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The Paradoxes of Piracy

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Piracy is a seductive object of media and cultural research, and for good reason. Piracy organizes textual experience on a grand scale, it creates its own economies, it exemplifies wider changes in social structure, and it brings into being tense and unusual relationships between consumers, cultural producers and governments. Critical debate has mushroomed over the past decade, and research on the topic is now appearing across the humanities and social sciences, from literary and legal studies to international relations and organizational theory, adding to the lively conversation taking place on technology blogs, in corporate boardrooms, and in homes and workplaces around the world.

Today's piracy conversation is wide-ranging. It extends beyond the scholarship of intellectual property to encompass many different styles of analysis and engagement, including copyright reform advocacy (exemplified in the Creative Commons and Access to Knowledge movements), situated studies of pirate production and consumption (Karaganis 2011; Sezneva 2012; Rone 2013), and interventions that read piracy through a framework of cultural globalization and governance (Wang 2003; Pang 2006; Fredriksson 2012), to name a few trajectories. This critical counter-discourse is not settled but in a state of flux, with ideas and theories appearing and disappearing at lightning speed.

In this chapter I focus on a particular problem that runs through the current conversation – a problem of naming. Specifically, I want to consider what is at stake in the term 'piracy' itself. Given that copyright infringement is a thoroughly mainstream practice, common in every

nation, what are the implications of describing the media habits of much of the global population as piratical? My aim here is not only to make the usual point about the 'pirate' label – that it criminalizes everyday activities – but also to explore a more subtle tension *within* the critical counter-discourse on intellectual property, about whether a language of 'piracy' should be embraced, rejected, recuperated or rearticulated. It is my hope that, in addressing this tension head-on, we may be able to fine-tune our critical paradigms a little and make sure they are suited to the tasks at hand.

Piracy with and without intellectual property

Like anything else, the piracy question looks different from different angles. Consumers, producers and governments all have their own stake in the issue, and positions vary within and between each group. Disciplines also have distinct orientations. Seen from the perspective of media economics, piracy takes a certain kind of shape. This differs from the way it appears in literary history or the sociology of art. Seen through a freedom-of-information or communication rights paradigm, it morphs again.

It may therefore be helpful to situate this chapter within its own disciplinary context. I became interested in piracy in the mid-2000s as part of a project on audio-visual distribution in different countries. As a scholar of media industries, I was interested in how people access media content and the structures that underwrite this access. This meant understanding not only legal channels of distribution but also the many informal systems, from pirate street markets to online cyber-lockers, that exist alongside them. My main concern was the networks themselves and what kinds of experiences, exchanges and economic interactions they opened up and closed down.

Consequently, I have always been somewhat uncomfortable with the word *piracy*. Even though I use it all the time – there is no adequate alternative – it never captured the essence, nor the complexity, of media

systems. Piracy has many connotations but it is first and foremost a legal category: it brings everything back to intellectual property. By invoking piracy we implicitly frame media practices, which have diverse motivations and functions, as conforming or nonconforming to standards of authorized consumption. This becomes their characteristic feature. Yet, when viewed from the vantage point of everyday practice, this is rarely the most interesting thing about them.

To illustrate this point, let us consider an actually-existing media system: the indigenous audio-visual networks of Ecuador, which have been expertly analysed by the anthropologist Simeon Floyd (2008). Floyd's work documents the explosion of minority Quichua-language media production since the mid-2000s in the Ecuadorean Andes. Locally made DVDs, containing music, drama, street comedy and videos of religious events and cultural festivals, are sold cheaply at local markets 'alongside bootleg Van Damme and Jackie Chan movies' (36). This has all the hallmarks of a typical pirate economy, but it is also a number of other things. As Floyd's analysis foregrounds, given the segregated nature of Ecuador's media environment, this system represents one of the few avenues through which Quichua people get to see and hear their own language spoken on screen. Piracy is here bound up with a wider set of political and racial divides that shape both the formal media environment and its informal equivalent. The Quichua DVD circuits have also become the platform for a new kind of star system: performers build up a celebrity image via the DVDs, and local musicians use them to promote their live shows.

To describe all this as piracy is certainly not inaccurate – the disks are not formally traded, and little or no revenue returns to producers from retail sales – but it captures only one aspect of the system. It reveals little about relations between the Quichua DVD scene and the wider political economy in the region, where informal exchange is a feature of everyday commerce; nor does it capture the secondary economic activities generated by the DVDs.¹

¹ This is a point stressed by Floyd in his analysis: the term *piracy* is used rather ambivalently.

