

Pirates, Hydras, Trolls, and... Authors? On the Authorial Capacities of Digital Media Piracy

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A Thesis  
in  
The Department  
of  
Sociology and Anthropology

Presented in Partial Fulfillment of the Requirements  
for the Degree of Master of Arts (Social and Cultural Anthropology) at  
Concordia University  
Montreal, Quebec, Canada

April 2018

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**CONCORDIA UNIVERSITY**

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## ABSTRACT

Pirates, Hydras, Trolls, and... Authors?

On the Authorial Capacities of Digital Media Piracy

Thomas MacDonald

In this thesis, I undertake a positive analysis of digital media piracy to examine the movement's authorial capacities. Proposed by James Meese as a way of looking beyond the traditional "piracy is theft" framework, this perspective offers new insights about how the increasingly mundane act of downloading and sharing media files can incite social change. I begin by examining what it means to be a digital media pirate, and how that question is part of the construction of the piracy movement. In the second chapter, I explore the complex relationship between piracy and information capitalism, highlighting how piracy arises from within information capitalism. In the third chapter, I look to how moral panic discourse has been used to demonize pirates, but also how this process has been appropriated by pirates to circulate counter-hegemonic discourse. In the fourth chapter, I examine how pirates are the authors of alternative ethical criteria within private filesharing communities, and how pirates mobilize moral and ethical discourse to push back against attempts to impede their ability to pursue a good piratical life. The final chapter of this thesis takes up the ethnographically rich moment of the Kickass Torrents shutdown in July 2016. Looking at the shut down as an event that like digital media piracy is both meaningful yet mundane, we see how pirates, though contesting romanticized and naturalized norms of property and authorship, push for a new form of authorship constituted by p2p communication in online spaces. Through these perspectives on the piracy movement in the summer of 2016, I argue that through the agglomerated effects of individual acts of piracy, the broader piracy movement radically changes the ways we understand and engage with cultural media objects.

KEY WORDS: Digital Media Piracy, Filesharing, BitTorrent, Authorship, Internet Activism, Ethics, Moral Panics, Kickass Torrents

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## **Acknowledgements**

There is a veritable swarm of individuals who have lent their support to me throughout this project. To Dr. Forte, I would like to convey my deepest gratitude for your patience and understanding throughout this project, as well as your insightful comments. To my colleagues and professors at the Department of Sociology and Anthropology at Concordia University, I thank you for always inspiring new angles from which to look at piracy, many of which have made their way into this work. I am indebted to family and friends for abiding by my frequent rambling, and for providing generous amounts of emotional support throughout the project. Without your compassion and encouragement, I certainly would not have made it this far. Finally, I would like to thank the individuals who participated in the research. Without the assistance of the various pirates, filesharers and users that I spoke with during the fieldwork period, I would most certainly have been adrift without a rudder.

## Introduction

The term “pirate” is a captivating one. It embodies a rich history of subversive acts from Ancient Greek *peirates*, buccaneers and freebooters on the Atlantic, British pirate radio hosts, early computer enthusiasts sharing computer code with each other, teenagers opening their music libraries to each other through Limewire, hackers ripping Digital Rights Management (DRM) from games, contemporary pirates hijacking container ships, users distributing fragments of files through the BitTorrent protocol, streaming sites and cyberlockers. The imaginary of the swashbuckler pirate has been commercialized through Disney’s *Pirates of the Caribbean* franchise. It has also been employed by media and intellectual property interest groups to motivate draconian copyright reform through rhetoric depicting carnage at the hands of predatory internet pirates. However, despite this rhetoric and the illicit nature of piratical activity in most legal jurisdictions, piracy has become a widespread everyday practice for many. In 2017 alone, over 300 billion visits were made to piracy related websites (Ernesto 2018), and as illicit streaming portals become more popular due to increasing bandwidth and network access across the world, it appears that piracy is set to continue as a daily practice of accessing mediated culture. The captivating history of the term, the ambiguity it presents, the widespread appeal and the accessibility of this form of hacktivism is what attracted me to study this topic.

The accessibility of digital media piracy undoubtedly plays a role in its normalization. Unlike other forms of hacktivism, digital media piracy requires minimal technical proficiency. Early p2p services like Napster helped foster the sense that it is perfectly normal, even desirable, to make one’s media files accessible to one another. However, today the act of engaging in piracy seems to have lost the novelty that it had in its early Napster heyday. This is a key point of departure for this thesis. How can we examine digital piracy as an increasingly normalized part of digital life? Furthermore, how does this everyday, unreflected practice effect social change? To help answer this question, I explore multiple facets of digital media piracy, and argue that through the agglomerated effects of individual acts of piracy, the broader piracy movement radically changes the ways we understand and engage with cultural media objects.

The approach I take in this thesis is inspired by the BitTorrent protocol. As a user enters a BitTorrent network, they join a swarm of peers who are sharing bits of data between one another. By entering the swarm, the user also shares with others and creates rhizomatic organizations of

individuals distributing these bits, which are then constituted on the user's computer by their client software. In this thesis, I am one of many users entering a network of established literature on the subject. In addition to drawing from academic peers working on piracy, the overall constitution of the thesis mimics the act of torrenting. Each chapter stands as a separate bit; drawing from a specific set of theory to discuss a facet of the broader piracy phenomenon. Alone, each bit only represents a fragment of piratical practice. By presenting this assemblage of bits of theory and practices, I develop a more comprehensive examination of digital media piracy, specifically as I observed it in the summer of 2016.

How can downloading and copying media files effect broader social change? I refer to the ability to foster new ways of thinking about and engaging with the production, distribution and consumption of digital media as the authorial capacities of digital media piracy. Piracy and authorship are intricately linked subjects, often positioned as antithetical to one another; I argue that this positioning is a relatively recent construction resulting from the intensification of private property norms through copyright law. This point will be discussed in further depth in chapter one.

### **Fieldsites, Methodology and Ethics**

The fieldwork period for this project began in July 2016, and concluded in January 2017. The period was separated into two portions. From July to September 2016, I was in the field full-time, engaging in forum research and preparing for interviewing by remaining up to date on piracy news discourse and issues. I remained in the field on a part-time basis from September 2016 to January 2017; during this time, I conducted email interviews, created backups of research data, and began going through my data in anticipation of writing.

#### *Fieldsites*

The "field" in this project is multi-layered, and differs significantly from the traditional anthropological field site. In geographical terms, the research was conducted from various locations throughout Montreal while my interviewees were scattered throughout the world. There are significant methodological difficulties with trying to fix this project in one geographical context. Aside from what my interviewees told me, I could not positively ascertain where they were from, and did not wish to for ethical reasons. Piracy platforms are also constantly in flux, shifting through national boundaries as they change their domain name to evade shutdowns and server seizures. Finally, the prosecution of piracy follows similar global flows; while different



legal systems can create different contexts of piracy, as more legal systems align themselves with the World Intellectual Property Organization (WIPO), agree to copyright aligning statutes in international trade agreements, and create multinational law enforcement agreements, these differences are beginning to erode.

As the BitTorrent protocol is founded on the idea of decentralized filesharing, it explicitly avoids having a ubiquitous website or community as seen with Napster. There are many different types of website that pirates engage with daily—torrenting sites, forums, social media sites, blogs—each of which incorporates different understandings and elements of the broader digital media piracy phenomenon. Keeping these considerations and complexities in mind, this project is an attempt at multi-sited research (Marcus 1995) where I consider several of these “disruptive spaces” within which piratical practice flourishes (Lindgren 2013a).

### *Methodology*

In this project I aimed to engage in participant observation on forums attached to public index and public tracker<sup>1</sup> websites like Kickass Torrents (KAT) and The Pirate Bay (TPB); however, soon after the fieldwork commenced KAT was shut down, including its forums. I was unsure how quickly the community would be back up and running—not to mention whether they would trust an ethnographer prying into the loss of their community. I had contacted moderators before the shutdown, and while they were willing to sanction my research on the forums, they asked that I refrain from giving links to external sites and from soliciting emails from users. On SuprBay, I was also cautioned against surveys, as previous research surveys had not been well received.

Fortunately, the KAT community forums returned within a week, due to the prodigious amount of volunteer work by the forum moderation team who were restoring user profiles as quickly as possible. However, for a while the moderators faced technical issues that would not allow recently created accounts to post on the forums. When I was eventually able to access the site in late August 2016, attempts to generate conversation in a dedicated thread (per the moderators’ requests) did not gain traction among users. Given the short amount of time remaining

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<sup>1</sup> Indexes maintain a database of available torrent files for users to download, whereas trackers maintain a record of what users have what files, to coordinate the transfer of bits between them.

in my full-time fieldwork period and my desire to respect the wishes of the forum moderators, I made the decision to move away from participant observation on the KAT forums.

To supplement the loss of participant observation on KAT and other forums, I increased my efforts to collect data on pirate discourse during the fieldwork period. This included documenting news stories on TorrentFreak, as well as the reactions to these stories in comment sections. TorrentFreak's comment system is run by the Disqus platform, a public platform which afforded me the ability to gain insight into user discourse about some of the events that happened during the fieldwork period. Furthermore, it was possible to collect a dataset of comments on TorrentFreak stories by employing a dedicated comment scraper<sup>2</sup>, which collected comments and aggregated them into a searchable comma separated values (.csv) table for backup and analysis. This observation of piracy discourse was complemented by interviews with 11 individuals who volunteered from the r/piracy subreddit, and one individual who had contacted me via the encrypted email listed on my consent form that I had posted to the KAT forums<sup>3</sup>.

This methodological shift, though inconvenient for research, did yield some benefits. Rather than focusing solely on the KAT shutdown I could see how it had a broader impact on the pirate communities that picked up the users who were temporarily without their forums. I was also able to look at how this specific case of enforcement connected to other enforcement debates occurring during the fieldwork period. It also prompted further examination of blog discourse, through which I came to better understand the discourse around copyright trolling that is discussed

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<sup>2</sup> The Digital Methods Initiative has a publicly available Disqus comment scraper available at <https://wiki.digitalmethods.net/Dmi/ToolDisqusScraper>. This tool was used as a backup, and to make the comments text-searchable.

<sup>3</sup> It is important to note that all of my interviewees identified as male. The prominence of toxic technocultures on Reddit in recent events like #GamerGate and the Fapping (Massanari 2017) raises questions about piracy and gender, especially on communities like Reddit. As several users noted in the r/piracy subreddit, it is likely that pirates who identify as female may not publicly identify as such to avoid spam and harassment (carsick 2017). This is an under-researched element of digital media piracy, as generally the focus is on framing piracy in terms of resistance to the state, and corporations. Furthermore, when gender is examined much of the research derives from the descriptive strain discussed in chapter four, where the goal is to associate willingness to engage in piratical behavior with gender. Despite this locus, an excellent example of critical research on piracy and gender can be found in Kavita Philip's discussion on how the political economy of authorship has been shaped by transnational and hybrid histories of race, class, gender and colonialism (2005).

in chapter three. Finally, my efforts on KAT did not go entirely to waste, as an individual from the KAT forums later made the effort to contact me to see if I was still looking for people to speak with. As my consent form had my secure research email listed, he had sought me out as he was interested in contributing to the project.

The methodology in this thesis differs from traditional ethnography. Anthropologist Tom Boellstorff argues that research that relies solely on elicited data—such as interviews and forum discourse and other online texts—may be a threat to the rigor and legitimacy of ethnography as a digital research method. To supplement elicited data, Boellstorff argues that online ethnographers must engage in participant observation to be able to understand the difference between what people say they do, and what they actually do (2013). However, ethnographic research on digital media piracy requires some methodological flexibility, given the rapid changes that can occur such as the overnight disappearance of entire communities and websites. Christine Hine argues that online ethnography must be flexible to better understand the internet as it becomes more embedded, embodied and part of our everyday lives (2015). In particular, the everyday nature of digital media piracy makes it difficult to engage in classic methods of participant observation. As previously stated, in this project I was not physically present in the fieldsites, nor were they tied to any physical place. Outside of the potential ethical concerns of meeting face-to-face with digital media pirates, the in-person act of downloading is a relatively mundane and individualized affair that occurs in the background of a user's everyday online interactions; however, through the network of individuals that digital media pirates engage with daily, these discrete acts of downloading take on meaning within a broader piracy movement. As such, this project departs from the more traditionally informed ethnography Boellstorff envisions towards an approach suited to studying the shifting phenomenon of digital media piracy in the summer of 2016. This does not mean that Boellstorff's concerns about relying solely on elicited data should be discounted. In this project, the events described occurred while I was in the field, and as such I experienced the KAT shutdown in my own way alongside many of my interlocutors. In the case of this project, the availability of elicited data is a strength, as it allowed for the preservation of online interactions for later analysis.

## *Ethics*

Ethics were—and continue to be—a significant concern for this thesis, given that it is examining practices that could result in civil or criminal penalties depending on the legal jurisdiction. Furthermore, there are significant issues that are emerging about the accessibility of user data, and the ways that this data can be manipulated. Given these concerns, a strict ethical guideline was necessary to govern both the collection and handling of research data during the project. In this section, I will briefly address some of the key ethical concerns within this project, and how they were handled to ensure no harm would come of the participants.

The first major ethical concern revolves around issues of collecting data that could potentially identify the participants during the fieldwork period. Given the legal liabilities that p2p pirates have faced in the past<sup>4</sup> and the ethical obligations anthropologists bear to their research participants, I took active measures to minimize risk to potential interviewees and participants so that it did not exceed their usual day-to-day activities. When recruiting interviewees through the r/piracy subreddit, I advised participants that I would prefer to conduct interviews via Protonmail, an email provider that employs secure end-to-end encryption for all emails, expiration timers, minimal collection of user data, and other security features. While this may seem excessive given that many users employ their own anonymization techniques, by adopting these measures on my end it allowed users who did not actively anonymize their web traffic to maintain anonymity throughout the project and in the collected data. Despite this, only one interviewee elected to use Protonmail for our discussion. For the remainder, interviewees either employed a “burner email account” from another provider to respond to my emails from the Protonmail account, or used their anonymous Reddit<sup>5</sup> account that they normally used on the r/piracy subreddit. During the interview

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<sup>4</sup> For example, Joel Tenenbaum was sued for 4.5 million USD by the Recording Industry Association of America (RIAA) for sharing 30 songs on Kazaa, and following several years of legal battles the courts fined him 675,000 USD in 2013 (Tenenbaum 2010; Sony BMG Music Entertainment, et al., v. Joel Tenenbaum 2013).

<sup>5</sup> In the field, I made the choice to allow this if interviewees expressed a preference towards using Reddit’s private chat. This is because these users had already been active on the r/piracy community using this username, and engaging in interviews would not pose any additional danger to them than they already experience using that account.

process and on the interview consent forms, it was clearly stated that interviewees were not obliged to answer any questions they did not wish to, especially those pertaining to demographic details. Questions about demographics that could provide potentially identifying information were intentionally vague (e.g. asking for an age range and country rather than for a more specific age and location). Rather than collecting signatures as a marker of informed consent, interviewees were asked to provide an answer to a photo-based verification question on the consent form before the interview process began. In terms of data storage and access, any data that required informed consent was stored on an encrypted USB drive, accessible only through Tails, a secure distro of the open-source Linux operating system<sup>6</sup>. When possible, I used the Tor browser to anonymize my own connection, which was prepackaged within Tails. Finally, within the thesis, I employ pseudonyms for each of my interviewees and only draw direct quotes from material that I am confident will not affect the user. In certain scenarios I refrain from using direct quotes, preferring to anonymize in aggregate when referring to text that is publicly accessible online (Dennen 2012).

The second ethical concern for this project is what I call the ethics of lurking. Lurking can be defined as the observation of online communities and forums without contributing to them. Generally, it is a harmless practice; however, the differences between a user casually browsing a forum and a researcher covertly collecting data necessitates some consideration about whether the methodological benefits outweigh the ethical quandaries. Methodologically, lurking prevents the disturbance of an online community due to the ethnographer's presence, and reduces the likelihood participants were filtering their discussions due to the known presence of a researcher (Steinmetz 2012). At the beginning, I decided not to engage in covert research on the forums, as I felt that an open relationship with users would be more beneficial had I required clarification on comments. Prior to the KAT shutdown, I was not worried about my presence altering forum activities. Following the KAT shutdown, I felt uncomfortable operating covertly on the forum given the site's recent shutdown was facilitated by covert law enforcement posing as interested advertisers (Ernesto 2016a). This was also a factor in my decision to shift methodology during the fieldwork period. Finally, operating covertly is problematic on websites where the user may have an expectation of privacy within the forum (Markham and Buchanan 2012). While the text itself may

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<sup>6</sup> The decision to use Tails was influenced by the fact that it was employed by Edward Snowden to communicate with Glen Greenwald.

be publicly accessible, the interactions operating on the forum may not be intended for an audience outside the members of the forum, or even of that thread. With the ease of locating potential commentators online, I did not draw direct quotes from the KAT forums; to supplement this I noted my own observations of forum discourse, and general observations about the flow of discourse on these threads. In the case of websites intended to encourage public discussion like Disqus and Reddit, the decision to include a direct quote is based on considerations about the higher degree of user anonymity as accounts do not require an email to register, and it is common to have multiple accounts for anonymity.

### **Chapter Summaries**

In the first chapter, I conduct a WHOIS<sup>7</sup> inquiry to explore the different ways of engaging in digital media piracy, and how these approaches differ on what it means to be a digital media pirate. An explicit goal of this chapter is to move away from an understanding of piracy based on a homogenous depiction of the phenomenon. To do so, I begin by examining how internet researchers have approached the heterogeneity of the phenomenon. Drawing from the work of Simon Lindgren (2013a), I outline a loose framework based on the innovative, political and everyday ways of engaging in digital media piracy, as well as how this approach demonstrates the authorial capacities of digital media piracy at the everyday level. By looking at piracy as a heterogeneous movement we can examine the relations between its constituent parts. In closing this chapter, I return to the question of what it means to be a pirate by examining the term itself. A concern that James Meese raises about the term is that its use by internet scholars may reify the unequal power structures between filesharers and the state (2014). I draw from my interviews to argue that the term should not be abandoned lightly. For the broader piracy movement, the re-appropriation of the term to brand the movement as a form of social banditry is an example of their authorial capacities; by reclaiming the term, pirates engage in what I refer to as trollish cognitive

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<sup>7</sup> WHOIS (pronounced "who is") is an Internet service used to look up information about a domain name. While the term is capitalized, "WHOIS" is not an acronym. Instead, it is short for the question, "Who is responsible for this domain name?" (techterms.com n.d.)

praxis. In the process, they remix the state's attempts to demonize them by sampling from popular culture to convey a unified piracy movement.

In the second chapter, I examine the interactions between the state, pirates, and media industries. The purpose of this chapter is to demonstrate the broader structures and legal frameworks that pirates navigate every time they share a file, as well as the historical precedents to these structures. Continuing the question of how the swashbuckler pirate can play into our understanding of digital media pirates, this chapter briefly explores the conditions contributing to the emergence of Atlantic pirates<sup>8</sup>. These conditions, which include the English enclosure, the development of British colonialism and mercantile capitalism, bear structural similarities to the digital enclosure of the late twentieth century, the effects of which remain to be seen. By taking a trans historical approach in this chapter, I emphasize three points; first, piracy is a reoccurring form of social disorder that responds to capitalist structurations enabled by the state. Here I draw from the work of Jonathan Paul Marshall and Francesca da Rimini (2014; Marshall et al. 2015) to explore how piracy emerges as disorder within attempts to impose social order. Furthermore, by understanding piracy as recurrent disorder, we also see that there is fluidity between piracy and capitalism. Drawing from the contingency within the terms "pirate" and "privateer" in the 18<sup>th</sup> century, we see that the term "pirate" is equally contingent today. In certain conditions, the agents of capitalism engage in and benefit from digital media piracy. Finally, the third point I make in this chapter is that through the combination of their ability to create disorder and turn that disorder into new ways of distributing digital media content, we can see further evidence of the authorial capacities of piracy on a structural scale.

In chapter three, I turn to another element of political economic analysis: moral philosophy. This chapter examines public discourse and how it is often framed in moral and ethical terms. Through the concept of moral panics (Cohen 1972), I explore the ways that the pirates have been cast as amoral and unethical thieves through public advertising campaigns and industry lobbying. However, with the introduction of new media in the late 1990s, there is a shift in research on moral panics that demonstrate that these moral panics can also be employed by those traditionally cast

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<sup>8</sup> The period I refer to here is between the 16<sup>th</sup> and 18<sup>th</sup> centuries. Generally, in popular culture piracy refers to what historians refer to as the Golden Age of Piracy, roughly from the 1710s until the 1730s when it was eradicated (Linebaugh and Rediker 2000).

as folk devils to construct counter hegemonic panics of their own. Here I examine public discourse on the practices of speculative invoicing—often referred to as copyright trolling—after the introduction of the Canadian notice-and-notice system in 2015. Through this localized panic, we see the authorial capacities of pirates emerge again; through the generation of localized panics about copyright trolling and their broader dissemination through mainstream media organizations, pirates highlight the repressive uses and abuses of copyright law.

Chapter four furthers this discussion of morality and ethics by discussing how pirates construct their own ethical criteria within private filesharing communities. Multiple research studies have attempted to find sources of unethical piratical behaviour; within one strain of this research there is an implicit assumption that pirates are ethically uninformed, and with adequate education they will become good consumers. I take a different approach to discussing the ethics of pirates by looking at how pirates enact their own ethical criteria and obligations within three filesharing communities. Blending the methodological approach of Balázs Bodó's work on private filesharing communities (2014) with Michael Lambek's theoretical work on ordinary ethics (2010, 2015), I examine the tensions between these criteria and the actions that pirates undertake, piratical notions of the good life, and the ways this informs alternative notions of authorship through voluntary copyright regimes.

The final chapter takes a closer look at the website shutdowns of 2016 with an ethnographic lens. Building on discussion from the previous chapters, I examine the events and discourse surrounding the shutdown of KAT. Though not uncommon, website shutdowns are ethnographically thick moments filled with paradoxes. The closure of a tracker has become a mundane, yet meaningful event that evokes conversations about the future of piracy. There were also elements of concern about the site operators as pirate authors; pirates were actively asking for the "real" KAT, despite the proliferation of site clones. This also indicated another paradox; while piracy sites are generally quick to re-emerge from government shut down, this also makes it difficult for new technologies and platforms to take hold. Here, we also see the authorial capacities of digital media piracy extend to within their own communities. Users could have simply switched to a new site and let the old community die; however, they actively sought out the individuals who maintained the community, and rallied behind them as pirate authors, challenging the ability of law enforcement to shut these sites down permanently.



## Chapter 1: WHOIS A Pirate?

What does it mean to be a pirate? This is a broad question, one that can be plotted in any which direction. For some, piracy is about theft while for others it is about sharing. Whether one is a pirate or not is a deeply personal question, as there is contention about whether users of the BitTorrent protocol prefer the term pirate or filesharer. Furthermore, whether we identify as pirates or not, some scholars argue that we are all pirates in a way. Our lives have become increasingly intertwined with objects protected by statutory intellectual property rights; as anthropologist Alexander Dent argues “[d]ue to the increased policing of intellectual and material properties on the part of corporations, governments, and law enforcement agencies both public and private, we are all (yes, all) pirates. We all have truck with ‘stolen’ music and movies, text-artifacts (perhaps including these very words you’re reading, you thief), or own a pair of fake designer sunglasses and a knock-off soccer shirt” (Dent 2012, 659). If we are all pirates, then the question of what it means to be a pirate is of greater concern in our increasingly mediated society.

A complementary thread that runs parallel to the question of what it means to be a pirate is the question of what it means to be an author. The term “pirate” entails certain forms of agency and subjectivity, constituted out of the historical development of intellectual property and copyright law. With the proliferation of technologies that afforded users the ability to reproduce media on their own terms, being a pirate took on new meanings. In the process, authorship itself underwent complementary changes. Repositioning authorship as a process within a broader historical context underlines how the prominence of participatory and user-generated culture in our everyday interactions online highlights a shift; in a very real sense, not only have we all become pirates, we are all authors too. Thus, if we are all pirates and we are all authors, this raises serious questions about the ways that media production and consumption are governed, and how this governance becomes implicated in our everyday lived experiences.

In this chapter, I explore the ontological dimensions of digital media piracy to emphasize that being a pirate and being authorial are not mutually exclusive categories. First, I outline the relationship between Western notions of authorship and digital media piracy. Then I examine how these notions of authorship have impacted the way scholars have understood piracy. Throughout the chapter, I weave in perspectives and statements on piracy and filesharing drawn from my own ethnographic fieldwork. Finally, as my own contribution to the literature, I address some of the tensions present in my own fieldwork between the terms “filesharer” and “pirate”. This tension

helps shed some light on recent concerns about the reifying potentials of the term pirate, as well as the differences between the terms filesharer and pirate.

## The Author Function

In literary history, the notion of authorship underwent significant changes following the introduction of copyright via the British Statute of Anne in 1710. It is at this point that the author function emerges. Foucault notes, “[i]n a sense, the function of an author is to characterize the existence, circulation, and operation of certain discourses within a society” (Foucault [1969] 1979, 19). The author function is repressive, simultaneously emerging as a form of ownership over a cultural work and a way to restrict the production of discourses. As Matthew David states, “[i]t is that later conception of the identifiable (and hence lawfully exclusive) author that copyright industries (such as the recording industry) have become attached to. Yet, the romantic artist is mythical in numerous ways, in terms of both the origins of creativity itself and in how best to protect the creative artist” (2017, 41). One does not have to look very far to see this rhetorical strategy at play today. Universal’s 2007 “Stop Destroying the Band You Like” advertising campaign took this ideal to a gory conclusion by likening the act of piracy to severing an artist’s ear, finger, or eye (Resnikoff 2015). Virgin Radio also took this route in a recent advertising



Figure 1 Virgin Radio's "Say No to Piracy Ad" by Leo Burnett. (Concepcion 2015)

campaign celebrating the sole acts of genius that resulted in Amy Winehouse's *Back to Black* (fig. 1), Marvin Gaye's *Sexual Healing* and Elvis Presley's *Love Me Tender* (Concepcion 2015). Accompanied by the tag line "If you knew what went into it, you wouldn't steal it", the ads conceal the hegemonic royalties and rights system<sup>9</sup> that copying and sharing impacts the most, and argue that it is the creators that are directly harmed.

By engaging in copying and sharing, piracy fosters increased access to digital media. This increased access also generates what Carolyn Guertin calls a third space of authorship (2012). Drawing from the work of Homi Bhabha (1994), she argues that this third space is a hybrid of the first space of the oral storyteller and the second space of the romanticised author. It is realized through p2p systems and by enabling further dissemination of cultural media objects it also creates new ways to engage with media. While an individual downloading a cracked video game may not create new works, the network infrastructure that supports piracy affords creative remixing:

This new space can open up possibilities for the invention of new social structures of narrative authority and for new interpretations of the contingencies of temporary and fluid authorial identity—and new tactical behaviors—that the earlier models of authorship on their own never made possible before. (Guertin 2012, 7)

One example from my fieldwork helps illustrate this third space.

Following the success of Niantic's Pokémon GO in August 2016, the fan project *Pokémon Uranium* was shut down by the developer after receiving multiple DMCA takedown requests from Nintendo of America. This free game had been in development for nine years, as a reimagination of the typical Pokémon game for hardcore gamers. Developers created an original story, new mechanics, new content and a higher difficulty level, remixing the Pokémon formula to create a game by fans, for fans. Overall, the innovations of the project were well received by Pokémon fans. However, this is not the end of the story of *Pokémon Uranium*; despite being shut down by

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<sup>9</sup> Generally, a recording contract provides an advance to the artist as an investment, which must be paid back through the royalties on the song, which are approximately 5-15% of the sales of the song. This creates a form of debt bondage to the recording company, which was exacerbated by the consolidation of recording companies and publishing companies in the 1980s and 1990s. This awarded companies more of the album's profit through "360-degree contracts", which provided no tangible benefits for artists. If royalties were not able to pay back the initial investment, artists may also be required to accept worse deals for later contracts. Through this system, approximately 2.5% of artists are able to be successful on this model (Matthew David 2017, 41–45).

intellectual property law, it lived on through piracy sites that uploaded mirrors to bypass the restrictions of the cease and desist order. As an act of piracy, *Pokémon Uranium* presented significant innovations on the Pokémon game's formula, and through subsequent acts of piracy the game could be appreciated by fans after the takedown order.

This increased access is also paired with the shrinking barriers to media production, to the point where remix culture and user-generated culture rival industry produced content in terms of technical quality. In addition to fan-made projects like *Pokémon Uranium*, major web platforms like YouTube, SoundCloud, and GitHub are strong indicators of the prominence of user-generated content<sup>10</sup>. Returning to the ability for piracy to make media content more accessible, it is unclear whether this accessibility displaces industry sales or augments it. A recent report in the European Union indicates that “In 2014, on average 51 per cent of the adults and 72 per cent of the minors in the EU have illegally downloaded or streamed any form of creative content, with higher piracy rates in Poland and Spain than in the other four countries<sup>11</sup> of this study. In general, the results do not show robust statistical evidence of displacement of sales by online copyright infringements. That does not necessarily mean that piracy has no effect but only that the statistical analysis does not prove with sufficient reliability that there is an effect” (van der Ende et al. 2014). While piracy challenges copyright by opening a third space for authorship, this does not necessarily mean the end of the media industries. As will be discussed in chapter two, the relations between the industry and pirates is complex and both sides are quite adaptive to the activities of the other.

In closing, a useful way of looking at the authorial capacities of piracy is to look at what Tilman Baumgärtel calls the triumph of the pirates:

This [increased ease of access to consumer content] is not the “triumph of the pirates” that is referred to in the title of this essay, though. This is about nothing more than about the convenience of the consumers. And even though the majority of people who pirate copyrighted content might have had nothing else in mind but just that—convenience—this is not the most important feat that the pirates accomplished. What they did, however, was taking a key property of digital media and turn it into the subject of a social, political, and

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<sup>10</sup> Members of my age group (18-24) are consuming less media from traditional outlets like TV and turning to these platforms. Between 2011 and 2017, the average number of hours viewed every week by this age group dropped from around 26 hours to 13 hours (“The State of Traditional TV: Updated With Q2 2017 Data” 2017).

