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The piratical is political: Why we should all pay attention to debates about piracy

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In early 2012 there was a wave of protests in the USA against the proposed introduction of the Stop Online Piracy Act (SOPA) and the Protect IP Act (PIPA). These ranged from petitions and rallies to service blackouts and denial of service attacks. The proclaimed intention of the bills was to protect the rights of copyright holders, but they were heavily criticised for their potential to limit free speech and stifle creativity and innovation. By January 2013 activists were celebrating Internet Freedom Day to mark the anniversary of these protests, which had succeeded in stopping the controversial bills in their tracks.

However, for many people there was little justification for these celebrations. They saw the protesters as radical anarchists defending their right to get something for nothing. Indeed, if official descriptions about copyright pirates and their actions and motivations were taken at face value we would be right to dismiss such protests as the actions of a radical fringe engaged in straightforward property theft. In my view debates about piracy should be considered as political discussions with far-reaching ramifications - they represent much more than conversations about the morality or illegality of the activities of a minority. Debates surrounding piracy have resonances beyond the issue of whether Western teenagers are able to access the latest episode of *Glee* or download *World War Z*. The debate is partly about the divide between those who are able to participate in a global society through their online access to cultural materials and those that are not. It is also concerns the way large corporations profit from intellectual property rights as commodities. And, increasingly, it intersects with issues of privacy: a number of activists and political groups have been vocal about the potential of legal changes ostensibly intended to curtail piracy to enable greater levels of surveillance and censorship.

One of my main reasons for writing this article is to point out that, although SOPA is no more, this does not mean that further anti-piracy measures have not subsequently grown up in its place. And there is now a growing international movement to resist the creeping enclosure of culture by global corporations. Political pirate parties (on which more below) have sprung up across the world, and after a conference in Brussels in 2010 they joined together to form Pirate Parties International, an NGO that boasts 42 members. And a number of other organisations are also concerned with promoting the rights of individuals in the digital age, including the Open Rights Group in the UK and the Electronic Frontier Foundation in the US.

Piracy: definitions and deviance

Before getting deeper into the argument that piracy is something that concerns us all, I need first to take umbrage at the term itself, not only on the grounds that its meaning is loaded, but also because it has been carefully constructed by certain actors and organisations so as to frame the debate and thereby dictate in advance the bounds of acceptable behaviour. Discussions about piracy are often stalled by the competing ideological and moral standpoints of those who enter the debate.

In particular, the moral judgments of particular groups are often reflected in the terminology that they use; words that seem innocuous on the face of it are seen to be deeply ideological when examined in detail.

The term piracy originally referred to robbing ships at sea, and the pirate was a cut-throat opportunist who sacked ships for personal gain. Over time, this definition has expanded, and piracy now also refers to the unauthorised duplication of materials protected by copyright. There is also a range of synonyms for the activity of unauthorised copying of copyrighted works - such as file sharing, copyright theft and bootlegging - each of which carries differing connotations. Bootlegging is now seen as rather anachronistic, and has largely fallen out of fashion as a description of acts of copyright violation. File sharing, on the other hand, brings with it as many misleading associations as the term piracy. It implies that works are not copied and illegally distributed, rather that they are circulated amongst a group of friends. The fact that the network of friends might extend to hundreds, thousands or even millions is often conveniently ignored. Indeed, file sharing as a term is often applied to describe any form of digital piracy, whether or not it involves the user(s) concerned 'sharing' the content with others. While none of these terms is ideal, I would argue that the word piracy is particularly problematic. It is often used as part of a rhetorical strategy that seeks to pre-emptively construct the bounds of deviance - the term pirate usually carries with it negative associations of deviant behaviour. The anti-piracy campaigns of the Federation Against Copyright Theft (FACT) or the Motion Picture Association of America (MPAA) usually feature an image of a pirate as thief. Indeed, copyright infringers themselves often use the term piracy in a pejorative sense: from their point of view it refers to those who profit economically from the unauthorised duplication and dissemination of cultural goods.

In the Western context there is often a generational explanation for piracy. Copyright pirates have invariably been imagined as springing from the youthful tech-savvy Google generation. But this is little more than a digital version of the 'hoodie' label. There is little attempt in such stereotyping to understand the different cultural practices of a younger generation. It should be noted here that pirates have also often been seen as having a certain glamour, and this is perhaps why the term has now been reclaimed by the political pirate parties. These have recognised that piracy has been used as a catchall term that demonises a whole range of ways of engaging with the media, legal and illegal, and they have appropriated the word to mean someone who is for freedom of expression and cyber liberty.

