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Schwarz, Jonas Andersson
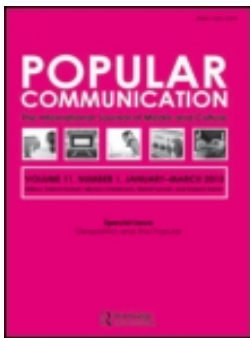Burkart, Patrick
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Piracy and Social Change: Roundtable Discussion

Jonas Andersson Schwarz, Patrick Burkart, Patricia Aufderheide, Peter Jaszi, Christopher Kelty & Gabriella Coleman

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ROUNDTABLE

Piracy and Social Change: Roundtable Discussion

Jonas Andersson Schwarz
Södertörn University

Patrick Burkart
Texas A&M University

Patricia Aufderheide and Peter Jaszi
American University

Christopher Kelty
University of California, Los Angeles

Gabriella Coleman
McGill University

This roundtable discussion draws together researchers with an interest of overcoming purely juridical treatment of piracy in their work. Christopher Kelty and Gabriella Coleman consider the aspects of cyberculture, which conflictually engage with intellectual property rights, through various communities of technology practice, including hackers. Patricia Aufderheide and Peter Jaszi's work on fair use addresses the growing opportunities for creators in the United States to utilize the tradition in their creative fields. Jonas Andersson Schwarz and Patrick Burkart, co-editors of this special issue, have researched user motivations and political activism around copyright and software patent reforms, partially explaining the emergence of dozens of European Pirate Parties, beginning with the Swedish Pirates in 2006.

This roundtable discussion was conducted using Etherpad software between August and November 2013 and has been edited for continuity.

Correspondence should be addressed to Jonas Andersson Schwarz, Södertörn University, Department of Media & Communication Studies, S-141 89 Huddinge, Sweden. E-mail: jonas.andersson.schwarz@sh.se

Question 1: Piracy can, of course, be appropriated not only as a legal category and a political struggle but also as an aesthetic, a method, or an ethics. Which one of these approaches do you find most rewarding, and why?

Patricia Aufderheide (PA): In the work that Peter Jaszi and I do, we find that some people assume the role of pirate as an oppositional stance toward a mainstream commercial culture repressive to creativity. Ironically, this approach brings new constraints to their work, since they accept the criminalizing labels for work that in fact is not criminal at all.

   If they are remixing and drawing from work that may well come from major media companies, they may very possibly be inadvertently employing "fair use." In interviews with individuals who created remixed audio-visual work, we found that they often believed they were doing something illegal. This had an effect on both their creative choices (e.g., choosing to draw from work they thought was more obscure, or drawing from highly commercial work for fear of abusing the rights of "real artists") and on their distribution choices. They often chose not to distribute work on major platforms such as YouTube. We found that when people did understand their rights under the law to use others' copyrighted works for transformative purposes in appropriate amounts, they were able to use their creativity more effectively. This feeling is enhanced by knowing that the "piracy" data circulated by the major media companies are utterly unsubstantiated, as Karaganis (2011) has shown.

Gabriella Coleman (GC): Some terms exhibit more flexibility than others, and "piracy" has been stretched far and wide. Utter "pirate" and from it cascades a set of often contradictory but potent images and sensibilities.

PA: This is precisely why corporate public relations (PR) people can exploit naiveté in the public to create what Patry (2009) calls a "moral panic."

GC: It is not so much that I prefer one approach—the aesthetic over the legal—but I find it useful to return to the term for the way it so richly shouts out a set of ideas. The term crystalizes and embodies the contradictions and possibilities over the contemporary struggles over production, consumption, and circulation. Its rich life in history, literature, and now digital circles, has prevented negative associations from fully colonizing it. It is why citizens dreamed up and instituted a new political party using its name.

   It is not clear who is winning the contest over the norms, laws, and rights over sharing. When it comes to the politics of access, these are the worst and best of times. Nevertheless, at least many do *see* this site as one of struggle and piracy is a linguistic ally making it more visible and for some, more compelling.

   Given the difficulty in making your message heard amidst a fragmented media landscape, I have always favored an approach that includes spectacle. Piracy fits the bill and has been heralded by actors actively taking the label to breathe new life into asserting a more long standing position about the right to access and share cultural and academic goods.

PA: This is a highly volatile game played by very sophisticated players. There are seemingly bottomless corporate funds dedicated to scaring people about the future of culture if "others" are allowed to "steal," and their fear is being channeled to fuel campaigns by media companies

to expand and extend copyright. That effort builds upon the good-faith investment many people have in copyright, especially the notion that they themselves can generate new material and hold copyright in it, and the good-faith ethical values that people express in honoring authorship. There is a move toward copyright "reform" in Congress. The incumbents want longer and more extensive terms, and more consistency in length and extent internationally. The counter-language does not exist yet.

