

3.2. The Pirate Bay and the ethos of sharing

by Jonas Andersson

3.2.1. “Subtitles by Svinto”

In pirated products, surplus value is added through labour which, at first glance, appears entirely unpaid: the late-night tinkering of crackers, encoders, subtitlers, administrators, seeders, leechers. This is a mode of labour which roots is described in volumes like Pekka Himanen’s *The Hacker Ethic*, Eric S. Raymond’s *The Cathedral and the Bazaar* and McKenzie Wark’s *The Hacker Manifesto*; it thrives on mutual recognition, informal systems of meritocracy, and just plain, sheer fun and curiosity.

It is clear that this labour is dependent on already established prosperity; it is a form of ‘free’ labour which one can afford, given that one has got the required material setup as well as the time, skill, and intellectual capacities. Is it sheer coincidence that key labourers — and advocates — in this gift economy are high school-students, often from the rich West and equipped with broadband since near-infancy? In order to begin contributing to the gift economy one has to *be* gifted — materially and intellectually. In order to share, one must have something to share. Mutual benevolence is something which one affords; it takes relative prosperity. The mobilized resources of the file-sharing network come at an initial expense among the agents involved.

However, once the aggregated strategic entity — the network — is in place, it becomes something fundamentally beneficial for these agents.

That is why this recognition of affordance is not the same as saying that poor labourers in India would be barred from sharing — fortunately, schemes of sharing resources and knowledge, coupled with (for example) sustaining public instead of private holdings of seed patents, are common ways of easing one’s livelihood in this part of the world and a means to challenge the current hard-lined corporate patenting of genetic code. Communalism, collaboration and public sharing here constitute a living, long-established, interesting challenge to the conventional financial system — and a sphere which can still promise profit and growth. The Asian counterfeit economy (*real* piracy!) is a thriving, semi-hidden counterpart to the corporate economy — and the gains from this pirate economy are often more beneficial to the world’s poor. When it comes to copying of so-called ‘immaterial’ produce, the collective gain is so high that also those with modest margins of sustenance can afford to share that which is only multiplied and never reducible: culture, ideas, knowledge, information, software.

It is, however, illusory to believe file-sharing is entirely altruistic. It is

highly motivated by personal gratification and notions of comfort and instantaneity. Scratching the veneer of most human behaviour this is of course a far from unexpected finding. Still, most people would argue, through the simple physical phenomenon of *aggregation* sharing generates something which could certainly be described as a ‘greater good,’ something which the agents involved can make continuous use of and take pride in — in fact, they often even describe it as altruism.

We all want to contribute to a better Internet, just as we would like to contribute to a better local community or public debate — and the best way to do this at present is to share resources and make available more qualitative data; simply, to try make a personal contribution. This can be seen as a benevolent, humble intention which has roots deeply paralleled with the Internet ethos of free information exchange, distributed efficiency and adherence to protocols. However, when applied to cultural content which was earlier not duplicable on such a scale, copyright law suddenly makes this ethos highly problematic. Although the intention never was to cause controversy or discord, the issue has become drastically inflamed. Ironically, if there is any issue file-sharers at large seem to agree upon, it is that they would rather keep sharing in peace and have these added controversies out the window. Since that prospect seems *very* unlikely at the moment though, the response instead becomes to step up the sharing even more.

3.2.2. Greyer than grey

We are thus at a junction, an interesting clash of interests, played out in what some commentators label ‘the grey commons’: the grey zone where certain uses of cultural content are labelled “copyright infringement” or “creative appropriation”, depending on who you choose to speak to — the pro-file-sharing grassroots mavericks or the anti-file-sharing industry representatives; these are the most vocal participants, who are currently shaping the debate into its highly dichotomised character.

The attack on *The Pirate Bay*¹ was an attack on one of the recently perhaps most vital instantiations of this grey commons — what is more, it was one of the most vehement police raids in Internet history, plausibly initiated through the U.S. government exerting diplomatic pressure on the Swedish government. Ironically, *The Pirate Bay* is essentially a provider of metadata, a facilitator for sharing, yet the raid forcefully involved the shutdown of numerous extraneous, perfectly legal websites hosted on the same servers as the notorious file-sharing hub. More worryingly, the raid thereby also involved the temporary shutdown of *Piratbyrån*², the political, organisational and edu-

cational wing of the Swedish file-sharing movement.

What was so controversial about the raid against The Pirate Bay was — firstly — that it so clearly showed how out of tune the syndicated authorities and anti-file-sharing propagandists were in relation to the wider public, and how established, how everyday and normative, how casual and careless mass-scale file-sharing has become. The pastime of downloading, which was for a long while legal in Sweden, was with the 2005 implementation of EU copyright directives made illegal overnight, ripening the legal climate for the aforesaid crackdown.