Approaching media systems through the paradigm of piracy – as opposed to seeing them as networks with a range of distinct, possibly contradictory, cultural and economic characteristics – also establishes a certain trajectory of discussion. Once this is in place the conversation usually becomes about the rights and entitlements of producers as opposed to those of consumers. This bifurcation is not always productive. It leads to a rhetorical dead-end where abstractions – the struggling artist vs. the wanton consumer, for example – solidify into identities, as though consumers did not also create and artists did not also consume.

Many scholars have been doing their best to change the conversation about piracy by decentring, without disavowing, the property question. The influential *Media Piracy in Emerging Economies* report (2011) by Joe Karaganis *et al* is one such intervention: it argues that piracy needs to be viewed ‘from the consumption side rather than the production side of the global media economy’ (i). Such a report, in foregrounding problems of access and affordability, is doing important work in establishing an evidence base and a conceptual tool kit through which we might think about media circulation differently.

Following this lead, it may be helpful to approach the piracy question through paradigms other than property rights, without necessarily devaluing the claims made along that axis. While both copyright defenders and info-libertarians foreground intellectual property in their discourse, albeit in different ways, we also have the option of framing the discussion in a way that puts intellectual property in its place as one way among many of organizing cultural economies, without necessarily buying into an anti-copyright argument: ‘These networks are doing A, B and C as well as X, Y and Z. They are opening up some things and closing off others. They are also copyright-infringing.’

So far we have seen how the term *piracy* entrenches a master paradigm – intellectual property – that should instead be dismantled. Discussions about media consumption, access and affordability end up as discussions about property. This is the case even when piracy

is invoked approvingly, in an attempt to reverse the polarities of the debate. The end result is entrapment within a *copyright-centric critique of copyright* – a critical project that cannot speak its own language.

There is no easy solution to this problem. Eliding the question of property is often as problematic as foregrounding it, because many actually-existing media networks are organized around their relation to copyright enforcement, even if this is not their most salient or significant feature. The best response may simply be to acknowledge this paradox, to bring it out into the open, and to take seriously its structuring power over academic and popular debates.

The impossible heterogeneity of piracy

Let us now consider another paradox that runs through today's debates. Speaking about piracy as a thing, as a coherent practice, makes sense in certain situations. Yet it can also erase the difference between media practices that would be better considered on their own terms. Hence piracy often becomes a stand-in for distinct and incommensurable activities.

Take the example of downloading an album via BitTorrent. Sometimes the knowledge of copyright violation will be foregrounded, producing its own thrill ('take that, Sony Music'). Sometimes the act will have no such association, because there is no normative horizon against which to judge it – as in the case of children who have enough technological know-how to download content but have yet to learn about intellectual property ('this is how we get music'). Sometimes the user is aware of the illegality of the act but this knowledge is crowded out by more immediate considerations ('I can't wait to hear this').

Consider some further examples of pirate activity which illustrate the diversity within this category: a middle-class teenager downloading movies from her bedroom in Brazil; an activist in Malaysia uploading files to darknets; an entrepreneurial DVD bootlegger in Russia for whom piracy is a business venture; a woman in Ecuador who shares

PDFs of cookbooks with her friends; an archivist in Belgium who makes a tactical decision to infringe copyright by putting a clip online; a DJ in New Zealand who makes copyright-infringing mixes for her Soundcloud page; and an authoritarian leader in Latin America who promotes illegal copying to undermine left-wing publishing houses.² These people are all pirates but they have little in common beyond the fact that they infringe copyright. There is no piracy here, only incommensurable *piracies* (Lobato 2008, 2012).

This second paradox of piracy, its impossible heterogeneity, has implications for political projects that seek to build a common identity around the pirate figure. The Pirate Party movement, for example, defines its ideal citizen according to a set of common practices – above all peer-to-peer exchange – that are taken to be representative of an emergent subjectivity.³

How viable is this project of identity-building? Its efficacy will of course be context-dependent. However, the diversity of practices falling under the banner of piracy do make it rather difficult to sustain a political theory of the pirate without falling back on particular, rather than universal, imaginaries of media practice. Not all pirates are created equal, and some kinds of piracy are more socially acceptable than others.

