

# CONSTRUCTING THE PIRATE AUDIENCE: ON POPULAR COPYRIGHT CRITIQUE, FREE CULTURE AND CYBER-LIBERTARIANISM

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## Abstract

*Digital copyright has become a key site of debate and dissent as a generation of consumers accustomed to file-sharing of proprietary content seeks to assert its rights more aggressively. A vocal anti-copyright movement has emerged, rallying around a free-speech defence of piracy honed in opposition to the hardline approach to intellectual property (IP) enforcement pursued by the US entertainment lobbies. This article discusses recent attempts at collective legitimization within this movement, with a focus on the implicit critiques of copyright that underpin pro-piracy discourse. I conclude that if this kind of popular copyright critique is to be more than a pet cause for early adopters, it needs to begin with an inclusive philosophy of access that does not reify the creative consumer as the normative citizen of the information society.*

When the courts shut Napster down there were, I think, 52 million Napster users. And 50 million had voted for each political candidate in the [US] presidential election. So there were enough Napster users to change the outcome of an election.

– Cory Doctorow, quoted in *RiP: A Remix Manifesto* (Gaylor, 2009)

This article considers various problems presented for research on media audiences by the practice of digital piracy. Specifically, I am interested the extent to which we can speak of a ‘pirate audience’, and how such a thing is constructed through both anti-piracy and pro-piracy discourse. While we are used to thinking of piracy as a form of deviant behaviour, it is nonetheless the default mode of media access for a significant proportion of the world’s population, with pirate distribution networks present in almost all nations and dominant in many. Hundreds of millions of viewers across the globe access pirate media on a regular basis, and untold quantities of film, video, music, books and software churn through online and offline pirate networks every minute of every day. How are we to make sense of this vast informal audience, and how does it make sense of itself?

The discussion that follows addresses these broader questions through a discussion of pro-piracy discourses found in online spaces popular with users of peer-to-peer (P2P) file-sharing technologies. P2P networks do not involve face-to-face contact, can be accessed from an infinite number of points and are indifferent to textual content. P2P users often have little in common beyond their engagement with a distributive technology of dubious legality. The audience formation produced by this technology is therefore a difficult object of analysis. To what extent is this even an ‘audience’? Does it have any sense of its own

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size, scale, ethos or nature? For the majority of P2P users who are sharing copyrighted content illegally, is there any kind of collective attempt to explain or rationalise their actions?

The argument offered here is that a shared discourse of popular ‘intellectual property critique’ (Hemmungs Wirtén, 2006) provides a discursive glue that binds together some elements of this inchoate audience. This energetic anti-copyright/pro-piracy movement is characterised by a set of arguments, assumptions and claims grounded in the ideal of informational ‘freedom’. This particular way of questioning the authority of digital copyright regimes has become a default position for debating intellectual property (IP) among many internet users, and it plays an important role in attempts to recast digital piracy as a widespread and legitimate practice. Highly visible in sites catering to P2P users and other online spaces where intellectual property and file-sharing are debated, anti-copyright/pro-piracy rhetoric constitutes a kind of ‘party line’ for this emergent audience. However, I argue that this particular way of thinking about copyright and piracy is grounded in a culturally specific understanding of internet freedom, and problems arise when this mode of copyright critique becomes the basis for a global movement.

The first half of the article considers the broad features of pro-piracy and anti-copyright discourse, its relations with other IP reform projects and some of the philosophical differences that mark this field. In the second half of the article, I discuss some problems with the set of ideas that are at the heart of this discourse, with reference to recent critical IP scholarship. Note that the issue of piracy is approached purely from the consumer side; I do not consider the impact of piracy on cultural producers or the ethics of piracy *per se*.<sup>1</sup> My analysis focuses on key claims, texts and personalities that are highly visible within this emergent scene, and on what these may reveal about how file-sharing communities – as imagined audiences – see, understand and represent their practice.

## Identifying vocabularies of copyright critique

Consumer activism around copyright and intellectual property involves an array of voices, from anti-capitalists to media reformers and free-speech advocates. It is informed by political affiliations ranging from liberalism to libertarianism and hacker ideology. While this is a very diffuse field, there are a number of recurring claims and strategies that constitute an informal collective philosophy for the pirate audience and a vocabulary for its advocates. This philosophy is oppositional in the sense that it is usually articulated in response to anti-piracy campaigns. Some of its key arguments are summarised in Table 1.

