



**Accumulation, control and contingency:
A critical review of intellectual property
rights' 'piracy'**
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Abstract

This article problematizes piracy a) as a hegemonic discourse and technology of control, aiming to securitize late capitalist accumulation; b) as a practice developed by the multitudes that is compatible to post-Fordist mode of production and to neoliberal norms; and, c) as resistance to dominant mode of late capitalist production, distribution and consumption of immaterial goods. The article addresses and criticizes capitalism's 'organic' and strategic colonization of fundamental social commons, such as culture, intellectual goods, as well as human creativity and communication, by looking at the ideological, institutional and material processes that reproduce the capitalist 'machine'. This paper concludes by considering the possibility of overcoming the capitalist approach to commons, through the politicization of IPR as well as through the connection of the problem they pose to broader social perspectives, confronting capitalism — in its post political disguises — politically.

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1. Introduction

'Piracy' is a negative term describing the worldwide popular practice of sharing, distributing and consuming cultural and intellectual goods without authorisation. The 'affordances' (Jenkins, 2006) of new digital information and communication (ICT) technologies offer users many possibilities to develop a 'free culture' (Lessig, 2004) surpassing 'free' market laws, contrary to ICT industries' planning. ICT industries largely perceive piracy as a major problem with many dimensions: economic, social, cultural, moral, political. Intellectual property rights' (IPR) policies attempt to counter piracy on a worldwide scale.

Departing from critical literature (May, 2009; Hesmondhalgh, 2007; Harvey, 2010), this article aims at offering a critical review of IPR, as discourses and policies. Simultaneously this article aims at problematizing [1] the subversive potential of piracy, by theorising piracy in relation to late capitalist structures. Piracy is developed by multitudes of individuals across the world for various reasons that may entail class, cultural, identity, as well as entrepreneurial issues. Critical political economy scholars frame IPRs as 'rents', producing profit to IPR's owners [2]; Perelman [3] argues that 'IPR have become the financial counterweight to deindustrialisation'. IPRs are also critiqued (Žižek, 2008) to reflect neo-authoritative social doctrines. Examples of policy documents and IPR-related reports from the European Union are used, in order to critically demonstrate ideological and material aspects of IPR and anti-piracy rationales and strategies that are central in transnational economic policy-making. The article concludes by opening for further consideration, the need for politics in order to address the seriousness of the advancing of the current IPR logics and policies worldwide, through the production of a post-capitalist social imaginary, the articulation of given problems and demands, the organisation of political strategies, the denotation of adversaries and the construction of alliances (Mouffe, 2000, 2005; Dean, 2008).

2. A review of critical positions towards IPR and piracy

This section aims at bringing together different approaches theorising the discursive and material context of IP and piracy; besides its ideological construct, piracy is also approached as a concrete practice. IP is disclosed in its liberal origins,

contextualised in late capitalist context. The discursive origins of piracy — in counter-piracy policies — are contextualised in the (neo)liberal grounding of IP. The idea of the commons is foregrounded as the strategic resource that (post-Fordist) late capitalism relies upon. Finally, the practice of piracy is further problematized, in relation to the centrality of informal economic practices to neoliberalism.

2.1. *The political 'bias' of intellectual property rights*

IP regulations exist for several centuries, possibly since fifteenth century Venice [4]. Historical accounts on IP (May, 2009) explain that the meaning of IP varies according to different historical-political contexts. While copyright in its early stages of development concerned the limited rights of the owner/producer towards a public good, copyright nowadays relates to exclusive rights [5]. The length of the 'life' of IPR is also on the rise; in the U.S., copyrights last the lifetime of an author plus 70 years [6].

Law frames IP as a natural right. There is nothing natural with property because property is not a pre-political natural attribute to individuals. The naturalisation of property relates to liberal ideology [7] and is a political construction. Naturalisation is an ideological and also material process, obscuring the political acts that produce property regimes and property norms, and enclosing the power relations that organise property.

IP is formally addressed in the same terms as material property (May, 2009; Boyle, 2008). A problem with the material framing of intellectual products is that material products are scarce. Immaterial products are not scarce; furthermore, digital technology allows abundance. IP regulation attempts to construct artificial scarcity [8] to regulate intellectual resources and to reserve the exclusivity of exploitation rights to the rights' owner. In a capitalist market system, IP regulations aim at maintaining monopolies and in controlling the product prices.