The imaginary that rises to the top in most cases is the reluctant middle-class pirate, embodied in the casual file-sharer or the creative user who ends up on the wrong side of copyright law.⁴ This is the ideal-typical subject of liberal copyright critique: the pirate whose innovation atones for his/her intellectual property transgressions. Lawrence Liang (2009) and Kavita Philip (2005) have drawn our attention to the colour-blindness of this redemptive discourse. As they note, debate

² In an essay on book piracy in Peru by Daniel Alarcón (2009), it is suggested that the Fujimori government actively supported piracy because it undermined the power of local publishing elites and intellectuals. Here we see piracy as both a driver of mass literacy, as a democratizing force, but also as one element in a dirty history of political repression.

³ McKenzie Wark's (2004) famous opposition between the 'hacker class' and the 'vectorialist class' comes to mind here as a pithy slogan for this binaristic imaginary.

⁴ Thank you to James Meese for many stimulating conversations on this topic.

around this figure has been playing out in a way that leaves other kinds of piracy – namely the commercial copying found throughout the street economies of the developing world – to one side.

After reading the work of Liang and Philip, or the brilliant critique of Eva Hemmungs Wirtén (2006), it is difficult to take seriously all the arguments mobilized by groups such as the Electronic Frontier Foundation. Yet liberal reformism is still regularly articulated in this language – which explains why the terms of the current piracy debate do not articulate well with a transnational cultural politics. Occasionally this contradiction bubbles up in dramatic ways that foreground the clash of values – as in the recent *Golan v. Holder* case in the US, which saw liberal critics of intellectual property maximalism arguing for the maintenance of antiquated and discriminatory treatment of foreign rights-holders, all in the name of the public domain.⁵

A few brave scholars have attempted a cross-cultural definition of the pirate (Dawdy and Bonni 2012), but the tension between imagined collective identity and the diversity of people's everyday practice is still largely unresolved. The anthropological evidence points to the existence of a range of 'pirate' media activities so diverse as to render the category meaningless. The more one looks at media practices around the world, the more complications and grey areas appear.

Take, for example, the curious case of non-pirate piracies – practices that look and smell like piracy but are actually licit. The case of Cuba

⁵ The *Golan v. Holder* case, which was decided by the United States Supreme Court in 2012, centred around the public domain status of thousands of early twentieth-century European musical works, movies and artworks which had slipped through the net of copyright protection as a result of the United States's antipathy to protecting foreign rights, and were only granted protection under the Uruguay Round Agreements Act of 1994. A coalition of advocates and end-users – conductors who wanted to retain the right to perform *Peter and the Wolf* royalty-free, educators who wished to screen early Hitchcock films to their students – had been fighting this restoration of rights for some time, on the grounds that it weakened the principle of the public domain. The Supreme Court eventually ruled against the challenge, confirming the protected status of the works. For copyright reformists, this was another assault on the commons – users, educators and archivists would now become pirates for doing the same things they had done freely before. But the works' earlier public domain status was in fact due to the fact that the US had long shirked its obligations to foreign authors; in other words, the free status of the works was a product of the same nasty copyright geopolitics that the progressives, in other circumstances, would probably lament.

is instructive here. As Anna Pertierra (2012) has documented, Cuba's electronic mediascapes are awash with unauthorized compilations of Latin pop music, blockbuster movies, talk shows and anime, which circulate via portable hard drives. None of this content is legally purchased, but it is not piracy because there is no official discourse of intellectual property protection in Cuba: copyright is considered anti-revolutionary. To make things more complicated, the Cuban state is actively involved in this informal media system, and has started encouraging and licensing local media rental businesses that have cropped up around the country: it sees this activity as a source of economic growth (Haven 2011). Is this piracy? Despite outward appearances, it is not.

For another Caribbean example we could look to Antigua and Barbuda, a nation that recently suspended US copyrights, thus potentially opening the doors to rampant copying of US-produced products. At the time of writing, there has even been talk of a government-authorized 'pirate website' (BBC 2013). But this suspension is actually part of a World Trade Organization-approved retaliation against the US over a registered dispute about an unrelated issue (offshore gambling). Any copying that flows from this suspension will be authorized and legitimate according to the institutions of global trade policy. From the perspective of international law, it will not be piracy at all.

