

Set the fox to watch the geese – voluntary IP regimes in piratical file-sharing communities

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There is a short, though revelative story I need to tell, before I start this text. [W]¹ is a highly secretive, elitist file-sharing network that specializes in music. Born on the ruins of [O], it is rumored to have all the finest, most exquisite and most complete collection of music ever written, hummed or recorded. Entry is difficult. Hopeful candidates need to pass an interview to prove that they know the rules of the site and those of music piracy. Detailed preparation materials are available that discuss such notions as ‘lossy’ and ‘lossless’ compression techniques, bitrate, transcoding, and so on. The candidates need to be prepared on the community guidelines and site-specific etiquette as well.²

The interviews are conducted on an IRC channel. When I felt prepared, I tried to join the channel. Instead of a merciless examiner, however, a sobering message greeted me:

“You were kicked from #[W]-invites by ZeroBot (Banned: Your entire country [Hungary] is banned from the invites channel. This is because of the very high proportion of users from this area being bad for the site - either leechers, traders, sellers and/or cheaters.)”

I laughed out loud. First YouTube, with its black, “This video is not available in your country” screens, and now the pirates also lock me out from their musical archives. They both seem to protect their respective resources from me, whom they perceive as a free-rider. YouTube does not think it can monetize either me or my fellow citizens, so they do not

¹ All the names of the different services are redacted to preserve their privacy.

² Similar paths led to the other communities discussed in this chapter. To some I was invited by a member, to others I passed an entry exam. The most difficult obstacle to getting into such communities in most cases is not securing an invitation, but rather knowing about their existence in the first place. As a member I conduct participant observation, and I reveal my researcher identity when conducting in depth interviews with key members.

license this territory from the recording companies. The pirate kings of [W] have the experience that users from this region take more than they contribute, and they are apparently not in the mood to tolerate free-riders and digital thieves amongst their ranks.

This struck me as odd. All the grand visions on the digital information economies describe information as an inexhaustible resource, where users do not compete with each other: rather than scarcity there is abundance. And yet, it seems, even piratical pools of stolen digital property are subject to some of the dangers facing traditional commons. If not over-grazing, then under-provision and abuse are issues, and they are obviously addressed by those who have some control over the entity that put the collection together.

I was greeted by a bot: a simple algorithmic daemon that checked my IP address and kicked me out without any further questions. But someone had to write that bot, others had to decide to ban Hungarian IP addresses, and still others had to detect that there was something fishy with users from this region. This simple, sobering message then, is only a sign of something bigger, more complex. It hints at a system of rules and governance mechanisms whose contours are only barely visible in the background.

It is these constructs that are the subject of this text. To begin with, I will bring three different examples of voluntary intellectual property (IP) enforcement in piratical file-sharing communities. I demonstrate that though the emergence of such norms may sound counter-intuitive, they are in fact logical consequences in the development of the underground file-sharing scene. I then move to discuss whether or not the long-term consolidation of such norms is harmonious with the default ethical vision of copyright. Here I show that current practices in the IP field are scattered in both the legal and the ethical dimensions, and stable (social, business) practices consolidate not according to their legality but according to whether they comply with the default ethical vision. Finally I suggest that voluntary IP regimes can be effective enforcement mechanisms that rights-holders should begin experiment with.

1. This is not the Sherwood Forest

[W] is not unique in the current peer-to-peer (P2P) file-sharing scene, neither in its secrecy, nor in its rules-based entry regime. Such a site only seems odd for those, who think that The Pirate Bay (TPB) is *the typical* site in the P2P piracy scene. The TPB and other *open networks*, however, only represent the public face of file sharing: beyond them exists a whole network of *closed, private trackers* that lurk in the depths of dark-nets. (Biddle, England, Peinado, & Willman, 2001)

This Janus-facedness of P2P file sharing is a direct consequence of the relentless legal pressures on file sharing in the last decade. The pure logic of network effects would suggest the emergence of a natural monopoly (or oligopoly) of file-sharing networks. The continuous attacks by law enforcement organizations, however, eroded this emerging single network –née Napster – into a few open and an unknown number of closed P2P networks.