Peter Jaszi (PJ): I have doubts about the usefulness of the "piracy" terminology. The fact that it is fairly venerable does not make it inevitable. The "P word" functioned very well for large rights holders as a way of collectively demonizing a wide range of practices. My sense is that students of media space, especially those with some commitment or predisposition to openness, should be avoiding this terminology.

If we are talking about the wholesale reproduction of copyrighted works in their entirety, then the most interesting questions are those that relate to the real economic effects of such practices. If the focus is on practices of selection and reincorporation of content into new works, then a cultural theory perspective may be the most enlightening—and economics has little to tell us.

PA: Peter's concerns are well taken, and we should be looking at the social constitution of the term and its implications for the generation and circulation of culture. In that regard, cultural studies is a central approach. However, economics is also very useful. Take a look at the studies done by Masnick and Ho (2012a, 2012b). They use economics but they also use reasonably reliable, if shallow, data. They demonstrate a growth both in revenues and in overall production of entertainment-oriented media produced on digital models. It is very important to develop research that can participate in a major trope of policy discourse, about the US international trade position.

Jonas Andersson Schwarz (JAS): The problem with purely quantitative economic analyses is that reality is rarely "either/or" but "both-and." Masnick's overviews are great but it is still impossible to say whether growth would have been even stronger or lower if it wasn't for file sharing and piracy. It would be a categorical error to resort to these counterfactual and alternative histories. It's more realistic to deal with questions like "In what ways is piracy performed and what positive and negative impacts does it appear to have?" As pointed out by Liang (2005) and Sundaram (2009), in poorer countries, pure-play file sharing often replaces the informal market for counterfeited DVDs. Further, it is more than likely that re-appropriation as well as pure-play file sharing can spark interests and satisfy palates that translate into future purchasing behaviors.

Still, that file sharers tend to be avid consumers of culture to begin with does not really say much about whether they would have paid for more culture "if it wasn't for file sharing." I would rather argue for a more holistic view on the entertainment industry, where the general exposure generated by file sharing makes it likely that the artists get remunerated in alternative ways. However, network effects such as these make simple statistical overviews really hard to make. This also explains why the debate so often returns to probabilities and estimates. And who is the ultimate benefactor in all these complex, interlinked revenue networks? The rights holder is often sidelined by telecoms providers and internet platform owners.

Looking at expenditure as part of disposable income proves illustratory. In Sweden, household spending on media has increased 50% in the last 30 years—but since the total disposable income has almost doubled during the same time, the overall share of money going to the media sector has

still declined from 9.3% in 1981 to 6.8% in 2010 (Wadbring, 2012). There are data that suggest that it is primarily telecommunication and internet infrastructure companies that stand to gain.

PA: One concern I have about stakeholders who are participating in this discussion of how to foster creativity and cultural generation for consumption and export is that new stakeholders in the Silicon Valley sector are increasingly becoming media producers/distributors themselves, and have a stake in establishing and maintaining tight copyright.

JAS: Yes, these are increasingly important players to look at. Here, the concept of "openness industries" (Jakobsson, 2012) is illuminating: These are industries that have relied on fairly liberal IP legislation. Things such as the "safe harbor" amendment in the Digital Millennium Copyright Act (DMCA) have allowed YouTube to avoid being censored or sued. But what happens when the economic interest in what is broadcast over YouTube becomes increasingly paramount to Google? We are currently seeing an increase in conventional advertising on YouTube. It is under pressure to make a profit and remunerate copyright holders. Interestingly, The Pirate Bay is also an advertising provider.

Christopher Kelty (CK): When I think about piracy, the approach that makes the most sense to me comes from Johns (2009), specifically the recognition that piracy is about a contest over legitimate economic activity. I am much less interested in the cases where piracy is figured as a form of cultural resistance or a political statement and much more interested in the places where piratical activity is either symbiotic with or indistinguishable from conventional economic activity.

There are two aspects to this symbiosis. The most obvious is the legitimacy of law. The actions of the major content industry trade associations have done more to damage the legitimacy of modern IP law than anything—the massive imbalance and over-reach that is involved in the last 20 years of expansion is pretty clearly a reason why it is so utterly disrespected, despite the fact that it might have defensible economic and legal orthodoxy behind it. The effect is that the last 5 to 10 years have seen a massive increase in the "intellectual property defense industry" (Johns, 2009, p. 498) and resulting global instances of enforcement. Such enforcement is necessary because the law has so little legitimacy. It is an open question as to whether enforcement makes law more respectable or the reverse, but it is clear that IP rights holders and trade industry associations now think the only way to make consumers respect the laws is to aggressively enforce them.

