or the quality is unmemorable.\textsuperscript{53} Also, there is simply not enough locally produced artwork in certain artistic mediums in some developing countries, and certain artwork created for a large audience cannot reach it: “More than 40 percent of India is media-dark, so TV- and radio-based messages are inappropriate methods to reach” a large segment of the population.\textsuperscript{54} Further, the high production value of U.S. television shows and movies, for example, makes them more appealing. This is not to say that all artwork from developing countries is bad, that developing countries do not vary greatly in what messages they convey through their artwork,\textsuperscript{55} that all developing countries have identical needs for more progressive artwork,\textsuperscript{56} or that all developing country cultural, social, and political practices are worse than those in developed countries—after all, “[w]omen hold 44% of parliamentary seats” in South Africa, a far higher percentage than in many developed countries.\textsuperscript{57} Rather, it is to suggest that the liberal messages of much of developed country art can inspire individuals in developing countries.

A study by Robert Jensen and Emily Oster examined the consequences of introducing cable television on the status of women in rural India. During a three-year period cable television was introduced into 21 of the 180 sample villages spread over five Indian states between 2001 and 2003.\textsuperscript{58} Each year they surveyed women in the village to compare “changes in gender attitudes and behaviors between survey rounds across villages based on whether (and when) they added cable television.”\textsuperscript{59} Their results found that cable television has significant positive effects on the status of women. Once cable television is brought into a village, “there are significant changes in gender attitudes: women are less likely

\textsuperscript{52} MÈDECINS SANS FRONTIÈRES, supra note 33, at 1.
\textsuperscript{53} Some anthropologists assume that divergences in culture do not allow the claim that art is created in cultures outside of the West. For a criticism of this stance, see Denis Dutton, \textit{But They Don’t Have Our Concept of Art}, in \textit{THEORIES OF ART TODAY} 217 (Noel Carroll ed., 2000).
\textsuperscript{54} While this figure has been reduced since the publication of Prahalad’s book, it has not completely disappeared. C.K. PRAHALAD, \textit{THE FORTUNE AT THE BOTTOM OF THE PYRAMID} 40 (2005).
\textsuperscript{55} Some individuals in developing countries use innovative ways to communicate or educate through art. For example, Brij Kothari, in India, “created a system called Same Language Subtitling. The system uses color to highlight subtitles word by word as the songs play akin to ‘follow the bouncing ball.’” \textit{STEPHEN C. SMITH, ENDING GLOBAL POVERTY: A GUIDE TO WHAT WORKS} 110 (2005).
\textsuperscript{56} For example, Bollywood, generally speaking, will likely only continue to become a larger and more positive force in spreading the notion of human rights and equality.
\textsuperscript{57} \textit{Walking Several Paces Behind}, Economist, Oct. 9, 2010, at 68.
\textsuperscript{59} Id.
to report that it is acceptable for a husband to beat his wife, and less likely to express a preference for sons.” Jensen and Oster also found that “[b]ehaviors traditionally associated with women’s status also change: women report increased autonomy (for example, the ability to go out without permission and to participate in household decision-making) and lower fertility.” The magnitude of the effects was “quite large,” and the “effects happen quickly, with observable impacts in the first year following cable introduction.” Remarkably, the Tamil Nadu government “has recently begun a program to provide free color televisions to 7.5 million households with the goal of ensuring every household has one.”

Their study did not differentiate between the effects of developing versus developed country artwork because both domestic and international programs were shown during the course of the study. Empirical work in this field is quite new, with Jensen and Oster’s study, along with another by Chong, Duryea and La Ferrara that will be later discussed, being the two significant examples. While they both show strong results, a follow-on study attempting to examine the difference in exposure to developing versus developed country artwork would be quite informative.

We are used to thinking of Western culture as corrosive, just as Voltaire had scathing words for Low Enlightenment authors—“placing ‘the miserable species that writes for a living’ – the ‘dregs of humanity’…at a social level below prostitutes” and thought it wise “to prevent [the masses] from learning to read” to maintain order. Those on the right of the political spectrum aver that Western culture is degrading morality, while the left asserts that media encourages consumerism and passivity among other misdeeds. Obviously culture is a common concern across the political spectrum, but development scholars and human rights theorists need to be able to discuss culture without fear of politicization.

Critiques from both aisles have some merit, but Western culture has certain positive attributes as well. Although art from developed countries is often far from ideal in the values it espouses or in artistic quality, it needs to be measured not against perfection but against the practices and artistic messages that pervade developing countries. While some developed country artwork is actually less liberal in the values

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60 Id.
61 Id.
62 Id.
63 Id. at 1060.
64 Id. at 1062.
65 “Demetrios Papademetriou, head of the Migration Policy Institute in Washington, DC, argues that such ‘knowledge transfers, the social and political remittances’ are very important. He and other migration watchers are turning their attention from the flow of money to the flow of ideas. It is hard to prove anything, but there are cases where large-scale return migration has coincided with (and perhaps boosted) political and economic change.” The Aid Workers Who Really Help, ECONOMIST, Oct. 10, 2009, at 62.
66 Darnton, supra note 2, at 94-95 (citing Voltaire, Dictionnaire Philosophique (1764)).
67 Id. at 90.
68 See generally BILL DONOHUE, SECULAR SABOTAGE: HOW LIBERALS ARE DESTROYING RELIGION AND CULTURE IN AMERICA (2009).
69 For example, see generally JOHN DE GRAAF, DAVID WANN, & THOMAS H. NAYLOR, AFFLUENZA: THE ALL-CONSUMING EPIDEMIC (2001) (in association with Redefining Progress, a nonpartisan organization located in Oakland, CA).
70 “There is only one [television] network in Norway and it is stupefyingly bad.... The best that can be said for Norwegian television is that it gives you the sensation of a coma without the worry and inconvenience.” BILL BRYSON, NEITHER HERE NOK THER: TRAVELS IN EUROPE 29 (1992).
it communicates than some developing country artwork, the balance still favorably points toward developed country artwork being more liberal, varied and factually correct overall. Much of the time Western artwork will be more helpful than harmful to those who consume it in developing countries. Further, presenting the complete spectrum of developed country artwork, warts and all, will convey to developing country citizens how rich and varied a culture can be if it espouses freedom of expression. Indeed, since not even the best art will touch everyone, the most effective strategy is to allow access to all developed country artwork. Critics who object that greatly moderating copyright will likely take years if not decades to show sustained results would do well to remember Benjamin Franklin's response to doubt about the prospects of initial balloon flights: "What good is a new-born baby?"

In the eyes of developed country citizens, illegally obtaining copyrighted artwork does not appear to cost much in developing countries—"pirated DVDs of Hollywood movies" cost roughly $1 in China. Nevertheless, when 1.4 billion people worldwide live on less than $1.25 per day, barriers to legal distribution are enormous and even illegal distribution remains expensive. Piracy helps lower cost barriers, yet piracy can only do so much given that buyers and sellers face legal risks; given that distribution is difficult where citizens lack Internet access, which is the case for over 84% of individuals in Africa and 72% in Asia; and because even pirates want to collect a profit.

Encouraging developing countries to severely weaken copyright for the good of poor citizens would also substantially benefit developed countries, Big Copyright, and all non-copyright-focused firms. If widespread access to developed country artwork over the long term encourages developing country societies to practice greater respect for human rights, freedom, equality, the rule of law, and clean governance, such practices would encourage robust and sustainable economic growth, and such growth in developing countries would benefit developed countries' economies. Developed countries would

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71 Furthermore, not all developed country individuals ascribe to all liberal values or disbelieve in superstition: "To this day, many Lapps earnestly believe that if you show the [Northern Lights] a white handkerchief or a sheet of white paper, they will come and take you away." Id. at 32.

72 Also, developed country citizens can likely benefit substantially from being exposed to good art from developing countries. Skladany advocates for the abolition of copyright in developed countries for other reasons. See generally Martin Skladany, Alienation by Copyright: Abolishing Copyright to Spur Individual Creativity, 55 J. COPYRIGHT SOC'Y U.S.A. 361 (2008).

73 "Eh! à quoi bon l'enfant qui vient de naitre?" Friedrich Melchior Grimm et al., Correspondance, Littéraire, Philosophique et Critique 349 (Paris, Garnier Frères 1880).


76 It is possible that much of what is pirated is of the most salacious material, so the scope of making developed country art that touches on human rights, freedom, and equality more available through considerably reducing copyright is possibly greater than initially assumed.

77 Such hesitancy to take part in piracy varies from individual to individual, but group trends may also be prevalent among, for example, certain age groups. Further, many individuals may not be willing to visit places that sell pirated materials or trust piracy websites to not give their computers viruses.


79 While such a profit is smaller, it does not reduce the cost of the pirated artwork to its marginal cost because it includes compensation for the pirate to agree to take on illegal activity.

gain from better investment opportunities and more robust trade with the newly vigorous economies of developing countries. The newly invigorated respect for liberal values in developing countries would also lessen national security risks faced by developed countries. Big Copyright and all non-copyright-focused firms would benefit from a less dangerous world and increased long-term profitability from the emergence of new overseas markets. Further, the short-term reduction in sales in developing countries would be largely inconsequential—e.g., Hollywood’s decision to make a star-studded movie does not hinge on its potential market in Swaziland, nor does a developed country artist’s resolve to put more paint on canvas pivot on her prospects in the Peruvian market. Big Copyright would also reduce its risk of being branded an international villain like Big Pharma.

The optimal policy is the significant weakening or elimination of copyright in developing countries. This is the preferred option because it is the most opening—it will allow for the most impact and is least likely to be seen as government interference or propagandistic in nature. Practically speaking this entails more than the United States and other developed countries simply ceasing to pressure developing countries to strengthen their copyright protection. Developed countries must firmly and openly commit to not oppose developing countries’ desires to weaken copyright protection; this commitment includes graciously agreeing to any corresponding alterations to treaties involving copyright and explicitly pledging to not retaliate against developing countries that weaken the copyright protection of developed country artwork. Further, developed countries should actively encourage developing countries to significantly curtail copyright.

Given the systemic corruption and neglect of human rights that is prevalent in developing countries, numerous developing country politicians might oppose a policy of substantially reducing copyright because in the long run it could undermine some of the illiberal values that they espouse. This is unfortunate, yet there will also likely be developing country politicians who would advocate for a meaningful reduction in copyright. If the politicians who oppose the dissemination of more developed country artwork into their countries have been democratically elected, developed countries could go as far as offering enticements to convince such governments to allow open access, yet the general policy should be that no developed country will force a developing country to weaken its copyright regime if it is not interested in doing so, because such action would simply be the opposite of what the United States has been destructively doing for so long—pressuring developing countries to adopt overly restrictive copyright laws that developing countries only agree to out of fear of retaliation. What developing country individuals need is free, robust access to developed country artwork if they choose to seek it out.

Ideally we should encourage the spread of more developed country artwork in developing countries, but such a policy becomes arguably even more important in politically repressive developing countries.