The obvious difference between open and closed networks is that the former serve anyone, while the latter are only accessible to registered users. From this simple barrier to access a number of important differences arise, most importantly that the membership rules of a closed tracker enable the development of a community with its own set of norms and its own governance mechanism. An anonymous member of a public forum described the difference between open and private trackers with a very vivid metaphor:

*A private tracker is a close-knit community of upper-classes merchants and artisans, while a public tracker is some unsanitary open market with shady Arabian traders in the middle of U.S.-infested Iraq.*³

In the litigation-heavy post-Napster era, a handful of file-sharing hubs willingly accepted the enforcement challenge, and responded to the attacks of rights-holders by a combination of technological prowess, personal sacrifice, the politicization of the debate and a daredevil attitude. The strategy they employed was to provide a free and open platform to exchange everything, for everyone. They were also willing to defend these services technologically, in court and in the public arena. While The Pirate Bay is the poster child of these services, there are a few dozen other open networks that offer similar services. The success of such a strategy is, however, ambiguous. On the surface, open trackers seem to be indestructible. But in recent years, many sites shut down as soon as their admins (or site administrators) were served with

³ Sourced from: <http://filesharingtalk.com/archive/index.php/t-327504.html> - accessed May 2012.

lawsuits and court orders. Others, like The Pirate Bay itself, are blocked by Internet service providers (ISPs), and their ‘admins’-owners were handed prison terms and multi-million dollar fines. Though TPB is defiant, I wonder if its days are also numbered.

Open bittorrent trackers are, however, more of an exception than the rule. There exist only a handful of trackers that have more than a million peers, or offer more than a million torrents. And there are only a few dozen sites that are in the hundred thousand range in terms of both peers and torrents.⁴ To put these numbers in perspective, on Mayday 2012, the biggest Hungarian *private* tracker would be #9 in terms of the number of torrents amongst open trackers, and #2 (behind TPB) in terms of the number of peers participating in file-sharing. The fact that a Hungarian private tracker, catering for a Hungarian speaking audience, specializing in Hungarian speaking content is on par with the most popular global open trackers suggests that there must be a significant underworld within the file-sharing underground. (Zhang, Dhungel, Wu, Liu, & Ross, 2010)

The other response to enforcement efforts has been to retreat into obscurity and keep a low profile. Such a response, however, makes the systematic study of these networks almost impossible. Even finding out of the existence of such networks is problematic, not to mention the difficulty of undertaking an extensive study of the inner organization. This lack of access to these networks denies us some important insights on the social (re-)construction of Intellectual Property rules. On these networks possibly millions of users negotiate complex rules that govern the everyday life of these piratical communities. Some of these rules are there to make sure that even the marginally popular content is constantly accessible in the catalog; others are there so the (technical) quality of shared files remains acceptable; and many rules deal with how anti-social behavior is controlled within the community. And in at least some communities we also find some rather unexpected rules, such as voluntary restrictions on the exchange of certain works within the network. In other words, what is emerging here are the seeds of voluntary copyright regimes. Before discussing them further, I will present three examples that highlight how they work.

Example 1: specialized, international file-sharing community

[K] is an international torrent tracker catering for film buffs. It has a detailed set of rules on what can be shared via the site. In the manifesto of the site the first rule of [K] is made clear:

⁴ See the list of trackers indexed by IsoHunt, a search engine for files available through open trackers: <http://ca.isohunt.com/stats.php?mode=btSites>