This categorical confusion brings into focus the wide variety of people and practices that gather together under the pirate umbrella. Given that the pirate plays a number of incompatible roles – informational pauper, reluctant thief, thrifty innovator, grassroots entrepreneur, digital opportunist – an effective theory of piracy benefits from being culturally located. In other words, it is helpful to speak about piracy in specific rather than in general terms.

An exemplary model is Ravi Sundaram's book *Pirate Modernity* (2009) which explores the electronics bazaars of Delhi, where a specific reproductive practice becomes a central feature of political economy. For Sundaram, the pirate is emblematic of a new kind of postcolonial urbanism in India's metropolises. He uses the term *pirate* strategically,

as counterfoil to the liberal discourse of middle-class sharing. Brian Larkin's (2004, 2008) work on piracy in northern Nigeria is similarly located in a specific milieu that becomes a platform for a wider theorization.

Other scholars combat the semiotic instability of the pirate figure by filling it with contingency. Adrian Johns (2010) takes this approach, reframing the pirate as a central figure in a wider history of industrial conflicts and settlements. For Johns, piracy is a practice that precedes, and exceeds, intellectual property law, and one that must be understood in relation to its mutable contexts. The category of piracy is retained only to be filled with endless historical difference. As these exemplary studies illustrate, for a theory of piracy to work effectively, a way of dealing with the impossible heterogeneity within the category is needed.

After piracy

As media historians like Johns are keen to remind us, the piracy debate is not new – far from it. Yet the intensity of debate, the level of interest across the social sciences and humanities, and the take-up of piracy as a critical trope for a wider kind of theorizing suggest we have reached a turning point in the discussion. In coming years it is likely that the profile of these issues will increase further. Hence it is helpful to have a sense of where the conversation has been and where it is going.

Looking backwards at the recent history of critical scholarship, a general pattern in the evolution of a discourse may be discerned. First, a maligned term, *piracy*, defined against the ideological backdrop of copyright maximalism, becomes recuperated and revalidated. Various discursive moves then become possible: *positive inversion*, in which the negative space of piracy becomes filled out with experiential detail ('Who are the pirates? What else do they do?'); *normalization*, in which the term is de-fanged by extending it in all directions ('We

are all pirates’); *deconstruction*, in which the epistemological authority of the claim is interrogated (‘You say pirate, I say info-liberationist’); *dialectics*, in which piracy becomes an analytic lens through which to reread the contingency of legal structure (‘Modern economies and states are built on piracy, which is in turn a side-effect of modernity’); and so on.

These tactics are familiar to us from other contexts, such as postcolonial and queer theory. They form part of a venerable repertoire of critical argumentation which destabilizes a master language by prioritizing its other. This discussion has been generative, not just in opening up new perspectives on the media rights question but also in providing a critical category that may be rolled out in multiple directions. There are also other options available to us.

One alternative would be to bow out of the intellectual property debate altogether and return to the politics of media distribution via another analytic language. Doing so would potentially dissolve the opposition between pirates and legal consumers, if only to reconstitute the debate differently. From here it may be possible to sidestep some of the baggage that plagues the piracy discussion. This approach of strategic withdrawal has its risks – it cedes the discursive ground of piracy to the noisiest stakeholders – but it allows us to move beyond the copyright-centric critique of copyright, the producers-versus-consumers cul-de-sac, and the drama of rights claims.

The necessary ingredient in such a strategy would be a viable alternative language for discussing media access and distribution. There are already a few contenders in use. The language of media ‘sharing’ discursively transforms piracy into an act of benevolence – but because it implicitly shuns the commercial, it excludes the many for-profit piracies that constitute global mediascapes. It is also intimately bound up with the commercial ideology of social media, and therefore introduces a different set of problems (Kennedy 2013).

‘Informal’ is the term I have found most useful, at least for media industries analysis, because it imports into the discussion about distribution a longer history of structural theorizing (the informal economies

debates of the 1970s) and also sets up a discussion that is not, and cannot be, organized along moral lines. Informality is neither good nor bad: everyday life is a combination of formal and informal activities, transactions and interactions. Seen from this perspective, media systems take up ever-shifting positions along a spectrum of formality. Piracy becomes an after-effect of changes in regulatory structure.

This is a potentially helpful language for discussing media industries, as it allows us to explore the variable dynamics of different systems without invoking – or at least foregrounding – the moral drama of property. Yet it is less useful for other purposes; and unfortunately it carries its own baggage of colonial developmentalism. Other terms have similar drawbacks. The best option, then, may be to speak in multiple tongues simultaneously.