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81 This does not hold for the largest middle-income country markets like India.
82 The societal benefits from my proposal will not necessarily lead to visible aggregate results immediately or in a few years. This is a long-term proposal.
83 See DRAHOS & BRAINTWATE, supra note 28.
because liberal policies are being suppressed not just by cultural norms but also by the full brunt of political power. Such scenarios are sadly not rare: "There are at least 40 dictators around the world today." Further, "Freedom House reports that only 60 percent of the world's countries are democratic ... not much more than a majority. And many of those aren't real democracies at all, ruled instead by despot in disguise while the world takes their freedom for granted." Also, some dictators are already broadcasting selective developed country media to create a false, negative impression of the quality of life in developed countries. For example, presumably to inculcate a vision of a crime-ridden United States, the Vietnamese government used to air Early Edition, a U.S. television show that in each episode deals with some man-made tragedy.

While a neutral position or transparent advocacy for the significant weakening of copyright will be the best policy in democratic developing countries, we should encourage the spread of developed country copyrighted material in closed-off, repressive countries run by dictators, regardless of the dictator's wishes. The need for and effectiveness of such encouragement are indicated by the fact that repressive regimes are genuinely fearful of their citizens being exposed to liberal values and the hope they bring. Barbara Demick notes:

The North Korean government accused the United States and South Korea of sending in books and DVDs as part of a covert action to topple the regime. DVD salesmen were arrested and sometimes executed for treason. Members of the Workers' Party delivered lectures warning people against the dangers of foreign culture: "Our enemies are using these specially made materials to beautify the world of imperialism and to spread their utterly rotten, bourgeois lifestyles. If we allow ourselves to be affected by these unusual materials, our revolutionary mind-set and class awareness will be paralyzed and our absolute idolizaton for the Marshal [Kim Il-sung] will disappear."

The potential benefits of increasing the amount of developed country artwork available to developing country individuals are, of course, tempered if a despot refuses to let the artwork into the country. China is far from alone in heavily suppressing copyrighted media in hopes of maintaining its repressive regime. In the case

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84 Generally, the more regressive a developing country is in any of the fields described in this article (equality for women and minority groups, etc.), the more urgent it is that we increase the availability of developed country art in those countries because such a policy is likely to have the greatest effects in such repressive states.
86 Id.
88 For example, this could possibly entail "turn[ing] a blind eye to the smuggling networks and the traders" who import media and technology. ECONOMIST, supra note 15.
89 BARBARA DEMICK, NOTHING TO ENVY: ORDINARY LIVES IN NORTH KOREA 214 (2009).
90 "China's 'great firewall' already imposes tight controls on internet links with the rest of the world, monitoring traffic and making many sites or services unavailable. Other countries, including Iran, Cuba, Saudi Arabia and Vietnam, have done similar things, and other governments are tightening controls on what people can see and do on the internet." The Web's New Walls, ECONOMIST, Sept. 4, 2010, at 11.
of censoring, despotic developing country regimes, weakening of copyright is only part of the solution; developed countries must actively promote developed country media and artwork in developing countries. Some practical suggestions for addressing this issue include: results-based prizes for sneaking developed country artwork into politically repressive countries, national security copyright task forces, or advocating for the expansion of Radio Free Europe’s mission of providing “free media in unfree societies.”

This paper does not take a Luddite position by arguing against copyright in developing countries. In fact, as Marshall McLuhan has argued, the medium can be more important than the message, in that the exportation of a medium has its own effects distinct from the messages conveyed. I favor dramatic increases in the availability of information technology in developing countries and am open to the proposition that such increases could be possibly as effective in getting people to appreciate equality, freedom, and clean, democratic governments. Of course, a significant increase in the accessibility of information technology in developing countries would also substantially foster the availability of developed country artwork in developing countries.

Section I of this paper will first discuss why developing countries need to substantially weaken copyright. It will then go on to demonstrate that developed countries should be in favor of reducing copyright in developing countries as well. It will conclude that multinational corporations should also encourage such a policy because it is in their long-term interest. Section II of this paper will suggest second-best proposals to increase the dissemination of developed country artwork in developing countries if copyright reform is unlikely in the short term. In some cases, these proposals can serve as transitional steps toward weakening copyright. Section III will discuss some potential criticisms of this proposal. Finally, Section IV briefly concludes.

I. Why Developing Countries Need to Substantially Weaken Copyright

The benefits to developing countries of considerably reducing copyright will be addressed in the first subsection. The second subsection will discuss the advantages that such a policy would bring to developed countries. The final subsection will show that this policy proposal is also in the best interest of not only Big Copyright but also all firms.

A. Why Best for Developing Countries

We asked Oucha Mbarbk, a man we met in a remote village in Morocco, what he would do if he had more money. He said he would buy more food. Then we asked him what he would do if he had even more money. He said he would buy better-tasting food. We were starting to feel very bad

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91 Radio Free Europe, http://www.rferl.org/info/about/176.html. Radio Free Europe/Radio Liberty “journalists report the news in 21 countries where a free press is banned by the government or not fully established. We provide what many people cannot get locally: uncensored news, responsible discussion, and open debate.” Id.


93 Given the neuroplasticity of brains, such programs might need to take heed of Carr’s warning. Without taking a Luddite perspective, Carr believes that for educational purposes teachers need to be careful how they use technology so that it is not a distraction that decreases understanding. NICHOLAS CARR, THE SHALLOWS: WHAT THE INTERNET IS DOING TO OUR BRAINS (2010).
for him and his family, when we noticed a television, a parabolic antenna, and a DVD player in the room where we were sitting. We asked him why he had bought all these things if he felt the family did not have enough to eat. He laughed, and said, "Oh, but television is more important than food!"  

It is not unrealistic to think that developed country artwork could positively influence developing country perceptions over the long run. Friedrich Schiller believed that only art and aesthetic education could enable us to attain our humanity. The English tradition links art with liberal ideals that result in individual and social well being, while Marxist theory holds that art plays a role in the political transformation of society. Even accidental and ephemeral experiences with developed country artwork have caused profound changes for individuals. For example:

A North Korean maritime official was on a boat on the Yellow Sea in the mid-1990s when the radio accidentally picked up a South Korean broadcast. The program was a situation comedy that featured two young women fighting over a parking space at an apartment complex. He couldn't grasp the concept of a place with so many cars that there was no room to park them. Although he was in his late thirties and fairly high-ranking, he had never known anyone who owned a private car—and certainly not young women. He assumed the radio program was a parody, but after a few days of mulling it over, it struck him that yes, there must be that many cars in South Korea. He defected a few years later.

The power of this one-off exposure to a better life illustrates how a large number of individuals were apparently inspired to emigrate by television shows like Dallas and Dynasty. Millions emigrate from developing countries because they believe that life can be better somewhere else. For some of these individuals, at least part of their belief stems from their exposure to Western copyrighted works that convey freedom and opportunity. Another example involves Chong, Duryea and La Ferrara studying the effects of telenovelas (soap operas) aired on the Brazilian channel Rede Globo on fertility:

In Brazil, a Catholic country, the state has carefully stayed away from encouraging family planning. However, television is very popular... From the 1970s through the 1990s, access to the Rede Globo channel expanded dramatically,

97 DEMICK, supra note 89, at 215.
100 While we cannot be certain of the exact number of individuals who fit this case, the International Organization for Migration estimates that 214 million individuals live outside their country of birth. International Organization for Migration, Facts & Figures, http://www.iom.int/jahia/Jahia/about-migration/facts-and-figures/lang/en. Others estimate the number to be over 300 million individuals.
101 This is not to claim that Western democracy is perfect, but in the spirit of Churchill it is the best system that we have found.
and with it the viewership of the telenovelas. At the telenovelas’ peak popularity in the 1980s, the characters in the soaps tended to be very different from the average Brazilian in terms of both class and social attitudes: Whereas the average Brazilian woman had almost six children in 1970, in the soap operas most female characters under the age of fifty had none, and the rest had one. Right after soaps became available in an area, the number of births would drop sharply; moreover, women who had children in those areas named their children after the main characters in the soap.\textsuperscript{102}

There are a limited number of practical ways to change values. Moreover, improving respect for human rights, freedom, equality, and justice requires enlightened leadership. For example, raising a child is one of the most powerful ways to instill values, yet parents who are not respectful of certain human rights make the family environment harmful. While kids can alter their parents’ views, widespread change cannot be anticipated.

Formal education for youth is a powerful tool against repressive viewpoints, yet it cannot be expected to do all the work in getting people to appreciate, for example, freedom for all members of society. It generally targets a subset of the population (youth), requires many thousands or hundreds of thousands of enlightened teachers to demonstrate the value of concepts like human rights, and can take years or generations to bear fruit. These are not criticisms of education as a means of instilling respect for freedom, human rights, and justice, but rather acknowledgments of how difficult the task is and how implementing only one policy on its own will likely be inadequate.

Another force for change includes the work of civic organizations, yet in many developing countries such institutions are actively repressed and must fight for survival on the margins of society. They are also not immune from propagating illiberal values. Moreover, while governments themselves can theoretically “promote access to knowledge in many different ways besides IP laws—through regulation and deregulation, through government procurement policies that encourage private actors to produce knowledge and information goods, and through the government’s own provisioning of information, knowledge and education\textsuperscript{103}—developing country governments often either do not have the capacity to implement sophisticated programs effectively or do not have the best interests of their citizens at heart.

The remaining realistic source of hope entails giving developing country individuals greater access to developed country artwork to broaden understanding of the practical and ethical need for liberal values. Such a policy is easier to implement than getting hundreds of thousands of teachers to agree to teach liberal precepts, and it targets both adults and youth. Further, developed country artwork can more easily evade the censors that restrict developing country civil society organizations and the media, in part because of electronic storage

\textsuperscript{102} BANERJEE & DUFLO, supra note 94, at 118 (citing Eliana La Ferrara, Alberto Chong & Suzanne Duryea, Soap Operas and Fertility: Evidence from Brazil (Bureau for Research & Econ. Analysis of Dev., Working Paper No. 172, 2008)).

and transmission and in part because such artwork is often less directly explicit about the failures of a particular regime while subtly expressing the values of human rights, equality, and freedom in the background. As with the educational approach, a policy of open access to developed country artwork could likely take years to show significant results. This is not a flaw but simply reality. Ideally, it would be implemented simultaneously with educational and other policies, yet even on its own it can be a positive transformative force.

Given the gulf between the values of some developed and developing country artwork, it is imperative that Big Copyright and developed countries at least stop pressuring developing countries to maintain a too restrictive copyright regime. At a minimum, we owe the poor in developing countries their autonomy on this issue. In extreme cases, where the poor are oppressed by Orwellian political systems, we ought to expand access to developed country artwork unilaterally.

Given that so much is riding on expanding access to developed country artwork in developing countries, we have to ask ourselves if such artwork is actually better at promoting liberal values than its counterpart in developing countries. It is unlikely that a country that does not teach over 85% of its girls to read, like Afghanistan, will create art and entertainment that empowers women more than developed country artwork would — that portrays strong, independent female protagonists who celebrate female empowerment as in the television series Veronica Mars or reversals of traditional employment norms as in the series Who's the Boss?. Afghanistan is far from unique—the female literacy rate is 15.1% in Niger, 16% in South Sudan, etc. Furthermore, the male literacy rate in each of these countries is at least 24% higher than the female literacy rate. In Yemen, the literacy rate among men is 34% higher than the rate among women. There is no difference between the male and female literacy rates in Canada, Germany, France, and the United States, which all have a literate population that exceeds 99%. While a lack of disparity between female and male literacy rates does not guarantee enlightened equality, significant disparities do not augur well.