PA: I appreciate that there are tensions around enforcement, that there are areas in which tolerated use is common, and that there is a population that does not respect copyright law. However, I can't agree that IP law is "utterly disrespected." The work of Sinnreich (2010) and others on ethics in this area shows that people have a range of opinions and actions but take seriously claims of both ownership and authorship. My own research (Aufderheide & Jaszi, 2011) shows not only consistent overcompliance with copyright law but also a strong commitment to one's ownership rights under it. This appears to be linked more to a concern for moral rights than to copyright in all its complexity, but nonetheless bespeaks a powerful investment on the part of many people in copyright law's ownership provisions.

JAS: File-sharers I interviewed compared piracy to crossing the street on red. The Swedish *Cybernorms* project has also conducted research on the (lack of) normative grounding of law in this area, at least among those who participate in pure-play file sharing.

One aspect is particularly telling, in an era of individualization and strong incentives to personal consumer choice—one could call it "the self as glorious exception." The reasoning goes a bit like this: "Sure, the law is overreaching. Yet, if everyone totally ignored it, the industry would end up in a dire situation. People should pay for culture. I, however, only pay for that which I find valuable." When probing this reasoning further, ease and convenience are paramount as is the admiration held for the cultural product, but duty to pay for it becomes secondary.

Rationalization is practically forced upon users through system design. As one of my filesharer respondents put it, it is interesting how the same egoism and hedonism that the cultural industries cultivate "bites back." Customers see certain cultural experiences as something that we *must* have but have been driven to pay dearly for. In an era of abundance, we see ourselves as having a God-given right to entertainment; at least that is the attitude that is sold to us. Similarly, social networking sites are designed as if there is a civic prerogative to share one's thoughts, ideas, feelings, and recommendations.

PA: These issues of media companies' relationship to their customers in respect to copyright are very interesting and also complex. Large media corporations and their associations and lobbyists are definitely not simply demonizing their customers. And not all large media sectors are alike. In traditional mass media, there is a push to serve customers better digitally within the terms of paid or advertised media. Other media companies and enterprises find what has happened in the music industry to be alarming and chastening. Educational film distributors are coming up with interesting new digital bundle plans which serve faculty needs and also keep crucial educational revenues going. Certainly the Recording Industry Association of America has learned never again to sue small actors; they know they were burned badly by their own strategies. Meanwhile, networked media are figuring out how ever more efficiently to milk the information we freely give them, often benefiting enormously from a nonexclusive licensing arrangement with contributors.

CK: Another relevant aspect here includes practices of technical and economic exploration. Much of what passes for piracy is not innovative or experimental, particularly if we are talking about user piracy or criminalized sharing. This is certainly the zone that Karaganis (2011) documents. He is studying real piracy on a huge scale.

But if we are talking about people who choose to pirate *systematically* and, more importantly, to derive more from it than simply satisfying a consumer desire, then there is an interesting place to think about the economics. Take book piracy—especially scholarly book piracy. The pirates exploring the space of distribution and remuneration for stolen books are essentially filling a market abandoned by major book publishers: poor people who do not have much money but a strong desire to learn. Access to books is something that they will spend money on. But as with the case of patented medicines, the global book industries have forsaken any plans to use price discrimination to reach this market. As a result, book piracy thrives on both giving things away for free (exploring models of extraction based on advertising) and for sale (increasingly with new currencies). Meanwhile, scholarly books are skyrocketing in price and becoming less and less accessible in markets. Alongside this is the robust experimentation in independently produced content, funding models, and distribution schemes, most of which accept the fact that content can't be controlled either by excessive law or enforcement, trying instead to convert new forms of quasi-social capital into new forms of quasi-venture funding (e.g., donations, gifts, subscriptions).

JAS: It is clear that piracy makes for interesting case studies in price elasticity. In recorded music, there is now a plethora of pricing models, such as the per-play micropayments of Spotify, or flexibly priced self-releases on Bandcamp. The elephant in the room still remains. Marketing is not as easily solved through a do-it-yourself model. With the need removed to make physical items, you can achieve distribution without a big budget—but marketing still requires money, labor, or both. Marketing is *more* critical now, as the white noise of excess has increased. This problem is less easy to solve; there are attempts at improving auto-recommendation systems, but can discovery, serendipity, or editorial choice ever be fully automated? "Push" marketing—curation, selection, recommendation—is always needed. In a pure "pull" system, only that which is already known will be downloaded.

