Piracy – Leakages from Modernity

The image of 'the pirate' is an ambiguous figure in contemporary culture: the romanticized hero of Johnny Depp's 'Jack Sparrow', the portrayal of anarchism of the seas controlled by the Somali pirates, the illegal goods that we are told fund terrorism and child labor, and the members of national Pirate Parties across the world. Contemporary piracy is also associated with the file-sharer: generally a young white man hiding behind a computer screen somewhere in Europe or North America, downloading movies and music, or anonymously trolling online conversations, or hacking into large and powerful computer systems – banks and other corporates, governments and international bodies. This is indeed a wide spread form of piracy that deserves more serious, and unbiased, attention from scholars and researchers. It is however also an image that tends to limit the understanding of piracy to a matter of intellectual property, and digital distribution of entertainment.

Until recently, a large part of the research about digital piracy has been initiated by the entertainment industry, and the independent research that challenges the claims made by media companies and copyright organizations has still had to address the problems and questions formulated by that industry. Research on digital piracy has consequently – with a few exceptions – come to focus on piracy as a problem to be solved: how to put a stop to it or how the artists, producers and copyright holders can be compensated if we accept a certain level of file-sharing? While illegal copies of all sorts of cultural products have been produced since the advent of the printing press, these issues become more complex in a digital environment where media companies are trying to find ways to keep on selling products that are infinitely reproducible.

This question is particularly poignant for those who try to make a living from selling the products of their artistic labor, but piracy has implications far beyond the sphere of the media economy. After the rise and fall of the music-sharing site, Napster, but before the file-sharing architecture known as BitTorrent really exploded with sites like The Pirate Bay, William Uricchio (2004, 139) pointed to the social and political potentials of digital piratical technologies:

> In the case of aforementioned peer-to-peer (P2P) networks, the implications of this shift range from the reconsideration of how we define and interact with certain cultural texts, to how collaborative communities take form and operate, to how we understand our rights and obligations as citizens – whether in the political, economic, or cultural sphere.

This implies that peer-to-peer (P2P) networks not only present a new way for individuals to interact with commodities, but also to interact with each other and with society as a whole. From newspapers to universities, record labels to textbooks, independent musicians to pornography, the monopolistic linear or vertical distribution model has been irrevocably changed. We now live in a global distribution system that has moved beyond 'the network' to be 'a constellation'. Like the constellations in the sky that we stare at in wonder, the connections are often not visible and can be incredibly difficult to understand.

The starting point for this book is how acts of piracy, understood in a wider sense, can redefine or confirm such interactions: that is, how does piracy open up spaces and create leakages of culture, knowledge and capital between different political, organizational and geographical spheres?

Piracy here is understood in a way that includes but is not limited to file-sharing and other technologies for unauthorized distribution of media and information. Researchers such as Ravi Sundaram (2010) and Lawrence Liang (2005) – working within the broader interdisciplinary Sarai Network that studies cultural and urban commons in the developing world – have begun to explore how piracy is intertwined with unauthorized use of urban space in third world cities. Pirated products are widely circulated in the ungovernable slums and shantytowns of cities like Delhi. New research demonstrates the parallels between the distribution of pirated software, films and books and the various practices that provide illegal access to public spaces such as squatting and tapping into networks for water and electricity (Liang 2005; Sundaram 2010). In this context, piracy can be envisioned as struggles over resources that are located in the borderlands between the public and the private: struggles that create and exploit leakages between enclosed properties and the commons. This interplay, or 'wrestle', demands that we re-imagine cultural and geographical space.