<sup>11</sup> These countries are Germany, the United Kingdom, France, and Sweden (van der Ende et al. 2014)

economic debate. Piracy can be read in a multitude of ways: as a leveler of economic inequality; as an invitation to free speech, as an act of resistance or simply as an opportunity for new types of business. But in the end, piracy is about authorship and access, and often the only opportunity to participate in a global conversation and to make yourself heard. The global media pirates challenge the established way of how content is distributed, a model that had already been put into peril by the emergence of the Internet. In a way, they were doing what the Internet—as a medium that has turned distribution into the copying from one server computer to another—seemed to want. (Baumgärtel 2015, 243)

Thus, the authorial capacities of pirates are not simply the affordances of increased access, and this third space of authorship. The authorial capacities of pirates entail their popularization of ideas that challenge the hegemony of copyright and the second space of authorship through mundane, everyday activities. In this thesis, I explore how these authorial capacities presented themselves throughout the fieldwork period across a variety of events and sites during the summer of 2016.

### **Pirate Typology**

Within the Free Culture framework proposed by Lawrence Lessig in 2004, there are two types of piracy. The first type are commercial pirates, or those who "...do nothing but take other people's copyrighted content, copy it, and sell it—all without the permission of a copyright owner" (2004, 63). Baumgärtel's description of a marketplace in the Quiapo district in Manila is an example of the type of piracy Lessig is referring to:

As soon as I surface from the underpass, I am in pirate land. It is not as obvious as it used to be, when pirated DVDs and CDs were sold from ramshackle carts right on the street but if you know what door to open, you end up in a veritable video warehouse. Loud music is blasting, so one almost does not hear the "DVD DVD Sir" calls from the vendors. They stand in small stalls, with piles and piles of DVDs stacked up to the ceiling. The latest Hollywood blockbusters, some of which have not even opened in the US. European art house classics. US cult series like *Mad Men* and *Breaking Bad* in neat boxed sets. Korean telenovelas, Chinese martial arts films and, under the table, pornography galore-- a whole audiovisual cosmos opens up in front of me. Forty pesos--less than a dollar--per dish is the asking price, but the more you buy, the more generous the discounts. (2015, 10).

This type of piracy is often invoked to justify draconian copyright laws; purportedly, commercial piracy has cost the recording industry 4.6 billion dollars, or one in three CDs sold worldwide. The film industry makes similar claims; the Motion Picture Association of America (MPAA) argued that they lost nearly 3 billion dollars in sales to these pirates (2004, 63). Lessig, distancing himself from supporting this type of piracy, fears that attempts to prosecute commercial pirates may impede the creative potential his second type of piracy presents.

The second type of piracy broadly covers non-commercial piracy, primarily pirates using early peer to peer (p2p) filesharing technologies like Napster and current ones like BitTorrent<sup>12</sup>. Lessig further divides this type of piracy into four categories. The first category covers pirates who substitute downloading for the legitimate purchase of media files, a practice that Lessig argues is the least morally justifiable of all the p2p pirates (2004, 68). The second category are samplers. These pirates use filesharing networks to sample media prior to committing their funds to purchase the product, which can have generative effects for media industries. However, if the content does not live up to its marketing or is not as popular, samplers may displace potential sales and have a negative impact on the formal media industry (2004, 68). The third category are pirates that use filesharing networks to obtain copyrighted material that is unavailable in other formats. This is one service that Lessig sees as a major draw to filesharing; for him, this allows media content to still be relevant even though it may no longer be available for sale. Rather than displacing sales, these filesharing networks act as archives, used book stores and libraries without requiring the physical infrastructure (2004, 68). Finally, the fourth category are filesharers that use p2p networks to share non-copyrighted and open-source files. Using the example of Cory Doctorow distributing his novels through p2p networks, Lessig sees these pirates as the most morally justifiable as no property rights violations occur during the file transfer; however, it is arguably the least common type of type two piracy (2004).

The typology that Lessig presents can be useful for a few reasons. Rather than situate the activities of the second type of pirates as fundamentally opposed to the law, Lessig reconciles some of their activities with copyright law. Additionally, Lessig's typology demonstrates how lumping all forms of digital media piracy under one black flag can be problematic. Lessig fears that attempts to prosecute commercial pirates will result in the stifling of any innovation and productive development of p2p pirates (2004, 69).

Despite these benefits, there are significant issues with Lessig's framework. Michael Strangelove critiques Lessig's framework for its insistence on aligning piracy with acceptable consumer behavior, extending capitalism's ability to determine meaning—its Empire of Mind—to piracy itself (2005, 73). Furthermore, Strangelove argues that Lessig's vision of Free Culture

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<sup>12</sup> For a brief discussion on how the BitTorrent protocol works, see the section titled *Pirates as Innovators* and fig.1 below

undermines the potential that piracy has in giving power to the audiences to transform the way media objects are distributed. Given Lessig's background as a lawyer and legal scholar, it is hardly surprising that his vision maintains the framework of property rights. In *Free Culture*, Lessig advocates for a system of production where the rights of creators are balanced with the free circulation of cultural products for further innovation (2004). This is made clear when he states, "[a] free culture is not a culture without property; it is not a culture in which artists don't get paid. A culture without property, or in which creators can't get paid, is anarchy, not freedom. Anarchy is not what I advance here" (2004, xvi). As such, any forms of piracy that are non-transformative—mostly commercial piracy— have no place in this free culture.

Lessig's condemnation of non-transformative piracy points to the second major critique of his work. Lessig's reliance on a commercial/non-commercial dichotomy marginalizes and demonizes commercial forms of piracy—particularly outside of the West—by positioning it as predatory to Western economic prosperity, and as being inherently non-productive:

In comparison to media practices such as remix culture and sampling, which have creative potential, these writers<sup>13</sup> view non-transformative commercial piracy as a practice with few redeeming features, and in particular position Asian piracy as a "limit point of difference from bourgeois law" (Philip 2005, 212). But, as Liang goes on to argue, this is an intellectual position that is not only rooted in privilege, but also one that refuses to acknowledge alternative ways of looking at piracy. Conversely, Liang, through a postcolonial reading of citizenship, convincingly situates non-transformative piracy as a form of cultural infrastructure that provides disenfranchised citizens from the global south with access to cultural goods (2005, 2009). (Meese 2014, 22)

Given these critiques of Lessig's typology, we turn to a more inclusive framework that is not predicated on maintaining the hegemony of U.S. copyright and property law. Situated in the Swedish context, the work of Simon Lindgren is one way to escape the commercial/non-commercial dichotomy that Lessig employs. This way of understanding piracy is bolstered by James Meese's examination of industry rhetoric and the activities of Australian filesharers as they manifested in the *Roadshow Films Pty Ltd & Ors v iiNet Ltd* legal case.

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<sup>13</sup> Meese is referring to Lawrence Lessig and Richard Stallman.

## Pirate Cultures and Imaginaries

In his book *New Noise* (2013a), Simon Lindgren describes three ideal piracy cultures that he encountered in his interviews. Through these piracy cultures, Lindgren aims to understand how the apparently non-political activities of everyday pirates can be connected to the activities of political actors like TPB, the Piratbyrån, and the Pirate Parties. He also aims to dispel the notion that the pirate movement is a homogeneous entity. Like Lessig, Lindgren views the practice of considering all forms of piracy under one black flag as problematic but for different reasons. Rather than worrying about stifling potential innovation like Lessig, Lindgren demonstrates that this homogeneous depiction minimizes the role that everyday, non-reflected piracy plays in driving the social movement.

James Meese takes a similar approach in his contribution to *Piracy: Leakages from Modernity* (Arvanitakis and Fredriksson 2014). Through his exploration of three different pirate imaginaries constructed through public discourse, he urges future researchers to emphasize the authorial capacities of digital piracy. In doing so, he aims to push back against industry discourse that relies on a perceived opposition between the pirate and the author to legitimize the enclosure of cultural expression. Meese also explores how piratical acts are part of everyday experience, but stresses that the sum of these individual acts are what grant pirates their authorial capacity. Considering the porousness between the terms author and pirate, Meese also asks if we should abandon the term “pirate” in favour of the term “author” to escape the history of structural inequality and unproductive hyperbole associated within the term.

### *Pirates as Innovators*

The innovative piracy culture emphasizes the idea that digital filesharing technologies are a means for creative individuals to bring about innovative change to digital culture. Lindgren describes this approach to piracy as “... based on the idea of digital piracy as a movement supported by enthusiasts, but enthusiasts who are driven by an interest in technology rather than politics...[t]his small group of people is developing ever more sophisticated ways to circumvent current regulatory frameworks and to find more effective file formats and ways of distribution” (2013a, 131). The focus here is not on political revolution, but rather on technological evolution driven by ideals of efficiency and accessibility. Furthermore, these individuals are often the most



visible and influential pirates. Bram Cohen—the creator of the BitTorrent protocol—would be a prime example of the pirate-as-innovator.

Through the introduction of new technologies like the BitTorrent protocol, the innovative piracy culture seeks to change how we engage with culture by making the processes of creation and transmission more resilient and efficient.

### *Pirates as Activists*

Governments derive their just powers from the consent of the governed. You have neither solicited nor received ours. We did not invite you. You do not know us, nor do you know our world. Cyberspace does not lie within your borders. (Barlow 1996)

The above quote comes from John Parry Barlow's well-known *Declaration for the Independence of Cyberspace*. In many ways, the *Declaration* is the mantra of Lindgren's political piracy culture and Meese's activist pirate imaginary. The political piracy culture contains actors identifying across the political spectrum, and it is difficult to fix piracy as a left or right issue. Pirates on the right often voice concerns of over regulation, wherein the state limits the rights of individuals to produce their own media and exercise their right to free speech. For example, in the comment thread for an article about a court battle between the owners of the infamous Grumpy Cat and a coffee company, anti-copyright rhetoric was employed by Free State Libertarians to attempt to recruit members to overthrow the state:

You are wrong. If not then it was fraud committed against the people. Here is a lesson is [sic] copy"right" history. The system was sold to the public as a limited time monopoly (7 years, a monopoly is not tolerated anywhere else, or theoretically, except for some other BS places, like cable/telecommunications monopolies). It was sold as being to promote the arts and sciences for the public good. The idea being more works would be made and end up in peoples [sic] hands when copy"right" expired. It's called the public domain. Everything was suppose [sic] to hit the public domain shortly after the work was published. That's not what happens today. Near [sic] \*EVERYTHING\* ends up having an indefinite period of protection. We're talking 100 years plus. No. This isn't for the public good and we should kill off copy"right". [www.freestateproject.org](http://www.freestateproject.org) [www.freekeene.com](http://www.freekeene.com).

Pirates on the left often voice concerns regarding the corporatization and commodification of culture, where private enterprise begins to take over the creation and dissemination of popular culture and limit popular access to it for profit (Lindgren 2013, 136). On both sides of the political spectrum, political pirates take up an antagonistic role versus the state and media corporations. As Beyer and McKelvey argue:

Piracy particularly undermines state power by creating communication that is difficult for the state's administrative gaze to observe and its judicial arms to control. As activists argue, piracy is about specific contestations over the circulatory capacities of communication technology—what can be said, transmitted, or distributed. The work of pirates then involves perfecting the art of not being governed online (Scott, 2009), and state evasion has motivated activists to work to create uncontrolled spaces where the coercive power and regulation of the state cannot intrude. (2015, 897).

Through recent events in the public sphere contesting the ability for the state to govern pirates, the activist pirate has become a prominent figure in many academic depictions of the piracy movement (Strangelove 2005; Durand and Vergne 2012b; Beyer 2014; Beyer and McKelvey 2015; McKelvey 2015).

This political piracy culture has mobilized in protest on several occasions. Online and offline protests erupted following the 2009 sentencing of TPB's administrators Peter Sunde Kolmisoppi, Hans Fredrik Lennart Neij, Per Gottfrid Svartholm Warg, and the businessman Carl Lundstrom to jail time and a fine of approximately 7 million US dollars (Beyer 2014, 57). Approximately 1,000 supporters showed up to protest the verdict in-person, while TPB supporters from 888chan participated in "Project Baylout", a series of distributed denial of service (DDOS) attacks that targeted media industry lobbyist web pages (Beyer 2014, 59). Protests against the Stop Online Piracy Act (SOPA) and Protect Intellectual Property Act (PIPA) in the United States in 2010-2011 also cast piracy in this activist role in collaboration with tech companies like Wikipedia, Reddit, and Google. Seen as a natural progression in US copyright reform by legislators, the bills would have given the US government further power to prosecute alleged pirates without due course:

Although the bills were ostensibly aimed at reaching foreign websites dedicated to providing illegal content, their provisions would allow for removal of enormous amounts of non-infringing content including political and other speech from the Web...SOPA would also allow rightsholders to force payment processors to cut off payments and advertising networks to cut ties with a site simply by sending a notice...These bills are targeted at "rogue" websites that allow indiscriminate piracy, but use vague definitions that could include hosting websites such as Dropbox, MediaFire, and Rapidshare; sites that discuss piracy such as [aspirate-party.us](http://aspirate-party.us), [p2pnet](http://p2pnet), [Torrent Freak](http://Torrent Freak), [torproject.org](http://torproject.org), and [ZeroPaid](http://ZeroPaid); as well as a broad range of sites for user-generated content, such as [SoundCloud](http://SoundCloud), [Etsy](http://Etsy), and [Deviant Art](http://Deviant Art). (Electronic Frontier Foundation n.d.)

By portraying the internet as an exceptional, but vulnerable, resource for all humankind (Powell 2016), the activist pirate was positioned as a freedom fighter against the excesses of corporate

culture. The SOPA/PIPA protests also demonstrate how pirates can be implicated in a broader fight for the freedom of information that extends beyond popular media.

In the case of Aaron Swartz, his piracy was interpreted as a push back against the enclosure of academic knowledge by the publishing industry. In 2012, Swartz was arrested for illegally downloading over 4 million scientific articles from JSTOR via a laptop he hid in a janitor's closet at MIT. The laptop ran a script that systematically downloaded and archived the articles. The increased bandwidth usage was picked up by JSTOR, who temporarily revoked MIT's access to the service. Following reinstatement Swartz ran a script that varied, or "spoofed", the laptop's MAC address, making it appear as several machines on the MIT network. Once Swartz was arrested, the articles were returned without being distributed and civil claims were dropped by JSTOR. However, MIT did not drop their claims, allowing federal prosecutor Steven Heymann to bring federal charges to Swartz under the Computer Fraud and Abuse Act (CFAA). The prosecution alleged that Swartz intended to distribute this copyrighted material online, citing both his prior investigation by the FBI and the *Guerilla Open Source Manifesto*. The manifesto stated:

Meanwhile, those who have been locked out [from accessing information] are not standing idly by. You have been sneaking through holes and climbing over fences, liberating the information locked up by the publishers and sharing them with your friends. But all of this action goes on in the dark, hidden underground. It's called stealing or piracy, as if sharing a wealth of knowledge were the moral equivalent of plundering a ship and murdering its crew. But sharing isn't immoral — it's a moral imperative. Only those blinded by greed would refuse to let a friend make a copy. (Swartz 2008)

According to his peers, "Aaron was transfixed by the fact that a piece of knowledge, unlike a piece of physical property, can be shared by a large group of people without making anybody poorer. For Swartz, the clear implication of this fact was that it was unethical to deprive people of information by creating artificial scarcity in knowledge, culture, or information" (Mako Hill and Schoen, in Swartz 2015, 7).

Under the CFAA, Swartz's violation of the JSTOR terms of service were defined as hacking. He was charged with 13 counts of wire fraud, computer intrusion and reckless damage, computer fraud, and theft of information from a computer (Poulsen 2013; Schwartz 2013). A few weeks before the trial Swartz committed suicide. Many of his supporters publicly denounced the conduct of the prosecutors, arguing that federal authorities were trying to make an example of him. Lessig, whom Swartz had collaborated with to develop the Creative Commons license, publicly

disagreed with Swartz's hack of JSTOR but felt that prosecutors had targeted him with too much vigor (Poulsen 2013).

Aaron Swartz's story sparked outrage about the consequences that internet activists may face, as well as the practices of the state in making examples out of them. Despite JSTOR acknowledging that no damage was done to their business, the state continued to pursue Swartz through dated legal frameworks like the CFAA. Following Swartz's death, attempts were made to reform the CFAA through Aaron's Law in 2015. To this day, the CFAA remains unchanged as Aaron's Law stagnated in the US Senate shortly after its introduction (Wyden 2015, Fox-Brewster 2014).

In my own interviews, Edward was the most vocal about his political views on attempts to enforce digital copyright, characterizing them as Deleuzian mechanisms of control (1992). His responses were articulate, and his understanding of filesharing was tempered by an educational background in mass media studies in the 1980s. When asked what got him into filesharing, he stated:

Limited funds in some cases -- even as an adult, raising a family is expensive. Entertainment and media are also often overpriced even when money is plentiful. I will not support any business which over-charges its customers. (That principle also goes beyond entertainment with me. I do not support the automobile industry by buying new cars -- only used. I do not support the credit/banking industry with multiple credit cards and associated interest; I pay cash as much as possible. I am extremely stingy with money -- I prefer to use my own two hands to build or repair things rather than buy more.) In other cases, filesharing is the only way to obtain some media or software when it goes out-of-production. Media producers use artificial scarcity to drive up prices. I do not participate in their cycle of control.

Edward had been engaging in piracy and filesharing since the 1980s. During our email discussions, he described the other types of media piracy he had engaged in, demonstrating a high degree of technical proficiency. He described to me his previous experiences with decrypting satellite television signals, using Netflix and iTunes to "Rent, Rip, and Return" media, removing DRM from e-books and "ripping" media from YouTube. He described his motivation for doing so as being linked to his technical skills:

Generally speaking, both me and my wife are highly skilled in information technology, and have the knowledge and means to control it, rather than let it control us. We use information technology to control it on our own terms. Because that is often directly in opposition to corporate controlling interests, it is generally branded as "piracy".

### *Pirates as Ordinary*

Everyday piracy is the most prevalent piracy culture that Lindgren discusses. These pirates engage in p2p filesharing as part of unreflected practice without overt moral or political motivations (2013). Meese's ordinary pirate imaginary is closely related to this. In his work, he examines the *Roadshow Films Pty Ltd & Ors v iiNet Ltd* case in Australia. In this legal case, the media industry claimed that iiNet was not taking adequate steps to combat piracy, and should be revoking the access of prolific pirates like those included in the RC-20. The RC-20 consisted of the usage records for twenty users collected by the Australian Federation Against Copyright Theft (AFACT), selected to show the excesses of iiNet's piratical customers. Through a close reading of the RC-20 and the case files, Meese argues the activities of these pirates do not follow the rhetoric presented by the claimants, and better demonstrate the banality of piracy. For even the most prolific users, piracy was not even the primary way they accessed media content. In light of the case, which found in iiNet's favour, Meese pushes for an approach to piracy that positions pirates as digital citizens more concerned with issues of access and infrastructure than undermining the hegemony of copyright law (2014, 30).

Through Rojek's depiction of piracy as a new form of leisure activity (2005, as cited by Lindgren 2013a, 130), we see how piracy offers increased participation with consumer culture. Rojek argues that "[f]or low-income workers, those whose labour pattern is casual, and many in the developing world, downloading extends leisure choice in unprecedented ways and allows more participation in consumer culture" (2005, 368). This increased participation can have benefits for the industry. For example, in 2013 the Home Box Office Inc. (HBO) show *Game of Thrones* was credited as being the most pirated show on the web. The reaction by executives and show runners to this news was positive; Jeffrey L. Bewkes, CEO of Time Warner, mentioned to reporters that this could be "better than an Emmy". Show writer David Petrarca publicly stated that "Our experience is, it [unauthorized viewing] all leads to more penetration, more paying subs and more health for HBO" (Lobato and Thomas 2015, 156). Piracy provided further audience statistics and

free marketing for the company, and may have helped accelerate the launch of HBO's own streaming service HBO Now<sup>14</sup>.

Since the release of HBO Now, the company has reversed course and increased their anti-piracy initiatives. In 2016, HBO renewed their efforts to reduce piracy of their content in Canada. While HBO Now is available in the US, consumers north of the border had the choice of paying for an expensive cable package or using p2p networks and illicit streaming sites to watch the show. Internet service providers (ISPs) were directed to forward legal notices to alleged pirates on HBO's behalf. A common response by pirates speaking to CBC News was that HBO was making pirated content more accessible than licit copies. Several individuals claimed that if HBO Now was available to Canadian fans then they would be more than willing to pay for the show (Harris 2016). Clearly, these pirates weren't politically motivated, the issue here was that the licit cable subscriptions were simply too expensive for their budget, and piracy presented a more accessible media infrastructure.

The increased policing of everyday piracy raises important questions about justice. In the last two decades we see the emergence of an entire industry devoted to combating piracy; however, the lack of oversight has allowed the use of predatory tactics and the abuse of legal frameworks. Within the Canadian legal system, the last two years have seen increased media coverage of the tactics used by this industry to facilitate quick settlements. These letters, which are drafted and sent to ISPs by representatives of the copyright holders, often employ intentionally vague language or misleading information. In one case, the University of Manitoba was legally required to forward over 6,000 legal notices to students living on campus. Copyright strategy manager Joel Gu nette described these letters as bordering on extortion, as many claimed students would lose their visas and scholarships if they did not pay the settlement fee indicated on the letters (CBC News 2016).

Further issues emerge when we consider how everyday piracy is the product of our contemporary neoliberal capitalist society. Through constant indoctrination to engage in prolific consumption, internet users have developed the expectation of immediate service, choice of platform and content, accessible pricing, as well as constant availability (da Rimini and Marshall

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<sup>14</sup> HBO Now is a video on demand (VOD) service, available for 14.99 USD a month. A similar service, HBO GO, is available to consumers that already have a cable subscription that includes HBO. At the time of writing, HBO Now is still unavailable in Canada.

2014; Baumgärtel 2015). As digital media begins to dominate more of our engagement with each other, and become part of shared culture, inadequacies in industry infrastructure push consumers to consider alternatives. In their study of Australian filesharers, da Rimini and Marshall noted that their interviewees characterized their engagement with piracy as “...simply what people do to keep in touch, keep current with cultural conversations and consume impulsively: all of which we have suggested may be necessary ways of maintaining status and employability in the ‘information society’” (2014, 328).

Many of my interviewees expressed similar sentiments, as they also characterized p2p piracy as being a way to access media content rather than as activism. When asked why he started using filesharing networks, Francis told me it was because he was a “[p]oor 12 year old boy from a third world country...” and that he “...wanted some music to listen to and channel my raw angst”. At the time of our interview, Francis had been downloading digital media for over a decade, and had also been active in offline filesharing through CD ripping and burning. Henry cited similar motivations as Francis. Henry stated that he felt more comfortable using p2p networks to access music rather than buy them from formal media outlets. John began using p2p filesharing to access media when he did not have the funds to purchase it legitimately, while Jack learned how to download cartoons in his early teens through KaZaa so that he could watch them with his brother. In each of these cases, being a pirate wasn’t about a political stance, rather it meant having access to content that would otherwise be beyond their means.

With the framework that we have constructed to this point, we see that there are many ways of conceptualizing what it means to be a pirate. For some, being a pirate entails bringing evolutionary change to how we engage with the objects of consumer culture. Piracy becomes a way through which we can efficiently move the products of global capitalism in new and exciting ways. In the public eye, to be a pirate often entails insurgency and political activism, as seen with the Pirate Bay Trial and the SOPA/PIPA protests. Finally, for most pirates, to be a pirate is to be a digital citizen with concerns about access and infrastructure. Piracy affords ordinary people the ability to keep up with our increasingly mediated society, especially when access may be beyond their means. By exploring these different piracy imaginaries, Meese argues that scholars need to reconfigure how they portray and understand pirates to better understand their impact on the world. This can be productively combined with Lindgren’s project to understand how these different ways of being a pirate become entangled in a broader piracy movement that effects change.

### **(Trollish) Cognitive Praxis**

How can the innovative, political, and everyday piracy cultures come together as a political movement, as seen with Project Baylout and the SOPA/PIPA protests? How can pirates construct a challenge to digital property out of disconnected acts of downloading and sharing? Pirates connect with each other through a variety of websites, what Lindgren calls disruptive spaces, the agglomeration of which may form a piratical counterpublic (2013b). Through the interconnection of disruptive spaces like TPB, digital media pirates construct their own counterpublic centered around ideals of exchange and property opposed to those of the neoliberal state. This counterpublic generates new noise, or “...emergent cultural currents that are part of a dramatic transformation of the social and cultural fabric, and that enable unprecedented forms of potent rebellion within a number of areas” (Lindgren 2013a, 3). Of concern here is how quotidian micro-occurrences of civil disobedience by everyday pirates in these disruptive spaces help construct this counterpublic and generate new noise. To make this connection, Lindgren views everyday piracy as an example of Bakardjieva’s subactivism:

Subactivism in my definition is a kind of politics that unfolds at the level of subjective experience and is submerged in the flow of everyday life. It is constituted by small-scale, often individual, decisions and actions that have either a political or ethical frame of reference (or both) and are difficult to capture using the traditional tools with which political participation is measured. Subactivism is a refraction of the public political arena in the private and personal world. (Bakardjieva 2009, 92)

Drawing from the collective subactivism of everyday pirates, actors operating at the subpolitical (Beck 1997) and formal political levels develop cognitive praxis, often in response to triggering events (Lindgren 2013, 127). Cognitive praxis, defined as the process of unifying a movement through the dissemination of ideas and knowledge, has three dimensions. Lindgren describes these dimensions as “...a cosmological dimension, consisting of the movement’s worldview, historical meaning, emancipatory goals, etc.; a technological dimension that consists of how the movement relates to the use of technologies; and an organizational dimension, consisting of the communicative and structural forms of movement activity” (Lindgren 2013a, 127).

What is unique about the cognitive praxis of pirates is how it is often conveyed through the practice of trolling, commonly associated with groups like Anonymous. In the case of TPB and the Piratbyrån, their trolling of formal media industries helps convey the cosmological dimension of pirate praxis by clearly positioning the movement as antagonistic to the media industry. Furthermore, these can also point to the technological dimension. Through a combination of legal



ambiguities inherent within the BitTorrent protocol as well as ambiguities in international copyright enforcement, the site enjoyed a measure of protection from the jurisdiction of the Digital Millennium Copyright Act (DMCA). Attempts to remove access to pirated material through DMCA takedown requests were frequently brushed off by TPB. As they were one of the first trackers to publicly troll the legal representatives of media corporations (Beyer 2014), this trolling became a point of pride for the site, and established TPB as a site of normative conflict where the daily act of torrenting a file could undermine the profit-driven and avaricious media industry (Beyer 2014). For example, when Warner Brothers sent a takedown notice to the site, site administrator anakata responded:

We are well aware of the fact that The Pirate Bay falls outside the scope of the DMCA - after all, the DMCA is a US-specific legislation, and TPB is hosted in the land of vikings, reindeers, Aurora Borealis and cute blonde girls. (Neij 2008)

In 2007 the domain for the International Federation of the Phonographic Industry (ifpi.org) temporarily became available. “The Pirate Bay claimed that an anonymous donor then gave it the IFPI domain, which administrators then turned into the ‘International Federation of Pirates Interests site’” (Beyer 2014, 69). References to these acts of theatrical civil disobedience were present in this project’s examination of blog posts discussing the Kickass Torrents (KAT) shutdown. One anonymous pirate stated “I can see all you prodigal sons returning to the pirate bay with your tails tucked firmly between your legs, see what compliance with the feds gets you KAT? And that's why the pirate bay has always been superior to kAT [sic] because they give the big middle finger to the maffia<sup>15</sup>...PirateBay No# 1”. In the fifth chapter of this thesis, how different degrees of compliance with the DMCA formed part of the cognitive praxis of TPB and KAT will be discussed in further detail.

Similar trollish cognitive praxis can be seen with the Piratbyrå. The organization is described by Jonas Andersson as "...entirely separate from The Pirate Party; it is more of a loosely organised think-tank, a website, a philosophical greenhouse or FAQ guide to digitization" (2009). The Piratbyrå is well known for their manifesto *POwr, Broccoli and KOPIMI*, the establishment of the church of Kopimism, and the kopimi license. The manifesto includes such tenets as "049. Threaten large American culture corporations", "088. Create the world's largest file-sharing service

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<sup>15</sup> Here, this commenter is referring to the Recording Industry Association of America, commonly referred to as the MAFIAA in political pirate rhetoric.

in a twinkling" alongside nonsensical ones like "075. Use IRC while in your underwear, and eat pizza" and "084. Force a prosecutor to draw up several thousand pages of drivel" (Ernesto 2009; The Pirate Bay 2009). Through its satirical tone, the manifesto develops cognitive praxis among pirates by stating that the activities of using IRC in your underwear while eating pizza, innovating digital file distribution, and threatening the hegemony of large American culture corporations are all part of what it means to be part of the pirate movement.

Despite its nonsensical and humorous tone, these trollish forms of cognitive praxis help convey unity within the pirate movement by repositioning copying in terms of communication and issues of resisting the power of the state to police their communication and corporations to limit them. "This communication can take place in overt displays of cultural critique, such as the transformative practices of parody and satire, but even non-transformative copying can be viewed as a form of authorial agency, with the use and consumption of cultural signs and goods adding to greater cultural literacy, communication and connection, as users engage with the contemporary cultural milieu" (Meese 2014, 33–34). Articulating the everyday activities of pirates to a critique of digital property through cognitive praxis, political pirates present their alternative to the hegemony of copyright law.

### **Pirate of Filesharer? Winking and Hoisting the Jolly Roger**

An element of the movement's cognitive praxis that interested me at the project's outset was how its cosmological dimensions sampled and remixed historical symbols of maritime piracy and Hobsbawmian social banditry. In the popular song *Free.mp3* by Dubioza Kolektiv, pirates are declared to be "... (like a) high speed internet Robin Hoods/Pirate gang from file Share-wood", drawing from the mythology surrounding pirates and Robin Hood. This semiotic remixing is also present on the front page of TPB, which prominently features a pirate ship with the cassette tape and crossbones emblazoned on the sail. Ethnographers like Dent (2012), Dawdy and Bonni (2012) posit that to develop thick ethnographic description of contemporary piracy we should also take into account the ethnographically rich history of piracy. Outside of anthropological studies of digital media piracy, this argument is sustained by Rodolphe Durand and Jean-Philippe Vergne, who situate contemporary piracy within a broader history of other piratical social organizations (2012a, 2012b).