I describe this kind of language as popular in order to distinguish it from other kinds of copyright critique, such as postmodern theories of authorship or revisionist legal histories, which address an audience of academics and specialists. Popular copyright critique takes a different kind of approach, although it is often just as effective. For example, as Joe Karaganis (2011) notes, there is a lively ‘cottage industry’ of online punditry dedicated to debunking industry data on piracy-related losses. Every new industry-sponsored anti-piracy campaign is now greeted with a wave of derisive digital chatter across thousands of blogs, forums, listservs and websites. This discourse filters through to the comments sections of online newspapers, where any article about piracy or anti-piracy is likely to be rebutted with many of the claims listed above. *Wired*<sup>4</sup> magazine and websites like Boing Boing, Slashdot and Torrentfreak are other important hives for anti-copyright/pro-piracy communities.

These online spaces offer the closest thing there is to a collective mobilisation of the amorphous pirate audience. However, it is important to note that this ‘scene’ has specific origins, which inform its pirate philosophy. Popular copyright critique is grounded in the hacker ethos of the free software movement (Stallman, 2002; Wark, 2004) and an older generation of culture-jammers.<sup>5</sup> It celebrates the ‘creative’ powers of the internet-savvy

consumer from the developed world, and is largely uninterested in pirate practices that do not conform to this image (Philip, 2005; Liang, 2009). I will return to this point later in the article.

**Table 1: Key arguments of copyright critique**

<i>Anti-piracy truism</i> <sup>2</sup>	<i>Anti-copyright riposte</i> <sup>3</sup>
Piracy is an act of theft – ‘ <i>You wouldn’t steal a car</i> ’	Piracy is an act of love – ‘ <i>Sharing is caring</i> ’
Culture is property – ‘ <i>Protect creative works</i> ’	Culture is a public/non-excludable good – ‘ <i>Information wants to be free</i> ’
Artists have the right to make a living from their work – ‘ <i>Pirate tapes rob artists and studios of their rightful income</i> ’	Consumers have the right to freely share information through digital networks – ‘ <i>Fight for your right to copy</i> ’
Piracy is the number one threat to media industries – ‘ <i>What are you really burning?</i> ’	Outdated business models are the number one threat to media industries – ‘ <i>The future is open</i> ’
Piracy will be punished – ‘ <i>You can click but you can’t hide</i> ’	Piracy is normative; IP law is unenforceable – ‘ <i>You can sue but you can’t catch everyone</i> ’
Piracy supports organised crime – ‘ <i>Keep away from piracy: don’t finance crime</i> ’	Big Media are the real criminals – ‘ <i>RIAA: Screwing artists and consumers since 1952</i> ’

## Free culture and cyber-libertarianism

Looking more closely at these forms of popular copyright critique, we can identify a spectrum of voices and opinions ranging from liberal to libertarian. Towards the liberal end, one finds a moderate copyright reform movement frequently referred to as free culture.<sup>6</sup> Today, the key figure in this movement is Stanford Law Professor Lawrence Lessig, a prominent voice in IP reform who has attained superstar status within these circles. The author of books such as *Free Culture* (2004) and *Remix* (2009), Lessig is the co-founder of the Creative Commons, an alternative IP licensing system used widely in cultural institutions and creative industries. Although he is careful not to endorse large-scale commercial piracy, Lessig is an active defender of appropriative and creative reuse of content – remixing, mash-ups, the reuse of copyrighted material in amateur filmmaking and documentary, and so on. He has been a strong critic of IP maximalism: the increasing length of copyright terms, restrictions on the use and reuse of media content in digital environments, aggressive prosecution of file-sharers, the use of spyware and other forms of surveillance by media companies, and so on. Lessig and his followers view this thickening of copyright protection and enforcement as a threat to free speech and an unnecessary restriction on innovation.