PA: Price elasticity is a fascinating point of study in an emerging environment. It is interesting to see pressures on pricing choices. The anti-Apple judgment for price-fixing ebooks will have a real effect on terms of circulation.

Patrick Burkart (PB): Gabriella, Pat, do you draw any links between the campaigns against "piracy" and what has happened to hacktivist dissidents such as Jeremy Hammond and Aaron Swartz?

PA: Some hacktivist dissidents are deliberately committing civil disobedience, and that some people violating copyright monopoly rights are also doing so, but then so are many other civil disobedience actors, including trespassers during Occupy, so I do not see any reason to link them.

Hammond hacked Stratfor to release documents he felt should not have been secret. It was seen and treated as a case in which First Amendment and journalistic values were pitted against national security.

I am not sure that the actions and eventual death of Swartz had much effect on the piracy rhetoric. The act that he committed that triggered the arrest and the chain of events that ended in his suicide was unclear in its motivation, and remains so. It fit with his other critiques of closed access, although this was a critique that went beyond copyright for him. He did consistently challenge the copyright regime's legitimacy, from an open-access perspective and played the role of dissident to a regime he believed to be against the public interest. He worked and lived within a copy-left environment. This subculture is rather small, and many who critique unbalanced copyright and negative and counter-productive aspects of copyright also find some legitimacy in the copyright regime and accept the validity of the concept of ownership rights.

Others who critique the copyright regime might well draw from a blank slate, depicting a regime in which copyright monopolies are either very short or do not exist, but they believe that in the real world rolling back history that far is simply impossible and therefore focus on what can be changed. While all mourned the loss of a brilliant talent, the group that mobilized protests to change copyright law upon his death was much smaller.

GC: In the last five years we have seen the explosive rise of a new type of technologist: the hacker activist and crusader. A decade ago there was barely an audible hacktivist voice. Today it has blossomed into a cacophony and includes the disruptive activism of Anonymous, the whistle blowing of Wikileaks, Chelsea Manning, and Edward Snowden, the growth of piracy as an illicit practice and the basis of a political party, the technological development of privacy tools

like The Onion Router, and liberal endeavors like civic hacking. To me, all of this activity has signaled the growing importance of what I call *weapons of the geek*, in contrast to *weapons of the weak*—a term anthropologist James Scott (1985) uses to capture the unique, clandestine nature of peasant politics. While weapons of the weak describes the tactics of economically marginalized populations who engage in small-scale illicit acts that do not appear on their surface to be political—such as foot dragging and minor acts of sabotage—weapons of the geek is a modality of politics exercised by a class of privileged and visible actors who often lie at the center of economic life.

Technology does not simplistically determine the politics of hacking, even if technological experiences usually inform its expression. As many ways exist to hack as avenues exist for hackers enter the political arena. From policy making to running political parties like the Pirate Party, from reinventing the law through free software to engaging in personally risky acts of civil disobedience, the geek and hacker are not bound to one single type of politics nor do they agree on how such politics should be accomplished.

So while I do see connections—hackers are often in deep debate over these issues—it is as vital to display their differences, especially since the politics of hacking are too often homogenized. The politics of hacking are often pinned to some simple and naïve libertarianism or slogan "information wants to be free." While there are quite strong libertarian currents, the examples of Swartz and Hammond demonstrate why we can't reduce this world to simple tale of libertarianism.

That said, what they all have in common is their political tools, and to some lesser degree, their political sensibilities emerge from the concrete experiences of their craft, like administering a server or editing videos. These skills are channeled into activities designed to bolster civil liberties, such as privacy. Geeks and hackers, even the clandestine Anonymous explicitly call attention to themselves via their volatile, usually controversial, political acts.

I suspect we are only at the dawn of hacker activist engagements. These already volatile and interesting times are only likely to grow more so as more geeks and hackers across the world enter the political arena.

JAS: The "weapons of the geek" metaphor highlights the interesting ways in which power and influence often seem to work online. This can also be expressed in the language of de Certeau (1984) and his civic politics of *la perruque*; an interplay of strategy and tactics that is often contradictory. Already in 2008, it was rather clear that entities such as The Pirate Bay constitute durable, influential, strategic endeavors in the file-sharing world (Andersson, 2009). It is not only a case of massive quantitative accumulation of granular micro-interactions generating durable structures; it also has a qualitative dimension in that if entities are strategically placed, massive accumulation is not even needed. Small actors—as long as they are placed in the crucial interstices—can generate massive change.