Entering the field, I was curious about how historical understandings of piracy affected how digital media pirates understood their own activities. As I had completed some coursework

on maritime piracy at the undergraduate level, I entered the field thinking some connections would be made by interviewees and participants. As I imagine most ethnographers experience early in their careers, the opinions I encountered were a lot more mixed. In interviews, most of my interviewees seemed apprehensive to relate their activities to maritime piracy. When I asked Francis if he felt there were links between filesharing and historical forms of piracy, he stated:

None. One [maritime piracy] is stealing while the other is this totally new thing that has no real precursor. I'm actually not sure about the history of the term, but I will say that the world of file sharing is far removed from the lawless and ruleless world it might have once been (maybe prompting the name). Things are organised now, very much so.

Henry continued this trend; he argued that you couldn't connect digital media piracy to maritime piracy because maritime pirates engaged in theft.

However, in other interviews theft was a characteristic through which two interlocutors connected their experience to their historical precursors. John made clear connections between digital and maritime piracy by stating that they both engaged in theft. William stated:

I define piracy as any sharing of copyrighted content without permission from the developer or content creator/s. Yes, I believe that pirating is an accurate title for using when talking about illegal filesharing. It draws many similarities to maritime pirate such as stealing property someone else has worked hard for...Digital piracy is the new maritime piracy. Although it would take so much less effort to download a file, the ethics of taking property which is not yours is the same.

For both interlocutors, it was possible to make a direct connection between digital media piracy and historical piracy through their relationship to property norms. Furthermore, neither of these two interlocutors tried to justify filesharing in a moral or socio-legal sense. It was just something that they did, and there was no need for them to justify it.

My interview with Edward provided another way of relating the terms piracy and filesharing. What follows is an excerpt from our conversation:

Tom: How would you define the word "piracy"? Do you think that the term pirate is appropriate to use when discussing online filesharing? Why do you think it is/isn't appropriate?

Edward: I think it might be more accurate to use the term "media piracy" to differentiate it. In general, the term "piracy" implies obtaining what you want through some form of non-legal means. In legal terms it connotes illegal theft for personal gain or profit. It probably isn't the best or most accurate use of the word, but I think that the romanticized literary and multimedia image of swashbucklers tends to come into play -- which also means the term is happily adopted by filesharers. There is also the quasi-historical derivation that high seas pirates of the past were "free" in that they swore allegiance to no one but their own quasi-democratic organization, refused to acknowledge other authorities,

and took for themselves what they wanted because it wasn't "illegal" in their own social cohort. Among themselves, they still had rules -- but those rules applied to themselves, not the outside world. So in that sense, I believe that the subculture of filesharing relates itself to the culture of the so-called "Golden Age" of high seas piracy.

Tom: Do you feel there are any links between digital piracy and maritime piracy?

Edward: Not in any modern sense. 21st century maritime piracy is primarily practiced as an extension of organized criminal enterprise, based on profit from re-selling stolen goods or hostage-taking. Digital piracy primarily based on sharing digital content among individuals with no direct monetary exchange. Some website operators do manage to leverage profits from advertising in parallel to site operations, and that should probably be addressed as an ethical and legal issue in its own right. There is also the matter of commercial copying and reselling operations in China and other parts of Asia where some software and media has no official licensing and retail channels (or minimal ones). These are the often quite slick "bootleg" copies of software and movies which sometimes show up on auction websites. This, too, is rather separate from common filesharing and copying since it is done on a commercial scale.

Tom: Why do you think that symbols surrounding maritime piracy (such as the skull and crossbones) have been picked up by digital pirates as a symbol?

Edward: See my comment above on the notions surrounding the "Golden Age" of high seas piracy and literary and media portrayals of swashbucklers. I think it's a combination of the historical roots of file sharing and the free software movement's genesis in the 1980's combined with the idealized, underdog, freedom-fighting image of romanticized pirate characters which has led to the adoption of such symbols. In short, it's fun. It's tongue-in-cheek. It's "sticking it to 'The Man'" in popular culture. It's an adaptation/affectation of cyberpunk culture.

Edward's comments here hint to the strategic use of the term "piracy" by filesharers, and how he felt that links to historical forms of piracy can be strategic for contemporary digital media pirates. Furthermore, it also serves as another trollish aspect of cognitive praxis that positions pirates as antagonistic to the media industry.

The strategic use of the term "pirate" by the media industry and the value of re-appropriating the term for conveying cognitive praxis was mentioned by Jack:

Pirates is what they call us, and like many words throughout history, the definition has blurred and when somebody calls somebody a pirate outside the context of a book or film, it most likely refers to internet piracy. Whether or not I feel the word pirate applies to me doesn't really matter, It [sic] might to some, but to me it doesn't. I think corporations and trolls<sup>16</sup> would like people to think of maritime pirates when they discuss internet piracy, to

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<sup>16</sup> Here Jack is referring to copyright trolls, organizations that abuse DMCA takedown notices and notice letters to everyday pirates to earn quick settlements. I discuss copyright trolling in further depth in chapter three.

give a negative connotation to people like me, so they can easily fill the public's heads with images of bad people with eye patches raiding boats of good honest people and stealing their precious jewelry and cargo. The reality of the matter is that we're regular people, most of us are law abiding citizens (outside of pirating) and have families, jobs, educations and we don't live day to day by stealing digital goods like corporations and lawyers would have you think.

Like Tyrion Lannister said "Never forget what you are, the world will not. Wear it like armor and it cannot be used against you" And that is what we do. Lawyers and companies call us pirates, so we use that negative association as armor which in my opinion has changed the overall definition of piracy. When I hear phrases like "piracy" or "pirate" I immediately think of the digital kind, not the maritime version that is while still active in the world, became archaic.

One of the first rhetorical efforts by media industries to brand copying as “piracy” to media consumers was in the early 1980s, with the “Home Taping is Killing Music (and It’s Illegal)” campaign. The logo featured the “tape and crossbones”, which was remixed into the “Home taping is killing business (and it’s easy)” by contemporaneous pirates (Lindgren 2013a, 134). Within the industry, the hardcore punk band The Dead Kennedys intentionally left the second side of their cassette for the album *In God We Trust Inc.* empty, with the message “Home Taping is Killing Music Industry Profits! We Left this Side Blank So You Can Help”. Today, the cassette tape and crossbones is commonly seen on the sail of the ship that adorns TPB’s home page (fig. 3).

Later, when discussing the use of ads to supplement streaming media, Edward said:

"Piracy" for me is a means to escape the control of modern mass media, and instead control what I view and read and listen to on my own terms. I can't say that it necessarily saves me money. I've spent a quite a bit over the years in specialized electronics, computer equipment and storage media. I've used quite a bit of my personal time and effort to learn skills for locating and manipulating media files. But mass media has profited very little. My money and time spent has directly benefited me and my family; I've made no one rich in my media consumption avenues. And that's what offends the established industry. I've bypassed their channels and control. Can't help it though -- I believe in acting and thinking independently rather than being spoon-fed. So, if that makes me a "pirate" I'll wink and hoist the Jolly Roger.

By winking and hoisting the jolly roger, pirates like Edward refer to the cosmological dimension of pirate cognitive praxis that positions media pirates as social bandits (Hobsbawm 1969). Through this form of cognitive praxis, pirates further demonstrate their authorial capacities by re-appropriating attempts to cast their activities as immoral to elicit support. In a way, Jack’s example



*Figure 2 The Home Taping is Killing Music logo (Left), The Pirate Bay logo (right)*

with Tyrion Lannister is an updated version of this that draws on the mythology of Game of Thrones to elicit support.

In conclusion to this section, we return to Meese’s concerns with the term “pirate”. He suggests that due to the history of structural inequalities and the unproductive hyperbole surrounding most accounts of piracy that the term might be better left out of future research in favour of the term “author”. Despite the reservations of a few of my interviewees regarding the term, I do not believe that academics should abandon the term lightly. Despite Meese’s qualms, the adoption and re-appropriation of the term is a powerful indicator of the authorial capacities he argues for. With this term, political pirates discursively position the movement as part of a long historical tradition of social banditry. The term has been strategically used for the construction of disruptive spaces like TPB, and the articulation of an entire social movement. Furthermore, abandoning the term pirate poses the risk of disconnecting pirates from the historical context from which they draw to articulate their political movement. As I argue in chapter two, by placing digital media piracy in a broader historical context, it becomes clear that it emerges within structurally similar conditions and is a recurring form of disruption.

## **Conclusion**

In this chapter, I explored the burgeoning academic literature on digital media piracy. My goal in doing so is to establish an understanding of what it means to be a digital media pirate, as

well as how other scholars have understood the movement. By examining Lawrence Lessig's typology as a jumping off point for this chapter, we see that an understanding of pirates predicated on their deviance is problematic, and poses the serious risk of stifling independent cultural production unless it benefits the media industry. However, Lessig's complicity in depicting non-Western commercial pirates as predatory requires that we consider more nuanced understandings of what it means to be a pirate. Through Meese's work on pirate imaginaries and authorship, we can see that by providing the cultural infrastructure for more people to engage with consumer culture, piracy has authorial capacities. Furthermore, Meese's positive analysis of piracy as beneficial for cultural production ties into the work of Lindgren, whose understanding of different piracy cultures underlines the utility of this approach to the different ways of being a pirate.

To connect the activities of everyday pirates to the activism of political pirates, I explored the concept of subactivism and how it enables an understanding of everyday piracy as individual political acts. These individual instances of subactivism are articulated to a broader piracy movement through the cognitive praxis of politicised pirates, seeking to connect disruptive spaces and construct a viable piratical counterpublic. However, there is some dissonance with the term "pirate" as expressed with some of my interviewees. Coupled with Meese's concern about the term we discuss the question of whether we should abandon the term pirate in favour of other terms like author. Through my interviews with Edward and Jack, I demonstrate that researchers should not abandon the term lightly, given that embracing and redefining the term is part of how pirates convey cognitive praxis and exercise their authorial capacities.

Informed by this literature and insights drawn from ethnographic fieldwork, this thesis understands piracy as a heterogeneous movement most often encountered as part of everyday life. Even the most mundane activities of everyday piracy are instances of subactivism, the sum of which lends the movement its legitimacy and authorial capacity at the subpolitical and formal political level. This subactivism is connected to the movement through the conveyance of cognitive praxis by actors like TPB, KAT, the Piratbyrån, and other pirates, often through satirical and trollish means. Finally, through a loosely connected network of disruptive spaces where subactivism occurs, the movement has created its own counterpublic premised on norms of exchange and authorship that capitalize on the ambiguities brought about by the introduction of digital media technologies.

## **Chapter 2: The Pirate, the State and the Capitalist**

When a user engages in an act of digital media piracy and works (often unwittingly) to create a piratical counterpublic, they do so within a context generally not of their own making; this context is established by the legal frameworks of the state, and the restrictions imposed on them by the media industry. In 2014, over a third of all Canadian anglophone Netflix subscribers were using virtual private networks and proxies to evade geo-blocking restrictions and access the wider catalogue available to American subscribers (The Canadian Press 2014). In response, Bell Canada's president declared the use of unblocking technologies piratical, and vowed to redefine the practice as socially unacceptable (Evans 2015). On the surface, this transgression of national catalogues appears relatively straightforward; however, in the process, the user is navigating a complex and multi-layered array of licensing agreements, legal statutes, political negotiations, and technological restrictions. In this chapter, I examine the relationship between piracy, the state and capitalism to establish the broader structural context within which each individual act of media piracy occurs. In exploring this relationship, I address three related questions; (1) under what conditions does piracy emerge, (2) are these categories mutually exclusive; and, (3) how can pirates exercise their authorial capacities on a structural level?

Digital media piracy is framed by industry discourse as individualized theft, necessitating further expansion of copyright protections and enforcement to protect the moral rights of creators. This depiction should be understood as a rhetorical strategy that simplifies the complexity and historical development of this relationship, one that is deeply impacted by the intensification of intellectual property rights enforcement in emergent spaces. Furthermore, by approaching the topic of piracy from a socio-legal standpoint, we can also look at the historical relations and forebears of these socio-legal assemblages. I argue that piracy emerges in the aftermath of the enclosure of commons. When commons, both material and immaterial, are enclosed for the purposes of capitalist accumulation, inconsistencies and tensions emerge that piracy capitalizes on.

I explore the connections between piracy, the state, and capitalism, to dispel the notion that they are wholly in opposition to one another. To depict these vast groups as homogenous masses would overly simplify the complex historical relationship between them. Many filesharing communities depend on the production of high quality content from the media industry, the state acts as a guarantor of the industry's property rights, the specter of the pirate has enabled the extension of intellectual property enforcement into the home, and counterfeiting has created de



facto standards that benefit industry leaders. The relationship between these actors is dialectical; while at their most extreme they seek to eliminate each other; their antagonistic relationship also constructs the conditions under which they grow.

Given these two points—that pirates originate from within the processes of capitalism and the state, and that they are closely intertwined in dialectical relationships—I argue that piracy disrupts processes of enclosure set in motion by capitalism and the state, and provides alternatives to property-based systems that impact the trajectory of capitalism. Rather than marginalizing pirates as mundane media consumers, slacktivists, or as the scourge of the internet, this approach emphasizes that while they are shaped by capitalism and the state, pirates play a role in the subsequent shaping of capitalism and the state. However, it is also important to be critical of utopian visions of piracy by also understanding the unintended consequences of exercising these authorial capacities. While the widespread adoption of piratical norms can foster change, the adaptability of information capitalism and the neoliberal state can enable further intensification of their hegemony.

### **A Tale of Two Enclosures**

A political economic framework is useful for examining digital media piracy on a structural level. The theoretical approach characteristically incorporates history into the analysis, examines a social totality rather than its constituent parts, entails questions of moral philosophy<sup>17</sup>, and bears an obligation to social praxis<sup>18</sup> (Mosco 2009). The approach can be defined as “...the study of the social relations, particularly the power relations, that mutually constitute the production, distribution, and consumption of resources, including communication resources” (Mosco 2009, 24). A much broader way of defining political economy is the “study of control and

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<sup>17</sup> Questions about the morality of media piracy are crucial to consider; however, due to chapter constraints I address this more closely in chapter three, where I discuss moral panics, and chapter four where I examine the ways pirates construct and negotiate community created ethical criteria through their everyday activities.

<sup>18</sup> Social praxis can be described as the “...unity of thinking and doing. Specifically, against traditional academic positions which separate research from social intervention and the researcher from the activist, political economists have consistently viewed intellectual life as a means of bringing about social change and social intervention as a means of advancing knowledge” (Mosco 2009, 4).

survival in social life” (Mosco 2009, 25). This definition is eminently applicable to the political piracy cultures, primarily in the ways they contest corporate control over media flows (Strangelove 2005), as well as the governance of the state (Beyer and Mckelvey 2015).

A driving question for this project was how current practices of digital piracy are relatable to historical instances of piracy. As discussed in chapter one, the histories of piracy played a mixed role in how my interlocutors understood their own experiences. The history of digital media piracy has been tracked back to the introduction of the printing press (Johns 2009); however, we see few pirates referring to themselves as the inheritors of Gutenberg’s printing revolution. Instead, it is far more common for digital media pirates to raise the jolly roger and evoke the hydra to convey cognitive praxis. Rather than limiting the connections between the swashbuckler and the files harer to simply a rhetorical strategy, it is useful to consider the historical parallels between maritime piracy and digital media piracy. There are clear differences between the acts of terrorizing a merchant vessel into surrendering their cargo and cracking or sharing a file between peers; however, the structural conditions within which these two forms of piracy arose have compelling parallels. By placing pirates within a broader historical context, the emphasis shifts from portraying pirates as opportunistic hackers and criminals to viewing them as a recurrent problem for capitalism.

A key concept that I employ throughout this chapter as an entry into the political economy of digital media piracy is structuration. Defined as a “process by which structures are constituted out of human agency, even as they provide the very “medium” of that constitution” (Mosco 2009, 185), structuration is the way in which society and the individual both create and are created by each another. The two enclosure movements I study here are both examples of structuration, as they sought to create structures conducive to the accumulation of capital in ways that actively limited human agency. In the context of these enclosure movements, structuration occurs through the application and expansion of private property rights into areas beyond the control of the state.

In addition to structuration, I also discuss commodification. Commodification refers to “the process of transforming objects with use value into objects with exchange value” (Mosco 2009, 129). Generally, scholars have examined the commodification of content, audiences and labour (Mosco 2009). Digital media piracy is often explored as a debate over the commodification of content. In p2p networks, the audience is generally conceptualized in terms of its ability to effectively transfer files, or its use value. However, the data generated in file sharing can also be

commodified for market research and the anti-piracy industry. In this burgeoning industry, specialized anti-piracy outfits—such as the Montreal based CANIPRE or the British Golden Eye International—trade in forensic data to facilitate litigation against pirates (Lobato and Thomas 2012). Finally, with regard to labour, piracy on Bulletin Board System (BBS) have been examined as a contestation of the commodification of programmer labour through the introduction of software copyrights (Mueller 2016).

I also briefly discuss spatialization, which refers to “the process of overcoming the constraints of space and time in social life” (Mosco 2009, 157) as well as the ways that capitalism both shapes and is shaped by these relationships. While the web affords the expansion of horizontal structures in the shift towards participatory culture and user-generated content, this change also privileges verticality (Mckelvey 2008). Multinational corporations like Alphabet Inc. benefit from the vertical spatialization of the internet and ICTs, especially with the proliferation of their own software and hardware. Since its inception as a search engine in 1998, the multinational now produces hardware (Pixel smartphones and tablets, Chromebooks, Google Home) with which one can connect to a Google Fiber network, on which one can use one of Alphabet’s many web platforms (YouTube, Google Search, Google Maps, Google Cloud Services).

While commodification and spatialization are both useful to consider, I follow Mckelvey’s example and focus primarily on how spaces are structuralized, and how commodification and spatialization occur through these structurations (2008).

### *Hydrarchy and Netarchy*

Two enclosures are of particular concern in this chapter; the first enclosure roughly encompasses the privatization of the English common lands beginning from the Medieval era and extending into the eighteenth century, whereas the second enclosure roughly covers the privatization of the cognitive and intellectual commons in the twentieth century (Boyle 2003):

In the later stages [of the first enclosure], which reached a climax in the eighteenth century, common lands by custom available for a general use by a local community were fenced in or “enclosed”. Villages lost access to grazing, fishing, hunting, quarrying, fuel, building materials, and rights of way. An entire culture based on shared usage was annihilated and replaced by a new economy in which landlords developed estates as capitalist enterprises, selling the outputs as commodities on a growing world market. (Dyer-Witford 2002, 130)

Scholars have looked at how these enclosures developed through a three-pronged approach: public discourse, law, and technological development (Dyer-Witheford 2002; Mckelvey 2008). Through the passage of laws that strengthened the rights of landlords, the use of force to remove commonists, and the introduction of new technologies, the first enclosure was normalized and the formerly common spaces became spaces of capitalist accumulation (Durand and Vergne 2012b; Dyer-Witheford 2002; Linebaugh and Rediker 2000).

This structuration of common lands had devastating effects on those who formerly subsisted on them:

[Big landowners] radically changed agricultural practices by enclosing arable lands, evicting smallholders, and displacing rural tenants, thus throwing thousands of men and women off the land and denying them access to commons. By the sixteenth century there were twelve times as many propertyless people as there had been a hundred years earlier. (Linebaugh and Rediker 2000, 17)

This class of displaced labourers could be employed during the reorganization of the British state towards colonial and naval pursuits by populating colonial outposts, armies, merchant vessels and the emerging navy (Dyer-Witheford 2002). These displaced labourers and the state were in a dialectical relationship, emphasized by Peter Linebaugh and Marcus Rediker (2000) through the term hydrarchy. From above, there was the development of what they call the imperial hydrarchy—a maritime state that developed the Atlantic Ocean as a territory for the accumulation of capital. From below, we see the concurrent development of the sailors' hydrarchy, within which we find pirates, buccaneers, and other members of the revolutionary Atlantic.

The British imperial hydrarchy emerged primarily through the introduction of nationalistic naval legislation following the English revolution that expanded the role of the navy, the influence of mercantile shipping in the British economy, the punishment of mariners for infractions aboard ships and increased the impressment of labourers into the service of the British naval empire. Technological innovation in ship building and navigation was an important part of the imperial hydrarchy, as it allowed for the expansion of the international capitalist economy off the labour of the seventeenth century mariner. It was the engine that drove the slave trade and the plantation mode of organizing labour, while incorporating other modes of organizing labour into one small locus in the middle of the Atlantic (Linebaugh and Rediker 2000). Furthermore, the state had already laid the groundwork for garnering public opinion towards colonial conquest in the sixteenth century. Early monopolistic state companies like the Virginia Company engaged in public awareness campaigns to extol the necessity of colonization for moral, nationalistic and

social reasons. Appealing to a desire to expand British colonial power, propagandist Richard Hakluyt sought to put the “swarmes of idle persons” who were dispossessed of the common lands to work in Virginia (Linebaugh and Rediker 2000, 16).

In more recent history, we see a similar reorganization from above in the 1980s and 1990s as the state reorganized towards digital aspirations; like the imperial hydrarchy before the state was reorganizing to become a netarchy (Bauwens and Kostakis 2014). This digital state helped drive the enclosure of the intellectual and immaterial commons in the late twentieth century through the extension of private property rights (Boyle 2003). Boyle argues that “[b]oth overtly and covertly, the commons of facts and ideas is being enclosed. Patents are increasingly stretched out to cover ‘ideas’ that twenty years ago all scholars would have agreed were unpatentable. Most troubling of all are the attempts to introduce intellectual property rights over mere compilations of facts” (2003, 39). These patents were justified through appeals to economic efficiency; by offering protection over the fruits of a researcher’s labour and the investment of the corporation or organization they worked for, patents are portrayed as an incentive for innovation. However, the issue of whether copyrights promote innovation is complex, as some scholars argue that the digital enclosure’s approach to intellectual property is a significant departure from original mechanisms of promoting innovation. Boyle argues that the initial intent of copyright law was to use a relatively limited set of intellectual property rights to reward innovation, while ensuring that there would be a strong commons for creators to draw from. Instead, this new approach to IP rights instead extends the concept of property to cover everything, even the mechanisms put in place to protect intellectual property. “We seem to be shifting from Brandeis’s assumption that the ‘noblest of human productions are free as the air to common use’ to the assumption that any commons is inefficient, if not tragic” (Boyle 2003, 39–40). This sentiment and approach to intellectual property rights is epitomized in *The Tragedy of the Commons*, which argued that the continued existence of commons would result in their overuse by free riders, to the detriment of all, and that property rights are a necessary evil (Hardin 1968).

How this relates to digital media piracy today is through a complex interplay between efforts to reduce the cost of manufacturing and distributing media and the application of intellectual property rights to cover practices occurring within the home. With the introduction of home taping technologies, there was increased pressure from media industries to codify in legal frameworks what historian Adrian Johns calls the “home piracy paradigm”. This marked a shift

away from legal understandings of piracy as a commercial operation often engaged in counterfeiting<sup>19</sup>. Although pirates had been operating out of homes for centuries before this period, the articulation of piracy and the domestic space was accomplished through public discourse and lobbying after the introduction of the reel-to-reel tape machine in the late 1940s and early 1950s. Positioned as a hobby akin to photography, home taping practices would later become ubiquitous in the 1970s (2009).

In the 1960s, the home taping phenomenon had begun to pose a threat to the music industry's control over production. Social practices of sharing and swapping home recordings between members of the community were becoming more popular. To combat the rise of home taping, the industry engaged in public awareness campaigns such as the "Home Taping is Killing Music" campaign to depict the practices as piracy, despite their non-commercial nature. Despite this rhetorical strategy that emphasized the death of an industry, home tapers actually bought more albums than the average music consumer (Johns 2009).

Accompanying this rhetorical attempt to convince the public of piracy's perceived ills, the industry sought the aid of the state to introduce laws that would designate home piracy as a deviant act. In 1972, the phonorecord<sup>20</sup> copyright was introduced, which "covers the sound of a recording, rather than the composition that has been recorded, and confers master use rights on the owner" (Sinnreich 2013, 33). These master use rights shifted the rightsholder's control to include how the music was exhibited and performed in public in addition to the composition of the piece itself. However, there was considerable restraint on the part of the state to actively pursue legislation that would curtail this form of piracy, as the state maintained an emphasis on combatting commercial piracy rather than this new paradigm of home piracy (Johns 2009).

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<sup>19</sup> While I am critical of the commercial/non-commercial dichotomy in analysis for reasons expressed in chapter one, it is important to note that this dichotomy does play a role in many intellectual property legal frameworks.

<sup>20</sup> Phonorecords are defined by the US Copyright Office as "A material object in which sounds are fixed and from which the sounds can be perceived, reproduced, or otherwise communicated either directly or with the aid of a machine or device. A phonorecord may include a cassette tape, an LP vinyl disc, a compact disc, or other means of fixing sounds. A phonorecord does not include those sounds accompanying a motion picture or other audiovisual work" (U.S. Copyright Office n.d.).

By the 1980s, the question of home taping had expanded beyond the music industry to the film and television industry with the introduction of Betamax, Video Home System (VHS), and other competing technologies premised on the same principles as the microcassette tape. The infamous Betamax case of 1984 ruled that home taping was regarded as fair use when applied to librarying and time shifting behaviors (Sinnreich 2013). Time shifting refers to the use of a recorded cassette to watch a video recording at a later time, as the consumer would not have been available to watch it at broadcast, and was generally regarded as an acceptable use of the technology. Librarying was more controversial for the media industry as it entailed the collection of media broadcasts. Despite the state's restraint to begin criminalizing home piracy through statutory frameworks the industry's rhetorical efforts largely succeeded in framing home piracy as a major issue.

Later statutory frameworks in the United States helped solidify this new paradigm, and make domestic sharing a legal matter. The Copyright Act of 1976 gave authors exclusive rights over the reproduction, adaptation, distribution, and performance of their work for life plus fifty years, or seventy-five years for corporate copyrights. As seen in the Betamax case, this copyright act was limited by fair use doctrine, which provided protections for teaching, research and scholarship, and protected the consumer's right to adapt the material for their personal use. The Copyright Felony Act of 1992 amended its predecessor to broaden its coverage to include copyrights outside of film, music and software (Higgins and Marcum 2011), while the Sonny Bono Copyright Term Extension Act of 1998 (often dubbed the Mickey Mouse Protection Act) extended authorship rights to life plus seventy years (Matthew David 2017, 28).

The neoliberal policies of the Clinton-Gore administration towards the internet shifted away from the technology-neutral stance previously taken by lawmakers. Rather than limiting the act of copying, the emphasis turned to limiting access and regulating the delivery of content. The 1992 National Information Infrastructure (NII) initiative and the 1996 Telecommunications Act signaled the development of the digital state based on marketization, privatization and deregulation. These acts commercialized internet provision through the telecommunications industry, the commodification of domain names (and speculative domain name squatting), and the consolidation of intellectual property law through technology and extensive policing efforts (Dyer-Witford 2002). Through discourse surrounding these frameworks, they emphasized that the true

potential of the internet could only be realized if it was made economically attractive to private investors and commerce (Gillespie 2007).

The No Electronic Theft (NET) act of 1997 completed the criminalization of home piracy by making the distribution of copied media illegal regardless of profit. The qualifications shifted in this context, requiring only the distribution of one or more copies of a copyrighted work with a total retail value of \$1000 over the last 180 days. It also strengthened potential sentences by including prison time that increased with repeated offenses (Higgins and Marcum 2011). This was followed by the Digital Millennium Copyright Act (DMCA) in 1998, which is described by Gillespie as “the most dramatic change in the history of U.S. copyright law” (2007, 177). A notable element of the DMCA was the criminalization of circumvention tools, even if they were needed in cases of fair use. If a user lacked the technical skills to decrypt a file, then the DMCA effectively blocked their access to fair use doctrine by making these circumvention tools less accessible (Gillespie 2007).

Hard Digital Rights Management (DRM) strategies like encryption were paired with soft DRM strategies like surveillance to regulate how users could engage with media. This was nearly realized in the “Trusted System” arrangements (Gillespie 2007). These arrangements featured a shift in how media distribution was spatialized by increasing the vertical control of viewership from the production of the content right down to the technologies that they can be played on. Examples such as the Secure Digital Music Initiative (SDMI) would have introduced watermarks on music files that could be interpreted by portable music players. The introduction of the standardized DRM system would begin by having consumer electronics manufacturers produce devices that were SDMI friendly, and would allow the playback of both SDMI watermarked and non-watermarked files. In the second phase of the initiative, after achieving market saturation, these devices would only be able to play SDMI watermarked files, and would refuse to play any files that lacked a watermark or had a tampered watermark. As Gillespie argues, this combination of watermarks to detect the origin of a music file and direct music players to act in certain ways went beyond simple copy protection. Instead of requiring expensive litigation, SDMI would have placed the burden of anti-piracy policing onto consumer electronics, which in the second phase would have had devastating effects on the digital commons. Due to technical hurdles and economic constraints, the unstable coalition of SDMI eventually broke apart, and due to being a voluntary arrangement, it never took hold in consumer electronics (2007).



It is important to note that I primarily address the American legal system's handling of copyright and enclosure of the web. The reason for this is that American policies have largely been the template for intellectual property provisions in global trade treaties like the World Trade Organization's agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (Matthew David 2017), the North American Free Trade Agreement (NAFTA) (Murray and Trosow 2013), and the Trans Pacific Partnership (TPP) (Ernesto 2015b). The global acts have been referred to as new forms of accumulation by dispossession; by appropriating and commodifying the immaterial along US-based statutory copyright law, they facilitate the accumulation and centralization of wealth towards hegemonic centers. In the case of this project, this would be the media industries largely located in the United States (Harvey 2004). The passage of the Canadian Bill C-11: Copyright Modernization Act in 2012 introduced similar elements as those found in American copyright law; the circumvention of technological protection measures—often referred to as digital locks—was made illegal, bringing Canadian copyright law more in line with the American model set by the DMCA (Murray and Trosow 2013).