[We do] not allow Hollywood/Bollywood mainstream. From its inception, [K] was designed as a source for non-mainstream and off-beat movies. We try to distance ourselves from the pervasive and easily available Hollywood (and Bollywood) mainstream and show people that a huge and exciting world of cinema exists beyond that. Therefore we do not allow any mainstream movies on the tracker. The definition of “mainstream” is very elusive and almost impossible to state precisely. It is within the discretion of the tracker moderators to decide on each specific case. As a general rule, we limit our definition of mainstream to Hollywood and Bollywood movies made after the 70s. Classic Hollywood movies are allowed and welcome - even though some of them may enjoy mainstream popularity, we have high respect for their artistic quality and importance in cinema history. We draw the line with the advent of the big-budget Hollywood blockbuster (with movies like Jaws and Star Wars) which brought on a rapid deterioration in the quality of movies. Modern independent productions are allowed and we might make special exceptions for new Hollywood movies from special directors. Also allowed are most "mainstream" movies from other countries - what might be a common mainstream movie in Hungary might be totally unknown elsewhere. For further information, see this collective forum thread for the discussion of the "mainstreamness" of specific movies. We are well aware that the enforcement of this rule makes a subjective judgment on the artistic quality of a movie that some people are bound to disagree with. However, this rule is the very foundation which has made [K] such a distinguished source for high-class world cinema.”

This general rule is further complicated and is the source of much sophisticated debate, not only by the continuous discussion of what mainstream is in the aforementioned forum, but also by a detailed list of authors whose specific works are not to be shared. It is for example forbidden to share Spielberg’s whole oeuvre, but it is OK to share the Coen Brothers pre-2001 films (but not films after 2001). Sam Mendes is forbidden, but pre-1998 Christopher Nolan is OK. Milos Forman is generally acceptable, but his 1999 film *Man on the Moon* is prohibited.

Some of these bans are the result of the work seen as mainstream. But other works are put on the list at the request of their producers. One of the admins of the site confirmed this in an interview conducted via email:

The short answer to [the question whether works are banned upon the request of a rightsholder] is Yes. We have been asked on a number of occasions if we could remove

a file by the producers of the work. Only earlier this week did I receive a request to remove something. Most often the producer will ask for it to be removed until a certain date or until they break even on the film. We have also "paid" (in ratio) producers to keep their work on the site.⁵

This short account offers valuable insight into the backroom dealings of piratical communities and rightsholders. It suggests that at least some authors and producers are willing to engage with pirates directly, and instead of asking lawyers to send takedown notices, they are asking nicely. And some pirates, on the other hand, seem to respect these requests, and try to negotiate deals that are mutually beneficial for the parties involved. Also, the last sentence confirms the long suspected fact, that at least some producers/authors are not only victims but also beneficiaries of the cultural black markets, and are willing to tolerate some (actual or perceived) losses as producers in exchange for some benefits in their capacity as users.

Example 2: specialized local community

[B] was a Hungarian file-sharing community catering the political extreme-right. It was organized along the political values of nationalism, social conservatism and national-socialism. It had a rich supply of Nazi propaganda, military history, anti-Semitic, racist literature and the cultural production of the local national-conservative musical and literary scene. Its manifesto stated:

The aim of the tracker is to share content that is nationalistic, or due to political reasons is banned elsewhere. Our aim is not to hurt the authors and producers of nationalistic works, so certain restrictions are in place to prevent that.⁶

Its uploading rules made it explicit that:

What you upload should conform to the nationalistic (Christian conservative, nationalistic/radical) values. You can upload works that contradict these values, but you should explain why you think the material is worthy for sharing (ie: it has some informative or deterrence value). If what you upload confronts our values, and no explanation is provided as for why it is worthy of sharing, the material will be deleted. The reason for this rule is suppress content that advertise deviance and other, liberal values.

⁵ Private correspondence, on file with the author.

⁶ Note, that networks of piracy have important anti-censorship dimensions, just as in many earlier historical contexts. See Coombe (1998) and Darnton (1982, 2003) for two very different sets of examples.

All nationalistic works are banned in the six months after their official release. If the six months passed, sharing these works is permissible. (This rule is in place to ensure that the livelihood of nationalistic authors is granted, and to make sure that the tracker does not hurt them financially. Six months should be enough for you to buy these works.). For works beyond the six months limit, please provide a link where the work can officially be bought, and add the following lines: ‘Support our nationalistic artists! If you like this CD/DVD/book/work, please buy it, and so support their work!’ (This rule is also to support the nationalistic artists.)