PB: The legal-ethical and aesthetic aspects of piracy studies are cross-cutting. I agree with Christopher that the legitimacy crisis of the IP law as dictated by the content industries is becoming a political sentiment. Dahlberg (2011) describes Swedish Pirate politics emerging in "hyperconnected" places like Sweden and Finland as being informed foundationally by an elaborated notion of privacy. The pirate attitude expects a judicially protected personal privacy that is virtually interconnected with others. Dahlberg suggests that the movement is set to reform the legal systems of these countries, and my own research (Burkart, 2014) corroborates this. Johns's

(2009) normalization thesis does not handle youth-oriented counter-cultural movements as well as it does elite power-brokering.

JAS: Sweden is conflicted with respect to political pirates, innovation, and commerce. Its part in international treaties and its *de facto* dependency on trade balances with the United States and the European Union makes Sweden as mired in the current copyright regime as any other small country. However, when looking at actual audience behaviors and civic sentiment there is rather weak support of the current copyright regime. After all, Sweden's hyperconnectedness and cadres of engineers/tinkerers have resulted in innovation both legitimate and illegitimate—the Pirate Bay, Spotify, μTorrent, Kazaa, Skype (see Palmås, Andersson Schwarz, & Larsson, forthcoming).

At the same time, the Pirate Party movement has failed to gain broad popular support within the populations of Northern Europe. There are likely several reasons. One contributing factor is the historical tradition of strong trust in the corporatist state capitalism and its welfare apparatus. Now, with the current US National Security Agency (NSA) debacle, it is quite telling how Sweden is revealed to be a key actor in the spying alliance, especially for its vicinity to Russia and for FRA (National Defence Radio Establishment or, in Swedish, Försvarets Radioanstalt), Sweden's own equivalent of the NSA. The Pirate Party in Sweden tried to raise awareness and generate debates about FRA powers in 2009, but the debate always seemed to fade from mass media attention. The two main parties, the social democrats and the center-right, both support military sovereignty, which, in turn, has been complicated over the last 20 years by overt collaboration with NATO. So maybe the geopolitics of the Swedish pirates is informed by nationalistic pride in all things security-related, with Russia as a constant background threat, and the government having to pander to the United States in all things trade-related.

PB: Jonas is on to something when he identifies a technological will to power shared by self-identified pirates. I had to see for myself what is happening in Sweden and Germany while completing *Pirate Politics*. Although Sweden is hardly on the wrong side of the digital divide, I observed many examples of blocked access to resources despite my expectations of fair use. I was prohibited from showing film clips in a media studies class without first making an uncertain and complicated petition to the university library. BitTorrent became more essential than ever to me, as it was already for my students. DNS blocking of North American television and film streams required my using a web proxy. Certainly by the end of the experience, it became more impressed on me that Sweden, and other countries in the European Union, have chosen to implement and enforce a harsher IP system than what exists in the United States.

PA: The United States, Israel, and the Philippines have fair use; Canada has just passed legislation vastly expanding and making fair dealing so flexible that its capacities may exceed fair use. There is discussion now throughout Europe, in a patchy way, of expanding copyright law to include provisions creating flexibility similar to the U.S. fair use provision. Hugenholtz and others (e.g., Helberger & Hugenholtz, 2007) have documented some of this. The British Prime Minister has said that the UK's economic future may hinge on adopting something like fair use. Fair use increasingly has become associated with innovation, which provides an important counter-narrative to the piracy rhetoric and creates new opportunities for legislative change. This certainly was a driver in Canada's reform, and it appears to be driving the debate in Australia.

The laws of most European nations have the right of quotation. This right appears to be both underused and rarely litigated. It appears to be ripe for interpretation by those who want to find more flexibility in copyright law. This is particularly true in Scandinavia. All Scandinavian countries have almost identical language in their copyright laws about a right of quotation, which leads to the possibility of a Nordic interpretation that expands the flexibility of copyright.

Your experience could be had in many universities in the United States, which is another example of the way that nonlegal and nonindustry actors who function as gatekeepers have an extremely powerful role in the system. We have begun to see that change with the adoption by the Association of Research Libraries of a Code of Best Practices in Fair Use for Academic and Research Libraries.[1] This code reflects a value shift in which librarians have come to see that constraining their patrons beyond the needs of the law is not being "conservative" or "safe," but actually is a kind of censorship. Peter and I believe that change comes with changed norms and expectations around them. Aligning actions to values core to mission often requires taking advantage of copyright law's flexibilities.

CK: I want to point out one thing that Jonas and Patricia have both mentioned in different ways. Contemporary piracy is deeply intertwined with contemporary innovation in IT and social media. Their creators and innovators go on to become part of a legitimate economy. There is something at the heart of the IT innovation economy that is also at the heart of the content wars and the piracy surrounding them.