The power of copyrighted works that espouse liberal values is also felt and can make a positive contribution in developed countries. Many mainstream television shows in developed countries have featured characters whose traits and behaviors are not widely accepted by the public yet should be. The very popularity of such shows testifies to their ability to gain acceptance for marginalized groups. While viewers know that television characters are fictional, an intimate and ongoing engagement with fictional lives gives them a chance to empathize with people they might avoid, consider strange, or rarely encounter in real life. Over time it would be

105 Veronica Mars (UPN & The CW television broadcast 2004–2007).
107 CIA, supra note 104.
108 Id.
109 Id.
110 Id.
surprising if no viewers came to realize that their prejudices toward certain types of individuals—e.g., homosexuals or working moms—were overblown or unfounded. Additionally, developed country artwork has often become more liberal over time. Many characters on television shows positively evolve—e.g., Major Margaret Houlihan on *M*A*S*H* was transformed from a woman whose life revolved around men into a more three-dimensional feminist determined to pursue her career. Developed country artwork can have positive effects on individuals in both developing and developed countries. It can transform perceptions and promote liberal values in different ways, most notably by disavowing prejudice, conveying information, fighting tyranny, and inspiring idea creation. While developing country art can provide the same benefits in similar ways, on average developed country art does more to promote liberal values. An analysis of art’s possible methods of doing this follows.

1. Disavowing Prejudice

Tolstoy felt not only that artwork needs to convey the value of equality and unity but that the purpose of art is such communication or discussion of ethical and religious considerations. While many believe that art can play other positive roles simultaneously, it is clear that art can cause people to question their prejudices. Over time doubts can lead individuals to repudiate intolerance. Such disavowal can occur by all members of society—by the cultural, economic, and political elite and by the poorest of poor. The main impetus for making developed country artwork more available in developing countries is over the long run to reduce prejudice and increase acceptance of individual human rights, freedom, the rule of law, good governance, and equal opportunity. This acceptance of others occurs because of at least four factors.

First, art can help individuals who hold prejudices come to terms intellectually with the fact that discrimination against and maltreatment of others cannot be intellectually justified. This is because art involves “the reader himself in the moral life, inviting him to put his own motives under examination.” There are no philosophical guidelines for how to ethically oppress others because the entire enterprise is repugnant, while discourse on how we should act properly is full of ideas like treating others as we would like to be treated, respecting others as ends in themselves rather than using them as means to an end, protecting individual autonomy and scope for action, etc.

Second, increased exposure to artwork that either explicitly or subtly conveys liberal values can lead those with prejudiced beliefs to begin to sympathize with the oppressed on an emotional level. For example, some developed country artwork engages in “behavior placement”—subtly incorporating good behavior like green-friendly practices into the background fabric of television shows or movies—because, as NBC Universal Chief Executive Jeff Zucker pointed out, “People don’t want to be hit over the head with it.” Amy Chozick, *What Your TV Is Telling You to Do: NBC Universal’s Shows Are Sending Viewers Signals to Recycle, Exercise and Eat Right. Why?*, WALL ST. J., Apr. 7, 2010, available at http://online.wsj.com/article/SB10001424052702304364904575166381279549318.html.
ing art can cause individuals to see the world through the eyes of others, and hence the "aesthetic experience fosters mutual sympathy and understanding." 117

Third, whether on an intellectual or emotional basis, or both, art can help oppressors come to understand that neither the oppressed nor the oppressor can be free. Hegel viewed even the master in a master-slave relationship to be held captive and stunted by the structurally unjust relationship. 118 Bakunin articulated a similar vision: "I am not myself free or human until or unless I recognize the freedom and humanity of all my fellowmen.... The freedom of other men, far from negating or limiting my freedom, is, on the contrary, its necessary premise and confirmation." 119

Fourth, related to yet distinct from Hegel’s stance, art can help raise the consciousness of oppressors by demonstrating the advantages of a more liberal culture and society. For example, a documentary video, the argument or plot of a fictional work, or subtle signs of prosperity in an image celebrating individual freedom can show or imply that establishing the rule of law and good governance can lead to sustained and robust economic growth. Given their elite position, the wealthy in developing countries can begin to understand that they would be well positioned to benefit from such a transformation and to actively encourage it. Furthermore, even with their current wealth, the rich in developing country cities cannot easily buy valued goods like clean air, which could be a major benefit of a well-governed country.

2. Conveying Information

An important component of promoting cultural and social justice is education. 120 Art can educate individuals by dispelling myths and disseminating facts—e.g., "[i]n Africa, the Andes, and elsewhere, people in isolated villages still believe that if a child has diarrhea she should not be given water, because they believe that the system is trying to 'expel water.'" 121 Also, "[m]any people believe that sex with a virgin can cure AIDS." 122 Misguided notions of facts can over the long term be reduced by opening developing countries to more developed country artwork, just as violations of human rights, equality, and justice can. Such education can be instrumental in building people’s understanding of a society’s or country’s failings and can provide at least partial answers to how to address them.

Developed country artwork will allow developing country individuals to learn tremendous amounts of information. With regard to international relations and public policy, it can teach them about their own country, the historical struggle of individuals in other countries, how successful or ineffective policies have been when attempted abroad, etc. If freely accessible, it can reduce the misinformation and ignorance that reinforce oppressive cultural and institutional practices. It can promote transparency and accountability and, in so doing, encourage the support of developing country artwork that does the same. For example, a recently written book about John Githongo, a Kenyan whistleblower,

120 Art can also educate individuals about how to approach learning or certain perspectives on learning. See Elliot W. Eisner, The Arts and the Creation of Mind (2002).
121 Smith, supra note 55, at 71.
122 Id. at 33.
“although not officially banned” in Kenya, is difficult to find at Kenyan booksellers because “many fear the consequences of selling a book that exposes corruption in the Kenyan government.”

Education touches the lifeline of a nation. As Thomas Jefferson wrote, “I know no safe depository of the ultimate powers of the society, but the people themselves: and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion by education.”

3. Fighting Tyranny
André Malraux stated, “Art is a revolt against man’s fate.” While he may have been suggesting a rebellion against human mortality, his words can equally stand for a call to arms from oppression and discrimination. Oppression aims to mentally and physically beat down individuals into accepting their subjugation and not thinking for themselves. As Hannah Arendt suggested, “Thought ... is still possible, and no doubt actual, wherever men live under the conditions of political freedom. Unfortunately ... no other human capacity is so vulnerable, and it is in fact far easier to act under conditions of tyranny than it is to think.”

While some may never succumb, those who do need a voice to counter the oppressors’ messages—to recall what they have lost, to fend off the thundering dehumanization, to see that their hardships are experienced by others, to inspire them to persevere, to encourage them to not defer to illegitimate authority, and to strengthen their resolve to challenge injustice. The oppressed can find meaning in their fight against tyranny if messages of hope and resistance reach them.

4. Inspiring Idea Creation
As Dostoevsky said, “Neither man nor nation can exist without a sublime idea.” Art has the power to stimulate creative thinking. It can open lines of inquiry that inspire individuals to come up with new ideas and innovative practical proposals—discoveries they would not have made without it. Exposure to developed country art can provide intellectual stimulus and build political support for freedom and democracy, which also help individuals generate new ideas: “The genius of a democratic people is not only shown by the great number of words they bring into use, but also by the nature of the ideas these new words represent.” This idea is similar to theories as to why cities are hotbeds of idea generation and business activity.
B. Why Best for Developed Countries

Developed countries should favor considerably weakening copyright in developing countries for national security, economic, and altruistic reasons.

Developed countries, and in particular the United States, face significant risks from foreign state and non-state actors. These dangers often arise because of poverty and/or non-liberal cultural beliefs. Threats to developed countries include terrorism, war, piracy, failed states, the spread of infectious diseases, and environmental disasters. All of these hazards are aggravated by either poverty or cultural norms that are antithetical to freedom, equality of opportunity, and human rights.

Over the past few years it has become almost fashionable to make the argument that a certain policy should be supported on national security grounds—e.g., retired U.S. military leaders desire to ban junk food in public schools because they fear that obesity in young adults is reducing the military’s ability to recruit the best soldiers. Many arguments invoking national security may be well founded, given how complex our society is in terms of the number and types of actors and their differing motivations. If security concerns are legitimate, then it becomes important to prioritize the different perils we face. Further, it is critical to rank our responses based on their cost in reputation, blood, and treasure; their probability of success; and whether they are addressing root causes or simply bandaging or alleviating symptoms. In 2000, “[c]onvinced that the global spread of AIDS [was] reaching catastrophic dimensions, the Clinton administration [...] formally designated the disease“ as a “threat to U.S. national security.” The U.S. government ultimately responded with targeted measures including the $15 billion Emergency Plan for AIDS Relief and Department of Defense programs that provided condoms to the Angolan armed forces and “antiretroviral drugs to the South African Defense Forces in order to maintain” both armies’ combat readiness. The financial cost was not extraordinary, and the programs improved our reputation and did not lead to any bloodshed. Also, the probability of slowing the epidemic was relatively high. The main drawback of the policy was that it did not tackle the source of the epidemic, poverty; instead it was aimed at alleviating symptoms.

132 I do not suggest that poverty and terrorism are linked. My reference to poverty refers to increased risks from infectious diseases, failed states, etc. In fact, there is sparse evidence suggesting either that the poorest countries breed more terrorists or that the average terrorist is poor. See generally ALAN B. KRUEGER, WHAT MAKES A TERRORIST: ECONOMICS AND THE ROOTS OF TERRORISM (2007). According to research, countries with few civil and political rights do turn out more terrorists than countries with more robust rights.

133 See generally Mission: Readiness, Too Fat to Fight: Retired Military Leaders Want Junk Food Out of America's Schools (2010), available at http://www.missionreadiness.org/. missionreadiness.org/ “Mission: Readiness, an organization of retired senior military leaders, is warning Congress that at least nine million 17- to 24-year-olds in the United States are too fat to serve in the military. That is 27 percent of all young adults. Obesity rates among children and young adults ... threaten not only the overall health of America but also the future strength of our military... Military concerns about the fitness of our children are not new. In 1946, General Lewis Hershey was instrumental in convincing Congress to pass the original National School Lunch Act as a way to improve the nutrition of America's children, increase their height and weight, and ensure America's national security.” Id. at 1.

134 My purpose is not to address each argument's validity here.


136 Steve Radelet & Bilal Siddiqi, U.S. Pledges of Aid to Africa: Let's Do the Numbers, CENTER FOR GLOBAL DEV. NOTES 3 (2005).


138 With this observation I do not mean to demean the tragic suffering of those with AIDS.
Not all responses to threats can confront the causes of what puts us in jeopardy, yet the reduction of copyright in developing countries is such a policy. Making substantially more developed country artwork available in developing countries has the potential, over time, to address two causes of our national security concerns: poverty and the disregard for freedom, equality of opportunity, and human rights in certain societies. We do not fear economically developed, liberal democracies for a reason. Further, democracies allow for transparency—they do not have famines, they publicize public health concerns more widely and efficiently, and they protect the environment better. If the United States is willing to expend so much blood and treasure to protect and attempt to advance a liberal world order, then we need to consider using a powerful tool to advance this goal: the significant reduction of copyright in developing countries. Such a policy is the essence of soft power.