According to the World Intellectual Property Organisation piracy 'is usually associated with infringements of copyright or related rights'; and the term is 'normally used in connection with cases of intentional infringements of IP rights, related to commercial purposes of the infringer, or causing significant economic harm to the right holder'.¹ However this assumes, firstly, that the concept of property is easy to define (which in the case of intellectual property in particular is by no means the case) and, secondly, that any concept of property that runs counter to the accepted legal definition is inappropriate and 'deviant'. Furthermore, the remit of Intellectual Property protection seems to be perpetually expanding, which means that so too is our likelihood of falling foul of legal measures. As our interactions with music, films, books and games are increasingly controlled and managed in the name of piracy protection, a growing number of everyday interactions might come to be considered under the banner of piracy. For this definition of piracy does not take into account the multiple encounters we have with media on a daily basis. If we purchase bootleg DVDs from markets, street-sellers or online, or download films, music or software using torrents, file sharing forums and cyberlockers, the illegality of our actions seems relatively straightforward. However, if we want to make a backup of our music on our computer, or if we want to show a film in a retirement home and charge a nominal fee to cover tea and biscuits, or if we lend a CD or DVD to a friend, are these infringements intentional, and are we causing 'significant' economic harm? Such questions have repeatedly been raised within the copyright wars and a satisfactory answer remains illusive. Our experience of the media we purchase is increasingly managed and moulded by the use of anti-piracy strategies such as Digital Rights Management and public awareness campaigns, with little thought as to whether the IP principles that underpin them are themselves appropriate in the current media age.

Given that the gateposts are constantly being moved and definitions modified, we increasingly find that our everyday use of what we think we own has somehow become restricted. In such a context, whether or not we consider ourselves as pirates, we all need to consider piracy as a political issue. Not least because those who are able to label some people as pirates and others as entrepreneurial developers hold much of the power within society.

Intellectual property and the creative industries

The principle behind copyright is ostensibly to ensure the protection of society's capacity for the continued creation of artistic works, and to safeguard particular industries. These industries are indeed important for the economic welfare of Western society and their erosion should not be taken lightly: the creative industries are an important part of the economy in the UK and in Europe more generally. According to a study carried out by the independent consultancy firm TERA, commissioned by Business Action to Stop Counterfeiting and Piracy: 'In 2008 the European Union's creative industries ... contributed 6.9%, or approximately €360 billion, to total

European GDP, and represented 6.5% of the total workforce, or approximately 14 million workers'.² The study estimated that the EU creative industries experienced 'retail revenue losses of €10 billion', and losses of more than 185,000 jobs. Such figures illustrate how important these industries are to Europe, but also their importance to the livelihoods of the individuals who work within them.

But to accept that the creative industries are important for the health of the economy and the financial wellbeing of individuals does not automatically imply acceptance that the current ways of defining copyright and enforcing intellectual property legislation are the most effective way of safeguarding their interests. We should not blindly accept the efficacy of the anti-piracy measures that are being offered to us. Instead, we should question in whose interests the current IP regime operates, whether it is fit for purpose, and what other restrictions it might potentially be used to justify.

According to the World Intellectual Property Organisation (WIPO), Intellectual Property 'refers to creations of the mind' (there are stricter and more comprehensive legal definitions elsewhere, but this definition is sufficient for the purposes of our discussion here). The principle behind IP legislation is to extend proprietorial rights to the often-intangible results of human creativity and imagination, with the aim of allowing individuals and companies to profit financially from the fruits of their creativity, and thus ultimately to foster innovation and creativity within society as a whole. However, although copyright protection is often heralded as a device to protect the interests of artists, and to encourage continued artistic creation, its alternative function – of allowing an ever-increasing number of creative manifestations to be exploited for profit by those who buy up the rights - is usually downplayed. And if it is mentioned, it is usually discussed as a means of protecting the livelihoods of 'good honest working folks'. But the creators of music, film and other forms are not usually the principle beneficiaries of the profits made; and nor are the diverse range of other workers within the field. As with most businesses, the profits go to the shareholders or owners. But the economically driven business agenda of maximising profits is justified in the name of stimulating creativity and artistic production.