Further towards the libertarian end of the spectrum one finds the Electronic Frontier Foundation, which has been campaigning for digital consumer rights since 1990. Founded by Mitch Kapor, John Gilmore and John Perry Barlow, this San Francisco-based organisation has played an important role within internet policy debates, and its position on information policy matters is strongly influenced by the hacker philosophy of ‘information wants to be free’. The EFF is active across issues such as Digital Rights Management (DRM), internet

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privacy, net neutrality and free speech rights for bloggers. It has been a vocal advocate for file-sharers, providing free legal counsel for users targeted in anti-piracy lawsuits. The following blog post is representative of the organisation's values:

File-sharers are characterized as shallow thieves, when in reality they're just fans who are using one of the most efficient technologies for distribution ever invented to explore creative works in the most convenient way possible. (EFF, 2010: n.p.)

For the EFF, free access to information is understood as a constitutional right. The liberty of the individual is the foundational concept in their philosophy of digital freedom. While the EFF is largely focused on US issues, their rhetoric has a lot of traction in other territories as well. There are now EFF spinoff organisations in other nations (see Electronic Frontiers Australia: [www.efa.org.au](http://www.efa.org.au)), constituting a global movement of sorts – albeit one profoundly rooted in a First Amendment tradition.

At the right wing of the pro-piracy spectrum, one finds a cyber-libertarian discourse that is less concerned with public-good arguments than with the perceived threat of state intervention in the digital space. This is the position of conservative commentators like Adam Thierer and Berin Szoka who, while espousing 'information wants to be free' rhetoric, are committed above all to the ideal of free enterprise. As Thierer and Szoka's manifesto (2009) puts it:

The cyber-libertarian believes that 'code failures' (the digital equivalent of so-called 'market failures') are better addressed by voluntary, spontaneous, bottom-up, marketplace responses than by coerced, top-down, governmental solutions.

This argument – a mainstay of internet-era conservative thought – differs significantly from the Digital Commons movement led by Lessig. Indeed, internet libertarians regularly dismiss the latter as cyber-collectivism or even cyber-communism. Copyright critique is therefore not solely a cause for progressives: in its US inflection, there is a very strong link with *laissez-faire* ideology.<sup>7</sup>

Elsewhere within this broad anti-copyright/pro-piracy movement, we encounter collectives that do not have a clearly defined philosophy beyond a deeply felt antipathy to IP. This is best typified by Anonymous, an amorphous collective of hacker vigilantes that recently hit the headlines for its DDOS (Distributed Denial of Service) attacks on Mastercard, Visa and Paypal, in retaliation for the decision to stop processing donations to Wikileaks. Before its Wikileaks action hit the headlines, Anonymous mobilised hackers around the world to shut down the websites of law firms involved in anti-piracy lawsuits. One such firm was ACS:Law in the United Kingdom, whose aggressive 'speculative invoicing' lawsuit against several thousand file-sharers has been extremely controversial (see Anderson, 2010). During the Anonymous action, ACS:Law's email server was hacked and its contents distributed openly via Bit Torrent. Many of the emails cast the firm and its litigation strategy in a very unflattering light, and this event was considered something of a coup among file-sharing communities.

These are some of the most significant strands of the emergent pro-piracy/anti-copyright movement, the most vocal and visible segment of the amorphous pirate audience. As we have seen, the foundation of this discourse is the ideal of internet freedom, whether framed in the moderate, reformist language of Lessig or the more extreme rhetoric of the cyber-libertarians. Many of these same sentiments are also being articulated in a new breed of anti-copyright documentaries made with the pirate audience in mind. In the next section, I look at some recent examples that exemplify this tendency.

**Greetings,**  
fellow anons.  
We have an new target in our movement against anti-piracy organizations across the globe.

ACS Law Solicitors  
Awarded for Excellence in Three Fields

- Hired Bitch for Anti-Piracy Movement
- Infinging on Personal Pirate Privacy for Anti-Piracy
- and last but not least...*Quote of the Day!*

"Big Whoop, it was only down for a few hours. I have far more concern over the fact of my train turning up 10 minutes late or having to queue for a coffee than them wasting my time with this sort of rubbish."  
- Andrew Crossley, Head of ACS:Law

Laz0rs will be coOrdinated from:  
irc.thefailship.net  
#savethepiratebay  
Quick Chat  
http://bit.ly/PayBackIRC

Our weapons of choice:  
Low Orbit Ion Cannon (Windows)  
<http://sourceforge.net/projects/loic/>  
Low Orbit Ion Cannon Java (Mac/Linux)  
<http://sourceforge.net/projects/javaloic/>

US EDT - 0830  
US PDT - 0530  
US CDT - 0730  
UTC/GMT - 0030  
AU EST - 2230

ACS-LAW.co.uk/91.103.216.62

Operation Payback

Source: <http://img208.imageshack.us/img208/4145/opacs4.png>.