### *The Sailor's Hydrarchy: The Many-Headed Hydra*

The responses to the first enclosure have been framed by Linebaugh and Rediker as the Many-Headed Hydra (2000), a framing that also carried into the halls of power; “Aghast at the recurrence of these outbreaks, the rulers of the day spoke of the rebels as a ‘hydra’ whose regenerative powers resisted their own ‘Herculean’ attempts to decapitation” (Dyer-Witford 2002, 131). With both responses to enclosure that I discuss in this section, the symbol of the hydra is pervasive, demonstrating the heterogeneity of the responses to enclosure.

The anti-enclosure movements of the sixteenth to eighteenth centuries were quite diverse, comprised of “dispossessed laborers, sailors, slaves, pirates, market women, and indentured servants. But they repeatedly came together in combinations, from Digger communes to the maroon settlements of slave and settler runaways, that crossed what later became sedimented divisions of race, gender, and class. This motley array of revolutionaries was the human residue of the enclosures—commoners” (Dyer-Witford 2002, 131). The crews aboard ships in the Atlantic

were also incredibly diverse, as the Navigation Acts<sup>21</sup> and the Naval Discipline Act were often disregarded to ensure that there were enough sailors to crew the fleets of mercantile capitalism and the maritime state. As Linebaugh and Rediker note, crews were often composed of foreign deckhands<sup>22</sup>, and many ships had been seized in wartime from the Dutch. Due to expansion and loss of hands at sea<sup>23</sup>, sailors were pressed into service and strict legislation was rarely followed, resulting in increasing diversity among the crew<sup>24</sup> (2000).

Rediker characterizes the dialectic between the rulers of a state—including the sovereign, the government as well as the clergy—and the sailors serving on the oceangoing vessels of these vast mercantile empires as a ‘tale of two terrors’; this dialectic took place on a variety of global and local stages ranging from the dockside gallows to the heaving decks of a ship at sea (Rediker 2004, 4–6). Pirates were often experienced sailors, dispossessed of their land by the forces of mercantile capitalism and were often left with only their labour and their bodies to survive on. Their labour at sea could often amount to little, as wages were often years in arrears. Conditions were worse aboard military vessels, with their strict military hierarchy and discipline, lower quality of food and lower wages, which were often further in arrears than their mercantile counterparts. Life aboard a privateer was often better, offering prize money, better food, shorter work shifts, and the crew had more power in determining the ship’s actions (Linebaugh and Rediker 2000). Aboard

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<sup>21</sup> The Navigation Act of 1651 stipulated that no more than a quarter of the crew could be foreigners. Three quarters were required to be English or Irish and any contraventions of this law could risk the seizure of the ship, or its goods (Linebaugh and Rediker 2000, 151).

<sup>22</sup>This extended beyond British naval service, as seen in the tale of Ned Coxere. “Ned Coxere, who went to sea in 1648 and “served several masters in the wars between King and Parliament at sea,” wrote, “Next I served the Spaniards against the French, then the Hollanders against the English; then I was taken by the English out of Dunkirker; and then I served the English against the Hollanders; and last I was taken by the Turks, where I was forced to serve then against English, French, Dutch, and Spaniards, and all of Christendom” (Linebaugh and Rediker 2000, 151)

<sup>23</sup> For example, pressed sailors had particularly high death tolls at sea, where “...three out of four pressed men died within two years, with only one in five of the dead expiring in battle” (Linebaugh and Rediker 2000, 151).

<sup>24</sup> “English ships continued to be worked by African, Briton, quashee, Irish and American (not to mention Dutch, Portuguese, and Iascar) sailors” (Linebaugh and Rediker 2000, 151).

merchant and naval vessels, these bodies endured many acts of violence at the hands of ship captains (Jeffries 2015).

By breaking away from the violent hierarchies imposed on the ship by the nation-state and mercantile capitalism, sailors envisioned a radically different society at sea:

They elected their captain, they changed the system of discipline, and they feasted on food and drink...they took control of a powerful machine, which made them dangerous to the powers of the day. One reason why authorities wanted to hang these men was that they used these vessels to create societies that subverted the typical shipboard social order. (Jeffries 2015, 25)

Their actions directly challenged both the legal and economic systems of the Atlantic during this period, thus disrupting the continued monopolization of this space for maritime trade by seizing ships belonging to the maritime state and monopolistic colonial trading companies like the Dutch East India Company (Linebaugh and Rediker 2000; Durand and Vergne 2012b).

Where the state employed terror to create an orderly system on the ship and across the Atlantic for the continued trade of mercantile goods, pirates employed terror tactics to seize ships. However, as Rediker argues, this was often to avoid further violence. The Jolly Roger is a prime example of this; when hoisted, its purpose was to force fleeing merchant ships to surrender rather than put up a fight (Rediker 2004). Rediker argues that this basic symbol of the maxim “surrender or die” is accompanied by many layered meanings. It represented an ironic commentary on the origin of the skull and crossbones as a symbol for a deceased sailor in merchant captain’s logs. As he states, pirates felt that “[w]e’re trapped in a deadly employment, so we’ll take this symbol of death and put it on our flag. We will fight under it and we will find life under it. We will live differently, in a new kind of society of our own making” (Jeffries 2015, 28). The colour of the flag—often red—also indicated that the ship would not surrender, thus the fight that ensued would certainly be bloody (and best avoided). The red flag also became a symbol of the labour movement, being used by sailors in the Liverpool Sailor’s strike of 1775 for similar reasons (Rediker 2004). Through the Jolly Roger, it is arguable that pirates engaged in an early form of trolling, aggravating their foes by revealing the frailty and risks of trans-Atlantic shipping during this era.

Another useful element of the history of maritime piracy is the ambiguity of the term pirate. On the high seas, who was and was not a pirate was highly contextual; for example, the Sea Dogs were feted as national heroes in Elizabethan England, while they were viewed with animosity by the Spanish as pirates (Durand and Vergne 2012b, 34). During the War of Spanish Succession, many would-be pirates served aboard private warships granted a letter of marque and reprisal

sanctioning their seizure of Spanish ships. Known as privateers, they were employed to temporarily increase the size of the state's naval forces during wartime. Following the cessation of hostilities many privateers turned to piracy and gave up ties to any state. As Rediker states, "They made the point with brutal clarity after the declaration of war against Spain (the brief War of the Quadruple Alliance) in March 1719, when the British admiralty and royal officials throughout the Americas desperately hoped that pirates would come in, accept the King's commissions, and go back to sea as privateers. Many pirates did come in, did accept commissions, and did go back to sea as privateers—in the employ of Spain, to attack British ships!" (Rediker 2004, 8). The fluidity between these two labels help inform work on how pirates impacted the trajectory of capitalism. Rodolphe Durand and Jean-Philippe Vergne argue that piracy is an intrinsic part of capitalist change due to its abilities to slow the expansion of monopolies into grey areas and introduce alternatives to these monopolies (2012b) . In their work, they explore the histories of piracy across various mediums to demonstrate these recurrent processes of enclosure and reaction on the seas of the Atlantic, the airwave, analog phone signals, and digital code.

### *The Digital Hydra: Pirates, Hackers and Crackers*

The hydra is a pervasive symbol of the digital piracy movement, commonly invoked as a response to website shutdowns and attempts to impose law and order online. For a short while, the mythical creature was featured in TPB's logo (see fig. 3), emphasizing that shutting down one top level domain<sup>25</sup> would only give rise to several others. This symbolic representation of the resilience of the piracy movement had a similar effect as the use of pirate symbols discussed in chapter one; these symbols convey cognitive praxis, rallying users behind the symbol of the hydra and expressing the resilience of the movement through this mythological creature. Beyond digital



Figure 3: The Pirate Bay's Hydra logo, image courtesy of the Wikimedia Commons

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<sup>25</sup> Top-Level Domains (TLD) are part of a website's Universal Resource Locator (URL). The text to the right of the URL is the TLD (e.g. .org, .ca, .com). There are general TLDs like .org and .gov, country-code TLDs like .ca or .uk, as well as infrastructure TLDs like .arpa ("ICANN | Archives | Top-Level Domains (GTLDs)" n.d.).

media piracy, this symbol has also been used to express the heterogeneity of the second anti-enclosure movements. Dyer-Witheford identifies several different “heads” of this digital hydra: “hackers, pirates, free software creators, universal and open access movements, cyberactivists, and hacktivists” (2002, 135).

Much like their seafaring predecessors operating in the grey areas of the Atlantic, digital pirates operate in the grey areas of the internet, contesting the enclosure of digital goods through the affordances of ICTs. The shift to digital media is also a shift by the industry to reduce costs, which is coupled with the development of global network capitalism: “In simultaneously promoting global property regulation and labour market deregulation, neoliberalism expands the gap between retail price and production cost of IP-rich products” (Matthew David 2017, 166). It has come to the point that the cost to reproduce media content has approached zero (Rifkin 2014; Matthew David 2017). In the broader context of the second enclosure, piracy between networked peers emerged as a response to the structuration of the web to facilitate the exploitation of this artificial scarcity (Arvanitakis and Fredriksson 2014).

As discussed in chapter one, aggregated acts of civil disobedience by everyday pirates, molded into a political movement through the cognitive praxis of politicized pirates can generate new noise (Lindgren 2013b). To add to this, we can also examine how this new noise interacts with the projects of the state and information capitalism through recent work on social disorder within information society (Marshall et al. 2015), and informal media economies (Lobato and Thomas 2015). These approaches to understanding the structural effects of piracy also demonstrate that pirates in the Atlantic and peer-to-peer pirates can be connected through the ways they exercise agency in the enclosure.

Order and disorder are subjective and positional, and can vary depending on who is making the claim. Within my own interviews, Francis commented on the state of piracy, arguing that it was more orderly than in the past:

So, while I can't say this is representative of the piracy world as a whole, my piracy journey has largely been one that has moved from chaos to order. I've got a remote server that automatically grabs new content for me (keeping me safe as well, plus better speeds and ratio) from either private trackers or usenet and sorts it and loads it into Plex for consumption. It's a highly organised system that works extremely well and is seamless enough for my mother to rely on for her Game of Thrones fix.

Although, I agree that it's becoming more decentralised. But at the same time, I think that leads to more order overall.

Marshall et al. situate pirates, the state, and capitalists within their own order/disorder complexes each with their own goals and ordering projects that can conflict or mesh with one another. Each of these complexes take different forms; in the case of digital media pirates, this “pirarchy” is built on the chaotic and fluid networks of the p2p swarm (da Rimini and Marshall 2015), opposed to the more rigid and static media distribution systems of formalized media economies (Lobato and Thomas 2015). However, with the KAT shutdown there appeared to be early signs of the other forms of pirarchy emerging as users turn towards streaming hubs, Kodi boxes that index these streams automatically, as well as more decentralized alternatives like Zeronet and IPFI. By creating disorder through the sharing of digital media files outside of the industry’s control, piracy disrupts this structuration through the expansion of intellectual property laws and the concept of private property.

### **The Authorial Capacities of Commons and Pirates**

Arvanitakis and Fredriksson open their discussion on piracy and the commons by relating the issue to the 1995 film *The Usual Suspects*:

...the character played by Kevin Spacey, ‘Roger ‘Verbal’ Kint’ states that: “The greatest trick the Devil ever pulled was convincing the world he didn't exist” (Singer and MacQuarrie 1995). ‘Verbal’ is describing the existence of a master criminal, Keyser Soze, that everyone feels is everywhere and hears everything, yet no one has ever seen and, in fact, no one is really sure exists. (2016, 132)

They argue that the enclosure of digital commons has played a similar trick; neoliberal ideologies of private property have become so embedded and invisible within our daily lives that their application to digital content is unquestioned. Piracy contests the necessity and applicability of these property rights online.

Michael Strangelove posits that a hostility towards the notion of property is embedded deep within the roots of the internet (2005, 161). In early computer hobbyist clubs providing free copies of programs was the norm, and afforded early computer programmers the chance to refine their skills by deconstructing programs. Programmers and hobbyists were experiencing increased alienation from their work, and the consolidation of control over software code by their employers (Mueller 2016). In a sense, this labour force of coders and programmers bear similarities to the displaced labourers from the first enclosure. Like the pirates of the Atlantic they were also able to use emergent technologies to contest the conditions that were being articulated.

The non-rivalrous nature of digital data is an important part of piracy's critique of property; copying a file does not deprive the original owner of their access to the object, requires minimal resources to reproduce, and does not degrade the original file in any way. As users are copying files from other users without degrading the original, they are not engaging in theft. The free sharing of files between users has been likened to a Maussian gift economy (1950), where users are exchanging files without monetary compensation; however, with the BitTorrent protocol, one click hosting websites, and streaming websites it is perhaps better to examine them as akin to blood donation:

Like blood donation, online file-sharing requires large-scale infrastructure and considerable institutionalization, where a depersonalized entity is established and made operable primarily thanks to the ostensibly altruistic behavior of its participants, whose incentive lies in a belief in the efficacy of the overall system rather than in direct monetary gain. (Andersson 2012, 588)

Users are encouraged to upload files to BitTorrent indexes and trackers; however, there are relatively few ties requiring that users downloading engage in reciprocal uploading. Especially in the case of BitTorrent, uploading is automatized through the protocol.

Jonathan Marshall and Francesca da Rimini extend this line of thought by emphasizing that the concept of property itself is historically contingent, and socially constructed:

Property is imagined, and it arises out of a social-historical network of coproduction, creation, distribution, conception, and relations of power. It is difficult to extract bordered property from this network and impossible to give it a single cause without an act of socially legitimated "theft", backed by some others, which extracts it from its messy origins. Property has no eternal essence and no boundaries: it is a network, or process, involving the whole of social action. Things are constantly becoming property and escaping being property, amid conflict and decay. As Proudhon claims, "property is impossible" (n.d., 157-218). (Marshall and da Rimini 2015, 148)

With the emergence of BBSes, an alternative commons-based critique of private property could be enacted between networked peers over a distance. Early textfile .zines highlight the value of this network as enabling social practices rather than attaining commodified code:

What's a pirate? COMPUTER PIRACY is copying and distribution of copyright software (warez). Pirates are hobbyists who enjoy collecting and playing with the latest programs. Most pirates enjoy collecting warez, getting them running, and then generally archive them, or store them away...Pirates SHARE warez to learn, trade information, and have fun! But, being a pirate is more than swapping warez. It's a life style and a passion...The \*TRUE\* pirate is plugged into a larger group of people who share similar interests in warez. This is usually done through Bulletin Board Systems (BBSs), and the rule of thumb is "you gotta

give a little to get a little...ya gets back what ya gives." Pirates are NOT freeloaders, and only lamerz think they get something for nothing. (*Pirate Newsletter* 1989)

The “true computer pirate” on these networks cracked copyright protection on software and distributed these warez for others to learn from, rather than for personal consumption. By cracking software and displaying their technical prowess, BBS pirates also attained social capital within the social group. In a lecture at DEFCON 18, historian Jason Scott discusses crack screens for pirated Apple II software<sup>26</sup>. These loading screens for the software prominently list the names of the cracker(s), their contact information, boards they go to, “greet” their friends in the scene, and on occasion post lengthy critiques of other users and call on other pirates to “rag” on competing crackers. An enormous amount of work went into each of these crack screens; some of the more intricate ones incorporate artwork and rudimentary animations (2010, n.d.).

The development of Napster<sup>27</sup> in 1998 by Shawn Fanning and Sean Parker represented a significant leap in the technical infrastructure of digital media piracy and its challenge to digital property by expanding the size of the pirarchies. Unlike BBSes, users did not have to find a specific board hosting the files they wanted and manually connect to it. The technological skills required to engage in downloading and sharing were minimal, and facilitated by the Napster client. Napster operated a central server that tracked the users logged into the client, and what files they had made available to other users. A prospective downloader would send a request for a file to the central server, which the server would process by showing the list of users who had made it available. Then, the prospective user could select the file and initiate a direct download between the two users. Through this method, users could become both the client (the downloader) and the provider (the server). The Napster client was introduced in 1999, but did not become popular until 2000 after media coverage of the RIAA’s suit against the service attracted users to the platform (Gillespie 2007).

The increased accessibility and centralized server made Napster susceptible to shut down by the media industry. Shortly after the launch of the service, eighteen record labels filed suit against the service for enabling widespread copyright infringement. In their defense, Napster

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<sup>26</sup> This lecture can be accessed at [https://www.youtube.com/watch?v=QCAL\\_YgYiP0](https://www.youtube.com/watch?v=QCAL_YgYiP0)

<sup>27</sup> A flowchart of the Napster protocol can be found in Appendix 1-1



referred to the Betamax case; they argued that their service offered non-infringing uses, and as such should be entitled to the same protections as those extended to Sony in the 1980s. In July 2000, the courts decided in the industry's favour, citing that Napster had been willingly enabling copyright infringement and that its ability to control user activity differed significantly from Sony. The service was ordered to find a way to reduce infringement, and following the mass removal of copyrighted files the piratical network was a shell of its former self. The service ceased operations in 2001<sup>28</sup> (Gillespie 2007).

Learning from Napster's mistakes, the second generation of filesharing networks moved towards further decentralization. Gnutella<sup>29</sup> distributed the task of maintaining the network architecture and index of files to the swarm; a user's request for a file, or a ping, would be passed along the network of users until a fruitful connection could be made. Following this, the download would be initiated. Kazaa, and Grokster used the FastTrack protocol<sup>30</sup>, which connected a large swarm of users with varying hardware, connection speeds, and upload/download capabilities by creating two classes of peers: Ordinary Nodes and Super Nodes. When a user logged into a client using the FastTrack protocol, they would usually be connected as an ordinary node. If they had a strong, stable connection and capable hardware, the user would then be a super node. Super nodes coordinate the network activities of a group of ordinary nodes, and maintain an index of available files. Should a requested file not be available from the immediate peers, the super node can send queries to other super nodes (Liang, Kumar, and Ross 2004). By replacing the centralized servers with shifting networks of users, the second generation of p2p filesharing protocols were more resilient to legal shutdowns. However, they were not without faults. Gnutella is a difficult network to maintain as the piracy grows, and Grokster and Kazaa were both shut down because of legal action. Grokster was shut down for inducing copyright infringement in 2005 because of legal action by MGM (Hesseldahl 2005).

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<sup>28</sup> Curiously, Napster was later purchased and turned into a subscription based streaming service, returning when Rhapsody rebranded itself as Napster in 2016 (Popper 2016), and co-founder Sean Parker sat on the board of rival streaming service Spotify until 2017 (Nicolaou 2017).

<sup>29</sup> A flowchart of the Gnutella Protocol can be found in Appendix 1-4

<sup>30</sup> A flowchart of the FastTrack Protocol can be found in Appendix 1-3

Introduced in 2001 by Bram Cohen (McCullagh 2001), BitTorrent<sup>31</sup> is one of the most popular p2p protocols in use today, accounting for roughly 5.96% of North American internet traffic in the first half of 2014 (Sandvine Incorporated ULC. 2014, 6). What is unique about BitTorrent is that it samples from each of the previous filesharing protocols discussed to this point. It borrows the upload/download ratio from the BBS and automatizes it. “Bit Torrent software keeps track of how much you contribute compared to how much you take, and enforces this social contract through protocols, not laws” (McCullagh 2001). Like Napster, BitTorrent relies on external servers (trackers and indexers) to connect users to one another through .torrent files; however, the .torrent file does not contain any copyrighted material, instead it provides a list of peers from whom the user’s torrent client downloads can download parts of the file from. At the same time, as the user downloads the file, they also seed data back to the network. Rather than copying a file from one user to another, BitTorrent relies on a many-to-one approach where one user copies parts of files from a large swarm of users, which they can then seed back to new users joining the swarm. Through this many-to-one approach, BitTorrent is easily scalable, as the swarm itself is constituted solely of users who possess a fragment of a file, rather than a collection of users connected to the network with a variety of files.

As alternative networks enabling increased sharing, these commons-based pirarchies offer several benefits over the private-property based structuration effected through enclosure. Recent research suggests that the free sharing of non-rivalrous informational content is more efficient than property and market arrangements. For music artists, these networks enable direct contact between artists and their fans and represent a way out of an oppressive royalty-based remuneration system where record labels take 85-95 per cent of a record’s profits, and deduct investment costs into artists from royalties (Matthew David 2017). This can be vital for smaller artists, as recent research suggests that mid-tier artists may benefit from the exposure that private filesharing provides (Lee 2018). By bypassing the formal record industry, these commons can provide better incentives for artists by inverting the approach to recorded music; the industry norm is that live performances should push record and album sales, as record labels receive a large portion of that revenue. Free-sharing commons reduce the cost of accessing recorded music and increase the sale of tickets to

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<sup>31</sup> A flowchart of the BitTorrent Protocol can be found in Appendix 1-2

live-performances and merchandise, thus making the recorded music the advertising medium for live performances. Unlike the royalty-based system of remuneration, this revenue bypasses the recording industry's control over artists, and alternative free-sharing models have been tested by the group Radiohead. In 2007, they released their album *In Rainbows* with a pay-what-you-want pricing scheme. Although the album was still heavily pirated, the more distributed sales of the album netted a higher profit for the group than if they had released it through a record label (Matthew David 2017).

While the generation of new noise and viable alternatives is a significant authorial capacity, the dialectical nature of the relationships between pirates, the state and capitalists means that they also draw from one another and build off each other's disorder. Ramon Lobato and Julian Thomas argue that despite their tensions and irreconcilable differences, our media landscape can be conceptualized as a spectrum between both formal and informal economies. Through a combination of political economy and neoclassical economics, they understand informal economies as linked to their formal counterparts. Formal and informal economies exist on a spectrum, and are constantly exchanging ideas, content, capital and personnel (2015). Informal media economies often sample from formal media actors. The pushback against commodified software in the 1970s and 1980s produced Richard Stallman's free software movement (later Free and Open Source Software, or FOSS) and the GNU General Public Licenses (GNU GPL). The formalized language, style and tactics of copyright (namely to restrict the use of software to specific scenarios), were appropriated by the GNU GPL to ensure that derivative works remained open-source (Mueller 2016, 338). The reverse is also true, as formal actors can sample from the practices and products normalized by informal media economies, as seen with the adoption of the .MP3 format for compressing music files. The .srt standard for subtitles was also due in part to the efforts of informal Fansubber communities, who incorporated formalized practices of moderation and quality control to verify that user generated subtitles are accurately translated and widely available to users (Lindgren 2013b; Lobato and Thomas 2015). Furthermore, there are actors in between on the spectrum referred to as pirate capitalists who generate capital through advertising on free sharing websites (Matthew David 2017), as well as adaptive capitalist business models that formalize music piracy's ability to give free access to music by commodifying audiences; outside of premium subscriptions, the popular music streaming platform Spotify is supported by commodifying the attention of the free-tier audience for advertisers (Matthew David 2017).

However, there is an important caveat to this interplay between formal and informal media economies that should be kept in consideration. There are considerable power differentials at play here, especially when these media economies mesh together quite well. Lindgren argues that we must never take the disruptive potential of new noise for granted, as at its best it may represent actual change but at its worst may simply be utopian rhetoric with little impact at all, or even change towards further enclosure. For him, the question is “...whether, through aggregation, micro-occurrences of disruptive spaces add up to a substantial counterpublic” (2013b, 142). This is a central irony of digital media piracy:

...neoliberalism uses the breakthroughs generated by piracy and the creation of new commons as a way to further enclose and commodify an expanding range of resources. Hardt and Negri (2004) have discussed the ambiguous and intimate relation between capitalism and the commons, where capitalism is inherently reliant on the commons to produce new commodifiable resources to ensure the constant growth of the market. This creates an irony: acts of piracy break down the very property rights that are meant to promote innovation, but are often at the same time highly creative and then become the subject of enclosure. (Arvanitakis and Fredriksson 2016, 140)

The home taping phenomenon in the 1970s is an early example of this irony, as it broke down the music industry’s (and later television and film’s) monopoly on media production and enabled new social sharing practices. However, public awareness campaigns and legal frameworks enclosed these non-commercial practices and made them subject to increased legal scrutiny, industry surveillance, and technological control.

These piratical practices have had benefits for capitalist enclosure by extending their control. In China in the 1990s and 2000s, the prevalence of pirated copies of Windows helped establish a foothold in the Chinese market, whose official operating system was Linux. As users became accustomed to Windows and its programs, they were more likely to purchase the software in the future (Jie 2014). These network effects of piracy are often left out of industry rhetoric; here, network effects refer to “...contexts in which the value of software rises with the size of the installed base. The more widely used a piece of software or software service, the more it becomes a de facto standard that shapes user decisions about adoption and investment. Platform technologies such as operating systems exhibit strong network effects because a popular platform will foster a rich secondary market in applications and services, which in turn increases the platform’s value” (Karaganis 2011, 51–52). The network effects of piracy can further entrench the

hegemony of the industry. As Jie argues, understanding the commons as purely revolutionary can effect a double subjugation:

One is imposed by the copyright industry, which has been trying, through antipiracy rhetoric, to subjugate the susceptible portion of digital pirates into guilty criminals who then subjectively converted themselves into docile consumers. The digital pirates themselves impose the other subjugation: they have been trying, through anti-capitalist declarations, to subjugate the die-hard digital pirates into self-deceived grassroots heroes. These ‘heroes’ then righteously continue to upload and exchange digitized media products on the Internet only to increase the fan/user base for industry-produced media artifacts. (2014, 207–8)

Given these network effects, it is important to approach the utopian visions of piracy overthrowing the capitalism and the state with a critical eye.

Thus, we have reached a crossroads about the authorial capacities of digital media piracy on a structural level. On the one hand, piracy has fostered several prominent shifts in the ways that we engage with media content. It has disrupted and opposed the enclosure of digital content by providing alternative networks through which to share non-rivalrous content with each other. As a contestation of property rights, digital media piracy has been effective, and has changed the way that digital content is delivered. This is evidenced by the rise of streaming services like Spotify that while they commodify the audience, they do fulfill the promise of Napster: free access to music through a simple interface. These commons present a compelling alternative to private property based media economies, and in some respects outperform their formalized counterparts by being more efficient, more effective and providing better incentives for creators (Matthew David 2017). However, researchers must avoid assuming these changes will take over global information capitalism, and approach their authorial capacities critically.

## **Conclusion**

In this chapter, I explored the relationship between piracy, the state, and capitalism to answer three related questions. First, under what conditions does piracy emerge? Drawing from theoretical insights gleaned from the political economy of communication, I looked at how emergent spaces underwent processes of structuration through enclosure to argue that these forms of piracy emerge while the state is structuring emergent spaces for capitalist accumulation. The maritime state was realized through legal policies that enclosed the commons and reoriented the labour displaced by enclosure towards colonial development. Active recruitment strategies used by monopolistic trading companies like the Virginia Company served to help legitimize this shift

in the public eye. Finally, developments in naval navigation technologies resulted in the expansion of the sea-going proletariat, from which we see the emergence of pirates.

The second enclosure featured similar processes that facilitated the development of global information capitalism and the digital state. With the articulation of neoliberal intellectual property laws that expanded the scope of patents and copyrights into the immaterial and digital domain, the intellectual and cultural commons were enclosed and harnessed as sites of capitalist accumulation. Like the reorganization of the British state towards maritime aspirations in the 16<sup>th</sup> century, the United States reorganized towards developing a digital economy through legal frameworks like the DMCA, which were then exported to other countries through international trade agreements like TRIPS. Public awareness campaigns also played a role, justifying the enclosure of the web as the measures necessary to create an “information superhighway” that would privilege American media industries, and other members of the digital sector. This is complemented by the use of encryption technologies to regulate how users engage with content, and further structure private media consumption and sharing practices to be subject to increased control and surveillance by expanding vertical spatial relations.

In the process of commodifying code and information, we see the emergence of a digital hydra constituted out of hackers, pirates, free software creators, universal and open access movements, cyberactivists, and hacktivists. I traced the history of piracy as a part of this hydra beginning with the BBS pirates of the 1970s and 1980s; many of these pirates were software coders, understanding their piratical practices as a way to hone their technical skills. With the popularization of the electromagnetic tape, the production and distribution of media was decentralized. Through neoliberal policies like the DMCA, home piracy made informal sharing practices subject to state enforcement, and the media industries aimed to gain further control over the consumption of media products.

With this context in mind, in the second half I introduced Marshall et al.’s (2015) framework of order and disorder. Order and disorder are subjective, contingent, and deeply interconnected. On the one hand, piratical order/disorder complexes, or pirarchies, do not mesh well with the order/disorder complex of information capitalism, sowing disorder in attempts to enclose the web. This disorder, created through the distribution of files through the BitTorrent protocol, disrupts the consolidation of industry control over media distribution and the ability to profit from this control. However, at times these structurations can mesh incredibly well. As seen

with the work of Lobato and Thomas, pirates can also be understood as informal actors in the media landscape who create their own informal media economies through ICTs. Here we see many examples of how pirates can alter the trajectory of capitalism by facilitating informal sharing practices, and sample from formal business practices as seen with the GNU GPL. However, at times these informal practices also mesh well with the projects of information capitalism, and they can incorporate informal practices and standards for further expansion.

The third question that I addressed in this chapter is how pirates can be authorial on a structural scale. On a structural level, pirates do exercise their authorial capacities by generating disorder and normalizing viable alternatives, however these authorial capacities may not always have the intended effects. Relying on the non-rivalrous affordances of data, pirates have generated considerable disorder through p2p exchange protocols like BBS, Napster, Gnutella, Kazaa, Grokster and BitTorrent. By sowing disorder in the ordering projects of information capitalism and the neoliberal policies of the digital state, they have presented viable alternatives in terms of efficiency, efficacy and incentives. However, it is important to recall that capitalism is adaptive, and we see the shift towards the commodification of audiences to supplement the circulation of commodified content. As such, it is important to approach this issue with a critical lens, to evaluate the ways that these alternative commons-based structurations of the web intentionally and unintentionally exercise counterpower for better or for worse. In the opinion of this author, there are signs that these authorial capacities have had long-lasting effects for everyday media consumers. These alternative commons have demonstrated the issues with mass media models and have invited experimentation with distributed media models. Furthermore, while there are issues with the commodification of audiences with ad-based streaming services like Spotify and YouTube, one element of the everyday piracy culture has been realized; access to media has never been easier, and may be one of the first steps to a post-scarcity structuration of the web.