Example 3, local, mainstream file-sharing community

Székelys are ethnic Hungarians living in eastern Transylvania, Romania. Székely youth has set up its own file sharing service [C], supplying them both Hungarian and foreign films, music and ebooks. This torrent tracker includes the following rule in its section dealing with copyrights:

[C] does not support the sharing of works, whose gifted authors are active in Transylvania and who created something worthy of remembering in music or in film. Uploaders of such content have to have the proper authorization to share, unless the author authorized the sharing by him/herself. Such content will be immediately removed upon request of the author or rights-holder. If the content does not meet the aforementioned limitations, its sharing is supported without further limits.

These three file-sharing networks differ in every possible aspect. [K] is a highly specialized, prestigious, international network catering to 30,000 film professionals and fans. [B] was used by a few thousand political extremists to get their Nazi paraphernalia, military history and national rock fix, while [C] has 50.000 users and is a general service defined by age, ethnicity and geography. Yet all three arrived to a point in their development, where they felt that they needed to address Intellectual Property issues: so they started to distinguish between authors and works, and offer protection to some and not to others.

Why on earth did this happen? Why would the technologically sophisticated file-sharing pirates, safe behind layers of filters, anonymization services and privacy guarding Virtual Private Networks (VPNs); their servers, hosted in exotic countries; inefficient domestic law enforcement; and their sheer numbers would voluntarily restraint themselves in *anything*? In

order to answer this question we must first understand the role that the private trackers' rules serve.

Closed, private trackers measure their headcount in the tens, rarely in the hundred thousands.⁷ These are thus relatively small communities whose most important goal is to *maximize the value of the library of shared files*. The value of the collection is a function of at least three separate factors: (1) the 'completeness' of the collection as a whole, (2) the technical quality of the individual files, and (3) the robustness of the community that supports the collection. Every single action, taken in each of the aforementioned dimensions is to protect and nurture the collection, even if that reduces the usefulness of the network for the individual user, in some cases quite significantly.

(1) Protecting the collection

The mechanisms that serve to maximize the value of the collection are similar to how Lessig described the different layers of regulation in *Code 2.0* (Lessig, 2006). Some of the rules are embedded in the file-sharing technology, creating an architectural layer of regulation. This layer enables the development of a second, economic system upon itself; while a third layer of social norms and hierarchies makes the system complete.⁸

On the level of technological control we find the capacity to measure the amount of data up- and downloaded by each user. This measurement enables site administrators to detect and punish free-riders, who would rather just download and not seed the content for others. Such a feature (hard-coded into the technological layer) opens up the opportunity to set the thresholds for punished, tolerated and rewarded levels of user contribution, effectively introducing a price for consumption (download) and a price for labor (upload) into the system, turning "private BitTorrent communities [...] from computer systems into economic systems" (Kash, Lai, Zhang, & Zohar, 2012: p. 1).

If defined properly, such pricing mechanisms are able to ensure that older, less popular, niche, fringe or otherwise *archival* content stays accessible at all times within the community. The accessibility of long-tail content is a strong differentiating factor amongst file-sharing

⁷ Based on the available sources (like: <http://filesharingtalk.com/what-trackers-offer/>) the average headcount of the known closed trackers is around 47 thousand. User headcount is defined by the technical and human resources necessary to manage the community.

⁸ In Lessig's model law is a fourth factor. In an illegal, underground piratical file-sharing community, law only indirectly affects the internal organization of the network. On the other hand, there are written laws within the network, but these laws would be regarded as norms from Lessig's perspective. In the following I conflate the written rules and informal norms of these communities as norms, and preserve the law dimension to the category of national and supranational legislation.

networks. General, open networks can only rely on chance; individual users' commitment to sharing; or the law of large numbers when it comes to making content in the long tail available. A strict ratio rule⁹, on the other hand, may incentivize sharing in general, while ratio rewards for sharing marginal content and for fulfilling requests boosts the availability of marginal content. Such measures maximize the completeness of the collection as a whole. The same rules, on the other hand, severely restrict the freedom of the individuals to download anything s/he wishes, and therefore limit nomadic, explorative consumption patterns (Bodó & Lakatos, 2012), just like any other market mechanism.¹⁰

In the case of P2P file sharing, technology and logics would suggest a lack of scarcity and a subsequent freedom in consumer choices. Though this image may somewhat be true for open trackers, in closed networks, especially with strict ration rules, we see the re-emergence of artificial scarcity, in response to the perceived problem of free-riding and the under-provision of certain parts of the commons.

