

Piratical Practices

“It is empirically true that the law of what we now call intellectual property has often lagged behind piratical practices, and indeed that virtually all its central principles, such as copyright, were developed in response to piracy. To assume that piracy merely derives from legal doctrine is to get the history—and therefore the politics, and much else besides—back to front” [1]

—Adrian Johns

Under the entry for “piracy” all of today’s dictionaries list variations on the same theme: the unauthorized use or reproduction of copyrighted or patented material. This notion is symptomatic of particular historical assumptions and cultural understating about our relationship to knowledge and culture. It’s these assumptions that lead to the invention of intellectual property and this understanding that has stifled creativity, placed unnecessary limits on technological progress, and encouraged the monopolization of culture by copyright regimes. Piratical Practices question these assumptions and challenge this understanding in favor of the most limitless, diverse participation in culture possible.

//The Invention of Piracy

The eighteenth century western world introduced a phenomenon, due largely to the advent of new technologies and their radical potential, which challenged western culture’s relationship to authorship, creativity, communication, and commerce. Like most things which threaten the status quo it was recognized as dangerous, ethically contentious, and unlawful—this phenomenon was dubbed piracy. This word had a history long before it became associated with printing. “The word *piracy* derives from a distant Indo-European root meaning a trial or attempt, or (presumably by extension) an experience or experiment. It is an irony of history that in the distant past it meant something so close to the creativity to which it is now reckoned antithetical.”[1] In the 5th Century BC Athenian world *peiratos* was used to refer to “sea-going coastal warlords” and was initially seen as honorable—that is until Athenian civility positioned itself in opposition to it. At this point, in addition to being “seagoing thieves,” pirates were “irritants to the civilized order itself.” A pirate became the antithesis to civil order, and so, when a particular behavior in printing began to threaten London civility, it seemed a suitable term. However, it was the Stationer’s Company, the first licensors, who were accused of piracy.

//The Invention of Copyright

“For it was a witty and truthful rejoinder which was given by a captured pirate to Alexander the Great. The king asked the fellow, ‘What is your idea, in infesting the sea? and the pirate answered, with uninhibited insolence, ‘The same as yours, in infesting the earth! But because I do it with a tiny craft, I’m called a pirate: because you have a mighty navy, you’re called an emperor.’”[2]

—St. Augustine

Often quoted, this anecdote was referenced by Richard Atkyns—a cavalier and print-reformer, who, during the Restoration in wake of the English Civil War, paralleled Alexander with the Stationers' Company. He said, "there is as much oddes, as between a Pyrate that robs a Ship or two, and Alexander that robs the whole World." The Stationers' Company was, at this point, a century old guild which held a monopoly on publishing. It was through their "Register" of books that the booksellers and publishers enforced their control over editions, or "copies." Atkyns believed the Stationers' maintained an internal regime that had no moral order, motivated by greed and corruption. His solution was to replace the Register system with royal patents. This would guarantee that only gentlemen would be granted the privilege, and precisely because they did not own the works, they would see to its protection. In order to make his case Atkyns needed to present the medium itself as a form of property. In response the Stationers' Company claim that the right over such property is inherently the authors—and so the notion of authorial property is born. From the ashes of this debate came the first copyright law, the Statute of Anne (1709).

//The State of Copyright

In 2007, Holden Lenz was eighteen months old, and, like most kids his age, it was adorable when he danced. One afternoon he did just that, and his mother, like any 21st century parent, captured the moment on digital video and pridefully shared it with her friends and family on YouTube. In the background of this 29-second clip was the nearly unrecognizable tune Holden was prancing to—"Let's Go Crazy," written by Prince and owned by Universal Music Group. When Universal caught wind of this arrogant act of piracy, they took action. Ms. Lenz found herself in court with \$150,000 dollars on the line. [3]

Copyright was created to provide incentive for creators to create without fear of being exploited, thus ensuring a culturally rich society. The Statute of Anne gave the author of a work exclusive rights for the period of 14 years, after which the work would pass into the public domain. Today, thanks to the efforts of corporate interests for whom intellectual properties are major assets, the copyright term in the US is the life of the author plus 70 years (for corporations it can be 95-120 years). To clarify, that's 70 (or 95-120) years after the death of the author when [s]he no longer has incentive to create.