The Motion Picture Association of America (MPAA) website states:

Copyright laws protect the rights of people who create movies, TV shows, artwork and other products by providing the creator with exclusive rights to sell, license or otherwise use his or her creative work. In the case of movies and television, these laws help safeguard the creative works that support the livelihoods of the 2.4 million Americans who work as set painters, costume designers, make-up artists, writers, actors, directors and more.³

However, especially in the case of the film industry, it is not the creators who own the copyright, it is the corporations for whom the creators work (typically on a casual, short-term, precarious basis). It could, of course, be argued that with a collaborative medium like film that might make a certain amount of sense. A film is a communal effort, and it perhaps makes sense that the financial backers of the film hold the rights, so that they can see returns on their investment. But, as we see in the quotation from the MPAA, copyright is continually presented as protecting the rights of the 'creator', although this is far from the reality: the 'creatives' are very rarely the copyright owners.

Indeed, when it was first proposed in late 2011, SOPA was heavily criticized on the basis that the legislation would itself stifle creativity and innovation. The bill proposed allowing websites to be shut down on the grounds that they enabled copyright infringing activities without the owners even having their day in court. Such draconian measures are the antithesis of an open culture.

Furthermore, in the web 2.0 era, user-generated content is increasingly 'published' on platforms such as Twitter, Facebook and Instagram, and in this media landscape we all potentially become at once creator, distributor and consumer of content. Within this context we all regularly relinquish proprietorial rights over our creations, our thoughts and our ideas (sometimes unknowingly) - and frequently we allow large companies such as Facebook and Google to profit from what might ordinarily be considered to be our intellectual property. If Internet users must relinquish such rights en masse in exchange for the benefits of an effective search engine or a platform that allows us to connect with friends and family across the globe, the existing copyright system would seem to be far from fit for purpose.

With such tensions in mind, organisations such as Creative Commons (creativecommons.org) have developed an alternative to copyright that addresses the complexities surrounding IP and piracy in the digital age. Founded in 2001 – and underpinned by the philosophy that knowledge and creativity should be shared - Creative Commons allows users and corporations to choose licences that allow subsequent users of their work to use, remix, distribute and copy it to varying degrees, depending on the licence that the owner has chosen. Such gradation allows the creator greater freedom to decide in which ways their work is used and distributed after it has been released to the world. Creative commons licences are used by organisations such as Google, Wikipedia and Flickr - and even by the White House – and represent a serious alternative to the current IP system. There is no doubt that people who work in the creative industries should have their jobs protected and creativity should be supported, but it is doubtful that the existing IP regime is achieving this end. We are awash with economic arguments about the damage that piracy is doing to the creative industries, but my contention is that these arguments often veil economic self interest and a wish to maintain the status quo.

There are many alternative ways of funding and enabling artistic creation: the ability to use copyright to exploit a creative work for profit is far from being the only model. To take one example, in the UK the license fee system of funding the BBC is so well established that it is in danger of going unnoticed, and yet it has enabled a huge media organisation to 'inform, educate and entertain' for almost one hundred years. Although BBC works are copyrighted, the license fee demonstrates that different economic models exist that can enable the creation of both cultural content and jobs within the creative industries. Another example is crowdfunding – asking enthusiasts for small (to not so small) amounts of money to fund a project in return for anything from a CD or gig tickets to dinner with a film director. Although this form of funding is in its infancy, it offers a stakeholder model that can enable new plays, films, computer games, books and albums to reach their audiences. Public funding, though dwindling in many places, still provides considerable funds for the arts and culture in the UK.

Given the existence of all these other models designed to stimulate and support artistic creation, we must consider whose interests are represented by anti-piracy laws - and what unintended consequences might accompany them.

A common global culture

One of the principle standpoints of the UK Pirate Party is that 'everybody should benefit from the digital revolution' - a principle that brings me to the final reason why we should all pay close attention to the piracy debates.⁴ In many instances engaging in piracy is a way of facilitating greater participation in a global cultural sphere. In this context it is important to recognise that not all pirates and people who 'pirate' act in a similar manner, and nor are they motivated by similar things; moreover the way piracy is practised also varies from country to country. In some parts of the world piracy in legacy formats - such as DVD, SVCD and even VHS - is still alive and kicking. For instance, the Nigerian film industry, Nollywood, is famous for distributing official and unofficial films through the same distribution networks, often on poor quality VHS tapes. In countries such as India and China, physical piracy takes place in marketplaces and bazaars as well as online. Even if we examine digital piracy as a separate element, there is still a range of diverse practices. Files are shared online using specialist software, within password-protected communities, using cyberlockers, and via bit torrent and eDonkey. Some piracy is casual, some anti-establishment, some political, some opportunistic, some fannish and some forgettable. The one thing that piracy is not is homogeneous.