Secondly, The Pirate Bay proved so deeply controversial because it showed that a fully working, useful, easily accessible and highly popular resource for pooling metadata about high-resolution, large-quantity compressed movies, games and music albums *is possible*, and moreover facilitated simply through the tinkerer/hacker work ethic outlined above. It cripples the industry that they still are not able to produce such a wonderful thing, and the impression of The Pirate Bay must in this sense implicitly be an emasculating one. Nothing humiliates more than being emasculated.

When we freely share content on the Internet, we are currently bypassing the established forms of the market place — generating, in effect, new systems of exchange. Appropriation and consumption are just that; it is all about the uses of media content*; turning it into something else, or using it beyond the means dictated by the producer. We could therefore ask ourselves: is cultural appropriation piracy?

Rasmus Fleischer and Palle Torsson — the authors behind the influential ‘grey commons’ speech — insist on talking about file-sharing as a horizontal activity;

Digital technology is built on copying bits, and internet is built on file-sharing. Copying is always already there. The only thing copyright can do is to impose a moral differentiation between so-called normal workings and immoral. (Fleischer and Torsson 2006)

They thus equate ‘grey’ with the blurring of the distinction between form and content that digitization brings about (‘zeros and ones have no taste, smell or colour’), the blurring of the distinction between copy and original, and with the blurring of distinction between consumers and producers (they actually hold that the demarcation between these two is ‘impossible to institutionalize’).

* I will not in this article go into the ontological discussion whether digital files should be considered “artefacts” or “ether/flow”; I could however take the opportunity to refer to my own research for further discussion regarding this.



Ill.: Thepiratebay.org

I see this refusal to distinguish between ‘consumers’ and ‘producers’ as a strategic, arguably even propagandistic move, in order to present a more hard-lined stance against the entertainment industry’s DRM initiatives and propaganda (that Fleischer appropriately calls ‘Mental Rights Management’). However, there is a risk that this attempt at a positive retribution of the productive nature of consumption will only blunt the arguments, and muddle the language.

Even more problematic is the further assertion that some proponents of file-sharing make — that we should refuse the term ‘content’ on the whole and instead talk about the Internet solely in terms of ‘communication’. I find this not only counterintuitive but devaluing towards the work of us actual media producers: I for one certainly do not see my own creations as sheer ‘communication’ — I value them as true artefacts of beauty and non-conformance, although they are entirely digital. Eminent theorists like N. Katherine Hayles have shown that also virtual objects have materiality. Belittling cultural products through falling into the jargon of hackers — using terms like ‘communication,’ ‘information,’ or ‘data’ for “old media” forms like films and music recordings — portrays the role of file-sharers as more innocent than it probably is. Although the downloaded material is formally different than pre-packaged, commercial artefacts, we are still dealing with works of art. ‘Fetching data’ definitely sounds more innocent than ‘copying artworks’: it is also through using this language that the activity of file-sharing Hollywood blockbusters is so conveniently headed under the more general, innocuous rubric “information wants to be free”.

Actually, referring to the downloaded goods as cultural ‘products,’ ‘objects’ or ‘artefacts’ is more risqué. This, because this language does tread significantly closer to the IP establishment mantra “downloading is theft”. Still, we cannot deny that the language makes sense: in terms of their *signified* (you may frown, but allow me using the term ‘content’ as a synonym here), down-

loaded objects are very similar to their pre-packaged retail siblings. Although their *signifier* (alternatively, 'form') is different, the digitized avi files are far from non-interfering with DVDs. We might be talking apples and pears here, but they are all fruits of delight, ripe for plucking.

The problematic term 'content' — much-hated by the pirates — is in this context a compromise between acknowledging the flow-like qualities of digital data and the segmented nature of separable objects. Sadly, the term is tainted since its inception by mid-1990s dot.com entrepreneurs who blindly favoured a commercial, one-way flow of information mode of Internet communication. Ironically, if we are to ditch the strict distinction between producers and consumers, maybe we should give the term a renaissance? After all, 'content' can these days be delivered by acne-ridden not-for-profit hacktivists just as well as by corporate drivelmongers.

I point this out, since the more outspoken proponents of file-sharing like Fleischer are arguing that the grey zone essentially favours a radical blurring of distinctions between cultural consumers and producers (an argument especially owing its heritage to Walter Benjamin). Seeing the goods exchanged purely as data facilitates this view.

However, I would still hold that what characterises the *public* in this arena is their role as consumers in the carnivorous sense — in other words, their role as active consumers, arbiters, decoders, rehashers, re-evaluators, and re-producers: vital cogs in the eco-system of cultural exchange. When the p2p enthusiasts label the work of fans, aficionados and boffins 'production' they are actually referring to what is still a phenomenon of consumption, albeit of an empowered and highly active kind; consumption so thorough, intense, dedicated that it goes into overdrive, becomes explicitly productive.