Piracy thus also touches on one of the crucial questions in the construction of modern capitalist societies: what is a common right and what is a commodity? This balance is currently under (re)negotiation, from debates over access to knowledge versus the rights of authorship, to the reorganization of national

health insurance, social security and rights and freedoms around labor and labor migration. In this way, we can understand contemporary debates over piracy as a continuation of the struggles over the commons and enclosure of societies since the middle ages. The enclosure-fuelled emergence of the economic machine resulted in immeasurable innovations and allows those of us belonging to mainstream Western societies to live the lifestyle we enjoy today. But the destruction it caused displaced millions. With an eye to this history of the commons-commodity struggle, we choose not to see piracy as a revolutionary moment, or as simply something illegal – for it can be neither and both in one simultaneous act. We do not romanticize piracy but rather see it as representing a complex interplay between claims of rights, knowledge systems, technology and ontological positions.

Piracy not only actualizes structural changes in the Western world, it also relates to ongoing postcolonial transformations. The work undertaken at the Sarai Network can be seen as one example of new research that contextualizes piracy in different ways and looks at it from geographical, geopolitical and thematic perspectives other than those articulated by the media industry. As Joe Karaganis (2011) points out in his introduction to the report *Media Piracy in Emerging Economies* – derived from comprehensive fieldwork done by local researchers in six countries across South America, Asia and Eastern Europe – most research on media piracy has been formulated by American actors with the interests of their national industries in mind (also see Drahos and Braithwaite 2003). It unilaterally focuses on how piracy affects American copyright holders, while rarely discussing how changing laws and technologies of distribution affect consumers, citizens and informal economies in the third world. The privilege to formulate the problem has rested with the corporations and governments of the Western world. Like many emerging research networks, this book challenges this dominant perspective.

Leakages and innovations

This book, then, connects with and reflects the changing agenda of piracy research by opening up the field to a wide range of new thematic, disciplinary and geographical points of view that take piracy seriously as a global, social, political and cultural phenomenon. The geographic and thematic diversity of this collection reflects that development and gives a glimpse into the wider field of

inquiry that takes the issue of piracy beyond the narrow focus on sales and business models. This is not to say that sales and business models are not important, but a discussion about the media economy has to be situated in a broad social context; and acknowledge other interests in order to be relevant. The readers will indeed find discussions about digital piracy and media economies in this book, but contextualized in a way that highlights more fundamental social, political and cultural aspects and consequences of piracy.

The point of departure for this anthology is to approach piracy not as an abnormality that needs to be rectified or a problem that needs to be solved, but as something inherent to modern, capitalist society. Piracy, we argue, is a phenomenon that actually teaches us something about contemporary society if we are prepared to learn from it.

In *The Cultural Commons of Hope,* Arvanitakis (2007) details the history of counter movements as opening up new commons as well as protecting existing ones, while capital moves to enclose and commodify these spaces. This has occurred in different phases, with different kinds of resources: the common lands, the environment more generally, the institutions of the welfare state, the human body, the intellect, and ultimately cultural practices. The ability to place definable private property rights around each of these is at the very core of capitalism and modernity. But property rights are never that easy to define: even in something as obvious as a car you may own, there are many obligations associated with those rights – from needing insurance and registration to wearing a seatbelt and driving within the speed limit. This ambiguity of property rights becomes even more immediate when it comes to the more slippery resources that are systematically commodified under intellectual property rights regimes and continuously challenged by piracy.

In many ways, this focus on piracy contributes to articulating a new way of understanding the very processes of modernity. If we understand modernity as a series of institutional developments accompanied by changing social and cultural practices, piracy allows us to re-examine historical and contemporary developments. The emergence of capitalist economies is inextricably linked with the changing nature and definition of property rights: something that had to be defined to respond to what were being identified as 'acts of piracy'. Likewise, the modern split between private and public spheres is continuously redefined as authorities attempt to deal with 'piracy'. In the cultural sphere, as various

authors in this collection note, the norms among 'pirate' file-sharers can, in some aspects, actually align with the values and norms that hold the ideology of copyright together.