(2) The P2P digitization machine

The second factor that defines the value of the collection is the technical quality of individual files. File-sharing networks are not only efficient content distribution networks, but vast digitization machines as well. Most networks rely on the contributions of individual users to build an impressive catalogue of content not accessible anywhere else.¹¹ The technical infrastructure to create digital copies is more-or less accessible, but the production of high quality copies is far from trivial. Closed networks thus have to solve three closely related problems: the encouragement of users to create digital copies in the first place; help users so these copies will be of high quality; and filter low quality entries from user's contributions.

Closed trackers mobilize the community resources to address all these issues at once. These community efforts include very detailed and self-explanatory guides on the know-how of producing good digital copies; a multitude of forum threads where technical questions are asked and answered; and an army of community members ready to lend a helping hand to anyone asking. Sophisticated user feedback mechanisms are coupled with administrative

⁹ One, that, for example, expects 1 Mb to be uploaded for each downloaded Mb.

¹⁰ The already quoted *Kash et al.* study provides the empirical evidence that such an introduction of ratios affects what is being consumed within the community. In a previous study of ours we have found evidence that the chance to consume cultural goods free of charge encourage explorative, nomadic consumption, which is more willing to experiment with unknown cultural experiences. The *Kash* study suggests that in ratio based networks, explorative nomadism is more pronounced when the virtual cost of consuming archival, long-tail content, with low potential to boost the upload quota, is set to zero.

¹¹ See (Zhang et al., 2010) on the rate of cross-pollination of content amongst different private and public networks.

control to identify and ‘Nuke’ sub-par files. Closed file-sharing networks have the important role of coordinating and organizing some of the anarchic and uncoordinated digitization activity happening all the time on the net, by setting digitization standards and providing the quality assurance mechanisms.¹²

(3) No commons without a corresponding community

The library of shared files, which is in the core of a closed P2P network is a prime example of a regulated, peer-produced, common property regime, with “particular institutional forms of structuring the rights to access, use, and control resources” (Benkler, 2006, p. 60). The rights, described by Hess and Ostrom (2003) regarding the use of common-pool resources are all well defined in closed P2P file sharing communities. Membership restrictions limit access to the library; upload/download ratios regulate extraction rights; different administrative ranks and rights define the management rights; while the group of system administrators practice the exclusion and alienation rights. It is also important to note, that not only the use of the shared resource pool is regulated, but its production as well. Since all of the content-pool is hosted on the users’ computers and, a significant share of it is also digitized by them, additional rules regulate the production and the quality of the common resource pool.

Each underground knowledge commons relies on four separate, but closely intertwined technological infrastructures: (1) the resources (storage capacity, bandwidth) of individual users; (2) the torrent tracker, which coordinates the shared individual resources; (3) the search engine, which provides the meta-information on the shared resource, and (4) the online forums and other communication channels which enable interaction between group members. Most open trackers have one or both of the second and third infrastructures, but offer little in the fourth domain. This latter infrastructure is, however, the space where the community and the norm formation take place. It is on this infrastructure where the rules that differentiate ad-hoc, accidental, anarchic piratical libraries from well managed and regulated knowledge commons are negotiated. It is the participation in various online interactions that helps the lone, anonymous file-sharer to become part of a well-defined community. A forum commenter described the role of community as follows: “The casual downloader would not care about community. They just want to go to the tracker, find what they want, download it,

¹² The destruction of gigapedia (GP), a vast, underground academic and scientific e-text archive was important for this very reason. While the already digitized collection remains accessible through other venues, the community that put that collection together in the first place is scattered, and the post GP sites do not offer the same level of social support and control of the digitization process as GP did. If this situation persists, that will severely limit the continuous supply of high quality digital copies in the future.

and stop the torrent as soon as they complete the download. They're not interested in getting to know other users of the tracker as well. In private trackers, dedicated members will try to maintain a good sense of community. This starts with keeping torrents seeding as long as possible, making good comments on torrents, and participating in the forums and/or IRC. [...] Believe it or not I used to try to post in the Pirate Bay forums, but given the huge number of people who go there, the forum activity is quite lacking."¹³ This community, its rules, its governance mechanisms, its opinion leaders, its discussions, its collective identity is what can ensure the long-term survival of not only the commons in question, but also the practices that sustain the commons.