It seems that there is no adequate alternative to ‘piracy’, at least not one that will do all the things asked of it. For this reason, an expanded range of analytic languages is needed to debate the politics of information and distribution. Within this cacophony there will be distinct projects that may or may not require the invocation of the property Hydra: sometimes it will be tactically important to defend the ground of copyright infringement; at other times it will be more important to defer those debates and focus on other issues.

In the meantime we can look forward to seeing the discussion evolve in different directions. The paradoxes of piracy will remain with us, but so will the possibilities for engagement and critique that the term opens up.

References

- Alarcón, D. (2009), ‘Life Among the Pirates’, *Granta*, 109. Web.
BBC (2013), ‘Antigua Applies for Permission to Run “Pirate” Website’, *BBC News*, 25 January. Web.
Dawdy, S. L. and Bonni, J. (2012), ‘Towards a General Theory of Piracy’, *Anthropological Quarterly*, 83(3): 673–700.

- Floyd, S. (2008), 'The Pirate Media Economy and the Emergence of Quichua Language Media Spaces in Ecuador', *Anthropology of Work Review*, 29(2): 34–41.
- Fredriksson, M. (2012), 'Piracy, Globalisation and the Colonisation of the Commons', *Global Media Journal – Australian Edition*, 6(1): 1–10.
- Haven, P. (2011), 'Cuba Tries to Drag Shadow Economy into the Light', *Forbes.com*, 5 July. Web.
- Hemmungs Wirtén, E. (2006), 'Out of Sight and Out of Mind: On the Cultural Hegemony of Intellectual Property (Critique)', *Cultural Studies*, 20(2–3): 282–91.
- Johns, A. (2010), *Piracy: The Intellectual Property Wars from Gutenberg to Gates*. Chicago, IL: University of Chicago Press.
- Karaganis, J. (ed.) (2011), *Media Piracy in Emerging Economies*. New York: Social Science Research Council.
- Kennedy, J. (2013), 'Rhetorics of Sharing: Data, Imagination, and Desire', in G. Lovink and M. Rasch (eds), *Unlike Us Reader: Social Media Monopolies and Their Alternatives*. Amsterdam: Institute of Network Cultures, 127–36.
- Larkin, B. (2004), 'Degraded Images, Distorted Sounds: Nigerian Video and the Infrastructure of Piracy', *Public Culture*, 16(2): 289–314.
- (2008), *Signal and Noise: Media, Infrastructure, and Urban Culture in Nigeria*. Durham, NC: Duke University Press.
- Liang, L. (2009), 'Piracy, Creativity and Infrastructure: Rethinking Access to Culture', draft paper, *Social Science Research Network*. Web.
- Lobato, R. (2008), 'The Six Faces of Piracy: Global Media Distribution from Below', in R. Sickels (ed.), *The Business of Entertainment, Vol. 1: The Movies*. Westport: Praeger, 15–36.
- (2012), *Shadow Economies of Cinema: Mapping Informal Film Distribution*. London: British Film Institute.
- Pang, L. (2006), *Cultural Control and Globalization in Asia: Copyright, Piracy, and Cinema*. London: Routledge.
- Pertierra, A. C. (2012), 'If They Show "Prison Break" in the United States on a Wednesday, by Thursday It Is Here: Mobile Media Networks in Twenty-First-Century Cuba', *Television & New Media*, 13(5): 399–414.
- Philip, K. (2005), 'What is a Technological Author? The Pirate Function and Intellectual Property', *Postcolonial Studies*, 8(2): 199–218.
- Rone, J. (2013), 'Bulgarian Pirates: At the World's End', *Cultural Trends*, 22(1): 1–12.

- Sezneva, O. (2012), 'The Pirates of Nevskii Prospekt: Intellectual Property, Piracy and Institutional Diffusion in Russia', *Poetics*, 40(2): 150–66.
- Sundaram, R. (2009), *Pirate Modernity: Delhi's Media Urbanism*. London: Routledge.
- Wang, S. (2003), *Framing Piracy: Globalization and Film Distribution in Greater China*. Lanham, MD: Rowman & Littlefield.
- Wark, M. (2004), *A Hacker Manifesto*. Cambridge, MA: Harvard University Press.