Piracy thus creates a gap or leak from the processes of modernity, while at the same time meeting the capitalist economy's need for interventions and innovations. In contemporary terms, Internet piracy is founded on countless innovations that create a 'leak' from the globalized capitalist economy, where profits, control and the monopoly on distribution is dispersed beyond the existing property regimes. Authorities tend to respond to these developments with stricter enforcement of intellectual property rights, while corporations attempt to enclose and commodify innovations created by the very same outlaws it rails against. These legal, technological, political and economic changes seek to reinforce the capitalist system that piracy potentially destabilizes.

This complex interplay creates a dance of power, control, innovation, confrontation, leakage and enclosures. Moreover, this leads to a contestation of rhetorical devices, as claims of piracy are matched by declarations of freedom: after all, what may be considered an act of piracy by one person, community or nation, may well be seen as a form of resistance by others.

It is here that piracy has the potential to help us gain new insights into the processes of modernity. Specific forms of piracy often emerge in the margins of innovative processes and transformations: but these innovations are at the core of modernity, not at the periphery. As such, we return to our first point: piracy *must* be understood as part of the everyday.

Structure

This book is structured according to three themes. Since nothing piratical should be taken for granted, we begin by discussing the *ontological* basics: *What is piracy?* Or more precisely, *What can piracy be made to be?* These questions reflect a fundamental aspect of our approach: piracy is neither homogenous, nor essential. As noted, 'piracy' is a label that certain actors slap on others for specific reasons. How this label is distributed tells us a great deal, about the alleged pirates, about those who have the power and desire to stick on labels, and the social context of both. We then move on to chapters that discuss the *politics* of piracy from a macro perspective, analyzing how piracy relates to structures of power and processes of transformation. Finally, we present a selection of texts

that focus more closely on piratical *practices* and show how acts of piracy, whether street-vending or file-sharing, carry different meanings and have shifting implications in various contexts.

Part 1. Ontology

The opening text is **James Meese's** *The Pirate Imaginary and the Potential of the Authorial Pirate*. Meese sets the scene by discussing how various discourses struggle to position the pirate either as a criminal, a rebel or a mundane media consumer. At the end, however, Meese challenges this kind of polarization with which piracy is so often associated. Importantly, the first chapter raises the question as to whether we should abandon the term 'piracy', as it tends to evoke a 'criminal/hero dichotomy' that 'reinforces unequal institutional structures, at the expense of a fully realized understanding of how we all engage with, create and reproduce cultural artifacts'. This excellent starting point for this collection asks what we mean when we say 'piracy', as well as why the word is used to describe certain acts.

Virginia Crisp addresses the same fundamental question of how the image of the pirate is constructed, but she approaches it from the perspective of the assumed perpetrators. In her chapter, *To Name a Thief: Constructing the Deviant Pirate*, Crisp examines how certain groups of file-sharers relate to the concept of piracy and to what extent they identify themselves as pirates. The chapter raises important questions about identity: If you have ever read a newspaper over someone's shoulder, would you consider yourself to be taking content illegally?

The following chapter entitled *'You Can't Change Our Ancestors Without Our Permission': Cultural Perspectives on Biopiracy*, is in many ways, also about naming a thief. Here **Daniel F. Robinson**, **Danielle Drozdzewski** and **Louise Kiddell** discuss the practice of biopiracy: how multinational companies patent and appropriate genes, breeds and other natural resources whose uses were discovered or known, developed and deployed for centuries by Indigenous communities. Those communities carefully held, nurtured and transferred these scientific (medical, nutrition, ecological management) knowledges between people and generations as common resources. Yet the intellectual property regime turns such knowledge into commodities that are enclosed and exploited - in other words, sold for profit. This exemplifies how piracy can be conceptualized as a counter discourse that, in this case, aims to expose how multinational industries use intellectual property

rights to pirate resources that were traditionally communal.