### **Chapter 3: The Devilish Pirate and the Industry Troll**

Public discourse about media piracy is fraught with moral undertones. Public anti-piracy campaigns like the “Home Taping is Killing Music” campaign of the 1980s, the “Don’t Copy that Floppy” campaign of the 1990s, as well as the “Piracy. It’s a Crime” advertisements of the early 2000s are prominent attempts to frame copying and filesharing as immoral. Anthony Cohen’s concept of moral panics (1972) is a useful analytical tool to understand the motivations behind these advertising campaigns. This chapter examines how judgements about the morality of piracy play out in public discourse, notably through the generation of moral panics. As a discursive strategy, moral panics often serve hegemonic interests; by fostering a sense of urgency, they can legitimize the introduction of more restrictive legal frameworks and technical standards to combat the pirate threat.

In the first half of this chapter, I examine the use of moral panics to construct this devilish pirate. I outline the concept of moral panics, as well as the development of the term through Gramscian theories of hegemony (Hall et al. 1978) and the rise of user generated content in the 1990s (McRobbie and Thornton 1995). I then examine the way that moral panic discourse has been applied to digital media piracy beginning in the 1990s and how this discourse continues to this day in the form of the FairPlay Canada coalition’s ongoing lobbying of the Canadian government. In the second half, I look at the use of localized moral panics to effect change from below. These “pirate panics” (Lindgren 2013c) aim to highlight the abuse of copyright law through the construction of the industry troll. This is seen in piratical discourse about speculative invoicing—also known as copyright trolling—that occurred during the project’s fieldwork period. As a part of the growing anti-piracy industry, this international form of copyright enforcement has attracted criticism from mass media outlets and government institutions. In some cases, their tactics have even been viewed unfavourably by major rightsholders.

I argue that these two forms of moral panic discourse demonstrate further evidence of the authorial capacities of digital media piracy. First, the piracy movement has effectively harnessed the affordances of ICTs to popularize and satirize these panic discourses by demonstrating their flaws. Second, by generating concern about the tactics used by copyright trolls, pirates are also able to generate further support for their movement and their practices.



## *Moral Panics*

Stanley Cohen's *Folk Devils and Moral Panics* (1972) examines how mass media coverage of young people fighting on bank holiday weekends in the 1960s amplified the perceived deviance of these activities. Cohen's moral panic model generally incorporates four elements; "(1) exaggeration and distortion; (2) prediction; (3) symbolization; and (4) reaction" (Cohen 1972, cited in M. David and Whiteman 2014, 453). By exaggeration and distortion, Cohen refers to the increased coverage of a phenomenon by news media, as well as the exaggeration of seriousness, damage and violence involved in the phenomenon. In this coverage, we also see predictions of when and where the folk devils may strike next, and an emphasis that they will strike again if they are not dealt with. By symbolization, Cohen refers to three connected processes: "a word (Mod) becomes symbolic of a certain status (delinquent or deviant); objects (hairstyle, clothing) symbolize the word; the objects themselves become symbolic of the status (and the emotions attached to the status). The cumulative effect of these three processes...was that the terms Mods and Rockers were torn from any previously neutral contexts...and acquired wholly negative meanings" (1972, 40). Finally, by reaction, Cohen refers to the reactions of the audience (in terms of what the implications of an event is), as well as the reactions of the agents of the societal control culture to the emergence of folk devils and panic discourse. Moral panics can foster new social norms that enable informal control of folk devils through public opinion, as well as formalized social control through the introduction of legal frameworks. However, they do not necessarily need to convince the audience to institute new forms of social control; through the use of emotive language and calls to action, moral panics can create the conditions under which the further imposition of power appears legitimate, even without public support (McRobbie and Thornton 1995).

There are several important developments in the concept's forty years of existence. Geoff Pearson's research integrated an element of historical analysis by examining how moral panics often entail some degree of reflection on a golden age, demonstrating "...how moral panics in society act as a form of ideological cohesion which draws on a complex language of nostalgia" (Pearson 1983, cited by McRobbie and Thornton 1995, 562). In *Policing the Crisis*, we see concern for how moral panics enable the development and intensification of political control through the Gramscian concept of hegemony (Hall et al. 1978). An especially salient point of Hall et al.'s work

for any consideration of piracy is the ideological function of crime statistics in moral panic discourse:

[Crime Statistics] appear to ground free floating and controversial impressions in the hard, incontrovertible soil of numbers. Both the media and the public have enormous respect for 'the facts' - hard facts. And there is no fact so 'hard' as a number - unless it is the percentage difference between two numbers...In general it must also be remembered that everything depends on how the crime statistics are interpreted (by the police), and then on how these interpretations are reported (in the media). However accurate or inaccurate the statistics quoted earlier, they were used to identify the existence of a mugging crime wave and to justify public reaction to it. (Hall et al. 1978, 10)

In terms of digital media piracy, economic statistics about the losses suffered by the music industry serve a similar function. The Canadian anti-piracy coalition FairPlay states on its “Myths vs Facts” page that between 2016-2022 the streaming media industry will lose 50 billion dollars in revenue to pirates<sup>32</sup>. However, these statistics rest on shaky grounds, as it presumes that each individual would have purchased a subscription if the option to pirate it was not available, rather than access the same files through a free streaming portal (e.g. YouTube). Academic research on these displacement rates can also be problematic. They tend to focus on conveniently accessible populations that are statistically most likely to engage in piracy (e.g. college students), as well as remain relatively limited in national scope (Herz and Kiljański 2018).

By centring panic discourse around the economic impact of digital media piracy, industry lobbyists promote the idea that digital media pirates are detrimental to the economy. These statistics are socially situated, and should be subject to similar levels of scrutiny (Yar 2008). These statistics are often self-reported by industry lobbyists on behalf of their clients, and there is concern that they may deliberately inflate these figures for the purposes of more effective lobbying. In the MPAA’s 2005 report on piracy losses commissioned from the LEK consulting firm, they claimed that mass piracy was occurring on college campuses in the United States. This rampant piracy accounted for up to 44% of the industry’s losses in the report; however, in 2008, the figure was adjusted to be closer to 15%. The MPAA cited human error for the staggering difference in statistics, but maintained that college students still accounted for a disproportionate amount of their losses (Oster 2008). While this may seem a simple error, their lobbying based on this figure was a

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<sup>32</sup>It is possible to pirate a streaming service subscription by using a modified application file to access premium features.

driving force behind the inclusion of provisions for peer-to-peer filesharing enforcement in the 2008 Higher Education Opportunity Act. These provisions forced post-secondary institutions to provide anti-piracy warnings to students, provided incentives for these institutions to develop anti-piracy measures on campus, and required that they submit reports on how they were enforcing intellectual property on campus (Miller 2008).

Angela McRobbie and Sara Thornton (1995) outline new ways of thinking about moral panics given the proliferation of media technologies in everyday life. This new media plurality increased access to alternative representations of folk devils, as well as ways to push back against these representations. Thus, the audience was recast as a more active participant in moral panics. While empowering folk devils, the theory's success in sociology led to better understandings of moral panics by the agents of societal control. For marketers, moral panics were employed to generate free advertising and increased sales:

Knowledge of this youth-culture ethos is such that its exploitation has become a routine marketing strategy of the publishing and recording industries. For example, the 'moral panic' about 'Acid House' in 1988, 1989 and 1990 began with a prediction on the back of the album that launched the music genre. The sleeve notes described the new sound as 'drug induced', 'sky high' and 'ecstatic' and concluded with a prediction of moral panic: 'The sound of acid tracking will undoubtedly become one of the most controversial sounds of 1988, provoking a split between those who adhere to its underground creed and those who decry the glamorization of drug culture'. (McRobbie and Thornton 1995, 565)

By invoking a moral panic about Acid House, marketers received free publicity through news media, attracting new consumers and others likely to purchase this genre of music. McRobbie and Thornton argue for a model of moral panics that emphasizes that they are continuously contested, which embraces the complex new ways that audience members were also becoming an active voice in media discourse (1995).

One of the most widely cited applications of the moral panic framework to digital media piracy comes from Majid Yar (2008), who examines how copyright lobbyists employed moral and ethical discourses in classrooms to criminalize digital media piracy in the early 2000s. Here we see how moral panics engage in symbolization; through the educational system, industry lobbyists attempted to link piracy with criminality and enlisted parents to act as “agents of surveillance and disciplinary correction” (Yar 2008, 619). In his article, Yar examines the Play it Cybersafe campaign, the Copyright Kids programme, the Cybersmart! Programme, the online computer

game *Ippy's Big Idea* and the Starving Artist Roleplaying Game, deconstructing the myths that each of these programs try to instill in children about copyright and property.

Yar identifies four tropes in these programs which serve to reinforce myths about the importance of copyright. Drawing from Roland Barthes' (1972) conception of myth, where "...myths serve to naturalize what are in fact historically, culturally and politically contingent phenomena. Mythification takes such contingencies and represents them as something simply given *in natura rerum*, in the nature of things and, as such, enduring and inviolable" (Yar 2008, 611). He argues that these educational initiatives serve to instill myths that benefit the copyright industry. The first trope is that the protection of Lockean property rights are necessary for the functioning of society<sup>33</sup>. These educational initiatives also engage in mythification by equating tangibles and intangibles, as seen in their insistence that infringing copyright is like the theft of a physical item. In this second trope, the differences between rivalrous goods and non-rivalrous goods are collapsed, allowing copyright lobbyists to ignore the fact that copyright places artificial scarcity on non-rivalrous goods, and that piracy affects the exploitation of this scarcity, not the production of it (Gillespie 2007; Yar 2008; Marshall and da Rimini 2015). The third trope informs children that creativity is an individual endeavour, which serves to situate creativity in 18<sup>th</sup> and 19<sup>th</sup> century romantic ideals of the self and isolates creative acts from their cultural context. Yar notes that creative acts are situated within a cultural context, and are constantly sampling and remixing themes from other cultural texts. As Yar states, "...how would Woody Allen's *Play It Again, Sam* be possible without *Casablanca*, or *Star Wars* without *Flash Gordon*, or Austin Powers without James Bond?" (2008, 614). Finally, the fourth trope that he addresses is the myth of harm, where the copyright industry attempts to associate copyright infringement with embodied suffering. This is especially apparent with the "Starving Artist" roleplaying game:

In the role-playing activity Starving Artist, for example, groups of students are encouraged to come up with an idea for a musical act, write lyrics and design a CD cover only to be told by a volunteer teacher their work can be downloaded free. According to the lesson, the volunteer would then "ask them how they felt when they realized that their work was stolen and that they would not get anything for their efforts." (Holson 2003)

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<sup>33</sup> Property rights and their constructedness will be addressed more in chapter two, where I discuss legal and technical ways of trying to reduce piracy.

Through exercises like these, Yar argues that the copyright industry broadly overstates the portion of proceeds from each sale that is transferred to an artist, minimizing the portion taken by various industry intermediaries. Furthermore, it incorrectly asserts that artists hold the rights to their work, when often these rights are held by corporate entities, a fact some artists like Courtney Love have ironically likened to piracy (2008). Here we also see Cohen's processes of prediction and audience reaction intertwined. Industry discourse, through these mediated initiatives, associate a sense of inevitability with the piracy phenomenon. By exploiting the reaction of children being told they would not get anything for their efforts, they emphasize that this is what they should expect if they become an artist, unless they take a pro-industry stance against piracy.

Outside the classroom, the infamous "Piracy. It's a Crime." ad campaign is one of the most recognizable attempts by copyright lobbyists to depict piracy in moralized terms and exaggerate its impact on society. This campaign was first launched in 2004, and commonly appeared in theatres and on DVDs as an un-skippable trailer. Matthew David and Natasha Whiteman provide an excellent description of the ad's content:

The trailer is 40 seconds long and contains no dialogue. It shows the perpetration of four criminal acts—the thefts of a car, handbag, television and a DVD—by four (male) criminals, and one averted action, the downloading of a film by a girl in her bedroom. This download provides the trailer with a unifying narrative: it is shown starting at the beginning of the ad, continues throughout the trailer (intercut with glimpses of the 'other' crimes), and is halted at the very last moment when the girl cancels that download and leaves her room, picking up her (school?) bag as she exits. (2014, 459)

In between these scenes, there are frames of text which speak directly to the viewer, building tension throughout the trailer and inviting the viewer to identify with the film downloader (M. David and Whiteman 2014)). The text frames read:

YOU WOULDN'T STEAL A CAR

YOU WOULDN'T STEAL A HANDBAG

YOU WOULDN'T STEAL A TELEVISION

YOU WOULDN'T STEAL A MOVIE

DOWNLOADING PIRATED FILMS IS STEALING

STEALING IS AGAINST THE LAW

PIRACY. IT'S A CRIME. (M. David and Whiteman 2014, 451)

The trailer also relies on visual and musical cues to create a symbolic link between piracy and crime. The music is interlaced with the sound of sirens, and behind the text there are blurred flashes of red and blue lights. The scenes of the car, handbag, television and DVD theft feature darker colour palettes, skewed camera angles, and the perpetrators whose faces are out of focus, making them seem less relatable. In contrast, the scenes featuring the downloader are bright, in focus, and are constructed to help the viewer see themselves as the girl downloading the film (M. David and Whiteman 2014, 460).

Despite its widespread recognition among youth, this ad campaign did not generate the intended audience reaction for two reasons. Firstly, as it appeared in movie theatres and as an unskippable trailer on legally purchased DVDs, the ad campaign largely inconvenienced licit viewers who were unlikely to engage in piracy to begin with. This generated a negative reaction towards the industry from licit viewers of their media. Secondly, the trailer features several logical inconsistencies that are invoked in parodies of the trailer. The trailer collapses the differences between criminal and civil offenses by portraying them side-by-side; in many legal contexts, copying is considered a civil offense if it is not for commercial profit. Like the educational initiatives Yar studies, it also collapses the differences between physical and non-physical property (Matthew David and Whiteman 2014).

Through participatory media platforms, users parodied the ad by drawing on these logical inconsistencies. One of the most well-known examples comes from the Channel 4 sitcom *The IT Crowd* (Lineman 2007), where the parody trailer gradually escalates the criminal acts perpetrated by a male thief (stealing a handbag, stealing a car, stealing a baby, shooting a policeman, etc.), and then finishes with the female downloader being shot by an FBI agent in the final scene, satirizing the exaggeration and distortion present in the original trailer. Other parodies, such as those joking about downloading a car (see fig. 1), satirize how the trailer collapses the differences between physical and non-physical goods. Here, pirates claim that if they could download tangible objects that they certainly would. With increased access to 3D



Figure 4: “You Wouldn’t Download a Car” by Reddit user augreeko in 2009.

printing, some pirates point to Ivan Sentsch's project to recreate a 1961 Aston Martin DB4. By 3D printing a plug to act as a mould for the fiberglass shell, Sentsch is in a sense downloading and printing a car piece-by-piece (Lavrinc 2013).

In studying this failed moral panic, David and Whiteman make five points. First, industry lobbyists can act as moral entrepreneurs; by generating moral panics about filesharing they can influence state policy to reflect their desires. Second, this moral entrepreneurship has resulted in the tightening of existing regulations and the introduction of new legislation to combat folk devils. Third, through the affordances of new media, audiences can respond through parody. Fourth, while these affordances enable responses, the power and hegemony of the media industry to guide legislation is still present. Fifth, while the affordances of new media may not reduce the power of lobbyists, it does make the actual process of regulating filesharing more difficult (2014).

One of the most prominent moral entrepreneurs from the media industry is Jack Valenti, the CEO and President of the MPAA from 1966 until 2004. In 2001, Valenti claimed that the MPAA was fighting its own type of terrorism mere months after the 9-11 attacks. These claims were sustained in front of a US Senate Committee in 2003, with the additional argument that piracy funded terrorism. In the following year, Valenti equated piracy and people traffickers in Pakistan and Russia who were flooding Europe with illegal immigrants and pirated DVDs, a rhetorical move that David and Whiteman allege "...allowed Valenti to claim that the struggle against IP violation was equivalent to preventing Western countries from being 'invaded'" (2014, 458). This extends beyond the MPAA and Valenti. In 1981, the Chair of the Canadian Recording Industry Association Brian Robertson decried the relatively lax fines levied on copyright infringers:

The parasites who currently feed off our business are going to say "Boy, what a deal, a \$200 fine for a piece of a \$50 million pie. Thank you, Canada, for your generosity, we'll be right up. A Haven is what we will be--no different from what Hong Kong used to be or Singapore still is. A country with no visible concern about the loss of income of its performing artists, composers, producers and musicians, or the declining employment in the industry or the eroding base of the manufacturing industry and its destructive influences down the distribution line in the loss of domestic taxes and export sales. (Robertson 1981, 20)

Tarleton Gillespie argues that Valenti's moral entrepreneurship generally followed a standard formula:

(1) we are in a time of great promise (be that promise economic, technological, cultural, or political); (2) copyright theft made possible by the Internet is a threat to that great promise and to all who might benefit from it (again, be that artists, consumers, or the nation itself);

(3) widespread piracy will convince the film industry to withhold its content or be reluctant to build online distribution systems; (4) if this happens, consumers, the Internet and the culture will suffer; (5) with the proper countermeasures (be they technological, legal, or legislative), this threat will be diminished and the Internet will meet its promise, which is (6) a digital cornucopia of multimedia entertainment that gives American consumers exactly what they want, when they want it, for a reasonable price. (2007, 112)

This style of discourse, closely related to Robert McChesney's "catechism of a free media system", offers a superficial and misleading picture of the media system, and may hinder attempts for democratic reform of the system (2013, 63).

Today, this formulaic moral entrepreneurship is replicated in the FairPlay Coalition's ongoing lobbying of the Canadian Radio-television and Telecommunications Commission (CRTC). This coalition—a group comprised of Canadian media producers, telecom companies, and interested parties—are currently appealing to the CRTC to create an Independent Piracy Review Agency (IPRA). This agency would be charged with investigating and blocking piracy websites similar to the website blocking provisions in SOPA and PIPA (Dobby and Krashinsky Robertson 2018).

The proposal follows Valenti's formula quite closely. The proposal claims that if the piracy threat was eliminated, the promise of the film and television industry could be fully realized. The proposal states, "It [piracy] also puts at risk the economic contribution of a film and television production sector that, in 2015-2016, generated \$8.5 billion for the Canadian economy and contributed over 140,000 jobs" (FairPlay Coalition 2018, 3). Should piracy be able to continue, the proposal predicts that creators will continue to experience real harm, as seen in the proposal's reference to the film *Goon* losing nearly \$1 million in box-office sales and an unspecified amount more in DVD and download sales due to piracy. Piracy is also depicted as a threat to the nation through the proposal's claim that "Piracy also continues to erode the contribution of Canada's cultural sector to the country's social fabric and democratic life" (FairPlay Coalition 2018, 11). Furthermore, the threat of the industry being reluctant to continue investing in Canadian media is invoked when the proposal states "BDUs<sup>34</sup> will not continue to invest in new telecommunications infrastructure, technologies, and distribution models if piracy, which relies on stolen content and existing Internet connections (often the result of investment by the same legitimate BDUs),

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<sup>34</sup> Broadcast Distribution Undertakings



continues to compete with them at no or little cost” (FairPlay Coalition 2018, 13). Without action against piracy, legitimate consumers and the industry will suffer as they will have to shoulder the burden of subsidizing these free riders, and that “...less Canadian creative content will be made and enjoyed. Uniquely Canadian stories may never be told and content that reflects the diverse cultural identity of Canadians will be lost. As Canadians, we are all harmed by piracy” (FairPlay Coalition 2018, 16). Finally, the proposal infers that by creating the IPRA to block piracy websites, Canadian businesses will be able to offer new and innovative ways for consumers to access media, passing the benefits on to them.

There proposal has sparked critique from industry critics. Michael Geist—the Canada Research Chair in Internet and E-commerce Law at University of Ottawa—points out that the rhetoric of a fragile industry employed in the proposal does not conform with recent data, stating:

...Music Canada recently reported that Canada is well below global averages in downloading music from unauthorized sites (33 per cent in Canada vs. 40 per cent globally) or "stream ripping" from sites such as YouTube (27 per cent in Canada vs. 35 per cent globally). Further, a 2017 report from the Canada Media Fund channelled the success of Netflix in noting that "some industry watchers have gone so far as to suggest that piracy has been 'made pointless' given the possibility of unlimited viewing in exchange for a single monthly price”. (Geist 2018)

Unlike SOPA and PIPA, the proposal claims that IPRA would include an appeal mechanism with judicial oversight; however, Laura Tribe from OpenMedia argues “What they [FairPlay] are calling judicial oversight is actually an appeal mechanism well after the fact... We don't think that's fair” (Harris 2018). The proposal is currently undergoing a period of public consultation; however, the initial period of consultation for this proposal was quite short. Initially posted to the CRTC’s page on January 30<sup>th</sup>, 2018, the time allotted for public consultation was only two weeks, whereas other proposals on the same portal allowed a month for public commentary. Following a procedural request from the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic (CIPPIC) and OpenMedia, this deadline was extended to March 29<sup>th</sup>, 2018 to allow for further public consultation. In the case of SOPA and PIPA, sweeping changes to copyright enforcement were drafted and justified through panic discourse about the effects of foreign commercial pirates on the US media industry. This is also present in FairPlay's proposal, as they argue for a website blocking system like that of the United Kingdom to be enacted in Canada. This system, in tandem with the enforcement of the Copyright Act, would allow for a more efficient reduction of piratical activity.

The failure of SOPA and PIPA demonstrate the power of new media to challenge the regulation of filesharing as a form of communication. The failed bills were brought down by widespread public backlash, fostered in part by the plurality of voices new media enables. Through new media, counter-discourses that cast the copyright industry as a folk devil spread quickly. However, despite the failure of the bills, moral entrepreneurs within the copyright industry can still influence state policy, which is their fourth point. Some of the most controversial provisions within the bills—such as the ability for non-government intermediaries to terminate payment services to foreign domain names like The Pirate Bay with minimal oversight or accountability—were enacted quietly behind closed doors through voluntary state-industry agreement—deals that included some of the actors who publicly protested the bills in 2012 (Tusikov 2016). This occurred during the fieldwork period, when PayPal revoked access to UnoTelly’s payment services. UnoTelly is a Canadian Netflix unblocker service cast as piratical in 2015 by Bell’s president Mary Ann Turckle (CBC News 2016a).

In the wake of SOPA and PIPA, new media technologies afforded new ways of resisting the hegemonic imposition of these policies. This can be seen in the widespread adoption of virtual private networks, darknet-based filesharing alternatives, smaller decentralized filesharing trackers, and easily replicated filesharing websites to sidestep attempts to restrict piratical practices. Through these means, pirates evade the restrictions that the moral entrepreneurs introduce through moral panics. However, pirates can also generate localized panics about issues that impact their day-to-day lives. Through the plurality of new media, they can quickly circulate their own panic discourse to raise doubts about the imposition of new restrictions and enforcement practices employed by the copyright industry. From time to time, these localized panics are taken up by formal media outlets and become part of public discourse. In the following subsection, I examine recent Canadian media discourse about private copyright enforcement agencies. With the introduction of Bill C-11: The Copyright Modernization Act in 2012, ISPs were legally obliged to forward notices of infringement to internet subscribers without divulging the personal information of the subscriber to the claimant. However, since the notice and notice system was put in place, there have been numerous accounts of the system being abused by what pirates call copyright trolls. In this discourse we see the emergence of a pirate panic where pirates depict these enforcement agencies as trolls acting in bad faith, undermining the promises of the internet.

## *Copyright Trolls and Nice Pirates*

Copyright trolls suck. That's all. They don't deserve to exist. They are a waste of money and time. Copyright trolls shouldn't have control over anything.

The above quote comes from William, one of my interviewees. As a media consumer (and aspiring pirate ethnographer), the topic of copyright trolling caught my attention in late 2015. I was curious what potential interviewees would think about copyright trolls, whether they had been targeted before, and how they felt copyright as a construct could change to mitigate this issue. I have never been on the receiving end of a copyright troll's efforts, but I hoped that perhaps one of my interviewees could provide some insight on this issue. When I asked Edward if he had ever been targeted by a copyright troll, and if he followed any news on copyright trolling, he informed me that he had been targeted by Rightscorp, but had ignored the notice and employed a different VPN. He also stated:

Copyright trolling is just another expression of an overly-litigious world. Don't like something? Get a law made against it. Feel wronged? Sue someone! The only winners are the lawyers who collect their fees, and the companies that can afford to spend outrageous amounts on lawyers to collect even larger settlements. They are parasites, plain and simple.

Rightscorp is an anti-piracy company based in the United States. A brief examination of TorrentFreak's coverage on copyright trolling provides a snapshot of the highs and lows of the company's operations, rhetoric, and tactics throughout the last seven years. Other companies like Prenda Law, Spridningskollen, TCYK LLC, LHF LLC, Canadian Intellectual Property Enforcement (CANIPRE), CEG TEK, and others regularly grace the piracy news blog's front page. Of interest to this chapter is how their practices are discussed in moralized terms by pirates, as folk devils who seek to limit access to the good life expressed in the first part of this chapter.

In this section, I examine how copyright trolling—also referred to as speculative invoicing—was present in Canadian and piratical media discourse between 2015-2017. Articles were collected from TorrentFreak as a primary source of pro-piracy news, as well as formal media outlets in Canada like CBC News and the Globe and Mail. Shortly after entering the field, I noticed several stories about legal notices sent to internet subscribers through the recently introduced notice and notice system. Through an examination of themes in these articles, I look at how pirates constructed their own moral panic about copyright trolling, and by bringing awareness to this issue could exercise their authorial capacities.

Copyright trolls can be described as organizations that monitor BitTorrent swarms<sup>35</sup> to litigate against IP addresses caught infringing the copyright the troll is contracted to enforce. While this appears to follow the same practices as the anti-piracy lawsuits filed against music downloaders by the RIAA in the 2000s, the legal strategies copyright trolls employ have notable differences. First, copyright trolls tend to be legal firms or private companies who offer contracted anti-piracy enforcement, rather than companies that produce copyrighted works and subsequently protect these works through litigation (Sag 2014). Second, copyright trolls target as many individuals as possible to maximize the chances of generating revenue. Sag notes that the use of Multi-Defendant John Doe (MDJD) cases to target thousands of alleged pirates at once is a concerning trend, especially when these cases relate to the sharing of pornographic material. In these cases, thousands of subscribers are targeted at once to lower the cost of litigation for the troll, and to increase the odds that subscribers receiving legal notices will opt for a settlement process rather than defend the claim in court: “[t]his is a familiar pattern in patent law where trolls thrive by opportunistically taking advantage of the uncertain scope of patent claims, the poor quality of patent examination, the high cost of litigation, and the asymmetric stakes faced by the patent assertion entities and the businesses they target” (Sag 2014, 1108). There are some concerns about how Sag frames the increased use of MDJD cases as a “troll apocalypse” in the United States (Balganesh and Gelbach 2015); however, in the scope of this project, the element that most discourse focused on was the legal notices that copyright trolls send to alleged pirates. This is the third characteristic of copyright trolls; whereas previous attempts by rightsholders to litigate against filesharers have relied on the threat of legal action with the intent to carry through, copyright trolls aim for a quick settlement through the mass sending of threatening legal notices to alleged pirates.

Early examples of copyright trolling emerged in Germany in the mid-2000s, where the legal concept of *Abmahnungen* permits lawyers to send cease and desist notices to suspected filesharers, even if they were not hired by the rightsholder (Wall, David, and Halbert 2014). This was noted in the UK in 2007, and rose to prominence in 2009 with the infamous ACS:Law firm, who sent thousands of notices of infringement to alleged downloaders:

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<sup>35</sup> A swarm refers to the collective of users who possess at least a fragment of a torrent file.

In May 2009, ACS:Law made claims on behalf of MediaCAT against suspected copyright infringement through peer-to-peer file sharing. By November 2009, a further 25,000 claims against downloaders were made. In the first two weeks of January 2010, 10,000 more letters were sent out to alleged infringers based upon information obtained from ISPs (HCJ Order 67/ 2009, cited in Wall 2014, 616).

In 2012, Andrew Crossley, the solicitor associated with ACS:Law, was suspended from practicing for two years due to allegations of “acting in a way that was likely to diminish the trust the public places in him or in the legal profession” and “using his position as a solicitor to take unfair advantage of the recipients of the letters for his own benefit” (*BBC News* 2012). After the downfall of ACS:Law, the rate of speculative invoicing fell in the UK but rose to prominence in the United States where the number of speculative invoicing cases went from 0 to over 200,000 between January 2010 to August 2011 (Palmedo 2011).

In the Canadian context, we see the rise of copyright trolling following the introduction of the notice and notice system in January 2015. Introduced to educate consumers about the civil penalties that piracy can incur, the system has seen numerous cases of flagrant abuse by copyright trolls. One flaw is that there is no oversight of what trolls put in these letters to subscribers. ISPs are unlikely to intervene here, due to potential legal liabilities and the costs associated with the system. As the system prohibits ISPs from charging trolls a fee to forward the notices, ISPs bear the cost of forwarding these notices to subscribers. Aside from verifying that the ISP is legally obliged to forward the claim, there is little motivation on the part of ISPs to ensure that trolls are not exploiting their customers. TekSavvy’s copyright FAQ states that aside from implementing automated form-based notice systems limiting what trolls can send to the user, any further monitoring of notice content would be too expensive for the ISP. As a result, these claims can contain false threats, as seen with the letters sent to students at the University of Manitoba. In this case, copyright trolls claimed that students found engaging in piracy could lose their scholarships or study permits if they did not pay the settlement fee.

In cases where a settlement option is listed, the settlement details tend to follow a statement about the maximum statutory damages permissible under Canadian copyright law. In the excerpt below, the possibility of violating the ISP’s terms of use, and incurring further damages are also mentioned to motivate users to pay a settlement:

In the event that this matter remains unresolved and/or you continue to engage in the unauthorized copying and distribution of copyrighted works, you could be in violation of the Acceptable Use Policy you may be party to with your ISP. In Canada, you could also

be found liable for statutory damages of up to \$5,000, or non-statutory damages for copyright infringement, as well as potential damages for unjust enrichment and interference with economic relations.