I like Jonas's "exceptional self" as a way to understand piracy at the level of the consumer; but it has a counterpart at the level of the *producer* as well. Budding innovators, engineers, entrepreneurs are all bent on "disrupting" the economy (or politics), and so it is almost inevitable that they will seek out the edges of legality or beyond in a bid to disrupt. The similar logic would be "Nobody should encourage piracy, that's insane. But what I'm doing is *innovating*." Probe a bit further and it becomes clear that the existence of pirates neither exactly precedes, nor is it quite produced by such innovations—but the innovations could not exist without the piracy—we are really talking about a whole level of "mutualistic" economic activity.

In some ways the Pirate Party and Anonymous represent an innovative urge in the domain of political practice that makes sense because it mirrors innovation in the domain of IT and commerce—not just one that takes advantage of these tools as new affordances. Witness Liquid Democracy or the famous Icelandic crowd-sourced constitution.

PA: This "innovation economy" is a point that some policymakers and industry lobbyists such as The Computer and Communications Industry Association are delighted to make, and it is becoming a major rhetorical trope.

The question of motivation is very important, and the suggestions that people think of themselves as innovators, as discriminating consumers, and indeed other kinds of actors than pirates are extremely well taken. It does a great disservice to analysis to impose the notion of piracy indiscriminately, particularly when this is precisely what large corporate copyright holders do in order to tar all innovation.

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[1]See Association of Research Libraries (n.d.).

PB: In the case of geek politicians, Liquid Feedback/Liquid Democracy software has been developed and adopted by the German Pirates in the Berlin State parliament. The functionality of the software is intended to influence the organization of parliamentary democracy in Berlin State so that one day, the software eventually will supplant the operations of the chambers in direct democratic practice. The workflows that manage professional software and media development have been harnessed to promote rapid decision making in the Berlin Pirate organization in a software implementation of direct democracy. The Pirates believe this to be innovative in its own right. For example, the ability of a member to assign proxy and sub-proxy voting rights to other members through a software rule can promote efficient committee work and improve responsiveness. Liquid Feedback is an open source project with a shared development team, code base, *and* user base.

But pirate politics does not entirely break with some traditions—witness how the Pirates borrow from the playbook of the European Greens, for instance. Peter Sunde, The Pirate Bay co-founder, recently commented on a tendency among pirates to expect too much from technology for problem-solving at the expense of political participation and civil engagement (Solon, 2013).

JAS: What this discussion tells me so far is that the breadth of critical inquiry related to piracy and social change is remarkable, and worth narrowing. So far we have covered international aspects of copyright and fair use, technology and entrepreneurship, political appeals of copyright reform, and cyberculture. I would like to pose our next question for the roundtable panelists.

Question 2: In your view, what are the main differences between "pirate" formations, hacker/tinkerer formations, and formations of more traditional activists? What significant similarities are there? And where do you think activism is currently leading?

PB: Here, it is worth comparing the civil society groups in the United States dedicated broadly to cyberliberties to the swirl of party and civil society activism occurring mostly in Europe. They all share tinkering with technology as a doxa. But the participation of Pirate Parties in national and international parliamentary systems shows that the Pirates can influence new information policy more visibly. They have definitely been able to influence information policy. Pirate Politics emerges partly from traditional activist contexts and partly as a consequence of political overreach by technocrats, who stir up hornet nests with new threats to online privacy, access, and free speech.

The Pirate Parties International is an alliance of dozens of formal Pirate Parties, many located in Europe, working with many more informal activist groups in global civil society. The early leaders were Sweden and Germany, and in these countries, Pirate Parties formalized in the face of rapid changes in information policy. In the case of Sweden, the Pirate Party emerged amidst a confluence of legal and regulatory precedents for weakened online privacy and enhanced state surveillance, the spectacular trial of The Pirate Bay Four, and public debates over the disposition of file sharing under the national implementations of IPRED (Intellectual Property Rights—European Directive). German Pirates responded to the perceived threats by younger geeks from new and proposed information law and policy perceived to be illegitimate. I speak especially of EU software patents, enhanced data retention requirements for ISPs, and the Access Impediment

Act, which permitted national IP domain blocking. The mobilizations against these reforms show us that there is at least one kind of feedback loop visible between political decision-making about technology and communication policy and the cultural bases of tinkering and file sharing.

CK: If I think about hackers of the 1980s who inhabited bulletin board systems—then there is a really interesting story of overlap and differentiation. The guys from Cult of the Dead Cow (CoDC) were, in some of their activities and incarnations, hackers and pirates. But they were also software developers—CoDC's Back Orifice software is legendary, though distinct from something like Linux or Emacs for obvious reasons. Similarly, today there are specific communities engaged in something that might indistinguishably be called piracy or hacking.