The development of the internet has undoubtedly contributed to the spread and growth of new forms of piracy. It has allowed for the global dissemination of books, films, games and TV shows whose audience was once largely restricted to a specific geographic area. As these cultural boundaries are tested, national products now reach international spectators.

The argument is sometimes made by anti-copyright campaigners that this encourages new markets for existing products, and that piracy might potentially help to generate new revenue streams for the creative industries. This is not an argument I wish to develop further here, but I would tend to agree that the proliferation of films and TV shows on the global stage does act to generate demand.

As US films, games and TV shows are increasingly marketed on a global scale, research has shown that audiences actually feel 'a sense of entitlement' to these US products. Audiences also see US cultural products as forming the bedrock of a 'common global popular culture'.⁵ This raises a number of contradictory issues. On the one hand it raises alarm bells: it smacks of cultural imperialism and an attack cultural diversity. If it is conceded that digital piracy does serve to promote US products in new markets, it means that it is helping to increase the dominance of the major record labels and Hollywood studios. We should all be concerned that this common global popular is not simply Americanisation by another name. On the other hand, piracy does allow many people access to products that were previously inaccessible or restricted. So - leaving aside for a moment the issue of whether or not this potential global culture is American - piracy can be seen as enabling participation in a culture to which non-US audiences may otherwise have restricted access, due to legal, political, and economic factors. While we might be concerned about exactly what constitutes this global culture, it is undoubtedly true that the pricing structures, geo-blocking and release window tactics employed by the creative industries create a global system of haves and have-nots. Given that there are still very few attractive legal alternatives to piracy, we live in a world where access to such global culture as exists remains deeply divided.

Thus we should pay attention to piracy because, for many, it represents a method of circumventing censorship or participating in a global cultural sphere. Just as we talk of a digital divide - a gap between those who have access to technology and those who do not - we need to think about the divide between those that have access to cultural products and those whose access is restricted. For we are not just talking about books, films, TV shows and games as entertainment: we must also think of these cultural products as routes to knowledge. Just as some increasingly think of access to the internet as a human right, we need to consider access to culture in a similar vein. Arguably this is something that organisations like EFF and the pirate parties of the world are beginning to do.

Conclusion

Despite the best efforts of organisations like the Pirate Party UK, the very use of the word piracy serves to tacitly persuade the general population that this is a debate that need not concern them. They do not break the law and thus have nothing to fear from any new legislation that might be imposed. This brings to mind old lines 'first they came for the Socialists, and I did not speak out, because I was not a Socialist'. Those in power withdraw the liberties of certain groups and others do not speak out because they are not affected. But finally: 'then they came for me, and there was no one left to speak for me'. We must learn from history. Young people do not spend all their time indulging in damaging behaviours, and their radical ideas will not bring about the demise of society. New technologies and mediums do not necessarily bring about the death of old ones.

Whether our concern is the state of the economy, the future of creativity, the accessibility of culture or the protection of privacy, we all need to take an interest in the debates that surround piracy. Shifting goalposts, technological developments and a corporate grab for widespread copyright ownership mean that many more of us could be considered pirates now than might have been thus labelled twenty years ago. We need to be mindful of changes in legislation that might cause us to fall foul of the law. We must ensure that in our zeal to protect intellectual property we do not pursue it at all costs.

We must also ensure that culture is accessible. Museums in the UK are seen as important and so they are free to attend, for all visitors, whether they are UK taxpayers or not. The BBC's license fee - even though it is an imperfect system that is undoubtedly anachronistic in many ways - is designed to ensure universal access to quality television. Furthermore, cuts in public funding to the arts and education pose just as much of a threat to the quality and continued existence of our creative industries as technological developments and piracy will ever do. For all these reasons it is important to be alert to the risk of the corporate privatisation of knowledge and culture.

Notes

1. World Intellectual Property Organization Website: www.wipo.org.
2. TERA. 'Building a Digital Economy', 2010: www.iccwbo.org/Advocacy-Codes-and-Rules/BASCAP/BASCAP-Research/Economic-impact/Building-a-Digital-Economy-TERA-study, p5.
3. Motion Picture Association of America (MPAA) website: www.mpa.org.
4. Pirate Party Manifesto 2012: www.pirateparty.org.uk/media/uploads/Manifesto2012.pdf p10.
5. Michael Z. Newman, 'Free TV: File-Sharing and the Value of Television', *Television & New Media* 13 (6), 2012, p468.