2.2. *Piracy as a hegemonic discourse*

Hegemony concerns the 'naturalization' of particular norms, and meanings and realities, according to 'master' discourses relating to powerful social agents. 'Piracy' is a hegemonic discourse, criminalising popular media and technology uses, on the premise of intellectual ownership. Intellectual goods' piracy discourse rose in the early 1980s over the decline of music industry sales, and the advance of tapes and tape recorder systems. The development of the VCR also saw the expansion of the piracy discourse in claims of film industries on sale losses.

The development of digital forms of copying and reproduction, the advance of the Internet, the development of peer-to-peer (p2p) structures of file-sharing, along with the multiple forms of digital file compression triggered the reaction of cultural, creative as well as software industries over losses of sales' profit (both actual and potential) [9]. In a 2008 briefing paper for the European Parliament's Committee on International Trade, estimations on profit losses from piracy are provided by citing a report from the Organisation for Economic Co-operation and Development (OECD), stating that losses

'could have been up to USD 200 billion in 2005, this amount is larger than the national GDPs of about 150 economies. The figure does not, however, include counterfeit and pirated products that are produced and consumed domestically, nor does it include non-tangible pirated digital products being distributed via the Internet; if these items were added, the OECD report concludes that the total magnitude of counterfeiting and piracy worldwide could well be several hundred billion dollars more' [10].

Piracy causes profit losses. Critical research though demonstrates that estimations such as the above are exaggerated. Lessig [11] has shown that downloading does not imply the actual buying of a given album (in the case of music) that was downloaded. Industrial analysis equates each download performed to the theft of an equivalent copy of a given artistic work (depended on its format — cd, dvd, etc). Furthermore, alarming reports as the earlier one, fail to take under consideration a number of social issues related to citizens' concerns and realities [12]. Strategic objectives of corporate growth are blind to issues relating to exploitation, exclusion and inequality, which exist in the material processes of capital reproduction and accumulation today, issues that will be further discussed in the following sections.

Piracy is a criminalising discourse attempting to close any discussion relating to actual people's uses, realities, intentions and motives behind everyday life culture and practices. Anti-piracy campaigns involve highly moralistic views, attempting to enforce particular norms in people's uses of new technologies. Aggressive legal and marketing campaigns, using metaphors of violence and conflict, such as 'fight', 'struggle' and 'war' against piracy, framing piracy as a 'serious crime' [13], signify the pro-active, disciplinary aims of such discourses. In his study of security governance, Price [14] argues that the strategic behavior of major institutions like financial markets, corporations or governments today, exposes a 'systemic need to invest in mechanisms of control' on issues important to such institutions. The article will examine further the issue of control in a following section.

2.3. *IPR, enclosure and exploitation of the commons*

The concept of the 'commons' concerns the domain of public goods, public resources, such as language, knowledge, culture or creativity, shared resources and things that 'no-one can do without' [15]. Intellectual goods (Lessig, 2004; Boyle, 2008), have always been part of the domain of the commons, while culture itself always developed through communication. Boyle [16] understands IP policies as enclosures of intellectual commons. Boyle relates IP policies to the enclosure of the commons that occurred in Britain between the fourteenth and the nineteenth centuries, where the common provincial land was progressively privatised and fenced during the feudal and industrial eras. For Boyle, current

developments on IP policies worldwide suggest a second movement of commons' enclosure, concerning intellectual commons.

While IPR is an institutional form of enclosure, late capitalism appropriates commons 'organically', through the contemporary 'reflexive' processes of value production. Instead of using the earlier notion of the commons, Virno (2004) draws on the notion of the common. The common includes fundamental aspects of human and social life, such as language and communication, creativity, or shared everyday practices. Despite on grounding the idea of common (or commons) on essential terms such as nature, Virno relates politics, equality and exploitation, by discussing the colonization of the common by late capitalism, as a central asset of post-Fordist growth and unpaid labor. Post-Fordism (Harvey, 1989; Hardt and Negri, 2004; Virno, 2004) implies the passing from a rigid Fordist mode of production — underlined by mass, material production and planning, end products, as well as labour discipline — to an informal mode of production, depended on immaterial production, reflexive planning that is based on scope, workers' flexibility and adaptability, creative destruction, and constant innovation. Virno stresses the reliance of post-Fordism to informal practices of the lifeworld (related to the notion of the commons), to sustain and reproduce capitalist growth. According to Virno [17], post-Fordism disrupted earlier barriers between public and private spheres of life. Under post-Fordism, social life became bio-political, because individuals' intellect, *poiesis* and *praxis* — the classical characteristics of human experience — were 'put into work', assimilated for purposes of flexible accumulation and production. The multitude, a term coined by Italian autonomist Marxists, defines the 'mode of being' [18] of humans in post-Fordist, late capitalist societies. The term multitude [19] stresses the individualistic but also inherently social character of the post-modern individual [20].