Developing countries that respect the rule of law, equality, freedom, and human rights would likely foster sustained, vigorous economic growth, which would also benefit developed countries’ economies. Cooper asks us to “Imagine a poor country with a well-run legal system but not much else in the way of resources. Someone will somehow find an opportunity to make money. In the end, the country will probably grow rich.” Systematic corruption obliterates incentives to create wealth and perpetuates a dynamic in which it is “in most people’s interest to take action that directly or indirectly damages everyone else.” Businesses will likely not thrive without illicit connections, and hence individuals without such contacts have little ability or motivation to better their material lot by studying or working hard. Political opposition similarly limits a country’s ability to grow its economy. Thus minimizing corruption and political repression within developing countries will allow developed countries to profit from better investment opportunities and more robust trade with the newly robust economies of developing countries.

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141 “For it is the United States that has had the difficult task of navigating between these two worlds, trying to abide by, defend, and further the laws of advanced civilised society while simultaneously employing military force against those who refuse to abide by such rules... American leaders, too, believe that global security and a liberal order—as well as Europe’s ‘postmodern’ paradise—cannot long survive unless the United States does use its power in the dangerous Hobbesian world that still flourishes outside Europe.” Robert Kagan, Of Paradise and Power: America and Europe in the New World Order 75 (2004).
142 Regardless of whether developed country governments are convinced that encouraging the reduction of copyright in developing countries is best for them, developing countries should not hesitate to unilaterally weaken copyright because of the benefits that would accrue to their citizens.
147 Id.
148 Id.
149 See Section II.C for a discussion of investment opportunities and convergence theory.
150 Such expanded trade and cross-border investments cannot be rejected wholesale unless one is willing to withdraw from all existing bilateral and multilateral trade agreements. Since we have agreed to participate in the global economy because we think the benefits outweigh the negatives, we need to be cognizant of such calculus when evaluating the present proposal. This is not to say that the creative destruction of capitalism should not be carefully managed like adopting a host of policies to assist those harmed from such upsurges in economic cross-border activity. See Paul Collier, The Bottom Billion: Why the Poorest Countries Are Failing and What Can Be Done About It 157–72 (2007).
Selfless motivation matters also. Regardless of the fact that weakening copyright in developing countries would have significant long-term benefits for developed countries, developed countries should advance such a policy because it will help the poor. Such consideration already occurs.\textsuperscript{151} For example, Robert Kagan states:

The United States \textit{is} a behemoth with a conscience. It is not Louis XIV’s France or George III’s England. Americans do not argue, even to themselves, that their actions may be justified by \textit{raison d’état}. They do not claim the right of the stronger or insist to the rest of the world, as the Athenians did at Melos, that “the strong rule where they can and the weak suffer what they must.” Americans have never accepted the principles of Europe’s old order, never embraced the Machiavellian perspective. The United States is a liberal, progressive society through and through, and to the extent that Americans believe in power, they believe it must be a means of advancing the principles of a liberal civilization and a liberal world order.\textsuperscript{152}

Washington can more easily be convinced to alter its stance on developing country copyright regimes if Hollywood stops lobbying it for increased protection. Why Big Copyright should alter its views on the matter is the topic of the following subsection.

\textbf{C. Why Best for Big Copyright and MNCs}

Major developed country copyright holders should also encourage the substantial minimization of copyright in developing countries. The interconnected motives for doing so are already familiar—selflessness, national security, and long-term profits. Perhaps the most compelling reason is to maximize their profits in the long run or, at least, to maximize the collective profits of all companies—both those who hold significant copyright interests and those who do not, both developed and developing country firms—in the long run.

Just as states are not immune to calls for selflessness, Big Copyright may not be either. Some CEOs may jump at the chance to have a hand in potentially liberating—politically, economically, and/or socially—millions of individuals.\textsuperscript{153} Some may see it as an inexpensive means of elevating the corporate brand and increasing its visibility. Indeed, since corporate giving is often used as a selling point, the cost, though insignificant—temporarily forsaking a small fraction of the company’s revenues—could on its own confer bragging rights.\textsuperscript{154} The momentary loss to copyright holders would not be substantial given how small the copyright market is in developing countries.\textsuperscript{155} More important, as discussed earlier, the free flow of art that expresses liberal values will assist in creating sustained and robust economic growth. By allowing open access to copyrighted artwork

\begin{itemize}
\item \textsuperscript{151} Of course, others may not interpret a U.S. act to be selfless.
\item \textsuperscript{152} \textit{Kagan, supra} note 141, at 41.
\item \textsuperscript{153} We also have an ethical responsibility to do so. \textit{See generally Peter Singer, The Life You Can Save} (2009).
\item \textsuperscript{154} This point would also be attractive to other participants in the creation of art, such as actors and directors.
\end{itemize}
in developing countries, Big Copyright will encourage citizens to adopt the values that will help pull the poor out of poverty.

For the reasons examined in the above subsection, developed country copyright holders should also take into account the national security concerns of their home countries. Greater access to developed country artwork will help developing countries become prosperous and, as a result, will improve the physical security of all individuals, whether at home or abroad. Filling the world’s pocketbooks will make the world safer for everyone.

Richard Dowden, Director of the Royal African Society, states, “Some argue that Western countries deliberately imposed these dictators on Africa because it suited capitalism to keep the continent poor and weak. Capitalism needs markets and Western governments would have undoubtedly preferred successful states to emerge in Africa.”156 He further notes, “The idea that these representatives of Western interests were secretly pulling the strings to keep Africa poor and oppressed is preposterous.”157 Just as individuals who believe that the West purposefully wants to keep Africa poor do not understand how such a stance is contrary to the pockets of capitalists, the capitalists themselves have mistaken what is in their own long-term best interests with regard to copyright policy in developing countries.

Big Copyright thinks it is stuck arguing that developing countries should do more to protect its copyrights or at least maintain their existing externally imposed restrictive copyright regimes because this will maximize Big Copyright’s profits. This reasoning is penny wise but pound foolish. It resembles the thinking of publicly listed companies that err by excessively stressing quarterly earnings reports over long-term profit and growth with the consequence of cutting research and development programs that bear costs in the present but hold out the promise of rewarding long-term benefits.158

The proposition that underlies the moral and national security arguments—exposing developing countries to liberal viewpoints expressed in developed country artwork will help them develop over the long term—holds for why copyright holders need to stop neglecting their own long-term interests. Significantly expanding access to copyrighted artwork in developing countries would help lay the foundations for much larger, new markets to sell to in the future.159 If developing countries become more liberated and more successful economically, they can become vast new markets for all companies—not just Big Copyright. This suggests that non-copyright-focused companies should also advocate for the considerable reduction of copyright in developing countries. Just as

157 Id. at 83–84.
158 Another irony is that managers impelled to pay close attention to the concerns of stockholders may be too profit oriented—insofar as owners stress short-run stock prices, managers may be pressed toward a focus on quick gains at the expense of risk-taking and longer-term investment that more stable tenure might allow. Thus managerial capitalism may yield social inefficiencies by its better integration into an efficient capital market that heavily discounts large but uncertain long-term profits (and disregards the positive social externalities of the longer view and risk-taking). Martin Lipton, Takeover Bids in the Target’s Boardroom: A Response to Professors Easterbrook and Fischel, 55 N.Y.U. L. Rev. 1231, 1233 (1980).
South Korea, Singapore, and Taiwan have transformed their economies over the course of a few decades, developing countries could become economically dynamic and successful in 20 to 30 years, at which point they could resurrect copyright, if developing country citizens desire it. Thus, within a relatively short period of time compared to the length of current copyright protection, new stable markets for developed country art can emerge. Given the size of the developing world’s potential markets, copyright holders could maximize their profits with such a strategy, even when discounting profits to the present. This is because by far Big Copyright’s major non-U.S. markets are other developed countries and middle-income countries and numerous developing country media markets favor domestic artwork: “In Ghana, domestic music has captured 71 percent of the market.”

If developing countries have much wider access to developed country artwork, such access would turn countless individuals into appreciators of developed country art. Such appreciation would logically improve the future earning potential of Big Copyright, for these appreciators would become consumers when copyright is reestablished in countries that have transitioned out of poverty. This business strategy for higher long-term earnings is time-tested and widely replicated—just think of all the free samples one can try simply by walking through a supermarket. Edward Bernays discussed how jewelers employed a similar long-term strategy as far back as 1928 by deliberately cultivating poorer customers, as they might one day have more discretionary income.

One could hypothetically interpret such a policy as being somewhat sinister, but such a conclusion would be completely false. We need to drive out views contrary to human rights in developing countries. If some developing country artwork propagates illiberal beliefs, the poor need such artwork to be disadvantaged vis-à-vis liberal artwork in the marketplace. One cannot seriously deny the oppressed and poor the possibility of political freedom, economic opportunity, and equality out of concern that some developed country artwork (and liberal developing country artwork) would, in the long run, be disadvantaged commercially over illiberal developing country artwork. That said, none of the above implies that developed country artwork and liberal developing country artwork cannot coexist successfully.

Even if advocating for the weakening of copyright in developing countries does not win greater long-term profits for some Hollywood copyright holders, such a policy would in the larger scheme maximize the profits of all companies—Big Copyright and non-copyright-focused firms, rich and

160 Cowen, supra note 155. “Many smaller countries have been less welcoming of cultural imports. It is common in Central America for domestically produced music to command as much as 70 percent of market share.” Id. These figures do not note what percentage of foreign music sales come from other developing countries versus developed countries. Alternatively, U.S. movies are far more successful in developing countries than U.S. music or television.

161 Some in Hollywood might be concerned that the reduction of copyright in developing countries would increase parallel imports—i.e., freely distributed French artwork in Benin would make its way back to France. While this is a serious concern with pharmaceuticals, given that pills are physical goods that can be very expensive, such “grey marketing” of artwork would likely be marginal given how almost all commercial art can be captured in digital form and the pervasiveness of the Internet in developed countries. Essentially, there would be little profit at stake in sending French music CDs from Benin back to France because the French, if they so desire, can already quite readily simply download an illegal copy or burn a copy from a friend.


developing country based. Convergence theory based on factor-price equalization suggests that relatively poorer countries will have higher growth rates than relatively richer countries because the rate of return on possible investments will be greater given the relative scarcity of funds in the poorer states. In such a scenario, developed and developing country companies would maximize their profits by investing in the projects with the higher expected rate of return.

Convergence theory stumbles because it does not properly take into account the importance of the rule of law and how pervasive corruption turns many MNCs away from investing in such countries and prevents developing countries from establishing their own thriving firms. Both MNCs and developing country entrepreneurs are deterred because they could not compete on a level playing field with corrupt companies possessing political connections and would be at the mercy of pilfering public officials. As Nigeria’s Economic and Financial Crimes Commission chief “Nuhu Ribadu said in an interview with Human Rights Watch, ‘The problem [of corruption] started a long time ago and it has eaten deep into all sectors of society and has almost taken over our entire way of life ... Everyone is involved now, even community leaders.’” The vice president of South Africa, Kgalema Motlanthe, “admits that at every level of government the scourge is ‘far worse than anyone imagines.’”

While all investment opportunities face risk that the particular investment will fail, in thoroughly corrupt countries where property and contract law are not respected, a second type of risk is encountered—corrupt public servants may take your investment either directly through expropriation or indirectly through improperly enforcing contracts and property claims. In the long run, if widely expanding access to developed country artwork for developing country citizens could shift perceptions on what practices are acceptable and also motivate individuals to stand up to those continuing to violate good governance, then developing country individuals would have a newfound reason to start new companies and MNCs to invest in those developing countries’ markets. If this happens it would not be a zero sum game; genuine wealth for many, inside and outside the developing country, would be created. Firms—whether large copyright holders or non-copyright-focused entities—would earn higher rates of return and not have to face significant risks of expropriation and corruption.