To reiterate, there is a very deep connection between piracy and innovation, and this connection is not unrelated to the way certain economic forms become legitimate or are criminalized. Perhaps the question needs to be directed more towards the mechanism by which an activity/practice of some kind gets deflected into either hacking/activism or hacking/piracy.

PA: It's important to disentangle entities that are disrupting without attempting civil disobedience, even though they may end up in some kind of legal tangle, from active civil disobedience and from popular individual consumer behaviors. Both are happening. It would be helpful, especially in lowering the level of the counter-productive moral panic around copyright, to distinguish between them for the purpose of assessing intentions and consequences for social change. Finally, there are many kinds of civil disobedience associated with the digital environment that have nothing to do with copyright, where the piracy language has been so thoroughly coopted by large corporate stakeholders.

PB: Thank you. I'll pose the next question.

Question 3: What does the resurgence of fair use look like? What are the main factors contributing to the change?

PA: Fair use codes have been available for documentary filmmakers for a decade. Newer filmmakers build from the assumption that they can employ fair use into their plans from the start, knowing that they can now get errors and omissions insurance for their work if it accords with the Documentary Filmmakers' Statement of Best Practices in Fair Use (Association of Independent Video and Filmmakers, 2005). People referring to popular movies can incorporate a clip knowing that Kirby Dick got not so much as a cease and desist letter from the 134 uncleared clips in *This Film Is Not Yet Rated* (Schmidt & Dick, 2006).

Similarly, when Open Courseware designers consider how to do their work, they now ask questions about how to incorporate third-party material, rather than whether it can be included. Prior to creating their own code, the designers simply shelved the majority of courses that depend so critically on third party material that they can't be put online meaningfully without employing fair use. In the first year of the code alone, MIT uploaded 31 new courses. When librarians have to decide whether they can copy a videotape to DVD, they now can make a considered decision, with their own code. At University of Colorado-Boulder, they can depend on changed university policy because general counsel has agreed with their Code.

But more than that, it means that people who professionally use and value their fair use rights understand the relevance of policy issues and take action. Documentary filmmakers were active in the last two rounds of Copyright Tribunal consideration of exemptions for the DMCA penalties for breaking encryption, and have won the right to break encryption on DVDs for accessing material.

Question 4: What kinds of activism are still needed and who needs to step up?

PA: More people need to know their rights, and the actual risks, so that they can make decisions without being scared. There is work to be done in pushing back on copyright misinformation and alarmism, which can come as much from copyright holders overreaching—as it can from overstating copy-leftists; in working on opportunities such as the triennial exemption process for the DMCA; in documenting creative processes that employ fair use; and in pushing for a better conversation with ISPs that do takedowns without ever having a human involved.

JAS: There is a risk of praising the active user too frequently, hailing all deviation or disobedience as "resistance." Hence, criticizing the users in a non-judgmental way is important for cultural studies scholars. There seems to be a possibility of criticizing the end-users too, without resorting to an all-out dismissal of illicit file sharing. Exclusively framing end-users as victims only risks making the situation more entrenched.

Users tend to relate to what they perceive as injustices, and use these to justify their own file sharing. As Pat and Peter note (Aufderheide & Jaszi, 2011, p. xi), deciding to just "go ahead and do it" is rarely a solution for those who worry about taking risks. Perhaps those who dare to challenge the current system represent a kind of oppositional subject. But this perspective seems to depend on conspiratorial notions of "the establishment" as a unified, corporatist system. This perspective is frequently articulated from a male, technically proficient, young, and economically independent perspective.

CK: A great deal more activism needs to be done by academics, to be honest. Academics have a very strong stake in an alternative economy of value that is under threat in ways that are missed by debates about piracy, consumption and fair use. Debates about piracy in most content industries struggle with a particular model of remuneration and a particular understanding of the "value chain" that makes creativity exploitable—in a nutshell, the relentless question "How are artists to be justly remunerated?" Academics of course see this differently: Academic value is something that emerges out of and benefits from an environment of freedom, secured by stable salaries and particular expectations of not-directly-compensated work. Politicized piracy parasites on this idea, and essentially suggests that our value model should be extended to all culture—everything free for everyone. That is why it's easy to infer common causes between someone like Aaron Swartz and The Pirate Bay (if not quite Kim Dotcom).