The ontology section ends with a text that takes us back to the origins of piracy, highlighting the consistencies in the discourse about high-sea pirates of the past with contemporary digital piracy. In *Piratical Community and the Digital Age: The Structural Racialization of Piracy in European Law and Culture*, **Sonja Schillings** discusses how the definition of maritime piracy in early modern legal history is deeply integrated with the construction of European colonialism. This is further linked with the racialization of piracy throughout European and American history. Highlighting how piracy presents new ways of understanding modernity, Schillings discusses how discourses on digital piracy continue to be structured along conceptions from the colonial past. In this chapter, we see how leakages from modernity were never tolerated.

Part 2. Politics

Shillings' text also points to the fundamentally political aspects of piracy. In this picture, piracy is not an incidental interference in contemporary information politics. Piracy engages with the basic social and political structures of modern society. **Sean Johnson Andrews** echoes this approach in his chapter *Modernity, Law and the Violence of Piracy, Property and the State*. Andrews places piracy within the global political economy in general, and the neoliberal agenda more specifically. He discusses piracy as a phenomenon that exposes the contradictions within contemporary capitalism and highlights neoliberalism as a failed project of modernity. Like Shillings, Andrews draws our attention to an aspect that is often overlooked in discussions of digital piracy: violence. Violence is inherent to the history of maritime piracy. Monopolized, state sanctioned violence is the ultimate force underpinning the private property regime, the regime that contemporary piracy challenges. As with law-and-order ramp-ups (or 'crack-downs') the world over, this state-sanctioned violence is a response to leaks that destabilize the established political economy.

In his compelling chapter, Andrews also makes the bold gesture to envision the end of capitalism – reminding us that no system lasts forever. This utopian position demands that we keep the door open for alternative ways of imagining the world. The fact that none of us can give a comprehensive outline of a political and economic system to succeed capitalism is no reason to imagine that the current state of organizing resources is perpetual. No one came up with capitalism

in a single stroke – it evolved over a long period of time through the practices of people and institutions beginning to do things differently, in most cases without a thought of changing the world. In the same way the multitude of heterogeneous practices called 'piracy' that we discuss in this book might very well form a small part in the great scheme of change that is just under way.

The crisis of capitalism and leakages of intellectual property are also themes in **Yannis Mylona's** chapter *'Pirates' in EU's (Semi) Peripheries*. Drawing on critical literature on new media, Mylonas empirically examines the practices that hegemonic mainstream political and economic discourses frame as 'piracy'. While this description is used for many practices, Mylonas finds that few Internet or digital technology users identify themselves as 'pirates'. The exception is Pirate Party members – though the terms are very different. Mylonas challenges the hegemonic construction of copyright piracy by looking at the concrete realities of people using new media and digital technologies in local contexts where different national histories of social and economic transformations are reflected in shifting attitudes to file-sharing.

Lucas Logan's chapter, *The IPR GPR,* also uses a political economy framework. Logan's work highlights the abovementioned interplay between modernity and piracy by discussing the emerging global prohibition regime (GPR) over intellectual property rights (IPR). GPRs are made up of legal, economic, social and political regimes that attempt to regulate prohibited practices – and in so doing, establish and enforce international standards. As we witness piracy destabilize the institutions of modernity, Logan highlights how it also gives rise to social interaction and communication between and within modern nation-states and global markets.

Ekin Gündüz Özdemirci's chapter *BitTorrent: Stealing or Sharing Culture* reflects on the countercultural discourse that has emerged around the concept of piracy: where file-sharing is seen as a technology of democracy and enlightenment, fully comparable to the birth of the printing press. Özdeirci's work highlights the complexity of piracy: it does not undermine the institutions of modernity like democracy, but potentially strengthens them. Özdeirci shows how new political meanings and potentials are attributed to piracy when new media technologies turn culture and information from a 'private good', underscored by scarcity thinking, into a potentially public good that can be infinitely shared and distributed. This reminds us how the challenges to the contemporary copyright regime sit

within a wider reconfiguration of the demarcations between private and public. Özdemirci's text indicates that the supporters of The Pirate Bay tend to regard piracy and file-sharing as a defense of the commons against imposed scarcity and enclosure.