As mentioned earlier, copyright could be strengthened in developing countries that succeed. If Hollywood copyright holders, after discounting future returns

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165 Id.
166 See HARFORD, supra note 146.
168 He Promises a Big Clean-up, ECONOMIST, Oct. 17, 2009, at 57.
169 Even though I personally believe that copyright should also be significantly weakened or abolished in developed countries, this decision should be left to the citizens of each country and hence does not have to be the case for developing countries that have found a sustained and robust development path and were assisted in their transformation by the absence of copyright earlier in their development.
in the event copyright is brought back onto the books, would ultimately not maximize their profits overall because they essentially have had to wait 20 years for the markets in developing countries to establish themselves, such copyright holders could still be hypothetically reimbursed by all the other firms (e.g., Ford or General Electric) in the economy that are benefiting from the free introduction of developed country artwork into developing countries. In fact, the Kaldor-Hicks version of efficiency says that because of such a hypothetical transfer, such a scenario would be efficient—it would maximize overall growth. Such a conclusion becomes more compelling if such transfers actually occur, which, of course, could be arranged. This transfer is not as far-fetched as it initially may sound. In fact, given that numerous MNC conglomerates own media and entertainment interests along with other types of companies, such Kaldor-Hicks efficiency gains could likely occur within such firms, leading to an overall increase in profit for such conglomerates. Furthermore, if other developed country companies benefit, their employees will have more to spend on copyrighted goods in developed countries.

Not only would the forgone profits of Big Copyright be minuscule and the size of the future markets it would be helping to create vast, but if Big Copyright does not stop lobbying to maintain the excessively long and expansive copyright regimes in developing countries, it runs the risk that public opinion in developed and developing countries might turn against it, vilifying it as the next Big Pharma. Given the urgency of not denying lifesaving drugs to the dying poor, Big Copyright is not as easily vilified as Big Pharma; nevertheless, one cannot underestimate the public's sophistication in quickly becoming aware of injustices and shaming those capable of helping but unwilling to help. Further, while the risk of vilification is possibly less for Big Copyright than it was for Big Pharma, if Big Copyright is actually vilified, its damages will likely be greater than those sustained by Big Pharma because demand for art is much more elastic than demand for drugs. Regardless of how bad you think a drug company is, you will likely still buy its drug if it will alleviate a serious illness. The same is not the case for entertainment. By ceasing its lobbying and instead pushing for dramatically greater access to developed country art in developing countries, Big Copyright can likely boost its long-term business outlook and prevent the risk of a public relations disaster. Finally, taking into account the national security benefits and the importance of altruistic considerations, the overarching point is that what is good for developing countries is good for all companies in the long run.

II. Increasing Access to Developed Country Art in Developing Countries

Section I presented arguments for why developing countries, developed countries, and Big Copyright should want to exten-
sively lessen copyright in developing coun-
tries. 172 Regardless of how compelling such
arguments are, it is not likely that all rele-
vant actors will agree with such reasons
or that progress on substantially weaken-
ing copyright in developing countries in
the short-term will occur. Thus, this section
will discuss practical ideas to either get ac-
tors closer to advocating or acquiescing,
in the case of developed countries and Big
Copyright, to the reduction of copyright
in developing countries or significantly in-
creasing access to developed country art
in developing countries even with copy-
right as it is.

These two goals can be accomplished
either by pressuring, ignoring, or coop-
erating with Big Copyright. Coercing
strategies are the most familiar—e.g., lob-
bying, boycotts, and public movements—
and hence will not be discussed below.
Rather, the first sub-section will recom-
mend policies that will increase access of
developed country artwork in develop-
ing countries, while ignoring Big Copy-
right—neither cooperating with or com-
pelling Big Copyright. 173 The second
sub-section will propose suggestions for
how developing countries, developed
countries, and non-profits can cooperate
with Big Copyright to encourage the dis-
semination of developed country art in
developing countries.

A. Avoiding or Dealing at Arm’s
Length with Big Copyright

Regardless of whether Big Copyright de-
cided to participate in significantly broad-
ening access to their artwork in developing
countries or could be leaned on to do so,
governments and civil society could con-
sider expanding such access unilaterally.

1. Compulsory Licensing

Catering to a nation’s needs in trade policy
is a familiar provision, which is explicitly
provided for through compulsory licens-
ing—international trade rules that give de-
veloping countries the right to suspend IP
protection to address serious concerns, like
debilitating diseases, within their coun-
tries. 174 While compulsory licensing is most
widely known in regards to patents in the
pharmaceutical field, it can also be used
in the copyright realm. 175

2. Special Copyright Zones

Special economic zones, areas of a state or
city in which firms receive special tax or
regulatory treatment, have been widely
used in the past few decades in developing
countries in the hope of spurring economic
development through enticing foreign
firms to establish facilities in the develop-
ing countries. 176 A similar approach could
be taken with copyright where tracks of

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172 Weakening or eliminating copyright in developing countries could be accomplished either through a big bang, an immediate
withdrawal of all copyright, or a gradual pull-back, possibly using compulsory licenses initially. If a developing country wanted to for-
mally retreat on copyright, it would need to pass domestic legislation along with likely having to withdraw from any copyright-related
treaties/agreements that it was a party to.

173 Many of these ideas can be pursued simultaneously. Also, each practical idea will only be presented in one of the two sub-
sections, though some ideas could fit into both.

174 Compulsory licensing of copyright is permitted under the World Trade Organization’s (WTO) TRIPS rules, though it is not
explicitly referenced as such within the treaty unlike the compulsory license of patents under Article 31. TRIPS incorporates in Article 13
the Berne three-step test, which limits how member states can relax copyright protection. It states, “Members shall confine limitations and
exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not
unreasonably prejudice the legitimate interests of the rights holder.”

175 If developing country governments opt not to invoke copyright compulsory licensing, a new trade provision could be established,
possibly explicitly only for copyright, which would allow non-governmental organizations in the developing country to invoke a
compulsory licensing-like proviso.

land within developing countries would be designated as copyright free zones.

3. Digital Developing Country Lending Libraries
Libraries in the United States buy digital copies of books and then lend out each copy, to one person at a time. Similar arrangements, funded by governments or non-governmental organizations (NGOs), can be established in developing countries for electronic books, movies, television shows, etc.

4. National Security Copyright Task Force
Developed country governments need to, if they have not already, launch copyright task forces within their national security framework to give greater emphasis and visibility to copyright policy's effect on national security. Such copyright task forces could explore ways in which developed country artwork can benignly assist in strengthening the spread of liberal ideals, perhaps drawing from some suggestions listed here. Initiatives could be as simple as weekly outdoor movie screenings sponsored by U.S. embassies in developing countries.

Possibly the greatest area for potential positive influence, and also the least controversial given the classified or secretive nature of such organizations, would be implementing policies to undermine despotic, closed regimes like North Korea. Such task forces could expand upon Radio Free Europe's mission of providing "free media in unfree societies" or the practice up until 2004 of South Korea and North Korea both blasting propaganda messages at each other using loudspeakers in the Korean Demilitarized Zone.

5. Creating Tailored Content and Convincing Celebrities to Volunteer
NGOs could fund the creation of art, produced by developed or developing country artists, that attempted to purposefully, yet tangentially, touch on important liberal cultural values or issues aimed at improving health and well-being. Such freely distributed movies or television shows could bring up many issues already discussed, like promoting gender equality, or others such as the importance of: washing hands, not cooking indoors without proper ventilation, using bed nets, improving sanitation, sterilizing water, maternal care, and preventative health care. Efforts could be made to convince famous Hollywood or Bollywood actors to act in such movies, even if only in cameo appearances.

6. Free Mass Promotion Techniques
International Development Enterprises produced a full-length film in which a "treadle pump played a central role in the plot" to publicize the benefits of such a cheap yet effective irrigation tool. Their remarkable next step was to use one portable generator and screen to play the

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178 "Brian Uzzi of Northwestern University in Evanston, Illinois, who advises intelligence agencies on democracy-promotion analytics, says diplomatic services are mapping the 'tipping point' when ideas go mainstream in spite of government repression." Untangling the Social Web, ECONOMIST, Sept. 4, 2010, at 17 (special insert entitled The Economist Technology Quarterly).
179 See Radio Free Europe, supra note 91.
181 Treadle pumps are an alternative to dam-and-canal irrigation systems. PAUL POLAK, OUT OF POVERTY 150 (2008).
movie “to a rural audience of a million people a year.” Such simple free mass distribution techniques need to be nurtured and developed.

7. Copyright Corvée
Developing countries could establish copyright corvées—a day, week, or month every year, during which copyright owners would be required to allow free access to their copyrighted works to all.

8. Reciprocal Non-copyright Agreements
New voluntary arrangements should be considered, such as a developed country and a developing country agreeing to a reciprocal non-copyright agreement whereby each country’s artwork would be freely accessible only in the other country—e.g., U.S. artwork would be free in Swaziland though not in the United States, while art from Swaziland would be free in the United States.

9. Subsidizing Tools to Disseminate Artwork
Foundations or NGOs could increase their subsidies to programs that help the spread of tools that enable the broader authorized dissemination of developed country artwork—e.g., cell phones, computers, Internet connections, software, and radios in the manner that the Open Society Institute donated photocopying machines to groups in Eastern Europe before the fall of Communism. Such a policy would not only assist individuals in poor developing countries but could be particularly useful for individuals in politically repressive regimes to work around their countries’ efforts at censorship.

B. Cooperating with Big Copyright
As argued above, Hollywood should advocate for the weakening of copyright in developing countries for both self-interested and selfless reasons. If it cannot fully appreciate such reasons, developed country governments, NGOs, and citizens could consider cooperating with Big Copyright. Such endeavors would aim to provide Hollywood with additional forms of revenue in exchange for ceasing to lobby the U.S. government to pressure developing countries to maintain stringent copyright laws and allowing wider distribution of their artwork in developing countries.

1. Copyright Free Clearinghouse
A clearinghouse or foundation could be created that would allow developed country copyright holders to donate the free or discounted use of their copyrighted artwork to certain developing countries or even to particular groups within developing countries.

2. Results-Based Prizes
From the Gates Foundation to the X Prizes, numerous organizations are offering large financial prizes to the first individual or entity to accomplish a speci-
fied task—e.g., develop a cure or vaccine for a disease. This strategy dates back centuries, at least to 1714 when the British government offered a £20,000 prize to the first individual to find a solution to the problem of determining longitude at sea to within half a degree.187 Even Napoleon in 1795 tendered a 12,000-franc prize for a better method of preserving food that was easily transportable and capable of supplying an army.188

This template can be used in the copyright context to award prizes for: convincing a developed country to alter its laws to let its copyrighted work be freely distributed in developing countries or a subset of developing countries, persuading developing countries to use compulsory licenses to make developed country copyrighted artwork more accessible in their countries, inducing a number of large copyright holders to license their works for free in developing countries, or sneaking developed country artwork into politically repressive developing countries that censure incoming material.