I believe that this community is an often overlooked factor in the studies on the motivations of file-sharers. There are many efforts that tried to identify the source of impulses that define the individual's attitudes on copyright piracy. Most of the studies focused either on the micro, individual level including: peer pressure (Becker & Clement, 2006); family/friend/superior influence (Svensson & Larsson, 2009); gender (Chiang & Assane, 2008); anonymity (Larsson & Svensson, 2010); individual socioeconomic background (Cox, Collins, & Drinkwater, 2010); and, motivational background (Bô et al., 2004; Goode & Cruise, 2006). There have also been a number of studies focusing on the macro societal influences: such as global income inequalities (Karaganis, 2011); market failures (Bodó & Lakatos, 2012); mass litigation (Depoorter & Vanneste, 2005); sources of IP norms (Schultz, 2007, 2009); and, mechanisms of gift economies (Barbrook, 1998; Giesler & Pohlmann, 2003; Leyshon, 2003; Skågeby & Pargman, 2005). Only a few studies realized that online communities that form with their own IP norms and ethics are probably the most important peer groups to shape the copy-norms of the individual (Beekhuyzen, von Hellens, & Nielsen, 2011; Cooper & Harrison, 2001; Downing, 2010, 2011; Lee, 2009; Rehn, 2004) .

Current copyright legislation and ramped up enforcement is still unable to prevent mass-infringement. Despite this, it certainly creates a climate where one feels the need to justify their actions, and situate IP related cultural practices within the macro-framework of IP legislation as well as any individual beliefs of rights and wrongs. Closed file sharing communities offer a platform to reconcile conflicting values, ethics and legalities, and serve

¹³ Sourced from: <https://www.thepiratesociety.info/blog/?p=971> - accessed May 2012.

as interpretative communities that distill their own ethics on the use of intellectual properties.¹⁴

Different file-sharing networks arrive to different conclusions on what they consider both proper and acceptable uses of IP. Some, such as TPB take a radical IP abolitionist position. They take the role of digital Robin Hoods who take from the evil rich (usually) American corporations and freely give the spoils to the poor. But the closed networks I cited seem to have left the Sherwood Forest some time ago¹⁵. As Downing noted:

...subcultural demands may construct conditions under which other goals predominate over consumer desires [...]. In other words, status within a subculture may be dependent not on consuming goods through any means possible but instead on consuming them “legitimately.”¹⁶ (Downing, 2011: p 768.)

The “legitimate consumption” in the aforementioned examples includes taking, to some extent, the interests of producers, authors into consideration.

I previously defined the borders of the community, as defined by the membership rules of the closed network; and the common resource pool as the one shared by the members of the community. The rules, however, expand the limits of both.

2. It takes two to tango

The authors and rights-holders may or may not be explicit members of the closed networks. If they are, they are more likely to represent their interests in the informal discussions on what

¹⁴ It is worth noting, that ‘being a pirate’ is hardly the most important component of the identity offered by closed networks. This is especially true within closed networks of well defined thematic focus: for film buffs or political extremists, the fact that one has to commit in copyright infringement in order to get access to an unprecedented resource pool is in many cases more of a cognitive and emotional tax rather than something one would boast about and focus her identity on.

¹⁵ An obvious task, beyond the scope of this article, is to track the development of pirate ethics, from its first formulation by the editorial of the Pirate Magazine in 1989 (“*A pirate is somebody who believes that information belongs to the people.*”), to the limits imposed to this free access by closed networks, or to the reactions of different piratical communities to the shutdown of Megaupload, a for-profit venue closely related to piratical activities.