Özdemirci highlights that the utopian vision of the Internet as a tool for civic empowerment forms one basis for an emerging political mobilization around issues of free speech, access to knowledge and respect for privacy in a digital world. In her chapter *The Internet between Politics and the Political*, **Mariachristina Sciannamblo** further explores this politicisation of piracy in the guise of the Pirate Party movement, which has made digital rights and freedom of information on the Internet its core issue. Sciannamblo argues that the emergence of pirate parties is a direct political expression of a radically different social order representing the changing distribution constellations described earlier. Far from being a mere technical innovation, peer-to-peer networks represent the political conflict between two economic models of knowledge and social organization: 'open' and 'closed' approaches. Sciannamblo sees this conflict emerge through the 'open' social practices of the Internet – such as content and information sharing which threatens established 'closed' power relationships based on ownership, property rights and monetary exchange: here the contestation continues.

These new forms of distribution of culture and knowledge level a critique at the dominance of the copyright industry. We can discern echoes of the criticisms made by the members of the Frankfurt school towards the culture industries here (Adorno and Horkheimer 1968/1994). It is indeed an inspiring thought to envision the BitTorrent protocol as the fulfillment of the age of technological reproduction. In so doing, however, we must not forget that the very technologies Walter Benjamin envisioned as potentially transmogrifying art from a sacrosanct privilege of the few to a collaborative act of the masses also formed the basis for the media economy that he railed against. One can imagine that Benjamin would be at the forefront of the challenges created by digital piracy against the established media industry interests. Yet we may also ask if those new digital technologies are not as likely to be co-opted and commodified by the culture industry as the film medium of the 1930s. It is here we can situate the chapter by **You Jie**, *Cultural Resistance or Corporate Assistance: Disenchanting the Anti-Capitalist Myth of Digital Piracy*. You Jie directly questions the radical, anti-capitalist potentials of file-sharing networks. In so doing, he highlights – as we have – that nothing about

this complex phenomenon should be taken for granted or simply categorized.

Part 3. Practices

You Jie's questions point to the need for more in-depth analysis of what piracy practices actually mean to those involved. **Stefan Larsson** and **Jonas Andersson's** chapter, *The Justification of Piracy*, introduces us to a deeper understanding of the practices of piracy. Larsson and Andersson build on a large-scale study of attitudes among thousands of Pirate Bay users that challenge the often homogenous yet polarized image of file-sharers as either indifferent thieves or ideologically coherent activists. They expose diverse and contradictory attitudes among file-sharers that might point to 'a revival of a norm pluralistic conception of law in a digital society'.

Balázs Bodó's chapter, *Set the Fox to Watch the Geese: Voluntary IP Regimes in Piratical File-Sharing Communities*, also discusses the heterogeneity of piracy practices. Bodó examines the diversity of file-sharing groups by looking at a wide range of closed and often very specialized file-sharing networks that exist beyond mainstream platforms like The Pirate Bay. Bodó's conclusions are challenging: he argues that such alternative networks also impose strict rules of exchange that often reflect those of conventional IP-regimes, but tend to be more efficient. Again, in these practices we find a challenge to mainstream practices as Bodó argues that insiders who respect the artists provide a better regime of managing IP than externally imposed, heavy-handed enforcement mechanisms.

File-sharing is thus not necessarily free from norms and gatekeepers, nor is it always free of charge. In closed file-sharing networks, the users often get a ratio of downloads partly based on how much uploaded material s/he contributes to the community. As Bodó points out, copyright holders can sometimes be rewarded with extra credits for allowing their works to be available.

Pavlos Hatzopoulos and **Nelli Kambouri's** chapter, *Pirate Economies and the Production of Smooth Spaces,* brings to life the Bertolt Brecht play, *Mother Courage and Her Children*. In this fascinating case study the authors track the life of illegal immigrants in Greece selling pirated goods across the protest lines on Syntagma Square in Athens: supplying water, Greek flags, torches and other necessities to both the left wing, human rights inspired protestors and the right wing anti-immigration groups. Again we witness the practices of piracy refusing to recognize established boundaries – political, social, physical or otherwise.