3. Subsidies
Public subsidies by developed country government or non-profits could take numerous forms:

a) Buying Distribution Rights. A developed country government or a non-profit would buy the rights to distribute only in developing countries certain Hollywood creations that are pro-woman, pro-democracy, etc.

b) Subsidies. Government or NGOs can simply pay copyright holders a subsidy to not pursue copyright infringement cases in developing countries—i.e., if a developed country copyright holder accepted the subsidy it would allow the government to publicize the fact that the copyrighted artwork was free to developing country individuals. The subsidy could be determined by a schedule, which would be based on estimated sales in a developing country or a subset of developing countries. Alternatively, the government or an NGO could simply give lump sum amounts to the largest corporations that hold copyrights on artwork that is widely distributed in developing countries.

c) Tax Breaks. Where subsidies are a possibility, so usually are tax breaks.

d) Developed Country Copyright Concessions. Developed country governments could give Hollywood copyright concessions in the United States—e.g., indefinitely renewable copyrights à la Landes and Posner’s proposal—if they agreed to freely distribute their works in developing countries.189

4. Developed Country Individuals Sponsoring Developed Country Art Viewings in Developing Countries
Big Copyright, with or without the assistance of governments or NGOs, could establish websites where developed country citizens can go to watch developed country artwork and advertisements. For every tel-

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187 JONATHAN BETTS, TIME RESTORED: THE HARRISON TIMEKEEPERS AND R.T. GOULD, THE MAN WHO KNEW (ALMOST) EVERYTHING 84 (2006). "Up until the middle of the eighteenth century, navigators had been unable to determine their position at sea with accuracy and they faced the huge attendant risks of shipwreck or running out of supplies before reaching their destination." Id. at 83. "The Government prize of £20,000 was the highest of three sums on offer for varying degrees of accuracy, the full prize only payable for a method that could find the longitude at sea within half a degree." Id. at 84. John Harrison, a self-taught carpenter, ultimately claimed the prize.


189 See generally WILLIAM M. LANDES & RICHARD A. POSNER, THE ECONOMIC STRUCTURE OF INTELLECTUAL PROPERTY LAW (2003). They propose "short fixed terms renewable as many times as the copyright owner wants if he is willing to pay a renewal fee (which may be substantial) every time." Id. at 210. For another proposal, see Martin Skladany, Unchaining Richelieu’s Monster: A Tiered Revenue-Based Copyright Regime, 16 STAN. TECH. L. REV. 131 (2012).
evision show and advertisement that the developed country individual watched, the copyright holder would donate one free viewing of the same television show to a developing country individual. This same idea could be applied to numerous art forms. Further, this general idea could be modified in various ways. For example, developed country individuals could simply go to a website and watch advertisements in order to sponsor viewings of developed country artwork in developing countries. Alternatively, for every television show a developed country individual watched, she could sponsor the viewing of any developed country artwork by developing country individuals, not just the show she watched. A further variation of this concept could be applied wholly in developing countries—for every set of advertisements developing country individuals watched, they could be allowed to watch a developed country artwork for free. This idea could even be structured to allow developing country individuals to reciprocate—i.e., a sister website could exist in developing countries so that for each developing country television show a developing country individual watched, a free viewing would be donated to a developed country individual. To reach those without ready access to the Internet, cell phones, television, or radio, portable movie screens attached to vehicles could travel from village to village, providing free screenings.

5. Top Up Campaign
Citizens, in cooperation with Big Copyright, can start a campaign in which they agree to pay an extra 10 or 25 cents for a DVD, CD, or on-line purchase to have the developed country copyright holders distribute their material in developing countries for free.

6. Differentiating Artwork—Charging for Premium Versions
Hollywood could consider innovative commercial arrangements like legally distributing free black and white copies of television shows and movies but charging for color versions of the same works.

7. Expanding Subtitles and Dubbing
Non-profits or governments could fund programs to subtitle or dub developed country artwork into the local languages of developing countries. Big Copyright could be convinced to participate because the dubbing or subtitling would limit the appeal to developed country individuals to illegally access such material—i.e., it is unlikely that Americans would desire a gray copy of a Hollywood movie in Mandarin. A further limiting factor would be to host such dubbed or subtitled material on non-U.S. soil on non-English language websites yet again making it harder for U.S. citizens to even find such material on the web—i.e., it would be difficult and not worth the hassle for a teen in the United States or Japan to find a free, bootlegged copy of a Hollywood movie on an Arabic website if she did not know Arabic.

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190 This idea is similar to http://www.thehungersite.com, a website where by simply clicking a button the money generated by the website's sponsors is donated to organizations fighting hunger.

191 Much like www.hulu.com currently, where viewers in the United States can watch free television shows and movies as long as they view ads that appear with the work.

192 For an example of such creative distribution, see POLAK, supra note 181, at 150.
III. Possible Concerns

This section will preemptively suggest potential criticisms of the ideas expressed in this paper in order to demonstrate that such concerns are either specious or minimally inconvenient and could thus be assuaged.

A. Culture Is Relative

Some aspects of cultures are relative or depend on individuals’ preferences—a fondness for Thai food over French, Indian saris over Japanese kimonos. Yet some claim that all aspects of a culture are relative. This stronger claim is patently wrong and should not be accommodated for reasons of cultural sensitivity. Aspects of certain cultures are always and unambiguously harmful. For example, one cannot seriously claim that honor killings and “selling young girls as brides” are anything but abhorrent practices that do not take the interests of those hurt into account. These abhorrent practices are imposed on the weak by those with power. To accept selling girls as brides and other such practices as relative norms of different cultures is to claim that those with power can legitimately decide to sell other humans and those being sold have no right to direct their own lives. The same must be said of cultures that prohibit women from riding bicycles or prevent public social interaction between the sexes. Several countries flog or jail for up to six months those convicted of breaking fast in public. A survey by Human Rights Watch discovered that 11% of 15-year-old boys in South Africa think gang rape is “cool.” Some of these practices are technically illegal yet rarely prosecuted, and many are supported by the full extent of the law.

An extended example illustrates the problem: “It is a common belief in Angola’s dominant Bantu culture that witches can communicate with the world of the dead ... [and] bewitch children by giving them food, and then force them to reciprocate by sacrificing a family member.” In numerous African countries, including sections of “Angola, Congo and the Congo Republic, a surprising number of children...”

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193 I am not attempting to purposefully highlight the injustices of one region, religion, or culture—many are in need of improvement, including numerous practices in developed countries. Furthermore, this issue should not divide political parties in developed countries as has been suggested by, for example, Susan Jacoby. She states that she “finds herself in a lonely place in relation to many liberals, political and religious, because [she] cannot accept a multiculturalism that tends to excuse, under the rubric of ‘tolerance,’ religious and cultural practices that violate universal human rights.” Susan Jacoby, Multiculturalism and Its Discontents: Why Are Liberals Excusing Religious Abuses on Grounds of Cultural Relativism?, BIG QUESTIONS ONLINE, Aug. 19, 2010, available at http://www.bigquestionsonline.com/columns/susan-jacoby/multiculturalism-and-its-discontents. She also believes it is a “politically strategic error as well as a form of moral blindness for liberals to push people like Hiri Ali into the eager arms of the political Right.”

194 The Law Changes. Will Attitudes?, ECONOMIST, July 18, 2009, at 45. “It is still common, ... throughout the Middle East, for men to murder female relatives deemed to have besmirched the family’s moral standing—for example, if they have had sex outside marriage or wear immodest clothes.” While many honor killings go unreported, the “United Nations Population Fund estimates that, across the world, as many as 5,000 women a year may be fatal victims.”

195 The Unhappiest Day of Her Life, ECONOMIST, Aug. 15, 2009, at 14. “The forced marriage of young girls is a long-standing tradition in Afghanistan, often used as a means of settling disputes and debts, or raising money. Around 60% of girls are married off before they reach the legal minimum age of 16. ... Pregnancies among 10-to-14-year-old girls contribute to the country’s high incidence of maternal mortality.”


197 Saudi Arabia’s Commission for the Promotion of Virtue and Prevention of Vice is “most notorious for two particular jobs: enforcing the separation of sexes in public places and herding people into mosques at prayer times.” Id. Further, a Saudi cleric “recently issued a fatwa on his website, decreeing that anyone who advocated mixing sexes was an enemy of Islam and should be killed.”


are identified as witches and beaten, abused or abandoned.” 201 In just one city, Kinshasa, “child advocates estimate that thousands of children living in [its] streets ... have been accused of witchcraft and cast out by their families—often a rationale for not having to feed or care for them.” 202 Two cases from Luanda are especially saddening. A mother “blinded her 14-year-old daughter with chlorine bleach to rid her of what she thought were evil visions,” while a father “injected battery acid into his 12-year-old son’s stomach because he feared he was a witch.” 203 Unfortunately, while the government of Angola has crusaded against such practices, the beliefs that underlie them remain deeply entrenched. Ana Silva, head of child protection for Angola’s National Institute for the Child, said, “We cannot change the belief that witches exist.... Even the professional workers believe that witches exist.” 204 Bishop Emilio Sumbelelo stated, “To date, we have not found any special way to fight against this phenomenon.” 205

The lives of humans are distinct from those of animals because humans can create, modify, and reflect upon their conception of themselves and their past and future. 206 Humans form an understanding of what a good life is and attempt to attain such aspirations. 207 Humans treasure their “status as human beings especially highly, often more highly” than their happiness. 208 Furthermore, “[t]his status centres on our being agents—deliberating, assessing, choosing, and acting to make what we see as a good life for ourselves.” 209

Human rights protect our unique status as humans—our personhood. 210 To get a better understanding of personhood, “one can break down the notion of personhood into clearer components by breaking down the notion of agency.” 211 Being an agent in a robust sense entails three components—autonomy, a minimum provision of goods and knowledge, and liberty. One must be able to “choose one’s own path through life—that is, not be dominated or controlled by someone or something else (call it ‘autonomy’).” 212 But “one’s choice must be real; one must have at least a certain minimum education and information. And having chosen, one must then be able to act; that is, one must have at least the minimum provision of resources and capabilities that it takes (call all of this ‘minimum provision’).” 213

Finally, neither autonomy nor minimum provision matters
if "someone then blocks one; so ... others must also not forcibly stop one from pursuing what one sees as a worthwhile life (call this 'liberty')." Given that we "attach such high value to our individual personhood, we see its domain of exercise as privileged and protected."

Immanuel Kant, Joseph Raz, Ronald Dworkin, Robert Nozick, Alan Gewirth, Jeremy Waldron, and others have varying views of human rights, yet the accounts share significant commonalities and the differences are minimal compared to the gulf between those who champion human rights and their skeptics.

This is not to say that human rights are the final say on all matters or that they constitute the totality of ethics—neither of which is true. Rather, human rights protect an "austere life of a normative agent," not a "fully flourishing life." Also, numerous things can be very important to humans' lives—"indeed, greater than a lot of issues of human rights—without themselves thereby becoming grounds for human rights." Furthermore, human rights are defined not only by personhood but also by practicalities, empirical information about human nature and societies that is not specific to one time or one place, but rather universal. While universality is "built into the idea" of human rights, it does not follow that "the content of a human right cannot make reference to particular times and places." For example, there are basic universal human rights like the freedom of expression and derived, nonuniversal human rights "got by applying basic rights to particular circumstances" like the freedom of press, which is not vital to a hunter-gatherer, non-technologically advanced, small group of people.