In order to help avoid legal action, we have been authorized by Koch Media GmbH to offer you a settlement opportunity that we believe is reasonable for everyone. This notice provides you with the information you require in order to resolve the claimed infringement matter and prevent any and all further legal actions that may be contemplated and relevant under Canadian jurisprudence.

To access the settlement offer for this claim, you have until [REDACTED] to visit the provided URL and complete the settlement instructions. If you prefer, you can simply copy and paste or type the URL directly into the Internet browser of your choice. Here, you will gain confidential and private access to all instructions how to complete your settlement payment and receive your executed Settlement Agreement. Please note that your Unique Notice ID forms the URL and corresponds with the Unique Notice ID found at the outset of this notification. (CBC Calgary (CBC News) n.d.)

Note here how the troll vaguely alludes to “potential damages for unjust enrichment and interference with economic relations”. In this case, the inclusion of these potential damages infers that the alleged downloader should take the settlement offer rather than face damages that may exceed the statutory maximum for copyright infringement. A similar tactic is used by CEG TEK in their letter to an alleged downloader of the 2016 film *London Has Fallen*. However, CEG TEK also alludes to the possibility of increased penalties if the recipient does not settle in a timely manner by adding “If this matter is not resolved by the date shown above, the original settlement offer will no longer be an option and *any future resolution may require an increased payment from you*” (Siegel 2016, emphasis mine).

In addition to false claims, threats of further damages and timed settlement offers, copyright trolls also target specific types of media to litigate against. Prenda Law, run collaboratively by John Steele and Paul Hansmeier, was an American legal firm that pursued alleged downloaders of pornographic films on public trackers like The Pirate Bay. Between 2011 and 2014, Steele and Hansmeier allegedly made more than six million dollars through copyright trolling. Their operations were described by an official Department of Justice press release:

Steele admitted that he and Hansmeier created a series of sham entities to obtain copyrights to pornographic movies – some of which they filmed themselves – and then uploaded those movies to file-sharing websites like “The Pirate Bay” in order to lure people to download the movies. Steele and Hansmeier then filed bogus copyright infringement lawsuits that concealed their role in distributing the movies, as well as their personal stake in the outcome of the litigation. After fraudulently inducing courts into giving him and co-

defendants the power to subpoena Internet service providers and thereby identify the subscriber who controlled the IP address used to download the movie, Steele and Hansmeier used extortionate tactics such as letters and phone calls to threaten victims with enormous financial penalties and public embarrassment unless they agreed to pay a \$3,000 settlement fee. (Department of Justice 2017)

In piracy discourse, this practice of targeting pornographic material is often cited as proof of the immorality of copyright trolls, given the implied threat of public embarrassment in the public record if they do not settle. This was demonstrated in TorrentFreak's coverage of the Prenda Law case, seen below in the emotive and moralized language the writer employed:

Underlying this deviant behavior was the disturbing fact that rather than simply monitoring pirates online, Prenda actually uploaded content itself in order to create pirate honeypots on The Pirate Bay and elsewhere, a practice that pushed the company well over the moral line.

But since then another year has passed and memories of Prenda have continued to fade. Will the world's most hated trolls ever be brought to criminal justice? Well, fresh news from Ken White at Popehat suggests that the FBI still have a keen interest in the case and could be close to their goal.

News that the investigation into Prenda's activities could be in its final stages will be well received by thousands of victims and the possibility of peering behind the curtain of one of the most hated troll outfits is certainly welcome. The cherry on the top would be a successful prosecution but that could be some time away yet. (Andy 2016b)

By employing phrases like "the disturbing fact", "the moral line", "the world's most hated trolls", "peering behind the curtain of one of the most hated troll outfits", the blog frames the copyright troll in emotive language, and mobilizes piratical opinion against copyright trolls.

This panic discourse carried over to coverage of this issue on mainstream media outlets. Article titles involving copyright trolls demonstrate the tone taken in the coverage: "Shocked' grandmother on hook for illegal mutant game download", "University of Manitoba students receive 'extortion' letters over illegal downloads", "A shakedown against Canadians': Hollywood still telling internet pirates to pay up", "Students beware: Illegal downloading on campus is risky", and "Terrified' 60-year-old woman told to pay up for illegally downloading porn". In the last of those articles, the focus is on the anxieties experienced by recipients of these legal notices:

In August, Debra got her first email notice informing her that if she didn't pay a settlement fee for illegally downloading a porn video, she could face legal fines of up to \$20,000.

She says she's innocent, but out of confusion and fear she paid a settlement fee of \$257.40.

This week, she got another email accusing her of downloading five more porn videos.

"I'm not sleeping," says Debra, who refuses to pay more fees and fears the repercussions. "I have depression already and this is sending me over the edge."

CBC News spoke with the Canadian anti-piracy company that sent the emails, Canipre. It claims someone in Debra's home downloaded the videos.

Debra says her husband doesn't even know how to do illegal downloads, and no one else has access to her internet account. She thinks perhaps someone hacked her Wi-Fi.

"How long is this going to terrorize me?" she says. "I'm a good Canadian citizen." (Harris 2017)

Two elements of this news story are important to consider. First, by paying the settlement fee, Debra was later targeted by CANIPRE for allegedly downloading other pornographic videos, this time empowered by having a name to attach to the IP address without having to go through a costly lawsuit. By highlighting the effects on Debra, this news story also emphasizes how copyright trolling impacts and in some cases relies on vulnerable individuals as part of their business model, a theme also present in their articles detailing international students' reactions at the University of Manitoba (CBC News 2016b), as well as an 82 year-old grandmother accused of downloading *Metro 2033* (Andy 2016a; Marchitelli 2016).

This issue has been raised as a concern by policy makers. In 2015, NDP Industry Critic Peggy Nash stated that "[t]he Conservatives are letting these companies send false legal information to Canadians in order to scare them into paying settlements for movies or music no one has even proved they've actually downloaded" (Sharp 2015). Despite this limited recognition, there has been little public action on the issue since. In 2016, a freedom of information request yielded a fifteen-page briefing document submitted to the Minister of Innovation, Science and Economic Development Navdeep Bains about the issue, featuring several of the news articles in this section as examples of public outcry about the practices of copyright trolling. Although the steps that are recommended in the report are censored, the existence of the report demonstrates some recognition of the panic discourse; however, to date there has been no definitive action to limit copyright trolling. This may occur soon, as the Copyright Act is currently undergoing a mandated review. Michael Geist proposes that the fix is simple: the government must "...implement anti-copyright troll regulations that ban the inclusion of settlement demands within the notices and create penalties for those companies that send notices with false or misleading



information” (Geist 2017). Looking forward, it is unclear whether these penalties will be introduced. However, this issue represents a clear example of how panic about copyright law and its abuse emanating from the traditional folk devils (pirates) can become part of broader media discourse. It also demonstrates how pirates can guide policy by inciting public panic about an issue, exercising an authorial capacity in the shaping of internet norms. Through pirate panics, we see the ability for pirates to push back against copyright trolling, and make the issue a part of broader discussions about the purpose of copyright law, and its enforcement.

## **Conclusion**

In this chapter, I approached the use of moral panics in public discourse about media piracy from two angles. First, I examined how the question of whether pirates are ethical or moral has been mobilized in the past to justify the demonization of piracy and legitimize the introduction of increasingly stringent IP regulations. Through examination of moral panics from above, we see the way that panic discourse has been used to educate children about the industry-preferred view of copyright as a natural right, as well as in campaigns to convince the public about the purported theft that pirates engage in by copying files. As discussed, these campaigns were met with scrutiny and ridicule by pirates, who quickly satirized these attempts to incite moral panics and highlighted the logical inconsistencies at play in them. Here we saw that the authorial capacities of pirates were embedded in this critique.

In the second half, I argued that pirates show their authorial capacities by generating localized moral panics, which effect change by bringing broader awareness to what would normally be fringe issues. This was seen in media discourse on copyright trolling during the fieldwork period. Through this pirate panic, pirates invited members of the public and lawmakers to scrutinize the business practices of copyright trolls, notably their use of pressure tactics to prompt quick settlements, their dragnet approach to copyright enforcement, as well as their abuse of the notice and notice system.

What change these pirate panics may bring is difficult to ascertain. Within the Canadian context, the mandatory review of copyright is ongoing. While it has opened the door to proposals like that from the FairPlay coalition, the backlash against FairPlay shows promise, as the moment of panic about further censorship extended the initial public commentary period and brought more user traffic to the site to provide comments. However, what remains the same is that pirates, through their satirization of attempts to construct a devilish pirate, were successful in constructing

their own counter-hegemonic imagery of the copyright troll. This also speaks to the ways in which the normalization of piracy is bringing further attention to their critiques of copyright and its protection. By demonstrating how everyday pirates experience the wrath of a copyright troll, they push their own image away from that of a devilish pirate to that of a grandmother accused of downloading a mutant-hunting game.

## Chapter 4: A (Good) Pirate's Life for Me

### Introduction: Pirate in a Bike Shop

In March 2016 I was working on a project for a fieldwork class. Oriented around the topic of volunteerism and the do-it-yourself movement, I was working at a small community bike cooperative. While reattaching a set of pedals to my road bike, the person in the repair stand next to mine asked me what I was studying. Without a second thought, I launched into the well-practiced spiel that any arts student is familiar with. After telling her that I was studying the political aspects of digital media piracy, she followed up her first question by asking more about my stance on piracy, particularly if I thought it was ethical. Up to that point, most people had been receptive to my project, and some even told me a bit about their own experiences with torrenting. I replied that I was more interested in how pirates interpreted the ethics of their activities more than proving a point of my own, but that I personally felt it was an interesting form of political mobilization against corporate control. She then told me that as a musician she worried about pirates stealing her music and the effect that might have on the livelihood of small musicians like herself. Following this brief discussion, we both returned to focusing on our respective bike stands and the rest of the evening went by without any further discussion on the topic.

In this brief conversation we can see two different judgments about the ethics of piracy. The musician saw pirates as unethical individuals who steal the product of her labour, and rob her of the ability to live off her music. My response fell along the lines of the political piracy cultures discussed in chapter one. Here, piracy is ethical because it aims to curb industry-imposed restrictions that limit users' ability to share media content with their peers. In this chapter I examine how questions about ethics and morality<sup>36</sup> are part of the authorial capacities of pirates, specifically how they are embedded in the everyday practices of pirates.

Within much of the research examining the ethics of piracy, there is a desire to identify the source of this deviant activity and provide insight for anti-piracy efforts. Charlotte Emily De Corte

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<sup>36</sup> Michael Lambek notes that are differences in the philosophical origins of these two terms; however, these two terms are applied inconsistently throughout anthropological literature and tend to be used interchangeably. In this chapter, I follow Lambek's lead and tend to use ethics more than morality, however when an author specifically uses the term morality I employ that term instead (Lambek 2015).

and Patrick Van Kenhove's work provides an excellent review of this literature, dividing it into three strains: Behavioral, Ethical, and Descriptive. The behavioral strain draws heavily from the Theory of Planned Behavior model, which looks at how "the occurrence of behavior is determined by intention, which in turn is influenced by one's attitude toward the behavior in question, subjective norms, and perceived behavioral control" (De Corte and Van Kenhove 2017, 442). The ethical strain tends to examine piracy using frameworks developed to examine willingness to engage in other deviant acts like shoplifting. A general assumption of this strain is that pirates tend to have less developed ethical standards, which is why they pirate media files. The descriptive strain aims to associate willingness to pirate digital media with gender, age, and frequency of engagement (2017). Of concern with this approach is how it compares piracy to the ethical framework of consumerism derived from neoliberal information capitalism without examining how this ethical framework is itself contingent on social and historical circumstances.

By exploring the ordinary ethics of piracy, I move away from a binary discussion of how pirates justify their unethical activities, of if they are ethical/unethical. Instead, I push for a more embedded understanding of the ethics of piracy that emphasizes *how* they relate to a piratical sense of the good life, and how this is mobilized when it is threatened. Instead of fixing the pirate within hegemonic socio-legal frameworks at the risk of reifying their demonization, it is important to look at the alternative criteria they construct, and how their practices relate to these criteria. By taking this approach, we recognize that pirates themselves have agency in negotiating the ethical in digital society, and through discourse can cast doubt on the practices of copyright enforcers, and the enclosure of digital media more broadly.

Before discussing how pirates construct these criteria, it is necessary to briefly address the topic of moral and ethical relativism. The point of this chapter is not to assert that piracy is definitively ethical and that the industry is unethical. I look at how the practices of filesharing are subject to many (often conflicting) ethical criteria that inform action and are mobilized in discourse. Given the different ways of conceptualizing piracy in chapter one, it should come as no surprise that how pirates interpret the ethics of filesharing is similarly complex. During the fieldwork period, I encountered multiple social media discussions about the morality and ethics of piracy that demonstrated this complexity. On the one hand, some pirates took up the rhetoric of the political piracy culture and asserted that their activities were ethical as filesharing undermined the power and control of the industry. On the other hand, I also observed pirates framing their

activities as unethical, and arguing that it was never about making a claim to ethical superiority to begin with. Filesharing had the effect of granting them access to media files. Given the sheer scope of the digital media piracy phenomenon, this chapter examines three private filesharer communities to demonstrate these alternative ethical criteria.

### **Ordinary Pirate Ethics**

Michael Lambek (2015) argues that ethics are an intrinsic part of human life and that the human condition is an ethical condition. By ethics, Lambek refers less to an abstracted set of rules, instead they are intrinsic to action, informed by our own judgment and subject to the judgment of others. In short, with this approach we look at how humans act ethically, and how these actions are judged and acknowledged as good for themselves and the community. This approach does not fixate on determining codified rules that limit or afford our ability to act; however, it is important to note that the objectification of ethical criteria can itself be an ethical action. Through this approach, ethical criteria can shift, and we can also be subject to multiple different criteria, even those that may be incommensurable. It also means that we can be caught up in moments where we do not know the ethical thing to do, as the ethical criteria are unclear. This is pertinent to digital media piracy, as one could argue that with the introduction of new media technologies that we encountered a moment of what Lambek refers to as underdeterminism<sup>37</sup>. In these moments, we are faced with conflicting notions of what *is* and what *ought* to be. With the emergence of new media, users were faced with the new affordances of easily reproducible digital media; the way in which they chose to act reflects their vision of what a digital life *ought* to be. Bill Gates acted to enclose code, and from his discourse in the 1970s we see that he envisions the software as something that creators ought to receive compensation from for their labour and incentivize further development. In contrast, Richard Stallman created the GNU General Public License, which infers the notion that digital code and its derivatives ought to be freely accessible in perpetuity to allow for open-source development. As Lambek argues, “[a]ny reasonably realistic vision of the good life must lie between these; we do want conventions, goals, and direction as well as the freedom to reject them. In fact, conventions and goals are meaningless in the absence of alternatives, freedom is

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<sup>37</sup> Lambek suggests the use of the term “underdeterminism” instead of “freedom” to escape the ideological baggage that accompanies the term, and emphasize ethical action during times points when freedom and convention are unclear (2015).

meaningless without constraint, and life is boring without a challenge” (2015, 4). By situating the ethical as part of action, we move away from looking solely at these frameworks as abstract entities that we are bound to follow. Instead, we focus on how our actions entail ethical considerations towards the good life.

### *A FAQ for the Good Life*

Most research on filesharing examines public indexes like TPB, which feature a large userbase downloading content with minimal expectation that they will seed data back to future peers. While there are general expectations that users should seed if they can, there are no repercussions for users that do not adhere to this ethical guideline. Fewer studies have qualitatively examined private trackers, which are enclosed BitTorrent communities that are heavily regulated and generally feature a more focused and curated collection of shared files. To understand the ethical obligations placed on filesharers, I refer to the rules of three private torrent trackers (What.CD, OiNK, and TorrentLeech<sup>38</sup>) as examples of ethical criteria. As previously stated, any conception of the good life should lie somewhere in between these ethical criteria and the ability to ignore these criteria. Drawing from chapter one, we could see three very different conceptions of the good life within each of Lindgren’s piracy cultures; everyday pirates may understand the good life to be about ease of access to media files, political pirates may view the good life as one lived outside the control of the state and industry, and innovative pirates may see the good life as one where they can test new ways of circulating data, outside of the conventions of copyright.

Oink’s Pink Palace, also referred to as OiNK, was a private filesharing community oriented towards sharing high-quality music files. The service was shut down following police raids in October 2007 and charges of conspiracy to defraud were filed against the owner Alan Ellis; however, these charges were later dropped (Wardrop 2010). The shutdown of OiNK was a major factor in the emergence of What.CD, which styled itself as a successor to OiNK. What.CD was

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<sup>38</sup> The site rules for What.CD and Oink.me.uk were accessed through the Internet Archive Wayback machine. For What.CD, the rules come from an interview preparation website, while the rules for Oink.me.uk were accessible on the website. The rules for TorrentLeech are available on a public wiki, intended for new users to become familiar with the site rules before requesting an open invite.

also a private music tracker, with an extensive index of music torrents that covered almost any genre of music. As one user on the r/trackers subreddit lamented after its shutdown:

Let's be real... What.CD IS the Library of Alexandria for music. Between the list of music and formats, to the collages, the top tens, the community interaction... What.CD was the pinnacle of music collection. Unless people have access to an up-to-date back-up of everything on What.CD (this is assuming, of course, that What is really gone, which we don't know for sure at this point), I'm not sure that another torrent site could do that again.

What and Waffles<sup>39</sup> rose from the ashes of Oink (Rest in Peace). Waffles was decent for what it was, but What was the place where musical Holy Grails were collected and found. What was the place that turned me and many others on to new artists and, in general, just absolutely incredible stuff. (“According to a French News Site, 12 WHAT.CD Servers Have Been Seized at OVH and FREE • r/Trackers” 2016)

TorrentLeech is an active private tracker with fewer file type restrictions than What.CD or OiNK. Rather than focusing on music, TorrentLeech focuses on 0day<sup>40</sup> torrents of all different file types. TorrentLeech, founded in 2005, is one of the largest active private trackers with approximately 180,600 torrents, and 211,900 users on the site (velzerat 2017).

The process of joining these communities varies; however, before joining new users are expected to learn the ethical obligations that they must adhere to on the site, or what they ought to do. These ethical obligations generally refer to how a user is expected to assist with the collection of files, the maintenance of the communal archive, and generally maximize the cultural value of the private tracker. In this case, the value of the tracker is based on the technical quality of its files, the robustness of its archive, as well as the community behind the tracker (Bodó 2014). By collaboratively maintaining and increasing the cultural value of the tracker, users also experience average download speeds between three to five times faster than a public one (Meulpolder et al. 2010). These elements attract users to these communities, and help justify the often arduous requirements and considerations that new users must make.

The number of users on a private tracker is strictly regulated, and in many cases this regulation is a strategic choice. By being smaller and more focused than public trackers like TPB or KAT, private trackers tend to avoid the attention of law enforcement. Periodically, private

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<sup>39</sup> Waffles.ch is another private tracker for music, with approximately 173,026 active torrents and 85,275 users as of September 2017 (velzerat 2017)

<sup>40</sup> 0day releases are torrent releases that occur close to the release of licit copies of a file.

trackers may allow prospective users to request an open invite, hold interviews, and provide existing users with invites to that they can recruit potential members. There are strict ethical expectations that prohibit selling or trading invites:

Do not sell our invites. The invites were given to you to invite your friends or people you think that can contribute. If you are found selling invites, you'll lose your account. ("OiNK :: Rules" 2006)

Invites are for giving to people you know and trust. Trading Torrentleech invites will get you and any one you invite banned.

Trading means posting TL invites on any forum giving away for free or asking for something in return in either case TL classes this as trading and your account will be banned. ("Start [TorrentLeech.Org Wiki]" 2017)

There are also ethical expectations that existing users curate the members that they invite and generally avoid inviting cheaters<sup>41</sup>. Should an existing member invite someone who does not comply with the site rules, then their membership may be jeopardized. For example, the TorrentLeech FAQ wiki states:

If you invite a cheat then you will receive a warning and your invites will be disabled. We may in some cases enable your invites again but this is not always the case. If we do decide to enable them again, if you invite a cheat again then your invites will be disabled indefinitely [sic] so don't bother asking for them to be enabled again.

The sale of invites to this site is strictly forbidden and results in both the inviter and invitee losing their accounts. If you come across an auction from someone claiming to have permission to sell invitations to this site, it's a lie. Do not believe positive feedback ratings; if you buy an invite, we will know about it and you will lose your account. ("Start [TorrentLeech.Org Wiki]" 2017)

Once you have secured a membership on a private tracker and have learned the rules, new users are expected to become active in the community by beginning to download files and upload data to their peers.

### *Sharing, Seeding and Leeching*

Lambek outlines two modalities of action: performative and practice. Drawing from the work of J.L. Austin, performative acts are discrete and discontinuous, and play a role in

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<sup>41</sup> Cheaters are users who modify their usage statistics or torrent client to bypass community rules like ratio requirements, hit and run (see note 13) reporting, bans or suspensions.



establishing the criteria for practice. Practice draws from Aristotelian conception of *praxis*, and is ongoing and continuous. In short, performative acts are what is done, and practice is what you are doing. For example, the act of initiating a download on a private tracker can be considered as a performative act. As a discrete action that occurs over a fixed period it also establishes the criteria by which the user's subsequent actions will be judged. This performative act determines how one should engage in practice; for example, the requirements for seeding (as an ongoing practice) may vary depending on the torrent downloaded.

Due to the decentralized nature of the BitTorrent protocol, there must be at least one full copy of the file present in the swarm for peers to sample from, even if that full file is composed of pieces from the collective users' fragments. At the beginning, the original uploader seeds a full copy of the file, but over time this can be peers who have downloaded the file. These users with a full copy are known as seeders. When a peer finishes downloading, they may become a seeder for future peers. Peers who download the file, and then exit the network before uploading the same amount of data to their peers are known as "leechers". By taking more data from the network than they seed back to others, leeching can be detrimental to the overall integrity of the network, as it limits the number of full copies peers can sample from. Each individual user's seeding and leeching can be measured through ratios, a numerical statistic that compares the amount of data downloaded by a user to their total contribution to their peers. Having a ratio higher than 1.0 entails that you have uploaded more data than you have downloaded, while a ratio below 1.0 means that you have downloaded more than you have uploaded. Depending on the tracker you use, this can be of vital importance.

As previously mentioned, public sites like TPB and KAT generally have no ratio requirement to use the site, which can lead to issues with accessing obscure or unpopular files. On What.CD, the necessity of maintaining a positive ratio was explicitly stated in the site's rules:

This is a torrent site which promotes sharing amongst the community. If you are not willing to give back to the community what you take from it, this site is not for you. In other words, we expect you to have an acceptable share ratio. If you download a torrent, please, seed the copy you have until there are sufficient people seeding the torrent data before you stop. ("What.CD Interview Preparation | What.CD Rules" 2016)

OiNK had a similar statement in their general rules; however, unlike What.CD they stipulated that users should maintain a ratio close to or above 1.0, which later changed to requiring that users maintain an acceptable sharing ratio. On the private tracker TorrentLeech, users were expected to

maintain a minimum overall ratio<sup>42</sup> of 0.6; however, due to the difficulty of achieving this ratio it was reduced to 0.4. Interestingly, while users are encouraged to maintain a high ratio, they are also advised “[d]on't point out or attack other members' share ratios. A higher ratio does not make you better than someone else” (“OiNK :: Rules” 2006).

### *Judging and Acknowledging*

Lambek expands his discussion by looking at two concepts that inform action. The first is judgment, which for Lambek is “...the ongoing work of discernment or practical reason that draws on criteria to inform and direct practice” (2015, 14). Judgment is something that is developed, entailing some form of reflection. Unlike downloading media on a public tracker, downloading on a private tracker requires quite a bit more forethought and reflection. For example, on TorrentLeech new users may download 6GB of files before their account ratio is calculated, in a sense, a grace period where all files become freeleech files<sup>43</sup>. When a user uses the private tracker, they must constantly evaluate how each use will affect their ratio, and how each discrete act will affect their adherence to the ethical guidelines put in place by the community.

For new users, how they make use of this grace period can radically affect their continuing membership in the private tracker. In addition to their desire to have a file, users must evaluate the size and age of the file, or whether it forms part of a pack. A small file (e.g. a single .mp3) can be detrimental, as while the new user may quickly achieve a 0.4 ratio on the torrent itself, the small file size (typically a few MB) compared to a video file (typically a few GB) makes it difficult to achieve the minimum overall site ratio. If the file is part of a compilation or pack (e.g. an album or a film series) the user's upload is hampered if future peers only download specific files from the pack. An old or obscure file may have a limited number of peers in the future, which means that your ratio for the file will most likely be below the expected ratio. While you may not receive

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<sup>42</sup> An overall ratio refers to the ratio of all data downloaded by that account versus all data uploaded. There can also be expectations for per-torrent ratios. On TorrentLeech, this is also 0.4.

<sup>43</sup> Freeleech files are files where downloaded data is not counted, and only upload data is counted towards site ratios. There are stated freeleech files on some trackers, which help users to build up their ratio.

a Hit and Run notice<sup>44</sup> if you seed the file for long enough, downloading old and obscure files can make the task of building a ratio difficult.

Users must also evaluate the number of seeders on a file, as well as technical differences between new and veteran users. If there is an abundance of seeders—a surprisingly common issue on private trackers—the new user may be competing with others for peers. It is becoming more common for technically proficient users to employ seedboxes<sup>45</sup> to maintain their ratio. Given the high speeds these dedicated servers achieve, this can create more competition for peers. Finally, the user must also judge whether they will be exceeding their usage limit, if their ISP has a data cap in place. As such, filesharers on these networks may incur further monetary costs in addition to their monthly data plan. As seen here, there are multiple judgments within the decision to download a file.

In addition to judgment, Lambek also looks at the ethical action of acknowledgement. Entailing some sense of responsibility and the means through which it is allocated, acknowledgement is described by Lambek as the ultimate ethical act (2015, 17-19). Acknowledgement in digital media piracy occurs both on public and private trackers. For example, Samuel alluded to the common practice of acknowledging the labour of the creators in our discussion about website takedowns:

ive [sic] been affected by multiple takedowns, Demonoid, TPB x2, KAT and a few others. It was sad to see sites like that go because there was a lot of care and passion from fourm [sic] posters and content uploaders. And a lot of post would have a tag line "if you enjoyed the content remember to support the creators" its very common among pirates and these communities to support the content that stands out. Piracy isnt [sic] about getting things

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<sup>44</sup> A Hit and Run (HNR) is similar to leeching. When a user fails to reach the minimum ratio on a file, the tracker issues a HNR notice. Over time, users that accrue too many HNR notices may have their account privileges suspended or revoked. For files where seeding to a minimum ratio may be difficult, trackers may specify a required amount of time to seed the file (e.g. 60 hours of constant seeding over a 72-hour period on TorrentLeech) to avoid HNRs.

<sup>45</sup> A Seedbox is a dedicated server, used by many pirates in private communities to keep their ratios up. They feature high upload/download speeds, and can act as an additional buffer to hide their internet activities. One of my interviewees addressed this use, stating “Seedboxes have always been a thing for people who want to seed 24/7 at high speeds (usually for private trackers), but privacy and practicing safe piracy are now concerns as well, although a VPN is the easier solution if that's your main concern. So I think that yes, these options are becoming more popular, but it's a drop in the bucket compared to normal users”

for free, all the time though that is a large part of it, its about getting content in a format that convenient and DRM free for the user.

These taglines are common in many torrent descriptions as well as forum posts, falling in line with the notion of piracy as a form of cultural infrastructure. In many ways this stands as an acknowledgement of the ethical implications of piracy. It implies that pirates feel bound to promoting content they enjoy, and that there should be some consideration for the creator's labour—although notably this refers to the creator, who is not necessarily the same as the copyright holder. When I asked if he had been following alternate copyright initiatives like copyleft and the kopimi movement, Francis alluded to similar acknowledgement of artist labour when he told me “I do believe in artists and companies being compensated for their work. I just believe a lot of people who didn't contribute to said creation get a lot more money than they should”. This relates to recent research on the economic effects of digital media piracy on music sales. This research suggests that private filesharing networks can have a generative impact for mid-tier artists, given their ability to promote materials through word-of-mouth generated through website features like What.CD's discovery feature. However, this research also demonstrates that top-tier artists experience a negative effect on digital sales (Lee 2018, 53–54). As Lambek argues, acknowledgement often leads to justifications. This is seen when Samuel justified piracy as a struggle for convenient and easy access to media files, and when Francis sees the industry as taking more of the artist's compensation than they should.

### *Irony and the Voluntary IP Regime*

During my interviews, I asked my interviewees about their views on copyright, and if they felt that it was still relevant given the affordances of digital media. The responses I received surprised me. All my interviewees agreed that there are issues with copyright, none of them felt that the system itself needed to be abolished or replaced. Even Edward—the most politically outspoken person within my group of interviewees—felt that the system was valuable, and necessary, despite frequent abuses. My interviewees were not against the idea of copyright; however, they were decidedly against it in its current form. Given that most of my interviewees viewed their piracy in the lens of the everyday piracy culture, this is not entirely surprising. Here, the issues with copyright is that the framework puts too many restrictions on the circulation of digital media. As Samuel stated, “Most of the time I download because its easier not because its

cheaper”. However, when we look at private trackers, we see the introduction of restrictions through ratio requirements.