In her chapter, *After Piracy*, **Yi-Chieh Jessica Lin** looks at piracy from the perspective of industrial designers in Taiwan. The article focuses on the design exhibition, "Copycat," where a number of Taiwanese industrial designers elaborate on the theme of originality, copying and counterfeits. Taking their work as an example, Lin explores how western brands are remixed and reconfigured to articulate certain aesthetic and political meanings against the backdrop of China's long *Shenzai* tradition of churning and counterfeiting. We can see how the work of these designers epitomizes the creative dimensions of copying and challenges established dichotomies between innovation and reproduction that are also tied to a (post)colonial polarization between West and East.

Vanessa Mendes Moreira de Sa's chapter, *The Collaborative Production of Amateur Subtitles for Pirated TV shows in Brazil,* acknowledges the extensive creative work invested in voluntary labor such as 'fansubbing' (or the production of subtitles for foreign language television programs). Unlike in professional sub-titling, no money is exchanged. Rather, recognition and appreciation from the wide community of file-sharing 'fans' replaces financial gratification as the incentive and reward for unpaid work. However, Moreira de Sa also challenges the wide spread conception of collective, networked labor as an intrinsically un-hierarchical activity. Like You Jie, Moreira de Sa acknowledges that what appears to be a collaborative act of free sharing of culture might, in some cases, also serve the purpose of the media industry in the sense that fansubbing can be seen as unpaid labor that promotes American TV-shows in foreign markets.

The final chapter, *Piracy is Normal, Piracy is Boring: Systemic Disruption as Everyday Life,* is written by **Francesca da Rimini** and **Jonathan Marshall**. As the title indicates, the chapter discusses how piracy has become a commonplace, mundane and everyday activity. The authors describe piracy as 'a commonplace disorder' which emerges within 'the order of information capitalism'. It is a process, as we discussed above, that is 'created by the ubiquitous orders of information capitalism and suppressed by those orders' – and by the dynamic relationships between the two. Piracy is not radical, according to da Rimini and Marshall, but the end product of a consumer society that is trained to seek instant gratification with the availability of endless credit.

It might appear somewhat strange to end this book, which itself claims piracy can redefine the way we understand modernity, with a text that declares piracy to be boring. This is, however, exactly what makes it so interesting and relevant:

piracy is not separate from the processes of modernity, just another expression of them. The fact that a practice that is still so legally and politically controversial has become so quotidian and integrated in everyday practices says something about the inconsistencies of contemporary society. Above all else, this book attests to the inconsistencies surrounding piracy by highlighting how the (same) practice can be a crime, a rebellious act, a technological, aesthetic or commercial innovation, a source for constructing community and identity, and a marketing tool for the very cultural industries that it attempts to challenge. This returns us to our starting point:

> What do we mean when we say piracy and why do we insist on using a term that has become so infested with prejudices, preconceptions and rigid dichotomizations?

The many inherited preconceptions that accompany the concept are what make piracy such an interesting phenomenon, because of the processes involved, and what we can learn about the society that created yet spurned them. This book offers no consistent position on piracy, for it is an ambiguous concept. Nor is there a grand unifying conclusion or theory that explains piracy, because one of the inherent aspects of piracy is that it morphs and mutates, and rejects all such attempts.

Our final point is that while each of the chapters embodies much labor, sometimes representing the culmination of years of research, this book is in itself not the end but the beginning of greater learning and exploration. We have just begun to see the outlines of a sphere of knowledge that will grow and contribute greatly to our understanding of contemporary society over the coming decades. We are looking forward to this with excitement and hope to follow and engage more with these debates about what piracy is, can be and should be. One forum for this will be an online presence including 'Piracy Lab' (http://piracylab.com) – we hope to interact with you there.

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