To argue that autonomy, minimum provision, and liberty are relative to a culture instead of common to all humans is quizzical. Some may be skeptical of the universality of human rights simply because of the concept's origins in Europe in the late Middle Ages and the historical harms that Europeans have forced others to suffer. This view may be understandable, but it is wrong and very dangerous to the well-being of the poor, the exploited, the subjugated. After all, how can the West be critiqued for its failings without some implicit concept of human rights? While the concept of human rights comes from the West, human rights are not relative to the West.

214 Id.
215 Id.

222 For example, Kant believes in the idea of personhood; he draws the contrast between mere objects or things, which have equivalents and can be priced and exchanged, and people, who are unique and cannot be priced or interchanged. Given their uniqueness and autonomy, humans are endowed with human rights, which can be viewed as trumps over potentially competing considerations. On the other hand, Griffin sees the exercise of personhood "as in itself an end the realization of which characteristically enhances the quality of life." Griffin, supra note 206, at 36. Thus while personhood is "highly important," it is not "immune to trade-off with other elements of a good life, such as accomplishment, certain kinds of understanding, deep personal relations, enjoyment, and so on." Id.

223 Id. at 53.
224 Id. at 54.
225 Id. at 38.
226 Id.
227 Id.
because autonomy and liberty are not unique attributes of Europeans but rather common attributes of all humanity.

Some may be cynical about the underlying values that support human rights—predominately autonomy and liberty—because they believe that community interests should trump both.228 Yet:

It may be that realizing certain of the values of individualism is incompatible with realizing certain of the values of community. But incompatibility of values is not their relativity. Besides, the frequency of the incompatibility is exaggerated. Not all forms of autonomy are the autonomy to which we attach great value. [citation omitted] ... What we attach great value to is the autonomy that is a constituent of normative agency, and relying on a tax accountant or an astrophysicist does not derogate in the least from one's normative agency. And the forms of solidarity to which we attach such great value do not require surrendering our normative agency.230

Thus the main objections to human rights—that the concept is a historical product of Europe and that the values that underpin it, autonomy and liberty, are relative—are misguided arguments that do not give the powerful the choice to sell girls as brides or to deny citizens the vote.

B. Economic Development and Capitalism Should Not Be Goals

A few post-development activists and scholars argue against making economic development or capitalism goals for developing countries.232 While their views are diverse, they center around a core of ideas that can include the concept that sustained economic growth is either a ploy to continue Western domination of developing countries or a destructive force that unleashes havoc on social, familial, and cultural norms. Some of these views are not new—Jean-Jacques Rousseau and other philosophers to some extent romanticized the life of those in the state of nature.233 Ironically this self-criticism of civilization proved inspirational to the drive of the

228 For a prominent account of communitarianism, see MICHAEL J. SANDEL, LIBERALISM AND THE LIMITS OF JUSTICE (1982). Writings of Alasdair Maclntyre, Charles Taylor, and Michael Walzer are also thoughtful.

229 Id. at 133.

230 Id. "The plausible explanation of the fact that different societies rank autonomy and solidarity differently is not that they are rankings of the relativist sort. Everyone, on pain of mistake, has to admit that autonomy and solidarity are both highly valuable. No one would maintain that any loss in autonomy is worse than any loss in solidarity, or vice versa. And the more specific a choice between the two becomes—a certain loss of autonomy, say, to achieve a certain gain in solidarity—the more convergence in choice one will expect there to be. We do seem able, if only roughly, to compare these competing values." Id. at 134.

231 Another argument against the universality of human rights is that some of them have a conventional element and hence are relative. While some do have a conventional element, it does not negate their universal applicability:

If the convention adopted by one society could be seen to be working rather better than the convention of another, then there is strong rational ground for the second to adopt the convention of the first. If, as is common, we cannot tell whether any one convention is working better than the others, then no society would have good reason to resist an obvious solution to the divergence: agreement on a common convention. This sort of difference between societies represents not a different framework of basic evaluations but merely a highly constrained difference in arational opting.

Id. at 136. One last mistaken view is "There are those who maintain that, even if ethical relativism were false, the problem of ethnocentrism would remain." Id. at 137. For a refutation of the problem of ethnocentrism, see GRIFFIN, supra note 206, at 137–42. Shirin Ebadi, Iran's Nobel laureate human rights campaigner, is sympathetic to Griffin's analysis. Ebadi "concedes that she would rather that the fight for women's rights did not involve interpreting musty religious texts. 'But is there an alternative battlefield?' she asks. 'Desperate wishing aside, I cannot see one.'" Islam's Many Hats, ECONOMIST, May 8, 2010, at 85.

232 See generally THE DEVELOPMENT DICTIONARY: A GUIDE TO KNOWLEDGE AS POWER (Wolfgang Sachs ed.,1992). In fact, they even dispute the standard terminology used in such debates, objecting to words like "developing countries."

French Revolution to cast off social artificiality. The same internal critique of one’s own society continues to be a theme in contemporary developed country mass media, one reason why it is feared abroad.

Given many countries’ history with slavery—perpetuated by their own people, neighboring tribes, and Arab and Western merchants—and their experience with colonialism, it is understandable that some citizens of developing countries threw the baby out with the bathwater when they decided to rid themselves of capitalism because they falsely deemed it contaminated or inseparably connected to colonialism. Such anti-colonial thinking shares numerous similarities with dependency theory, which avers that developed countries exploit developing countries in their political and economic relations—e.g., through unjust terms of trade. Again, while there are different strands of dependency theory, it is largely held that developing countries need to disengage from developed states to break the link of exploitation. This disentanglement is more anti-capitalism than anti-economic growth. Yet such a historical link should not discredit the only economic structure that has proven itself capable of, on a wide scale and over the long term, pulling societies out of poverty. Capitalism has numerous limitations and dangers, but we need to remember the words of Joan Robinson: “the misery of being exploited by capitalists is nothing compared to the misery of not being exploited at all.”

If you ask anyone on the street if they want to continuing being poor, you will very often get a radically different response from that of a post-development or dependency theorist. In fact, a Gallup survey of 259,542 adults in 135 countries determined that roughly 700 million adults would like to permanently emigrate. It should be noted that these results are indirectly indicative of the respondents’ desire for better economic, social, and political freedom and the better prospects such conditions bring; if the people surveyed had been asked if they wanted their own countries to become developed, one would expect an even higher percentage to say yes, because not everyone wants to pack up their life and permanently move to a foreign place. Another informative set of studies is the World Bank’s Participatory Poverty Assessments (PPAs), which suggest that poor individuals in developing countries desire the fruits of economic development. PPAs are “[u]nlike household

234 Sadly, such atrocities continue to today: “[Sudanese dictator] Bashir’s Arab militias, the janjaweed, may have halted their massacres in Darfur, but they continue to traffic black Sudanese as slaves (Bashir himself has been accused of having had several at one point).” Ayittey, supra note 85.


236 “Let us waste no time in sterile litanies and nauseating mimicry. Leave this Europe where they are never done talking of Man, yet murder men everywhere they find them, at the corner of every one of their own streets, in all the corners of the globe. For centuries they have stifled almost the whole of humanity in the name of a so-called spiritual experience. Look at them today swaying between atomic and spiritual disintegration.” FRANTZ FANON, THE WRETCHED OF THE EARTH 311 (1963).

237 ANDRE GUNDER FRANK, CAPITALISM AND UNDERDEVELOPMENT IN LATIN AMERICA (1967).

238 Id.

239 JOAN ROBINSON, ECONOMIC PHILOSOPHY 45 (1962).

240 Other scholars take a less radical stance than post-development theorists, arguing, for instance, that the primary goal of development should be nurturing people’s capabilities. Such theory usually does not argue against economic growth but does clearly view it as a secondary goal to enhancing capabilities—not as one of the primary goals integral to enhancing capabilities. Such theory would not be in conflict with this proposal. See, e.g., AMARTYA SEN, DEVELOPMENT AS FREEDOM (1999).


242 See generally CAROLINE M. ROB, CAN THE POOR INFLUENCE POLICY?: PARTICIPATORY POVERTY ASSESSMENTS IN THE DEVELOPING WORLD (2d ed. 2002).
surveys, which collect statistical data on the extent of poverty through standardized methods and rules.” Instead, “PPAs focus on processes and explanations of poverty as defined by individuals and communities within an evolving, flexible, and open framework.” Asking the poor what constitutes poverty and what is needed to break free generates responses—better roads, schools, etc.—that require robust and sustained growth to be adequately funded.

C. The Free Flow of Western Art as Cultural Imperialism

In at least some developing countries, a few politicians or fanatics or a larger portion of the local population might view the effort to export more developed country art into their country not as an altruistic attempt to improve human rights but as a Trojan horse intent on destroying or dominating their culture. While the aim of widely expanding access to developed country art in developing countries is to introduce individuals to liberal values, the intent and effect are not imperial. Unlike the heavy-handed, repressive policies of many developing countries, the proposal in question will not force anyone to believe in equal rights for women, let alone mandate that they consume any developed country art at all. Furthermore, the point of the proposal is to set developing countries free to decide copyright’s fate on their own—to have developed countries stop applying pressure. The policy simply stresses expanding options to individuals and allowing them to freely choose, a principle that David S. Landes finds lacking, along with others, in many developing countries:

The older centers of hither and farther Asia—the Islamic world, India, China—lacked the cultural and institutional foundations on which entrepreneurship rested. Worse: they tended to cling to tradition in a world of disturbing and disagreeable challenge. [citation omitted] Both China and the Arabic Middle East offer pungent case studies of this resistance to innovation and the subsequent national revenge against those they blamed for the economic disparities that ensued. Both impoverished themselves by insisting on their cultural, moral, and technical superiority over the barbarians around them, by refusing to learn from people they scorned as inferiors, by simply refusing to learn....

... [A]llmost everywhere [in the Middle East], rule is autocratic, with little patience for opposition or obstruction. The rulers and the powerful have succeeded in silencing the open-minded dissenters, who have come to realize that their very physical safety depends on their discretion or their departure to more open cultures—and sometimes not even then.

Landes makes clear that some current developing countries were once “teachers of the West,” which suggests that the

243 Id. at 5.
244 Plato was a critic of art. He believed that art misleads us from the truth because it misleadingly copies the appearance of reality and hence hurts us psychologically. He also thought that art distracts us from reason through its ability to conjure our emotions. PLATO, THE REPUBLIC 335-53 (Desmond Lee trans., Penguin Classics 2007).
245 David S. Landes, Global Enterprise and Industrial Performance: An Overview, in THE INVENTION OF ENTERPRISE: ENTREPRENEURSHIP FROM ANCIENT MESOPOTAMIA TO MODERN TIMES 1, 2-3 (David S. Landes, Joel Mokyr & William J. Baumol eds., 2010).
246 Id. at 2.
currently rich West was open to learning from the best practices of other countries and that such instruction was not Eastern imperialism that destroyed or sabotaged Western culture. Just as individuals in the West have been free to decide whether to study and adopt others' practices, developing country individuals would be able to do the same if developed country artwork becomes more freely available in their countries. Developed countries would not be forcefully imposing anything on developing country individuals; rather, they would be making views available that run counter to the stifling cultural coercion that is currently going on in many developing countries, where people are told, sometimes with threat of severe punishment, what beliefs to hold about politics, gender, social hierarchy, etc.