The recognition of this uncertainty—of promoting ease of access to media files, but also introducing artificial scarcity into the network through ethical obligations— can be related to Lambek’s concept of irony:

Irony encompasses the recognition of one’s own uncertainty and of acknowledging at times that one does not know what one wants, the extent of one’s responsibility for certain action, how to live, or even who one is. It names the recognition that one is subject to multiple and possibly competing, contradictory, or incommensurable aims and claims, intentions, desires, or commitments; that there are too many criteria, or too few. It entails recognition of being simultaneously both free and determined. (2015, 19–20)

Through the affordances of digital media, private filesharing networks can be freed of the limitations of reproducing physical goods. Digital media files allow for easy and nearly limitless reproduction at a fraction of the cost of physical media files. From an economic standpoint, there is no necessity for artificial scarcity with digital media files on private filesharing sites. However, this underdeterminism is bounded by the ethical obligations members must follow. On TorrentLeech access to 0day files are also limited by your ratio. A user with a ratio of less than 0.5, and less than 4GB of uploaded data must wait a minimum of 16 hours before being able to access the file, which as Bodó notes can have the effect of redirecting filesharers to licit means of accessing the file (2014). Despite intending to provide free access to media files for their members, this is accomplished ironically by introducing artificial scarcity, what Bodó refers to as a voluntary intellectual property regime.

Bodó notes that there are strategic explanations for this irony. The rules on a private tracker are in place to try and protect the community; by limiting the number of users, enforcing strict technical quality standards and actively enforcing contribution rules, these private trackers keep a low profile. In the past, What.CD voluntarily removed and banned the circulation of high-profile files to escape the attention of law enforcement. In 2009, a leaked copy of Microsoft’s COFEE forensic software was posted to the site and removed by administrators (Enigmax 2009). Bodó also points to utopian explanations, where these communities recognize that they are part of a broader media ecosystem. By introducing these voluntary IP regimes, the communities protect their pooled library of media files, and position themselves as part of a symbiotic relationship with legal channels (2014). Within the context of the sites I discuss here, when a collection of three

unpublished stories from the estate of J.D. Salinger was leaked on What.CD in 2013, site administrators removed the stories and prohibited further circulation of the files<sup>46</sup>.

## **Conclusion**

By looking at how the ethical is situated in the ordinary activities of pirates, we move away from understanding piracy through an ethical framework revolving around the good consumer. Instead of looking at how pirates are deviant within the ethical frameworks enacted by global information capitalism, I examined how users seek a piratical notion of the good life, constrained within the tensions between everyday filesharing practices and the community's ethical frameworks. Pirates on these private communities keep their heads down to try and maintain access to a diverse set of high quality digital media files, drawn from a community of like-minded members who actively contribute to this community. The expectation is to share freely, but also to respect the rules put in place to ensure that free sharing can continue.

Judgment and acknowledgement are intrinsic to the ordinary activities of everyday pirates. We saw with private trackers a series of deontological judgments that filesharers must make before initiating a download, about how their actions relate to the ethical criteria established within the community they engage with. While these considerations are also present on public trackers like TPB, the lower amount of regulation on the site makes them less visible. Despite this, there is a general expectation that users should seed files if they can. Pirates acknowledge that they are part of a system that relies on creators making content, and make overt statements that pirates should try to support creators if they can. This ethical acknowledgment alludes to the irony of piracy. On the one hand, they download content for free from their peers, but believe that authors should receive some form of compensation or support for their work.

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<sup>46</sup> In a statement provided to the Guardian, administrators cited strategic and utopian explanations similar to Bodó's filesharing communities: "Due to this case's rare and unlikely circumstances, due to the unnecessary and unwanted attention the Salinger leak has brought, and due to our desire to comply with the desires of the Salinger estate or other involved parties in this matter, the content has been removed ... It is not to be re-uploaded under any circumstances, and anyone found doing so will have their account disabled" (Kennedy 2013).

I also explored the ironies that manifested in filesharing on these private trackers to further demonstrate the complexity of pirate ethics. In the process of making these files available to their member base, administrators recognize the need to introduce some restrictions to ensure the longevity of the tracker, both in terms of access to files and avoiding prosecution. Through the introduction of these restrictions further evidence of the authorial capacities of digital media pirates emerges. Rather than depict them as antithetical to copyright—as I naively did at the outset of this project—we see that pirates articulate and recognize the ironies present within their own everyday actions. In the process of recognizing this uncertainty they refashion statutory copyright in ways that go beyond the dichotomy of pirate/author that this thesis has been trying to break down. Through these voluntary IP regimes, we see a potentially collaborative method that could have generative effects for creators. These voluntary IP regimes are viable alternatives to statutory IP regimes, and as Bodó notes, they also represent a way to bridge the “us” vs “them” dichotomy found in the discussion I had with the musician in the bike shop. Through these regimes, pirates recognize that they are members of a broader cultural community, and in these communities they seek a symbiotic relationship with artists, abolishing the depersonalized industry and repressive author function that statutory copyright relies on.

## Chapter 5: We Like Copying, Just Not from a CopyKAT

### Introduction

The latter half of 2016 was a turbulent time for the torrenting community. In the space of a year, several of the largest piracy sites on the internet had disappeared. KAT, TorrentHound and Extratorrent had graced TorrentFreak's top ten public tracker list for several years. Torrentz was a well known meta-search engine that was useful for indexing results from multiple public trackers. What.CD, the private tracker discussed in chapter four, was often likened to a Library of Alexandria for music aficionados. TorrentHound and What.CD closed their websites permanently, and their users were quickly welcomed on other sites; in the case of What.CD, its unofficial successor Pass the Headphones has already surpassed its user count. However, when websites attempted to resurrect KAT, users were dismayed. Users clamored for KAT to relaunch itself like TPB did in 2015, and there was much discussion about which mirrors to trust and to avoid. During this time, a paradox emerged; though copies of files were what users desired, they would not accept a copy of KAT that was not run by the original operators. I relate this to Fenwick Mckelvey's recent work on the paradoxes of TPB and the utility of assemblage theory for understanding these paradoxical tendencies (2015). Drawing from my own fieldwork experience, interview data, primary source data from TorrentFreak posts as well as user comments on these posts, in this chapter I explore KAT, its shutdown as well as the attempts to create a new KAT.

First, I briefly discuss assemblage theory to better understand how these third spaces come to be. Given TPB's prominence in academic literature and the public imaginary of p2p piracy, I also take this opportunity to contrast TPB's political assemblage with KAT's more community driven tendencies to help illustrate the ways in which it fostered social interaction in the index and in the community forums prior to the shutdown. Second, I examine the KAT shutdown, emphasizing how it was both a mundane, yet ethnographically rich moment in torrenting. The experience of shutdown has become normalized for pirates due to frequent changes to top-level domains, legal seizures of hardware, legal action against site operators, as well as other administrative reasons (e.g. costs). Due to the number of torrenting indexes online at any given time, users are generally accustomed to migrating to other websites either until their preferred site was back online, or until their new site of choice was also shut down. What made the KAT shutdown unique was how widespread the impact was on the torrenting ecosystem. The loss of the vibrant community helped fix this event at the forefront of discourse about website shutdowns



during the fieldwork period. Furthermore, it prompted questions about new directions for piracy. Users began to explore new ways of engaging in digital media piracy through alternative technologies, highlighting another paradox; to decentralize further requires the attention of users, which is difficult to obtain in a torrent ecosystem constituted by torrent giants like KAT and TPB.

After discussing assemblage theory and the shutdown, I turn to how authorship was a concern for the process of becoming the new KAT. During the five-day period between the shutdown and the emergence of the KATcr.co website, users expressed anxiety over who was running any site that claimed to be the new KAT. This concern for authorship may appear to contradict the critique of the author function that has been discussed to this point in this thesis. However, as I have demonstrated in previous chapters, the categories of author and pirate are not exclusive, nor are pirates entirely against the notion of authorship. As discussed in chapter one, the piracy movement envisions a third space of authorship that is more dialogic in nature. The concern for website authorship exhibited by KAT users can be better understood when we consider KAT as an assemblage that prioritizes centripetal desires and the third space of authorship that it actualized. It is within these centripetal desires that the authorial capacities of KAT users emerged in this event; by actively seeking out and re-establishing this community, KAT users challenged the ability of federal authorities to enforce copyright and shut the site down for good. This is also another area where the concern for authorship becomes important. As KAT was a centralized hub, any division into multiple competing sites would ultimately dilute the community, as well as its ability to continue exercising its authorial capacities.

### **Piratical Assemblages**

In “We Like Copies, But Don’t Let the Others Fool You: The Paradox of The Pirate Bay” (2015), Mckelvey examines TPB’s paradoxical desire for decentralization and reliance on a central position in the piracy movement to realize these desires. Through an analysis of TPB’s history via Deleuze and Guattari’s concept of political assemblage (1987), he explores the centripetal and centrifugal lines of assembly that make TPB unique in hacktivism:

TPB has a plane of organization drawn by two competing lines of assembling: centrifugal lines that refer to processes that flee or undermine a center in the plane of organization and centripetal lines that orientate elements toward a center. Centrifugal lines emanate from elements of TPB assemblage that pushing it apart. Peer-to-peer networks and piracy create these lines. At the same time, TPB contains centripetal lines where elements create gravitational pulls that orientate components toward a central figure or position. (Mckelvey 2015, 738)

One of TPB's centrifugal lines extends from the site's advocacy for Kopimism, a framework of beliefs centred around the notion that copying is an inherently human activity: "[Kopimism] subverts the authority of the original, as the copy is just as valid. Kopimism manifests in networks that avoid centers of authority that could determine original or copied, legitimate or pirated" (Mckelvey 2015, 738). Another centrifugal line extends from the adoption of techniques and protocols to make the site easier to copy; by employing cloud based hosting, distributed hash tables, as well as removing all .torrent files in favour of magnet links, TPB was reduced to approximately 90MB. For TPB to realize its centrifugal desires of Kopimism and radical democracy it had to garner the attention of everyday pirates, primarily through its front page and social networks (Mckelvey 2015).

TPB's front page is at the core of this centripetal attention assemblage, which conveys the site's political advocacy to users; the webpage is minimalistic, featuring a simple search bar, the site logo or doodle, and a kopimi symbol at the bottom of the webpage. The doodle is an important element, as it often changes to convey cognitive praxis. This can be seen in the site's projects like the Hydrabay<sup>47</sup>, the Promobay<sup>48</sup>, as well as other political doodles. Mckelvey argues that through the front page, TPB is able to articulate its "...symbolic war against digital property and build support" (Mckelvey 2015, 741). As discussed in chapter one, TPB's support for this symbolic war is built on the aggregated subactivism committed through the site's magnet links.

The front page of KAT was also a centripetal attention assemblage; however, unlike TPB it did not overtly engage in political activism on the front page. KAT did not publicly present any symbols of Kopimism, and its logo rarely changed from the KAT shield logo. While there are references to maritime piracy hidden throughout user contributions to the site (for example, fellow

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<sup>47</sup> The Hydrabay logo was featured in chapter two (see fig. 3, page 46). The doodle was posted in response to the appearance of the Anti-Counterfeiting Trade Agreement (ACTA) before the European Union parliament, which would have blockaded the website. "The doodle raised awareness of the blockade and encouraged users to spread a list of proxies to reach the site in the United Kingdom. The campaign proved successful, the U.K. Pirate Party received over 10 million hits to their own proxy in the first month of the Hydra Bay campaign (ajehales 2012)" (Mckelvey 2015, 741)

<sup>48</sup> Mckelvey describes the PromoBay as an attempt to decentralize attention on the homepage towards artists, who would be featured in the doodle on the home page in exchange for posting their work on the index to be freely shared (2015).

users are sometimes referred to as fellow shipmates), the main website itself did not employ allusions to swashbucklers very often. The layout of the front page was cluttered in comparison to TPB, featuring lists of recent and top torrents and contributions to the community. The front page changed later to more closely resemble TPB's front page, with a search bar and links at the bottom directing users to the blog and community forums; however, the centrality of this is belied by a link to the old front page, now referred to as the "full page". This suggests that the full page was the way the site was meant to be encountered by users, to focus attention on the collaborative work happening on the site. Through its front page design, KAT aimed to be a central hub that happened to assist with centrifugal activities like torrenting.

The two sites also differed in their approach to content discovery. On TPB, search results tend to return a more diverse set of files and are not as heavily filtered as on KAT. While searching for a torrent was by no means cumbersome on TPB, users had to judge whether a file suited their desires based on the torrent file name<sup>49</sup>. TPB engaged in minimal curation of search results, opting for a more open search engine that displayed a broader array of files. On KAT, when a user searched for a film the search engine curated the results by matching the search query to uploader-provided metadata and limiting the results to only that exact film. Once identified, other useful details like the cast members, genre and release date were displayed based on the film's Internet Movie Database (IMDB) entry, as well as its critic and audience ratings from Rotten Tomatoes. This subtle difference in serving search engine results to the end-user demonstrates that KAT's focus was on providing a user-friendly interface that promoted high quality content. By being more active in pointing users to specific files, this limited the exposure similar files would receive and limit the user's discovery of related files.

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<sup>49</sup> For example, a search on TPB for "Fast and Furious 6" yielded a torrent with the title "Fast and Furious 6 (2013) 1080p EXTENDED BrRip x264 – YIFY". This title provides information about the film title and release (that it is the extended edition), the release date, the image resolution (1080p), the release format the file originated from (BrRip, for Blu-ray rip), the codec used (x264) as well as the release group (YIFY). However, TPB also returned hits that were less relevant such as other films in the franchise. If a user typed a specific film title into KAT, the film is identified and the only results returned are those matching the film, rather than all the hits on each individual word in the query.

TPB’s broader approach to content moderation was to provide an open platform for all content that accurately matched its description, provided the content was not explicitly illegal in Sweden (Mckelvey 2015). KAT took a more restrictive approach. The site prohibited “[a]ny content that directly promotes or supports racism, extremism, hatred, discrimination, real violence (including animal violence) or intentionally provoking hatred & violence. Content that is uploaded only for some kind of promotion. Content that is fake or contains viruses or malware” (“What Types of Content Are Not Allowed on KAT? - FAQ - Kickass Torrents” 2016). KAT also took content moderation one step further by openly stating that it adhered to the DMCA. This position was often pointed out by pirates who were critical of the site. According to the site rules, if the administrators were contacted by rightsholders with a DMCA request, they were obliged to honor it. Following the takedown of torrents related to that file, the filtered search information discussed above would show a red banner that informed users it had been removed due to a rights claim (see fig. 5). However, in the legal filings for the case against Vaulin, industry representatives provided emails to argue that KAT did not comply with takedown requests very often, deflecting the takedown request with intentionally vague emails (Ridgway and Su 2016). As discussed in chapter

**The.Hateful.Eight.2015.DVDSscr.XVID.AC3.HQ.Hive-CM8**

<b>Type:</b> <a href="#">Video &gt; Movies</a>	<b>Uploaded:</b> 2015-12-20 08:46:22 GMT
<b>Files:</b> 4	<b>By:</b> <a href="#">xxxlavalxxx</a>
<b>Size:</b> 2.42 GiB (2597764437 Bytes)	<b>Seeders:</b> 1781
<b>Info:</b> <a href="#">IMDB</a>	<b>Leechers:</b> 1514
<b>Spoken language(s):</b> English	<b>Comments:</b> 10
	<b>Info Hash:</b> 08515290D557A2A313DB61C2ED2765E9CB845839

**GET THIS TORRENT** **ANONYMOUS DOWNLOAD**  
 (Problems with magnets links are fixed by upgrading your [torrent client!](#))

**The Hateful Eight 2015 DVDSscr XVID AC3 HQ Hive-CM8**

Removed by the request of copyright owner and not available for download, yesterday

Added 3 days ago by [Silmarillion](#) [\\*643.07K](#) in [Movies](#)  
 Torrent verified. Downloaded 168,707 times.

Figure 5 Torrent for *The Hateful Eight* on TPB (above), with same torrent on KAT demonstrating copyright request banner. Retrieved from Reddit (AlewisGB 2015)

one, when TPB was confronted with DMCA notices the administrators were combative towards the legal representative and made the email exchanges accessible from the front page.

Another element that was prominently displayed on KAT's webpages is the community sidebar, indicating to the user that they can go to the forums to request a torrent, ask for help, or even join up with other pirates from the same region. While the filtering options presented to the user is a way of focusing attention towards specific content, the community sidebar also directs user attention to the social elements of the assemblage. A month before the shutdown, TorrentFreak described what made the site stand out from others:

Largely thanks to the way the site is designed, KAT has developed perhaps the best torrent-based community publicly available on the Internet today. The site's forums are buzzing with the kind of activity one used to see on dedicated file-sharing discussion platforms back in 2005. Most of those have long since died out but somehow the Kickass community is thriving with the same spirit a decade on.

Of course, there are always a few rotten apples out to spoil the barrel, but KAT's community is largely comprised of people seeking to help others. Comment is generally constructive and those who step out of line are swiftly dealt with. That, coupled with KAT's special achievements awards (think Xbox achievements but for torrents), people are incentivized to contribute, thereby making the site better for all involved. (Andy 2016c)

These social elements helped KAT become the 69<sup>th</sup> most visited website on the internet. The last torrenting site to achieve the same milestone was Mininova in 2007, which had reached the Alexa Top 50 (Andy 2016c). As of April 2018, TPB is ranked as the 79<sup>th</sup> most visited website in the United States alone, and 110<sup>th</sup> globally ("Thepiratebay.Org Traffic, Demographics and Competitors - Alexa" 2018). In retrospect, the jubilant tone employed in the TorrentFreak article on the unparalleled community at KAT is bittersweet. The article closed with the following observation, "Moreover, Kickass makes users feel at home and when people feel at home, they look after what they have. The resulting loyalty is a recipe for success, and there's no sign that the site's popularity will fade anytime soon" (Andy 2016c). Unfortunately, US Federal agents had been actively investigating the site since 2015, and one month later they seized KAT's domain. This domain seizure kickstarted what TorrentFreak later called "The Year the Torrent Site Died".

### **The Year the Torrent Site Died**

It is customary for anthropologists to deliver some form of entry story for their fieldwork, as a way of providing some understanding of the first experiences in the community they are studying. My first experiences with KAT precede this project, when the top-level domain was

kat.ph. It was primarily the user interface that attracted me and kept me returning to the site. My second entry into the site occurred shortly before the shutdown, as I was preparing to conduct fieldwork on the community forums. I had just contacted the site moderators to ensure that they were aware of my presence. As my prior experience with the site had been largely restricted to the torrent index side of the site, I was excited at the prospect of joining this community to engage in some friendly conversations about p2p piracy.



Figure 6 Notice of Seizure posted to KAT.

On July 20, 2016 I booted up TAILS Linux and secured my connection through a Tor network. I navigated to TorrentFreak for my daily dose of pirate news and was greeted by the headline “Feds Seize KickassTorrents Domains, Arrest Alleged Owner” posted under the Breaking News tag. My first instinct was to try and access the site, which returned an error. Later I tried again and encountered the seizure notice that now dominated the front page (see fig 6). The sequence of events leading to the shut down were of a global nature; a Ukrainian national was arrested by Polish authorities on American criminal charges. The evidence against Vaulin was collected from around the globe. In January 2016, Homeland Security Investigators (HSIs) cloned the Chicago webhost server hard drives, gaining access to the KAT email server. Copies of business files from the Canadian webhost Netelligent were retrieved by the Royal Canadian Mounted Police in April of 2016. Covert IRS agents posed as potential advertisers to gain access to the KAT advertising accounts, which were in Latvia. The IP addresses Vaulin used for purchases on iTunes and his personal Apple email ([tirm@me.com](mailto:tirm@me.com)) were matched to IP addresses that had been used to log into the KAT official Facebook account. Investigators were also able to associate Vaulin’s personal bitcoin wallet with the bitcoin donation address for KAT based on information provided by US-based digital currency exchange Coinbase (Ernesto 2016a; Andy 2016d; Ridgway and Su 2016).

Several smaller sites associated with KAT were also shut down. This included Leechmonster.com, roly.com, solarmovie.com, solarmovie.ph, iwatchfilm.com, movie2b.com, hippomovies.com, biho.tv, and moviepro.net. Artem Vaulin was also not the only individual charged in connection with the shutdown; Ievgen Kutsenko and Oleksandr Radostin were later indicted by a grand jury as they were believed to be employees at Vaulin's company Cryptoneat (Ernesto 2016f; Andy 2016g). US authorities alleged that Cryptoneat was the front company for these websites, and the company's online presence vanished on August 22 2016 (Andy 2016f).

In the aftermath of the shutdown I scrambled to collect all that I could, and noted the sense of mourning for KAT that pervaded multiple forums and public discourse on TorrentFreak. On other forums users were greeted as victims; one thread on SuprBay was designated specifically to welcome new KAT users. This thread contained SuprBay users who offered condolences to KAT users on the loss of their website, reassured them that their site would return, helped orient new users and educate them about the peculiarities of SuprBay. KAT users actively sought each other out on multiple platforms outside of forums. I noted that in the comments on the TorrentFreak article there was an individual posting links for a "KAT Orphans" Disqus group to help users find one another following the site shutdown, share news about potential revivals of the community, and commiserate about the loss of the site.

The loss of the years of effort put into cultivating an online persona was felt acutely by these users. On KAT's forums, users gained social capital in the form of achievements (sometimes referred to as "cheevos") and reputation. Achievements were awarded for activity on the site, such as reaching a certain number of torrents downloaded, downloading specific torrents, or attaining a specific reputation for evaluating torrents. These ranged from achievements for maintaining the site (e.g. "Mind Police" for rating over 100 comments) to achievements for logging in on holidays (e.g. "Saint Kattrick's" for logging in on St. Patrick's Day). These achievements were listed on the user's profile, as well as on a public page listing all achievements and recipients. Reputation is described as the "...overall site rank that is added for activity on the Website. It is added for leaving comments, rating torrents, reporting such things as bad users, fake torrents, spam comments etc." ("What Is Reputation? - FAQ - KickassTorrents" 2012). Reputation was cultivated over some time on the site, and affected the user's rank on the site (user, super user, moderator, super moderator, etc.).

The loss of this social capital was compounded by the loss of emotional bonds to other users, which was expressed through public comments posted to TorrentFreak:

This is very sad indeed. KAT has always felt like home. I can't think of any other torrent sites that come close because what made KAT special was the community. People genuinely cared about each other and were supportive and if anyone ever needed help with anything at all, scores of people would rush to assist them. It's always been a really nice place to spend time. People talked and shared their hopes and dreams on KAT and when people were going through hard things in life, (Sometimes the kinds of things that can break us) the community was there to listen and offer support. It's not so much the loss of the torrents because they can be found elsewhere; (Although no other site has so much helpful and useful feedback on torrents from so many people) it's the loss of a place where all those people were able to gather. A community of clever, funny, helpful and caring people, who have lost many of their friends and who in all probability, have no way to contact them. Right now I just can't help but imagine all those people out there in the world who might be suddenly feeling very lost and alone because for some people, KAT was the only safe secure and welcoming place they felt they were able to go to. To anyone on here from KAT, if we don't meet again; it was my very great pleasure to have been able to spend time with you, and I wish all of you good things in your lives.

Looking back at archives of the forums, the discussion topics often strayed beyond torrenting. One element of the forums that struck me were the memorial threads for deceased members of the community. April 10 was designated as an annual memorial day for deceased members, and users were asked to contribute to maintaining an honour roll of these users. To help bring awareness to the honour roll and memorial day, users who logged in on April 10 and visited the honour roll received a specialized achievement (see fig. 7). Thus, the site's centripetal attention assemblage was employed to commemorate these lost shipmates.



*Figure 7 Special Achievement badge for KAT memorial day. Retrieved from the Internet Wayback Machine.*

Users also lost a space where they could share poetry, short stories, artwork, reviews of media content, and other discussions about content (see Appendix 2-1). The forums published an unofficial magazine dubbed *KATalyst*. This monthly periodical featured user-submitted artwork and poetry, reviews of books and films, interviews with prominent site members, as well as news from the site staff. Users also played text-based games on the site, and celebrated each others' birthdays. With over 170,000 active users, the community was vibrant, and likened to social media websites like Facebook and Twitter. Within my interview with Edward, he stated

The shutdown of KAT put a large dent in both the social aspect of the public torrent community, as it was probably the torrent index with the most social content and activity.



It had also surpassed the Pirate Bay in recent years as an index with reliable comments and technical information on the listed torrent files. Given that, a large number of torrent uploaders made KAT one of their primary outlets, so its demise sent file-sharers scrambling to find other torrent indexes, few of which offered as good a one-stop experience as KAT.

Users were also concerned with the loss of the torrent index, due to the breadth of material that it comprised. This was complemented by the fact that KAT was generally a reliable source of torrents for everyday users. Users commented on how you could find almost anything you wanted on the website, especially media that was difficult to obtain through licit means:

KAT was a great community, not just torrents. Great for foreign content not otherwise available. I see this as a hit against free speech and flow of information. Dumbing the public. It's not our fault hollywood hasn't made anything original, but remakes, prequels, sequels and book illustrations for the last 20 years. KAT was great because it allowed everyone, including those with poor bandwidth / subpar internet to participate. A sizable section of KAT was devoted to education including textbooks, documentaries and independent content. Most sites don't upload news.

Edward also stated that at its zenith it was often more efficient to just search on KAT than to use Torrentz's meta-search engine. However, with the loss of KAT, a lot of quality content was lost as uploaders had been relying on this central hub. According to Edward:

The Pirate Bay is still quite good, but ever since KAT's rise to prominence in recent years [TPB] hasn't garnered quite as many good uploads. ExtraTorrent seems to be where a portion of KAT's uploaders had been releasing in parallel all along, but it has nowhere near the totality of uploads found on KAT, nor is the site as well-suited for high volumes of traffic, at least so it seemed in the initial aftermath of the KAT shutdown. The broad range of uploads found on KAT don't exist anywhere else, and that seems to be felt acutely in the filesharing world.

Due to the influx of traffic to Torrentz, Edward speculated that this could have led to the shutdown of that site the following month. In a sense, the shutdown of KAT had network effects; users migrating to new sites, particularly less-known sites, placed strain on servers, site administrators, and brought these torrent sites into the limelight (and likely the sights of law enforcement and copyright trolls).

Most of my interviewees argued that KAT was shut down because it had become too much of a high-profile target. The monetization of this attention assemblage exacerbated this vulnerability. Authorities allege that Vaulin and Cryptoneat were making large sums of money through advertisements on the index, approximately "...\$16,967,865 in annual advertising revenue and is worth approximately \$54,593,622" (Ridgway and Su 2016, 20–21). My interviewees unanimously agreed that while it may be necessary to use ads to support a site's server costs,

anything beyond that was immoral. As an assemblage with strong centripetal lines of assembly, KAT charged substantial sums for advertising; undercover IRS agents were charged \$300 per day for advertising fees, then at a later time when there were more advertisers competing for banner space, the agents were quoted prices between \$1,000 and \$3,200 per day (Ridgway and Su 2016).

Despite the loss of KAT and several other torrenting sites, the torrenting ecosystem itself weathered the storm with relatively little change. This was another paradox that came up after TPB's shutdown and re-emerged after KAT's shutdown; the resilience of torrenting also inhibits its ability to change. While the multiplicity of torrenting sites means that the torrenting ecosystem is quite resilient to shutdown, it makes introducing new technologies quite difficult as users are more likely to migrate to a new site rather than a new technology. On July 26<sup>th</sup>, Peter Sunde spoke to the "Steal This Show" podcast and argued that these shutdowns demonstrated that the piracy scene needed to innovate to stay ahead of legal enforcement: "You have to understand that torrents are no longer the answer to these types of threats. Sure you can upgrade everything related to torrents to a more secure and better way of usage by promoting to users how they should use you through your new type of network etc., but at some point the protocol should upgrade" (King 2016; Andy 2016e). In keeping with Kopimism's centrifugal desires Sunde also argued that further decentralization was necessary if the piracy movement wanted to survive; however, he also noted that the larger filesharing sites like TPB and KAT would not be able to make this switch easily (Ernesto 2016c). Tobias Andersson, another of TPB's founders, expressed a similar sentiment to TorrentFreak in 2013, stating that "I believe that The Pirate Bay hinders the creation of something new. Not actively, but it has made people too comfortable by always being there – by not giving in to threats and so on. If The Pirate Bay would decide to quit, I'm sure something new and better would spring to life quite soon" (Ernesto 2013).

Two of my interlocutors mentioned that perhaps the shutdown was an opportunity for change in the piracy ecosystem. William noted that "The shutdown of YTS and KAT have been a bit of a shock however it is all for the better. It is about time that torrenting got out of the spotlight and private trackers take over. The amount of publicity is unsafe for the entire community". Following the shutdown, alternative technologies like Zeronet and IPFS received some attention from the torrenting community after the shutdown. Zeronet functions by decentralizing the role of the server to users on the network. Rather than rely on a central server or series of servers to send data to many users, each user connected to the network is constantly downloading site updates and

seeding them to peers. This would have the effect of distributing copies of every website to every user, and would even allow users to access the network (albeit as it was at the last update) without an active connection. The network is also secured through encryption and crypto-currency, and can also be accessed through a Tor browser (“ZeroNet: Decentralized Websites Using Bitcoin Crypto and the BitTorrent Network” n.d.). By adopting this technology, the torrenting ecosystem would have been able to become less centralized and would automatically backup to every users’ computer, foiling attempts to shut individual sites down. However, these decentralized alternatives do not appear to have taken hold in the two years since the shutdown, and the paradox remains firmly in place. The torrenting ecosystem has once again turned to new centralized sites like RARBG and 1337x and old favorites like TPB; however, there is strong evidence to suggest that perhaps the real shift in digital media piracy is occurring outside of the torrenting system as streaming piracy becomes more popular among everyday pirates.

### **CopyKATs and OpenBays**

It is useful to contrast the emergence of copyKATs with the Openbays that emerged after the TPB shutdown in 2014-2015. When TPB shut down, copies of the site were online within hours. In kopimist terms, this proliferation of copies of the site would appear to be desirable. TPB crew member Mr. 10100100000 told TorrentFreak “Copycats are to be seen as a higher form of the proxies. If [Pirate Bay’s] code wouldn’t be so shitty we would make it public for everyone to use, so that everyone could start their own bay” (Ernesto 2014a). If these issues with the code could be rectified, Mr. 10100100000 and the rest of the TPB crew intimated that they would have been satisfied, stating that “We’ve always lived by Kopimi. We love being cloned. It would be amazing if, like in the classic movie Spartacus, everyone could stand up and say ‘I am The Pirate Bay’” (Ernesto 2014a). Later projects by isoHunt sought to do this by making the source code of their Pirate Bay mirror open to everyone to develop and host their own TPB clone; within two weeks of TPB’s 2014 shutdown 372 “OpenBays” were created. As seen in figure 8, this project aimed to move piracy beyond the era of individual torrent sites and into new decentralized alternatives.