**Figure 1: An image used to promote Anonymous's DDOS attack on ACS:Law**

## Free culture and pro-piracy documentaries

Over the past few years, a number of independent documentaries have achieved a high level of visibility within file-sharing communities. The 'anti-copyright' documentary appears to be a popular new genre for filmmakers. Some of these works, such as Benjamin Franzen and Kembrew McLeod's *Copyright Criminals* (2009) and the Danish documentary *Good Copy Bad Copy* (2007), are professional productions made for television broadcast. Others, such as the low-budget efforts *On Piracy and the Future of Media* (n.d.), are circulated informally, primarily through online streaming and BitTorrent.

Within this emerging genre, we see the variations in pro-piracy philosophy that were surveyed in the previous section, from liberal to libertarian. At the more moderate end is Brett Gaylor's 'open-source documentary' *RiP: A Remix Manifesto* (2008), a professional production funded by the National Film Board of Canada, which focuses on musical mash-ups as a case study in cultural innovation. *RiP* is structured around the following Lessig-inspired free culture manifesto:

1. Culture always builds on the past.
2. The past always tries to control the future.
3. Our future is becoming less free.
4. To build free societies, you must limit the control of the past.

*RiP* uses inventive montage sequences to demonstrate how creative production is always a process of textual recombination, tracing out lines of influence that connect Muddy Waters to the Rolling Stones to The Verve, and folklore traditions to Disney blockbusters. The film's central claim is that copyright law, in its maximalist form, suppresses the creativity of cultural producers whose work incorporates appropriative digital technologies. Thus these individuals are criminalised when they should be celebrated. Gaylor's primary case study for cut'n'paste creativity is Gregg Gillis (aka Girtalk), a Pittsburgh DJ/artist who specialises in copyright-infringing pop mash-ups.

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*RiP*'s defence of piracy differs subtly from the digital libertarian position. As in Lessig's work, it redeems certain specific forms of copying (principally appropriative remix, mashup and cut'n'paste) as 'creative', and in so doing distinguishes them from other forms of (commercial) piracy. Although the film is available freely online,<sup>8</sup> via streaming and download, Gaylor seems to shy away from endorsing commercial piracy. In some interviews, he endorses open circulation more for its instrumental efficiency than its inherent worthiness:

I'm dealing with a lot of people who are wondering how we're going to make any money on this thing [*RiP*], or even just recoup the money, when it's right there on the bloody Pirate Bay! But my answer to that has always been, it's not piracy I need to be afraid of; it's obscurity. The problem is not that people are ripping off my film, it's that nobody's heard of my film, it's a tiny little film. And that's why I was very insistent that my film be released under Creative Commons license, and that it be free to travel through those networks. (Gaylor, in Hatch, 2009)

As in Lessig's work, there is an unresolved tension here between the everyday practice of piracy, 'creative' copyright infringement as a part of cut'n'paste production, and the exploitation of piracy as a marketing strategy.

*Steal This Film* is another recent anti-copyright documentary with a different approach to this issue. This two-part digital documentary, which surfaced on file-sharing networks in 2006–07 and was reportedly downloaded 2.7 million times, follows the notorious Pirate Bay website and its sister organisation, Piratbyrå. Part I focuses on the May 2006 raid on the Pirate Bay headquarters by Swedish police at the behest of US trade representatives. Part II provides a broader historical context for extra-legal media circulation by discussing precedents from the early print era onwards. Featuring interviews with well-known scholars, including Yochai Benkler and Siva Vaidhyanathan, Part II opens with the following mock-anti-piracy 'warning':

Do not seek permission to copy this film. Anyone who fails to redistribute this work, or impedes others from doing so, will be ostracised. All devices capable of being used to share this film should be so deployed. We ask the audience to remain vigilant in promoting such activity and to report docile consumption to cinema staff. Thank you.