¹⁶ Closed networks usually offer more than one, quasi-independent status hierarchies: one, defined by the distinction gained by sharing; one, defined by administrative rights on the site; one, defined by the knowledge capital within the thematic orientation of the collection, et cetera.

counts as legitimate consumption.¹⁷ But even if they aren't, some of the prohibitions protect their works as well. Studies on fan cultures show that in the case of transformative uses, the engagement of rights-holders with fans is a necessary component of the successful management of copy-norms and infringement issues. (Condry, 2004; Fiesler, 2007; Lee, 2009; Lipton, 2010; Schultz, 2006) The voluntary self-restrictions in P2P file sharing communities suggest that fandom has significant non-transformative aspects, and copy-norms in fan communities may regulate some non-transformative uses as well.

The restrictions on the common resource pool also suggest that these communities have realized that the P2P network, and the library based on it, is part of a larger ecosystem, which feeds it from the outside. This network can only maximize the value of the collection in the long run by imposing some restrictions. When it comes to the protection of the resource they directly control, they need to take into account the externalities of their actions, and subsequently protect that part, which they only indirectly control. By those sharing restrictions that redirect P2P demand to other, hopefully legal channels, piratical communities imagine themselves in co-existence with legal markets as well as with rights-holders. This is one, significant step beyond the usual descriptions of P2P black markets that suggest that piracy is either an autonomous domain, hostile to the legal markets in general, or is simply respond to the failures of legal alternatives. (Bodó & Lakatos, 2012; Karaganis, 2011)

These circumstances reflect an ethical disposition that is very close to how James Grimmelmann defines the default ethical expectation of copyright:

The basic ethical expectation of copyright is that authors and audiences respect each other and meet in the marketplace. Authors behave well when they create and offer works that enrich the audience's intellectual and cultural lives. Audiences behave well when they offer authors the financial support needed to engage in creative work. The exchange is commercial, voluntary on both sides, reciprocal, and respectful. (Grimmelmann, 2009: p 2014)

When authors do not exercise their options given by statutory copyright, and tacitly or explicitly tolerate their works being shared on file-sharing networks under certain conditions,

¹⁷ Authors can exercise a considerable influence on fan communities both positive and negative: For example, Metallica's stand against Napster or Trent Reznor's support of Oink still serve as reference points in IP debates many years later.

they ‘behave well’. When audiences redirect P2P demand to the marketplace, they also ‘behave well’. When authors and piratical audiences engage in a mutually respectful dialogue and in reciprocal exchanges, as we could see in the case of [K], they both ‘behave well’. The only catch is that this ethics is not universal, and it is not unconditional. It is situational and contextual: it only applies to certain authors, certain works, certain audiences and certain practices.

Statutory copyright is a universal but impersonal construct. It attempts to balance the general authors’ rights against the interests of a general public. Its limits, most notably the length of protection and its limitations and exceptions are also general and impersonal. This was not always the case though. Bottom-up, extra-legal, community based, voluntary IP rules are actually older than the first statutory formulation of copyright. The history of printing teaches us that early printers soon realized that they needed to curb unfair competition amongst themselves if they wanted the trade to flourish. (Bodó, 2011a, 2011b; Darnton, 2003; Johns, 2004; Khan & Sokoloff, 2001; Wittmann, 2004).

Such synthetic copyright regimes (to borrow the term from (Khan, 2002)) were personal (or rather, communal). As a courtesy of trade they reflected the consensus within the printing community on the permissible and undesirable behavior. They also defined the conditions, under which they applied, and under which they could be suspended.¹⁸ The emergence of formal IP regimes slowly crowded out such self-regulatory solutions. Up until the arrival of the Internet we find such community based, extra-legal IP regimes mostly at the social, cultural and political fringes, such as in bootlegging subcultures, amongst the bands catering the American counter-culture, or in various non-Western settings at the time when the cassette recorder arrived (Heylin, 1995; Larkin, 2004; Manuel, 1993; Schultz, 2006).