*Figure 8 Open Bay website screenshot courtesy of TorrentFreak.*

Given KAT's popularity, it is unsurprising that copyKATs were online within a day to capitalize on the increased attention on the site. TorrentFreak reported:

Shortly after KAT went offline dozens of people began promoting mirrors and copies of the site. Some are just trying to keep lost files accessible, but there's also a group trying to take over the brand, similar to the efforts seen following YIFY's demise. For example, the operator of Kickass.la sent an email to several reporters promoting a new KAT address. In a follow-up, we were told that the site is an "official backup," and that a copy of the database is in their possession. However, the site appears to be little more than a partial copy and the person behind it later admitted that they are not related to KAT (Ernesto 2016b).

It is likely that several of these clones aimed to monetize the attention that potential KAT replacements were garnering from lost users. Some sites like KAT.am were later discovered to be a copy of TPB's index dressed up with a skin to look like KAT's user interface (Ernesto 2016d). However, these sites tended to have limited functionality; for example, KAT.am had recent torrents that were uploaded to the original KAT but was not posting new content nor did it have a forum. After it too was shut down by the Motion Picture Association, the site's domain was taken over by scammers. When users attempted to log into the site, they were greeted by a popup ad asking them to sign up for a new account, which redirected to a portal to sign up with their credit card (Ernesto 2016e).

What can we learn from the OpenBays and copyKATs? The OpenBay initiative ultimately failed to achieve its centrifugal desires, mirroring the paradox Mckelvey discusses. Though TPB wanted to be cloned, these clones split the community of uploaders and moderators apart, and limited the breadth of the torrent index. TorrentFreak stated that:

Sticking with the Hydra mythology, if Pirate Bay copies are new heads then they're on top of a dead beast for now. In this flawed analogy the Pirate Bay raid didn't just cut off a head, it killed the beast itself. The Pirate Bay's real value were the uploaders and moderators, and these can't simply be copied. The real Hydra is something much broader. It is the entire BitTorrent ecosystem where The Pirate Bay was just one of the many heads, living alongside other popular torrent sites. (Ernesto 2014b)

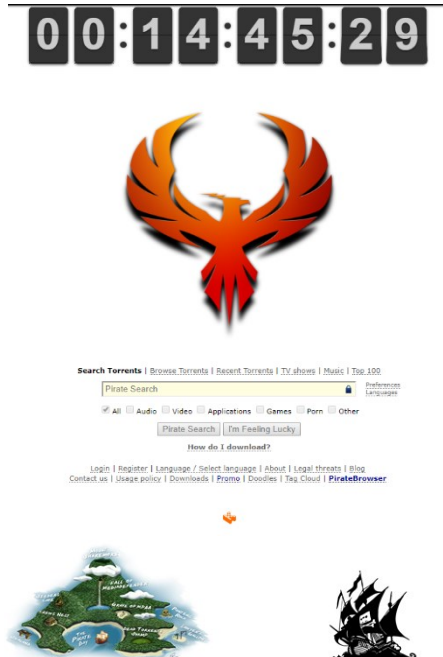
Even with promises of monetary rewards from the isoHunt team to develop the Oldpiratebay website<sup>50</sup>, the OpenBays faded into the shadow of TPB when it relaunched in January 2015. To commemorate its return, TPB's front page proudly displayed a new doodle featuring a countdown timer, a phoenix rising from the ashes, and the Piratebay ship sailing towards a pirate bay (see fig. 5).

A similar effect happened with the copyKATs after KATcr.co launched. As demonstrated in the TorrentFreak passage cited above about the emergence of copyKATs, a prime consideration about whether to use a site was whether it was associated with the "official" KAT. Once it was revealed that the former forum moderators had resurrected the community side of the website at KATcr.co, users flocked to the service even though it did not have a functional torrent index. The KAT Orphans group that I discussed briefly earlier shut down once the new forums were operational. This demonstrates that the centripetal elements of the site (the community) heavily outweighed the centrifugal ones (the torrents). Since the launch of KATcr.co, over 150,000 members have registered for the site, only 20,000 members less than the original KAT.

Outside of the copyKATs that were clearly scams, users expressed that who was running the website was of concern to them. At a glance, this concern with the provenance and authorship

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<sup>50</sup> Oldpiratebay was a mirror of thepiratebay.org hosted by the isoHunt team. As part of the Openbay initiative, isoHunt offered developers up to 100,000 dollars in bitcoin to develop the oldpiratebay.org index so that it could be copied easily. (Ernesto 2015a). As of 2018, the GitHub page for the Openbay initiative now states "Isohunt team is closing down the Openbay project support and the competition itself because of the very low activity on the project. We've got hold of the developers that took part in the competition and offered them a long-term cooperation. We are very disappointed that your activity lowered to such a level that even a 50 000\$ reward couldn't motivate you" (isohunnto [2014] 2018).



*Figure 9 Elements of TPB's Phoenix Front Page in January 2015. Retrieved from the Internet Archive Wayback Machine*

of a piracy website may seem paradoxical given that copying is a central element of piratical practice. However, this concern derives less from a question of whether these new assemblages were serving torrents; the primary concern of most users was that any new KAT assemblage recreate the tightly-knit social spaces of the old site. The recreation of this third space of authorship, and the concentration of users towards this site demonstrates the authorial capacities of the KAT users during the shutdown; by returning the site to its former self, users effectively posed a challenge to ability to shut down sites through copyright law and ensured that the collaborative space the site fostered would not be diluted across several copyKATs.

Looking at the new KATcr.co, this third space of authorship appears to be mostly back to normal operations. The aforementioned *KATalyst* magazine resumed publication without missing an issue, and the forums are once again filled with users playing text-games with one another. However, the resurrection has resulted in some setbacks. At the time of writing, KATcr.co still lacks some of the core functionality of the original's torrent index, and the site has not managed to place on the TorrentFreak's annual top ten torrent tracker list in the last two years. As a community, it is certainly thriving; however, as a torrent index, there is still work to do.

## Conclusion

At the time of the shutdown, the KAT assemblage was the social centre of the digital media piracy movement. Not only did it boast a wide array of quality media files to be shared, it also was a vibrant community. Due to the emphasis on the community and becoming a central hub for p2p piracy, KAT's assemblage was characterized by the opposite paradox as TPB; it aimed to be a central hub that relied on its centrifugal lines of assembly. The loss of this community made the KAT shutdown a significant event in this project's fieldwork period in the summer of 2016.

In this chapter, I approached the KAT shutdown through assemblage theory, drawing from Fenwick Mckelvey's recent work on the paradoxes of the TPB assemblage. This approach to understanding the ethnographically rich, yet normalized event in everyday piracy helped to understand the peculiarities of this assemblage as a mass of interconnected social, material, and immaterial elements. By looking at the centripetal and centrifugal lines of KAT's assemblage, I looked at the importance of the events around the shutdown and attempts to recreate KAT. Here I demonstrated that users expressed concern for who was running these copyKATs.

What was missing in the assemblages that tried to take on KAT's mantle was the community and social aspects. The prominence of these social elements throughout the site's everyday operations meant that potential successors that lacked these elements could not be the real KAT, just a copyKAT. This also helps explain the adoption of the KATcr.co site despite it lacking any torrenting functionality at all. I also argued that the return of KAT also demonstrated the authorial capacities of KAT users. By ensuring that the new KAT was not distributed between a multiplicity of copyKATs, users worked to the best of their ability to bring the site back. Today, KATcr.co boasts a user base of 150,000 on its forums, and a torrent index, and continues its own contestation of digital property and the repressive author function within its community forums.

## Conclusion

The digital media piracy movement is immensely complex; it brings together many different meanings, tactics, approaches, beliefs, actors and technologies into a heterogenous mass of individuals operating outside legal flows of media distribution. It operates in grey zones, sharing between peers in decentralized swarms files that have been cracked by coders, who have drawn these media files out of encrypted enclosures and released them as warez for the masses. In concluding this thesis, I must stress that digital media piracy is many things; here I did not aspire to cover the movement in its entirety. Instead I portrayed a snapshot of this movement as I observed it in the summer of 2016.

In this thesis, I asked how we can examine digital media piracy as an increasingly normalized part of digital life, and how this everyday unreflected practice could effect social change. I argued that pirates exercise authorial capacities in their everyday practices, which as a collective effort can challenge the hegemony of copyright and intellectual property law. The primary way this change occurs is by creating infrastructures through which users can freely engage with cultural media objects. These infrastructures enable new conceptions of authorship, what I referred to in this thesis as the third space of authorship (Guertin 2012). By actualizing this hybrid approach to authorship beyond the repressive sole-genius author that the contemporary media industry relies on, even everyday pirates alter the ways we think about and engage with digital media. This third space of authorship is a direct challenge to the statutory and regulatory systems of copyright and intellectual property that are in place throughout the world today.

In the first chapter, I asked what it meant to be a digital media pirate as a way of understanding the heterogenous nature of the digital media piracy movement. I deliberately distanced this research from frameworks predicated on a dichotomy of commercial/non-commercial, as these tend to be invoked to demonize pirates operating outside of the West. I instead pushed for an understanding of piracy as an assemblage of different ways of being a pirate. Borrowing from the work of Simon Lindgren (2013b) and James Meese (2014), this includes the political piracy culture that has been extensively covered in academic literature, the innovative piracy culture, and most importantly for this project the everyday piracy culture. Picturing the piracy movement in this way afforded us the opportunity to look at the relations between these cultures, and how they each contribute to the piracy movement. By regarding the act of torrenting a file over the BitTorrent protocol as a form of subactivism, the actions of all pirates—notably the



mass of everyday pirates—create a collective mass of subversive activity that can be articulated to a broader political message—as seen through the trollish cognitive praxis of TPB, the Piratbyrån and the pirate parties. Furthermore, by looking at the concept of trollish cognitive praxis, I also addressed Meese’s concern about the potential of reifying unequal power relations by invoking the term pirate. In the context of p2p media piracy, I drew from my interview data to argue that the term itself demonstrates the authorial capacities of digital media pirates; by re-appropriating a derisive term (pirate) and articulating it to the imaginary of a social bandit, the digital piracy movement remixed what anti-piracy interests meant by the term, and popularized their own meanings.

In chapter two, I examined the interactions between pirates, the state and the media industries through a political economic framework to argue that pirates exercise these authorial capacities on a structural level. Through this framework, I connected historical instances of piracy to contemporary digital media piracy through the similar conditions of enclosure from which both forms of piracy arose in the 18<sup>th</sup> century and 20<sup>th</sup> century respectively. I explored how this enclosure, as a form of structuration, is disrupted by the disorder that pirates generate by bypassing the restrictions put in place to enable accumulation by dispossession (Harvey 2004). However, I also addressed the contingency within this disorder that must be considered when examining all forms of piracy. Much like how pirates operated in grey zones as privateers in the 18<sup>th</sup> century, contemporary pirates operate in grey commons on the web. However, scholars must also consider that capitalism is very adaptive, and can harness the network effects of piracy to develop markets for further monopolization. As such, by creating disorder, and introducing informality into the formal media economies, pirates exercise their authorial capacities on a structural scale, but sometimes these authorial capacities produce unintended results.

In chapter three, I took up the topic of moral philosophy in relation to digital media piracy to examine how moral panics are used from above and below in the copyfight. From above, I discussed the use of moral panic discourse to demonize piracy and cast it as an immoral act of theft. This was demonstrated by the educational initiatives and public awareness campaigns of the early 2000s. I demonstrated that these awareness campaigns and similar attempts to incite panic discourse are socially constructed, and have been used strategically to pass legislation to combat pirate threats. From below, I explored the issue of speculative invoicing, also known as copyright trolling, and how pirates constructed their own counter-hegemonic discourses about the practice.

Through these panic discourses, pirates garnered support for their critique of the excesses of copyright enforcement. By bringing to public awareness the issues of copyright trolling, the digital media piracy movement demonstrated its authorial capacities by fostering discontent with the increasingly draconian enforcement of copyright and intellectual property laws.

In chapter four, I explored the construction of ethical criteria within private filesharing communities Oink's Pink Palace, TorrentLeech and What.CD. Drawing from Michael Lambek's work on ordinary ethics, I argued that in the pursuit of a piratical good life situated between action and ethical criteria, pirates on private filesharing communities created new ways of approaching copyright through voluntary IP regimes. While this artificial scarcity may seem antithetical to piracy, it instead balances the desire for media files with accessibility, and is open to intervention from artists. This is another way that pirates critique statutory intellectual property rights and exercise their authorial capacities; by creating communities with voluntary intellectual property regimes, pirates actualize viable alternatives to statutory intellectual property rights enforcement.

Finally, in chapter five I explored the event that dominated the fieldwork period of this project: the KAT shutdown. Drawing from recent work on TPB as a piratical assemblage constituted by paradoxical lines of assembly (Mckelvey 2015), I discussed how KAT was a unique community within the torrenting ecosystem. Unlike more politicised indexes like TPB, KAT was a meeting place for many members of the everyday piracy culture. When the site was seized by US federal authorities in July 2016 this community was devastated. As an assemblage of people, code, technologies and desires, the KAT assemblage broke apart and other sites sought to become the new KAT. However, users of the site expressed concern for the original site owners, which dominated discussion on whether the real "KAT" had returned. This presents a paradox; pirates on KAT engaged in copying daily, but would not tolerate a copy of KAT. In exploring this and other paradoxes of the shutdown, I also allude to the ways users exercised their authorial capacities to challenge the hegemony of copyright. By actively seeking out a replacement website centred around the forums and their original operators, these users challenged the ability for law enforcement to shut down their communities and their everyday practices.

Of course, it is important to note that there are limitations of this research project, most of which stem from the methodological adaptation necessitated by the KAT shutdown. As I discussed in the introduction, the shutdown made it ethically problematic to operate on the KAT forums as a covert researcher, and attempts to operate openly resulted in little interaction with forum

members. Perhaps with a longer fieldwork period to achieve rapport with members this could work in future research. In the future, this is a topic that I intend to return to, as the issues of intellectual property rights and copyright are prevalent in our daily lives.

A direction for future research that could be pursued is the ongoing shift away from torrenting by everyday pirates. In 2017, torrenting only accounted for approximately seventeen percent of all piracy traffic online, while streaming accounted for approximately sixty percent. Streaming seems to be the new hydra that is emerging to challenge copyright, and further research on this form of piratical practice is certain to gain traction in the near future. What remains to be seen is how these streaming sites will compete with the likes of Amazon, Netflix and Spotify, and how these legal services will adapt to these new heads of the piratical hydra. In this project, the selection of this topic was in part fuelled by my own past with the practices of torrenting, as well as the visibility of torrenting as a form of digital media piracy. However, this is not to say that the examination of torrenting should be abandoned. There is little research on the labour that goes into hosting and maintaining a torrent index, especially on private tracker communities. Yet again, with more time to build rapport among a community (and hopefully a more stable fieldsite), an examination of administrator and moderator labour is a locus in the literature that I hope that I or other researchers will address in the future.

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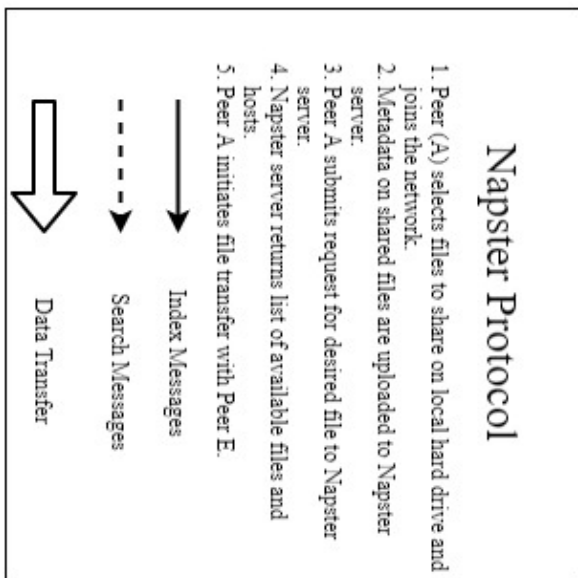
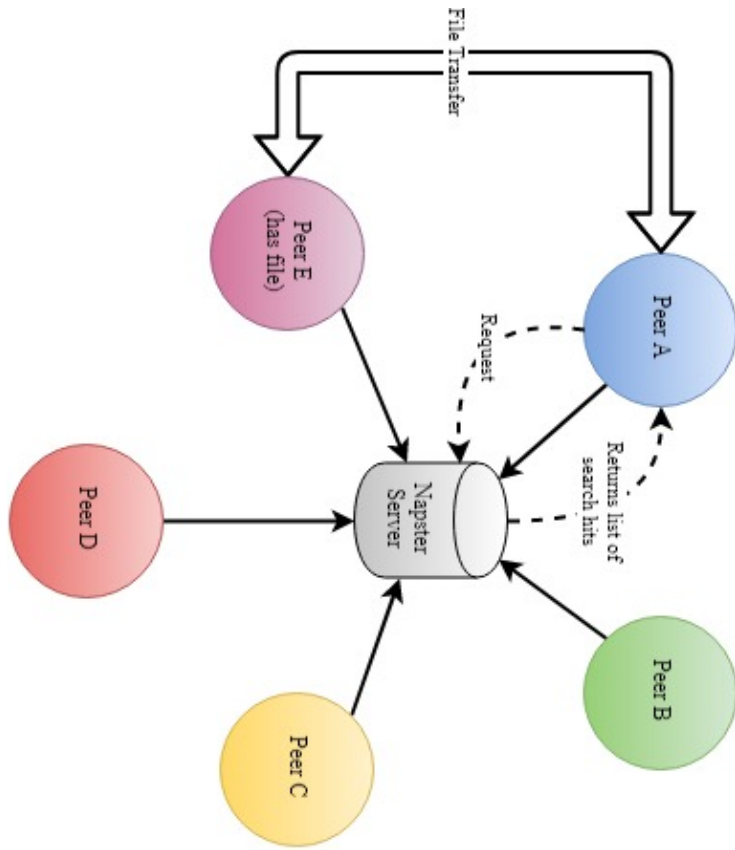
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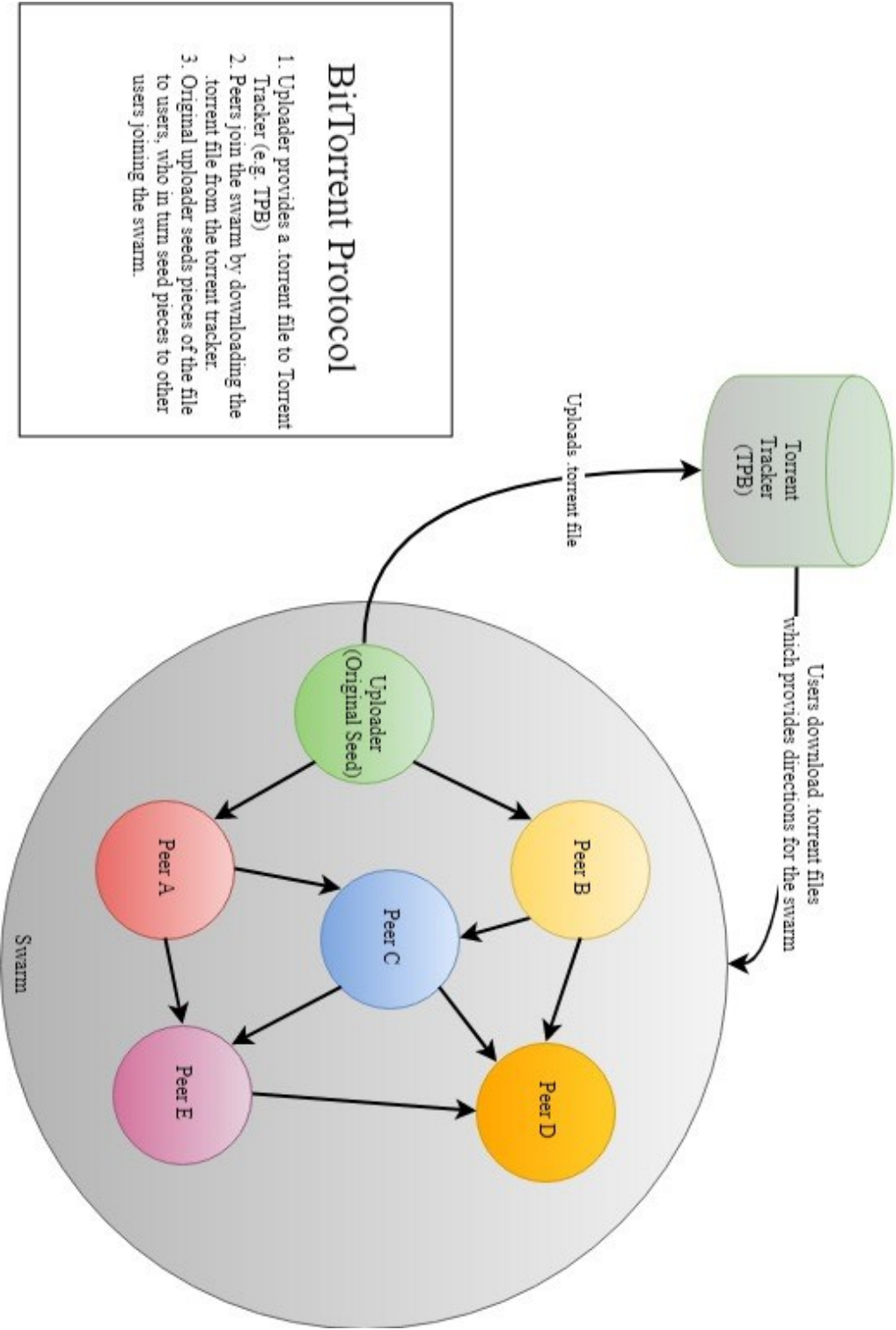


# Appendix 1: Diagrams of P2P Protocols

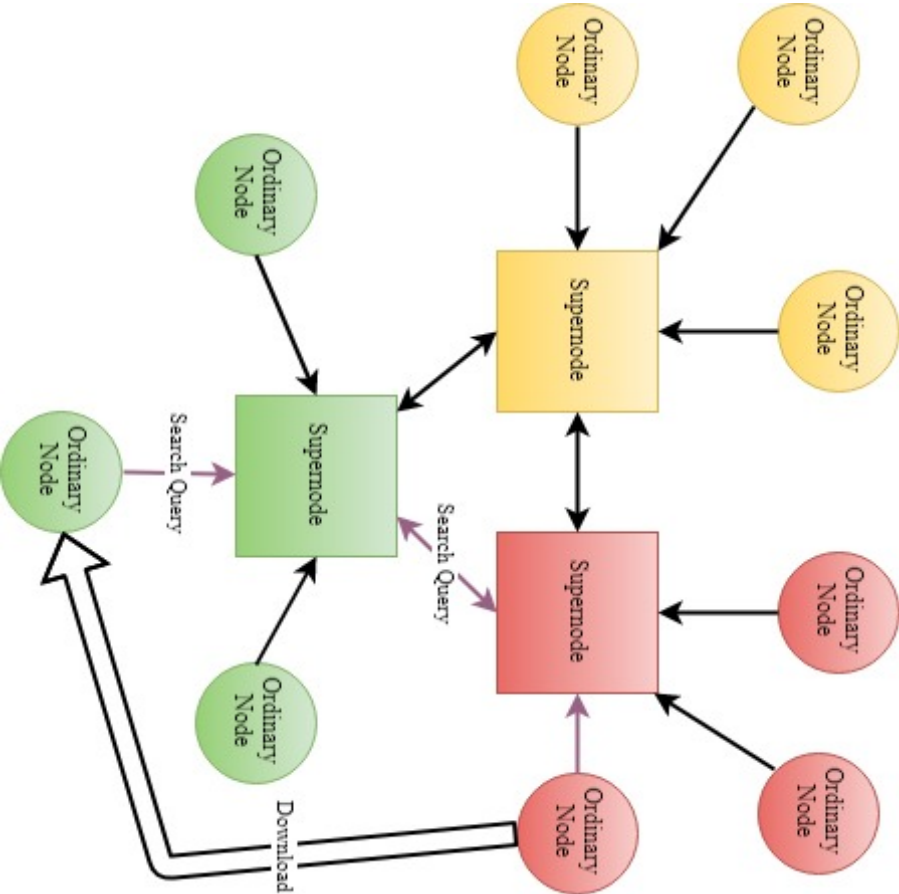
## Appendix 1-1: Napster Protocol



Appendix 1-2: BitTorrent Protocol

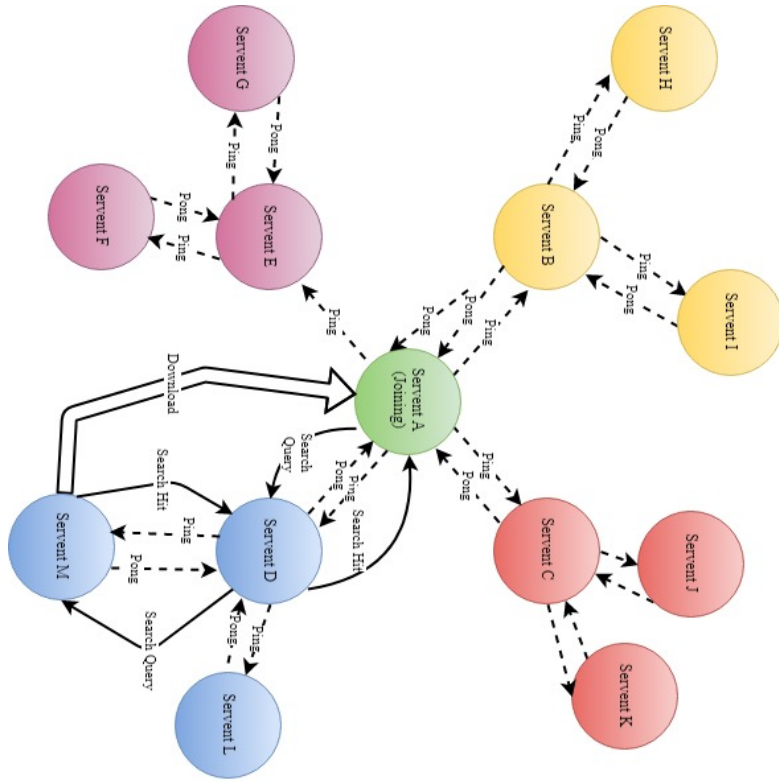


**Appendix 1-3: FastTrack Protocol**



- Fast Track Protocol**
1. Ordinary Nodes report shared files to Super Nodes.
  2. Super Nodes maintain a list of hosted files and process search queries within those files.
  3. If necessary, Super Nodes can pass search query to another Super Node, who can fulfill the request.
  4. The download is initiated between peers.

## Appendix 1-4: Gnutella Protocol



**Gnutella Protocol**

1. When a Servant joins the network, it pings neighbors, who respond with pongs. Pongs contain IP addresses of neighbors, as well as files and file details.
2. If Servant A initiates a search query, it is passed to neighbors, who pass to their neighbors, branching out through the network until a hit is recorded. This hit is passed back through the search query channel to the initiating Servant (A).
3. Servant A initiates a direct download to Servant with the file (M).

---> Group Building Messages

——> Search Messages

.....> File Transfer Messages

# Appendix 2: Screenshots

## KAT Forum Screenshot

Other					
Site Friends	Friends Of Kickass	2 years ago by <a href="#">O</a>	12	790	
Copyright Issues	Anything to do with Copyright	2 years ago by <a href="#">O</a>	34	2824	
Sign up and Advertising	Speedgigs.com - proxy without ads	2 years ago by <a href="#">O</a>	120	1090	
Leopard (Kickass Users Memorial)	What a day	2 years ago by <a href="#">O</a>	17	1288	
Wilkes Art World	WIP - Kickass website beautifier.	2 years ago by <a href="#">O</a>	11	378	
Kickass Memorial	KAT Official Member Memorial / Remembrance Day Thread	2 years ago by <a href="#">O</a>	7	319	
Manual Trademarks Forum	2017 Trademark Infringement - Books, Vids, Audio, etc...	2 years ago by <a href="#">O</a>	7	272	
Seedboxes	Free Seedbox for KAT Users	2 years ago by <a href="#">O</a>	63	1946	
Ultra's Pictures and Fun	The Two Word Game V2	2 years ago by <a href="#">O</a>	112	13840	
Photography & Art	Weekly Art KAT Appreciation Section	2 years ago by <a href="#">O</a>	8	110	
KAT Lounge					
Official Competitions	Post Your Pictures For The KAT Magazine	2 years ago by <a href="#">O</a>	23	204	
Birthday Section	Official KAT Birthday Reminder (May - August)	2 years ago by <a href="#">O</a>	148	5145	
Signature Creation & Training Forum	GDAY Creations - Signatures, Userbars & Avatars	2 years ago by <a href="#">O</a>	38	606	
Free Speech	What are you downloading or uploading now? - V4	2 years ago by <a href="#">O</a>	277	5550	
Offtopic talks, chat and anything else you want to discuss post here	The Number Game V4 Join this months Challenge!	2 years ago by <a href="#">O</a>	10	514	
The Pirate Ladies Cove	One year and still going strong	2 years ago by <a href="#">O</a>	136	2958	
Yearly Art KAT Appreciation Section	1xKeddie *M/7* ONLINE*	2 years ago by <a href="#">O</a>	6	96	
Reddit updates	Official UEFA Euro 2016	2 years ago by <a href="#">O</a>	54	1139	
Everything related to sport here	The Latest Random GIF IMACE Thread V4	2 years ago by <a href="#">O</a>	80	4558	
Photography & Art	Spas	2 years ago by <a href="#">O</a>	118	1439	
Colorful and fun	Last Letter Game V16	2 years ago by <a href="#">O</a>	271	16437	
Official KAT Birthday Section					
Former V1 Thread Section					
Threads for V1 V2 V3 Open deals that are closed					
Photoblog Imagination					
Twitter, Discussions, polls, giveaways and more.					

\* K (The Signature Of The Week #1) 30TIV & A30TIV - GFX Contest Entry Page } \*