As this joke suggests, *Steal This Film* frames the practice of illegal file-sharing as an ethical obligation as well as a consumer right. The film features extensive interviews with young Swedes who talk candidly about their file-sharing habits, and attempts to normalise and legitimise the practice as being in line with both free speech ideals and the norms of Scandinavian social democracy. This attempt to 'mainstream' pirate discourse occasionally produces moments that gesture towards non-US traditions of open access and freedom. One sequence features a TV interview with an elderly Swedish gentleman who suggests that filesharing is part of the national right to public access in the same way that 'lingonberry and mushroom picking on other people's land' has long been considered an acceptable practice.

These two films pick up on many recurring themes in free culture discourse, while also revealing some faultlines in the field of popular copyright critique. In *RiP* and *Steal This Film*, certain themes and arguments appear again and again: the 'revolutionary' nature of peer-to-peer distribution; the challenge to existing business models; the demise of the mass audience and old media gatekeepers; the 'radical' potential of user agency and interactivity in digital cultures. Both films also offer a technologically determinist reading of digital distribution as a 'wave of change' that cannot be stopped or turned back. These are all common features of the popular discourse of anti-copyright and pro-



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piracy. Engaging and visually dynamic, these films make their points in a way that is easily comprehensible to viewers without a background in IP law. It is possible that they have done more to popularise the critique of copyright than any academic text, with the exception of Lessig's books.

However, I am concerned that the reflex use of this kind of popular copyright critique – whether in the moderate or radical vein – as a cookie-cutter template for copyright critique may not always be the best way to respond to anti-piracy crusades or to intervene in IP debates. There is a whole other world of critical thought on intellectual property issues that is not captured – and is frequently drowned out – by free culture or cyber-libertarian rhetoric. This is why it may be worth spending some time considering not only how these defences of piracy are articulated, but also what kinds of consumer activity fall outside their remit.

## Rethinking the 'freedom' of culture

While the previous section has looked at popular vocabularies of copyright critique such as free culture and cyber-libertarianism, it is now time to introduce some different forms of copyright critique that place the piracy debate within a wider spatial and historical context. The work of IP scholars such as Eva Hemmungs Wirtén (2004, 2006), Lawrence Liang (2009), Kathy Bowrey and Jane Anderson (2009), and Anupam Chander and Madhavi Sunder (2004) is particularly useful here, as it offers a progressive critique of IP regimes without being welded to a US-centric tradition of First Amendment/public domain scholarship. While sympathetic to the various copyright reform movements, this work reveals some latent problems and contradictions in the liberal/libertarian critiques of copyright that are the philosophical foundation of free culture and cyber-libertarianism. In this way, these critics are helping to open up a space for alternative forms of IP critique grounded in different kinds of appeals and subject positions.

The first argument against free culture and cyber-libertarianism as the central ways of constituting a critique of copyright relates to the way 'freedom' is defined. As we have seen, in many forms of popular copyright critique, freedom is understood according to a US constitutional notion of free speech (and is typically contrasted with the locked-down IP systems of Hollywood and Silicon Valley, in which information's value is a function of its scarcity). While free movement, free speech, freedom of association and, above all, free enterprise are fundamental liberal values, all of these concepts carry historical baggage and have been used as the pretext for injustice. It is on this basis that a number of critics endorse a rethinking of the use of public domain metaphors as the basis for such a critique (see especially Chander and Sunder, 2004). Eva Hemmungs Wirtén (2006) makes a related point, noting that appeals to informational freedom all too often mask a *laissez-faire* agenda. She concludes a recent essay on this topic by suggesting that, under *some* specific circumstances, 'culture is perhaps best served by not being free, by not being allowed to be used freely, by not being subjected to free markets, and by not being free from governmental interventions' (2006: 289).

This approach also seeks to problematise the romantic idea of the public domain invoked in copyright critique (especially in its liberal mode) by stressing that membership of the public sphere has always been a privilege, not a birthright. The public domain – as the 'other' of private property – is equally a product of IP regimes: it is structured to include certain things (such as traditional knowledge and customs) and exclude others (forms of cultural production in which Western industries specialise). The public domain therefore can be evaluated negatively as well as positively, as 'a sphere of free works upon which capitalists can draw without either seeking consent or drawing liability' (Chander and Sunder, 2004: 1343).