The rapid and violent changes in technology, cultural markets and social practices in the last decade created a set of practices that became illegal, despite their ethicality. In such cases the constantly re-negotiated informal arrangements were more flexible to adjust to the emerging new practices than the statutory IP regimes, anchored in multiple supra-national institutions. The emergence of voluntary IP regimes in piratical communities is an important signal, that even if they have little respect for statutory copyright, and are unwilling to honor every rights-

¹⁸ Wittmann describes the conditions under which German publishers could resort to piracy in the 18th century: “Even its most vehement enemies called pirate editions as justifiable when the original publisher’s prices were increased, their discounts were low, codes of conduct were broken, colleagues as well as the public were damaged, or if pirate editions were only distributed in regions where the original itself was not available.” (Wittmann, 2004)

holders' claim, they are very well aware of their responsibilities as members of a cultural community. Their decisions, however, are less based on laws, and more defined by the ethics negotiated within the community.

This development has at least three important lessons in it. The first one considers the relationship of IP laws and social practices in the near future. I would argue that as long as the main question of the IP field is not how people can be forced to obey the law, but rather under what conditions they choose to respect intellectual properties, the survival of different social practices will be a factor of their ethical disposition rather than their legality. In other words we should expect ethically robust practices to persist even if their legality remains in question, and unethical practices will face considerable public opposition even if they are found to be legal.¹⁹

The system is constantly in a state of flux. File-sharing services come and go, file-sharing technologies emerge, mutate and become obsolete, generations of 'pirates' turn on, tune in and drop out. Rights-holder attitudes change, as do market conditions. Legal alternatives arise, mature and disappear. In this rapidly changing landscape certain practices and alternatives are closer to the ethical standard while some are farther apart. Those that are closer to the default ethical vision will continue to enjoy public support even if they are not legal, and those legal practices that do not conform to the ethical expectations, will face considerable resentment.

The second lesson is about the reestablishment of communality into the mediatized, industrialized and commodified processes of cultural production, distribution and consumption. The rise of formal and impersonal IP regimes was followed by the rise of impersonal, global, media conglomerates that are more focused on financial returns than on their cultural mission (Hesmondhalgh, 2007; Turow, 2009). These entities not only connect authors and audiences, but also separate them: their interests are different from those of the producers, whose work they market, and from the interests of the audiences they cater to. They have their own priorities and financial interests in the business of cultural production

¹⁹ Hardly anyone shed a tear for the forfeiture of the Rolls-Royce Phantoms of Megaupload owner Kim Dotcom, but even less sympathy goes to the US rights-holder groups and authorities, as it turns out they raided Megaupload knowing that they will not be able to take the case to court. Sony found itself in a PR nightmare as it raised the price of Whitney Houston's songs minutes after her death. Spamigating (mass-litigating) companies, copyright trolls, corporations turning against their customers, companies and individuals supporting SOPA/PIPA/ACTA are just a few examples to practices that are though legal, because of their questionable ethical disposition had to face severe backlash.

and distribution, and so far they have been very successful in representing them in the formal IP frameworks.

P2P networks are heralded sometimes as dis-intermediaries, sometimes as new intermediaries, between authors and audiences. I would suggest that P2P networks create communities where producers and consumers, authors and fans can, and do interact. Through these interactions a mutual realization of consumers and producers may emerge that there is no ‘us’ versus ‘them’ in this conflict; and authors, rights-holders and other, commercial intermediaries are also part of the community, to which users, down-loaders and consumers belong. Piratical networks with voluntary IP regimes have the potential to abolish the artificial separation of producer and consumer, and reunite these two groups into non-industrial mode of cultural community, so characteristic of a pre-mediated era, where cultural is produced by those who consume it, and vice versa: cultural artifacts are distributed and transformed through the acts of ‘consumption’.

The final point is that voluntary IP restrictions in piratical communities are probably the most effective enforcement mechanisms that currently exist. Closed file-sharing communities have developed tools of social control in spaces where statutory copyright is irrelevant. The enforcement efforts that target these networks destroy not just the resource pools and the communities that emerge, but also the social controls that are in place. Paradoxical as this may sound, the aforementioned piratical communities may be the enforcement allies that rights-holders have been seeking all this time. In any case, they both have at least one interest in common: sustainable IP/cultural ecosystems.

Some foxes do watch the geese.

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