But two things can be said: Academics generally do not understand the political economy of value in the university and often misrepresent the institutionally based nature of that value. Further, the ever-increasing pressure to find corporate partnerships—such as publishing ventures, joint start-ups, etc.—is transforming how value in the university is produced, bringing it more into line with the wider culture. We now openly discuss paying for peer review, open access publishing models in which authors pay to publish, "alternative academic" positions that do not

rely on the same culture of merit review and publication output, or new forms of remuneration for teaching, textbooks, and some kinds of research. There are more and more crossover forms of work in which commercial and university norms are hybridized.

Piracy is diagnostic of this situation because it idealizes the "purity" of a world where culture and science are free for everyone, and it demonstrates that at least some versions of that world *are* possible and *are* legitimate. There is no piracy in academia (as long as we are clear that piracy is distinct from plagiarism) and this fact should be part of the wider debate. Academics do not need to defend pirates "out there," but we need to do a better job of defending our own distinctive style of piracy—a virtuous form which is indistinguishable from good science, and has been centuries in the making.

PB and JAS: We thank the roundtable participants for their contributions.

REFERENCES

Andersson, J. (2009). For the good of the net: The Pirate Bay as strategic sovereign. *Culture Machine*, *10*, 64–108.

Association of Independent Video and Filmmakers. (2005). Documentary filmmakers' statement of best practices in fair use. Retrieved from http://www.cmsimpact.org/sites/default/files/fair_use_final.pdf

Association of Research Libraries. (n.d.). *Code of Best Practices in Fair Use*. Retrieved from http://www.arl.org/focus-areas/copyright-ip/fair-use/code-of-best-practices#.VMLACibjgdU

Aufderheide, P., & Jaszi, P. (2011). *Reclaiming fair use: How to put balance back in copyright*. Chicago, IL: University of Chicago Press.

Burkart, P. (2014). *Pirate politics: The new information policy contests*. Cambridge, MA: MIT Press.

de Certeau, M. (1984). *The practice of everyday life*. Berkeley, CA: University of California Press.

Dahlberg, L. (2011). Pirates, partisans, and politico-juridical space. *Law and Literature*, *23*(2), 262–281.

Helberger, N., & Hugenholtz, P. B. (2007). No place like home for making a copy: Private copying in European copyright law and consumer law. *Berkeley Technology Law Journal*, *22*(3), 2012–2035.

Jakobsson, P. (2012). *Öppenhetsindustrin* (Doctoral dissertation). *Örebro Studies in Media and Communication, 13*, 1651–4785; *Södertörn Doctoral Dissertations, 65*, 1652–7399.

Johns, A. (2009). *Piracy: The intellectual property wars from Gutenberg to Gates*. Chicago, IL: University of Chicago Press.

Karaganis, J. (2011). *Rethinking piracy. Media piracy in emerging economies*. New York, NY: Social Science Research Council.

Liang, L. (2005). Porous legalities and avenues of participation. In M. Narula, A. Sengupta, J. Bagchi, & G. Lovink (Eds.), *Sarai reader 2005: Bare acts* (pp. 6–17). New Delhi, India: Sarai/CSDS.

Masnick, M., & Ho, M. (2012a). The sky is rising! Techdirt. Retrieved from http://www.techdirt.com/skyisrising/

Masnick, M., & Ho, M. (2012b). The sky is rising 2: Regional study: Germany, France, UK, Italy, Russia, Spain. Techdirt. Retrieved from http://www.techdirt.com/skyisrising2/

Palmås, K., Andersson Schwarz, J., & Larsson, S. (forthcoming). The liability of politicalness: Legitimacy and legality in piracy-proximate entrepreneurship. *International Journal of Entrepreneurship and Small Business* (Entrepreneurship & Piracy special issue).

Patry, W. (2009). *Moral panics and the copyright wars*. Oxford, England: Oxford University Press.

Schmidt, E. (Producer) & Dick, K. (Director). (2006). *This film is not yet rated* [Motion picture]. United States: Independent Film Channel.

Sinnreich, A. (2010). *Mashed up: Music, technology, and the rise of configurable culture*. Amherst, MA: University of Massachusetts Press.

Solon, O. (2013, November 19). You can't beat politics with technology, says Pirate Bay cofounder Peter Sunde. *Wired.co.uk*. Retrieved from http://www.wired.co.uk/news/archive/2013-11/18/peter-sunde-hemlis-political-apathy

Sundaram, R. (2009). *Pirate modernity: Delhi's media urbanism*. London, England: Routledge.

Wadbring, I. (2012). Inflation eller deflation i mediekonsumtionen? En analys av människors medieutgifter och syn på mediers prisvärdhet. *Nordicom Information*, *34*(1), 37–48.