Also, concerns of a global monoculture are overblown. Certain unalienable protections like civil and political human rights should be globally respected, yet encouraging the universality of freedom, equality, and the rule of law leaves vast oceans of other important cultural practices untouched. There are countless examples of societies making room for foreign cultural practices without abandoning their own forms of artistic expression. Take the prosaic example of food in France. The French have embraced the culinary traditions of many nations from all corners of the globe, including eating more at McDonald’s than any other European society;247 all the while proudly and successfully maintaining their own cuisine. Since 1990, Hollywood has nominated for Oscars or awarded Oscars to movies from Algeria, Argentina, Bosnia and Herzegovina, Brazil, China, Cuba, Georgia, Hong Kong, India, Iran, Kazakhstan, Macedonia, Mexico, Nepal, the Palestinian territories, Peru, Poland, Russia, South Africa, Taiwan, and Vietnam. “Even at home, the United States enjoys no cultural hegemony.”248 Latin-music sales in the United States “increased 24 percent between 1997 and 2000 to $609 million.”249 Furthermore, developing countries can always subsidize the creation of developing country artwork, hopefully artwork demonstrating liberal values. If the subsidizing and exchange of art is not driven by politically nefarious intentions, even some prominent economists who believe in free trade allow for such a “cultural exception.”250

D. Developed Country Artwork Containing Harmful Values

Another prospective objection is that developed country artwork contains content that would harm developing countries exposed to such material. This possible concern is similar to the last three articulated above—whether human rights are relative, development as a goal, and the march of Western imperialism. To differentiate this fourth concern from the other three, I will interpret it as suggesting that some Western art, not pieces propounding human rights and equality, could contain messages corrosive to developing country individuals.


249 Id.

250 BHAGWATI, supra note 30, at 118.
Not all artwork is equal. First, while some developed country artwork may be harmful, it is unclear how much of it conveys bad messages. Second, if developing country individuals think developed country art is simply salacious, such a view may have come about because the most salacious developed country art is likely more widely demanded, consumed, or pirated in developing countries than other types of art. An indirect indicator of this is that "Internet users in Egypt, India and Turkey are the world's most frequent searchers for Web sites using the keyword 'sex' on Google search engines, according to statistics provided by Google Inc." Thus, opening up all developed country art to developing country individuals would bring a very different perspective. Third, while some developed country artwork might be a bad influence, we have to put its effects into perspective. Taken as a whole, the vast amount of developed country artwork with more liberal messages more than cancels out the bad. Further, developed country artwork, collectively, is surely more progressive than developing country artwork overall.

In addition, presenting the full range of developed country artwork will convincingly demonstrate to developing country individuals how robust and varied a culture can be when individuals possess freedom of expression. To properly respect others as autonomous adults, we must assume that they are able to "handle" unfiltered access to the total range of developed country culture. Doing otherwise would, in some sense, be replicating the infantilizing practices of their government censors and despots. We must give unobstructed access and let citizens freely decide for themselves what is worth hearing or viewing.

If the unfiltered flow of all developed country art into developing countries is prevented, then second-best scenarios, such as subsidizing the distribution of developed country artwork in developing countries, should be considered. For many of these second-best proposals, it would be necessary, on some level, to select swaths of artwork for dissemination. Such a procedure would require some differentiation for selection based on what messages the art conveys. Just as some developing country practices are clearly wrong—e.g., honor killings—while others are less so, some developed country artwork will clearly not be the best to export, while selecting from other pieces may be less clear cut. This is not a problem but rather a practical issue that is part of life. For such second-best practical suggestions, the mission will be to find developed country art that most effectively dispels the worst and most prevalent biases found within developing countries and leave it to developing country citizens to decide whether they want to consume such art and, if so, whether they ultimately appreciate it.

E. Individuals from Diverse Cultures Can Interpret Art Differently

Even if encouraging the export of developed country artwork is not considered a Trojan horse, some developing country individuals could theoretically interpret cul-

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251 Just as not all artwork is equal, nor are all art forms equal. While this is the case, this subsection will not concern itself with artistic mediums; rather, it will concentrate on artistic messages. This is because for most forms of art—sculpture, painting, music, dance, movies, theatre, etc.—what may be controversial is the message or a particular expression within an art form, not the form itself. Of course, one might attempt to blur these lines, for example, by claiming that throwing trash at people is a unique art form rather than an individual expression of performance art.

tural messages found within developed country artwork differently from how the artwork is interpreted in a developed country. Such misinterpretation would likely occasionally happen, as it does between different cultures that share a commitment to human rights and possess advanced economies but differ in certain cultural practices. Yet it seems difficult to conceive of how such misunderstandings would be so disastrous as to actually instill a deeper disbelief in human rights and equality in individuals who already hold less than full stock in such liberal ideals, or that such misunderstandings would negate or overwhelm the positive benefits of widely distributing developed country artwork.

If developed country individuals cannot have faith in liberal ideals winning over intolerant beliefs in a free and open marketplace of ideas in the long run, then how can such individuals advocate for democracy in their home countries? Learned Hand expressed this sentiment when he stated that “right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and always will be, folly; but we have staked upon it our all.” Further, how else do such skeptics propose to instill a belief in freedom—through force? Misunderstandings and real setbacks will happen, yet we have to respect the capacity of others to reason and ultimately see right from wrong. It may not happen quickly—it could even take decades or generations to have a majority of individuals within a society come to appreciate or openly express their support for the rule of law and freedom—yet there is likely no more acceptable way than to present ideas and let individuals choose for themselves, even if misinterpretations happen.

**F. Art Can Be Used as Propaganda**

That was the worst of the Cultural Revolution. The boredom. One would wake to the loudspeakers. They would be saying very loudly, “Never forget class struggle.” One would brush one’s teeth and on the toothbrush was the slogan Never Forget Class Struggle. On the washbasin it said, Never Forget Class Struggle. Wherever one looked there were slogans. Most people hated them—it was really very insulting. I was thoroughly bored.

The slogan “Never Forget Class Struggle” could be construed as a warning that oppressors can enlist art in propaganda campaigns. Governments have partaken in propaganda since at least the Roman days of bread and circuses. Many current developing country governments are no

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253 A distinct yet related issue is that some theorists argue that artwork is altered when those interacting with the artwork interpret it. See Graham McFee, The Historicity of Art, 38 J. AESTHETICS & ART CRITICISM 307 (1980).

254 Socrates, Milton, and Holmes, to name a few, have expounded upon this belief. For example, Justice Oliver Wendell Holmes Jr. touched on the matter in a dissenting opinion: “Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition.... But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas, that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out.” Abrams v. U.S., 250 U.S. 616, 630 (1919).


257 I am using the modern negative view of the term as opposed to the historical neutral meaning. BERNAYS, supra note 162, at 11.
exception, using this technique for their own suspect purposes. For example, one can only imagine what gets broadcast in Burma if Thabo Mbeki, a former president of South Africa, was quoted as suggesting the "CIA was involved" in the transmission of AIDS in Africa; the former minister of health of South Africa, Manto Tshabalala-Msimang, "urged people to eat beetroot and garlic to ward off AIDS"; and Dr. Wangari Maathai, the Kenyan Nobel laureate, said that AIDS "was deliberately created by 'evil-minded scientists' to kill black people so that outsiders could recolonize Africa."

My proposal does not entail any government-created artwork or propaganda. In fact, the U.S. government likely has to do no more, at least for non-despotic regimes, than simply stop forcing its overly robust copyright regime on developing countries and publicly commit to not retaliating against such countries if they reduce the scope and length of copyright. The policy would encourage the private selection of developed country artwork to minimize the selection of artwork by developing country governments.

G. Developing Country Artists Could Suffer

Another apprehension is that substantially weakening copyright in developing countries would hurt local artists. The vast majority of individuals in developing countries are struggling to survive—many of them accept that, at least for the foreseeable future, they will have to get by without any health care and, if they live in slums, with plastic bags as a means of disposing of human feces. These issues are secondary to the need to find enough food, water, and fuel to care for their families. In such a setting, many of the poor may want to create art but they do not have the time or money to do so. The few who attempt to subsist in such conditions through creating art may not even know what copyright is because it is so irrelevant to their life's circumstances. They usually create baskets, clothing, sculptures, etc. While some of these artistic mediums are protected by copyright, if such artists cannot get a day in court to challenge critical issues, it is anything but realistic to think they would be heard in court even if they had the means. Besides, piracy of their work is not rampant.

The remaining developing country artists, the ones who might actually rely on copyright protection, are part of the elite—they are well educated or rich. It is possible that these few well-educated or rich artists might be motivated to create art because of the existence of copyright. Yet even many of them create in artistic fields that either do not generate substantial revenues from copyright or support artists through other means—foundation grants, artistic fellowships, nonprofit art commissions, etc. Further, any potential royalties lost by such artists would be more than offset by the long-term benefits that the significant weakening of copyright would bring to everyone: the rule of law, freedom, economic growth, etc. Moreover, their own creative thinking could be invigorated because increased exposure to

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258 Dowden, supra note 156, at 343.
259 Id. at 344.
260 Id. at 334.
developed country art will open up new perspectives and stimulate new ideas.

Yes, some of these well-educated, rich developing country artists would suffer financially. They are the best positioned to lose revenue after copyright has been significantly weakened, but even then they will continue to be far better educated and richer than almost all of their fellow citizens. More important, weakening copyright in developing countries has such vast potential, over the long run, to improve the lives of all developing country individuals, that such possibilities cannot be sacrificed in the name of a few. In this case, the needs of the collective should take precedence.

**H. Importing Art Could Harm Indigenous Culture**

Some might argue against this proposal because they believe that the freer flow of developed country artwork into developing countries and the cultural, societal, and economic transformation that will likely ensue could have a negative effect on indigenous cultures. Such thinkers might either take a neutral position or actively encourage developing countries to maintain copyright as a filter.

Developed countries and developing countries have in the past done unspeakable harm to indigenous peoples.262 “But it is a great leap from acceptance of this history to argue” that increasing the availability of developed country artwork to indigenous cultures is an “equal or at least significant threat to these communities.”263 To borrow from Bhagwati, who speaks of globalization:

> Ultimately, one’s position on the matter rests on how paternalistic a position one takes on allowing individuals to freely interact with new ideas and decide for themselves what to believe. It is an “unpersuasive notion that the indigenous peoples generally, as distinct from the activists within them, wish to be trapped in their traditions and associated value systems and economic deprivation.”265

**IV. Conclusion**

Developing countries’ leaders need to focus on enabling the poor. Developed countries’ foreign policies and Big Copyright’s business strategies need to respect and attempt to more thoughtfully address the

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262 Conversely, some indigenous groups have done horrible things to their own people and to other indigenous groups.

263 BHAGWATI, supra note 30, at 113.

264 Id. at 115.

265 Id. at 116.
hardships faced by the poor and those living under dictatorships.

While far from perfect, artwork in developed countries often subtly contains liberal messages that demonstrate the value of equality, freedom, the rule of law, good governance, and respect for human rights. While developing countries all have unique circumstances, many of them could benefit in the long run from having developed country artwork more available to their citizens. Copyright can be beneficial, yet it is not universally so because it can reduce the maximum distribution of valuable artwork. Developed countries at a minimum should appreciate this and stop pressuring developing countries to continue a policy that is not in anyone's best interest. In fact, developed countries should consider encouraging, in a non-coercive fashion, developing countries to substantially reduce or eliminate copyright in their countries for at least a limited period of time, in order to find out what the revolutionary consequences of Low Enlightenment might be.