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A further problem with the discourse of informational freedom is that it renders invisible the material politics of who can access what and how they are likely to go about it. Free culture rhetoric tends to conflate public domain status with the actual availability of materials to diverse audiences, presuming that just because something is outside the sphere of IP protection, it is therefore available to anyone who could potentially benefit from it. But reducing the terms of the debate to a ‘hands off my iPod’ argument (Rimmer, 2007) obscures fundamental questions regarding who has access to digital technology to begin with, and what other kinds of privilege they enjoy. Hence the celebration of consumer autonomy that underwrites much popular copyright critique (fight for your right to copy) becomes a fetishisation of the productive activities of First World early adopters, as opposed to a more thoroughgoing examination of the structure of global intellectual property regimes.

This tendency of free culture/cyber-libertarian discourse is especially noticeable in polemics like *RiP*, and in the work of Lessig, where digital creativity is posited as a kind of redemptive process. As such, it functions as a point of differentiation between two kinds of piracy: remix and mashup on the one hand; and ‘uncreative’ commercial bootlegging on the other. As the Bangalore-based legal scholar Lawrence Liang has suggested, this distinction introduces a problematic ‘division of labour’, which works to redeem First World pirates at the expense of their counterparts elsewhere:

People working with initiatives like the Creative Commons tend to speak a universal language of creativity, while glossing over issues of political economy, development and equity. There is an assumption for instance that most people across the world have access to technologies that enable the process of ripping, remixing and sharing ...

... When one attempts to translate the terms of the IP debate into the contemporary experience of countries in Asia, Latin America and Africa, it is not easy to locate any easy indexical reference to ideas like the ‘digital commons’. There are challenges ahead of localizing the language of the commons through an exploration of ways in which cultures have shaped their relationship to knowledge and culture, and how such practices may inform contemporary sensibilities towards intellectual property. (Liang, 2009: 5–6)<sup>9</sup>

The depiction of developing world piracy in these films is quite revealing. Although most of *RiP* is shot in North America, it features some footage from China and Brazil. The China sequence is shot as part of a Lessig speaking tour, in which the Stanford professor extols the virtues of Creative Commons through a dazzling Steve Jobs-esque multimedia presentation. Viewers of *RiP* come away knowing nothing about the dynamics of piracy in the People’s Republic, nor does the film consider whether the US free culture argument is an appropriate one for that context. The Brazil sequence, also linked to a Lessig speaking tour, is more of a tropical fantasia. While featuring an interesting interview with Gilberto Gil, the Lula government’s minister of culture and a keen advocate of global IP reform, *RiP* consistently uses Brazil as a stand-in for an IP-free utopia of grassroots creativity. As Lessig says to his Brazilian audience: ‘You must remind us of what we have lost.’

The Orientalist character of this appeal is obvious, and the film’s desire to enlist the Brazilian experience (and the specificities of art forms like *bailefunk*) into a master free culture category – the ‘universal language of remix’ – is troubling.<sup>10</sup> *Steal This Film* is also problematic in this respect. Although it acknowledges a broader range of views on piracy, it still works to subsume all this into a universalist argument about the political potential of file-sharing technologies. And, as is the case with much free culture discourse, the fetishisation of the PowerBook-toting young man as the ideal-typical cultural producer of the digital age is explicitly gendered. As Laura J. Murray (2009) notes in an incisive



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review, *RiP* features only five women in speaking roles, compared with dozens of male lawyers, academics and activists. This gender imbalance is equally noticeable in the online anti-copyright scene, which is overwhelmingly dominated by young male bloggers and pundits. The implicit sexism within popular copyright critique – or, more accurately, the social practice of this critique – is one of the issues that the movement needs to address if it wants to be more than a pet cause for early-adopter men.

As Liang suggests, what is missing from popular copyright critique, as articulated by its leading proponents, is a broader consideration of the political economy of information, and how this plays out in spaces beyond the living rooms and laboratories of the developed world. This has been equally absent from most academic debates about copyright, which have an ethnocentric focus on ideas such as the Commons, the public domain and fair use. We are only now starting to see work that engages the question of piracy through a transnational political-economic perspective (see Karaganis, 2011; Liang, 2009), rather than through the hollow discourse of constitutional rights. There is an opportunity here to expand the terms of the piracy debate beyond its current deadlocked state.