Consumption is thus in my view the primer; it is the true locus of culture — and yes, although it is always (co)productive to varying extents, it is rare to find these productive qualities being dedicated, directed and embodied enough to generate what we would commonsensically call 'cultural products'; lasting artefacts. Or as Fleischer says himself:

Production and consumption are not opposites. Rather, cultural production is an extreme case of cultural consumption. Production is what happens when the consumption goes to extremes in a specific, particularly fruitful direction. (Fleischer 2006)

What is new, in the context of what we presently have at hand, is that consumption nowadays becomes highly materialised through the textual nature of the Internet. Blogging, wiki-ing, coding are all activities that generate ma-

terial products. Therefore — surely, the definition is harder to make! Take the maze of blogrolls surrounding the TV series “Lost”, for example: Who ultimately becomes the author when the spin-off narratives (veritable games of Chinese whispers materialised through xml-coded text) feed back to the actual script-writers of the show?

A person might in some instances or parts of her life doubtlessly be a producer of objects which survive for posterity — yet she might in other parts of her life merely play the role of a fleeting commentator of the world — and in some other instances a silent witness.

3.2.3. Battle of the armadas

File-sharing is thus seen as controversial because of its key role in this blurring of old concepts; what was earlier seen as stable commodity forms and circuits of distribution are now turned upside down, what was once seen as a delineation of stable roles for the human actors involved is now severely called into question. Why would mp3 files necessarily replace retail CDs, for example? Wouldn't they rather replace radio*? Why would avi files replace retail DVDs? Wouldn't they rather replace a visit to the video rental shop, or two hours of Sky Movies, or — for that sake — the free DVD that came with Sunday's newspaper?

We need to revise our metaphors here. Digitization irreversibly changes the meaning of the twentieth-century language which the entertainment industry persists in using. For file-sharers, media consumption is casual yet deliberating. It is essentially *non-compliant*. Downloading a film is in most instances a way to preview it — if it is bad, it goes straight into the now all-familiar, digital recycle bin which is perhaps the most telling symbol of our era — if it is good, one might even perhaps go out and buy it on DVD! File-sharing becomes a consumer tool, which enables her to become more deliberating, more tactical — to the point where file-sharing networks themselves become the norm, the first step in the consumption cycle, where the Pirate Bay comes to constitute an essentially *strategic* entity, deeply threatening to the established industry.

Who, really, has the upper hand? And, again, what are the correct metaphors? Is the situation so severe that it has actually turned from one where consumers respond tactically to the strategies of the industry, to one where

* Even the iTunes business model is a recognition of this. iTunes is a marketplace for that which was once freely scattered over the broadcasting spectrum; ephemeral snippets of music (in practice, m4p files ultimately expire) at relatively low bitrate; copy-protected music videos — all *sans* sleeves or packaging, thus calling their character as actual artefacts into question.

consumers themselves have established strategic spheres of resistance and platforms for pro-active agency; *strategic sovereigns*? It is — if we are to believe the entertainment industry, which instigates police suppression on file-sharing only comparable in scale to crackdowns targeting drug cartels, trafficking and the like. Because when they treat p2p as a clear and present danger, they are essentially *reactive* to an already established phenomenon. The Pirate Bay instils fear in the corporate rights-holders because it not only symbolizes but actually makes actual part of a concrete, material mainstay of pro-consumerist, free sharing, free making-do with the products that used to be labelled the always-and-forever property of corporations, products that now somehow fail to live up to that labelling. Critics might call the establishment of such a ‘mainstay’ an opportunist move on behalf of the consumers — yet so we could describe all the previous moves made by the industry as well.

It used to be part of the “small print” that the content on the CD you purchased was still owned by the rights-holder, and that your act of purchasing merely comprised a license to temporarily make us of it. With music becoming fully digitized, its boundaries delimited as data files and instantly replicable, this contradiction becomes painfully obvious; even more so when the prime industry response has been to try to add artificial layers of prohibition to these data files (as in the example of Apple’s iTunes). Nowadays, everyone knows that anyone could copy that file, yet the industry persists with even more vitriolic rhetoric.

The genie is doubtlessly out of the bottle, and we are faced with a public which is more aware than ever of the controversies at hand, whilst being increasingly skilled in getting what they want — for free. Moreover, with entities like The Pirate Bay they have established the material means for continuing doing so and to keep arguing for their own cause. It is not the matter of ‘rights,’ like in the alleged ‘right’ of acquiring information for free; it never has been — instead, it is the matter of being materially enabled and of enlightenment in regards to the very conditions of this material enabling.

To put it bluntly: People copy because they can. Now deal with it.

1. See <http://thepiratebay.org/>. On May 31st 2006, Swedish police raided the server halls where this world-famous BitTorrent tracker site was hosted. However, the attack merely generated even more worldwide interest in the site — it was re-launched within a matter of days, seeing its web traffic soaring to unprecedented levels.
2. See <http://www.piratbyran.org/>

References / further reading:

- Fleischer, Rasmus (2006) “Vart leder kampanjerna mot datorberoende?”;
<http://copyriot.blogspot.com/2006/08/vart-leder-kampanjerna-mot.html>
Fleischer, Rasmus and Torsson, Palle (2006) “The Grey Commons”;
http://www.piratgruppen.org/article.php?id_article=714