// Economics of Scarcity + Information

"(...)both in theory and as far as empirical evidence shows, there is remarkably little support in economics for regulating information, knowledge, and cultural production through the tools of intellectual property law." [4]

—Yochi Benkler

In a market the scarcity of a good can be a key determinant of value. An economic good is "rivalrous," that is to say that the use or consumption of the good prevents another consumer from simultaneous consumption. Furthermore, in order to create another unit of a rival good for other consumers, social resources need to be invested. We call the cost of creating an

additional unit its marginal cost. A chair is rival because if I am sitting on a chair no one else can sit on it, additionally if one was to build a second chair you would need wood, which could otherwise be used to create a table, crate, etc.

In economics, culture and knowledge are considered information. Information is non-rival, it has a marginal cost of zero, and as Jefferson explained in a dispute over patents, it is the nature of ideas that, “no one possesses the less, because every other possesses the whole of it. He who receives an idea from me, receives instruction himself without lessening mine; as he who lights his taper at mine, receives light without darkening me.”[5] Anytime we set the price of information above zero, we are imposing limits, forcing on it an unnatural scarcity. This is done to provide incentive for its production. However, economically we understand that when we do this we create an inefficient market.

// The Present builds on the Past

“If I have seen farther it is because I stand on the shoulders of giants.”

—Isaac Newton

Isaac Newton was one of history’s many beneficiaries of piratical practices, having used it as a “back door” to publish some of his unorthodox religious texts. So it is fitting that his quote is the reference for an economic effect which further problematizes copyright and gives credence to piratical practices. Yochai Benkler explained in an interview, “information is both an input and output of its own production, you create new stories from old stories, new pieces of music from recombination of prior pieces of music, new pieces software from older pieces software, and the higher the price is of an information good, so as to create incentives for the past, the more expensive and inefficient it is for a second generation innovator to use the first generation.” [6]

// The Nature of Ideas + Digital Data

“Obscurity, not piracy, is the biggest problem writers face. In the 21st century, if you are not making art with the intention of it being copied, you are not making contemporary art.” [7]

—Cory Doctorow

Echoing Jefferson’s sentiment (a century and a half later), conceptual artist Lawrence Weiner said, “Once you know about a work of mine you own it. There’s no way I can climb inside somebody’s head and remove it.” This inherent quality of knowledge and culture, to freely spread across the globe for the improvement of the human condition, without limits, and without exclusive appropriation is mirrored in *information* technology. A digital file can be copied infinitely at no cost, this in fact is one of the major advantages of the technology and an indispensable factor of its success and potential. Copying becomes a digital virtue. Similar to the inefficient market created by placing the cost of information above zero, is forcing scarcity on digital files, because they too are non-rival goods. Despite this fact we’ve seen the influence of intellectual property regimes on artificial limits placed on digital technologies—from DRM and

other forms of “digital locks” to online legislation like the DMCA.

“First, it’s okay to copy! Believe in the process of copying as much as you can; with all your heart is a good place to start – get into it as straight and honestly as possible. Copying is as good (I think better from this vector-view) as any other way of getting ,’there.’ ” [8]

—Phil Morton

// In Closing

What began as a monopoly privilege, later become a copy “right.” This right, or list of rights, was initially earned and granted, and later became inalienable. These innate rights over a particular work eventually transformed into the notion of the work itself becoming a kind of property. This property later became a commodity and the primary asset for a hyper-capitalist culture industry. For the first time in this history, the presumed value of this industry and its antiquated models is being challenged. New technologies and a networked society have created a new relationship to knowledge and culture free from the limits and restrains of copyright and intellectual property. We can now understand piracy to mean a refusal to comply with the industry’s forced scarcity agenda. Piratical Practices positions piracy as a cultural duty; simultaneously displacing old models while encouraging new ones. These practices have been the basis for the transition from a culture of consumers to a culture of consumer/creators, an amateur-pop culture, a digital-folk culture, a media literate culture, a critically engaged culture, a participatory culture, a piratical culture.

—Nick Briz

1. Johns, Adrian. "Piracy: The Intellectual Property Wars From Gutenberg to Gates." University of Chicago Press, 2009.
2. St. Augustine. "City of God." published in the public domain, 1886-1890
3. Lessig, Lawrence. "Remix: Making Art and Commerce Thrive in The Hybrid Economy." The Penguin Press, 2008.
4. Benkler, Yochi. "The Wealth of Networks: How Social Production Transforms Markets and Freedom." Yale University Press, 2006.
5. Jefferson, Thomas. "No Patents On Ideas: A Letter to Isaac McPherson" 1813. Penguin Putnam, 1984.
6. Benkler, Yochi. Interview with Bob McChesney. Media Matters, Illinois Public Media. 21, Nov. 2010.
7. Doctorow, Cory. "My Computer Says No" New Scientist. 7 Jun. 2010.
8. Morton, Phil. "Distribution Religion" self-published, 1978.