## Conclusion

For many consumers, online discourse about film and music piracy is an entry point into a broader personal reflection on the relation between law, commerce and creativity. For this reason, there is much at stake in how these discussions are framed and the range of viewpoints that are articulated within them. Both sides of the piracy debate would benefit from moving beyond binaristic caricatures (Crawford, 2005): the struggling artist vs the thief; the open vs the closed; early adopters vs technological dinosaurs. A greater variety of subject positions and lines of argument is required, as these will affect how media piracy is discussed and reported in the future.

So far, the liberal copyright critique of Lessig and his followers has emerged as the most popular and successful mode of popular copyright critique. Backed up by a body of solid legal scholarship and enhanced by a splash of street cred through its affiliations with remix and mashup cultures, it is becoming the respectable face of middle-class copyright critique. But is the ‘creative digital native’ subject position at the heart of free culture itself an open system, or is it a site of class privilege? How many internet users really conform to the stereotype of the creative internet user? Should this identity be at the heart of a global movement?

Identifying some of the tensions inherent within popular copyright critique should not downplay the very real and important contribution that movements like free culture are making to IP policy. The perfect should not be the enemy of the good when it comes to copyright reform, for it is likely that many other forms of IP critique would not have been able to achieve the things the free culture movement has already realised in its short existence. At the same time, however, it is undesirable to limit the terms of the debate by excising certain forms of copying and privileging others. Future interventions in the piracy debates may do well to use the free culture and cyber-libertarian defences of file-sharing strategically, rather than as a default template for IP critique.

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## Notes

- <sup>1</sup> I have addressed some of these questions in other publications (Lobato, 2008, 2009, forthcoming).
- <sup>2</sup> The quotes in italics are commonly used in pro-copyright discourse. They can be found in past and present anti-piracy campaigns by the Motion Picture Association of America, the Australian Film and Video Security Office, the Australian Federation Against Copyright Theft and the Hong Kong SAR government.

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- <sup>3</sup> ‘Information wants to be free’ is often attributed to Stewart Brand. ‘Fight for your right to copy’ was used as a *Wired* cover line in November 2004. The term RIAA in the final quote refers to the Recording Industry Association of America, which initiated numerous file-sharing lawsuits in the early 2000s. The other quotes in this column are part of free culture and hacker discourse, and do not have any clearly identifiable provenance.
- <sup>4</sup> *Wired*’s reputation in this scene has suffered greatly since its involvement in the ‘outing’ of officer Bradley Manning as the source of the Wikileaks documents.
- <sup>5</sup> A prime example is Negativland, the San Francisco band/art collective led by Mark Hosler. See [www.negativland.com](http://www.negativland.com).
- <sup>6</sup> Free culture overlaps to a great extent with the open culture and copyleft movements. There are fine differences of opinion between these various movements, but these need not detain us here.
- <sup>7</sup> Adrian Johns (2009) makes this argument in relation to the history of pirate radio in the United Kingdom. For more on cyber-libertarianism, see Dahlberg (2010).
- <sup>8</sup> *RiP* has been popular on the festival circuit and is available on DVD. Viewers could previously name their own price and legally download the film, as per Radiohead’s pay-what-you-want distribution model, or stream the film at the National Film Board of Canada site. Gaylor also urges viewers to re-edit the film at home and to post the results of their efforts on a website, [OpenSourceCinema.org](http://OpenSourceCinema.org). Extensive sequences of *RiP* have been assembled from this donated content, which Gaylor promotes as a revolutionary challenge to established film production. However, visitors to the site are, of course, encouraged to buy the DVD.
- <sup>9</sup> See also Philip (2005).
- <sup>10</sup> The Danish documentary *Good Copy Bad Copy* is an exception to this rule. Though it features interviews with all the familiar faces – Lessig, Girtalk, etc. – *Good Copy Bad Copy* differs from the other anti-copyright documentaries by offering a more international perspective on IP debates. It features an extended section on the Nigerian video-film economy (Nollywood) and the Brazilian *technobrega* music scene, two booming cultural industries where IP enforcement ranges from weak to non-existent.

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