Post-Fordism developed in post-WWII liberal societies due to the rise of individual consumerism and the rise of labour demands on flexible and creative work, accompanied by higher profit shares, breaking away from horizontal forms of collective identity formation of modern and pre-modern societies. Post-Fordism was capital's reaction to the aforementioned challenges. Capital responded by outsourcing material production, by pressuring for free market regulation, or by organising production based on marketing and management strategies.

Neoliberalism, as an ideological movement, organised the political environment to turn the increasing flexibility and individualisation of late modern societies to an advantage of capitalism [21]. While post-Fordism is the mode of late capitalist production, neoliberalism is the hegemonic ideological framework and political doctrine of late capitalism. Neoliberalism is thus a form of governance (Foucault, 2008) binding together different techniques and discourses, to 'constitute and to stabilise liberal-capitalist societies' [22].

2.4. Piracy and the informal economy

Piracy was defended in courts, on the grounds of its non-commercial principle [23]. Lessig [24] makes a distinction between non-commercial piracy, related to p2p, and commercial piracy, related to counterfeiting of goods for profit. According to Lessig, commercial piracy should be legally persecuted, but p2p file-sharing should be seen as socially beneficiary, for expanding the availability of cultural resources to people that the market cannot reach, broadening the creative possibilities of people and developing a civic culture [25] that can deepen democratic polity. Lessig's views are shared by different scholars, especially those scholars interested in the democratic potential of new ICTs. Cultural and social capital, creativity and crafting, the defence of cultural commons, are stressed as motives of p2p style piracy, instead of monetary incentives [26].

Although valid, Lessig's distinction between commercial and communal forms of piracy is not fully sustainable empirically, as different forms of everyday life uses and practices often blend. Lessig [27] also distinguishes between four different forms of p2p, where his first category involves the free downloading of commercial products, without sharing; users accumulate 'free' stuff, by using technology to pursue their consumerist desires. In such a context, the civic-communal-creative potential that Lessig may be envisaging in new ICTs is not accomplished. Different principles guide people's habits and practices, usually involving contradictory aspects. Although it is useful to maintain new ICTs potentials in mind, one should also push the understanding of piracy in different realms, particularly in relation to the material and ideological establishment of late capitalism, worldwide.

In its commercial sense, piracy can be understood as an informal sort of economic activity that is useful and most importantly, intrinsic to neoliberalism (Sassen, 1994, 2002; Davis, 2006; Lobato, *et al.*, 2011). Informal economies are economic processes existing outside the scope of formal institutions regulating economic activity, such as taxation rules, production standards and vocational regulations, among others. The neoliberal dismantling of protectionist regulation on economic activity and the shrinking of welfare policies that secure society from market so-called 'economic externalities', produced a private orientated regulation of economic life, protecting the 'free market' framework of economic conduct. Private initiatives and interests advanced in dispense of public ones, creating mass and deep levels of inequality, exploitation and exclusion around the globe. The European Union, in its counter-piracy 'struggle,' seems to acknowledge the entrepreneurial potential — at least — of piracy, and equates piracy to counterfeiting, without considering the structural origins of piracy and counterfeiting. In a European Commission (2009) report entitled 'Enhancing the enforcement of intellectual property rights in the internal market' one reads:

'The growing value of IPR is an indicator of success. However, it also makes them attractive to **counterfeiters and pirates, who are often well financed and have become organised, highly skilled entrepreneurs operating on an industrial scale. These infringers make full use of advances in technology and trade, adopting modern business models** to control the production, distribution and sale of illicit goods across borders and continents. The Internet is one such tool that is being used to drive a worldwide market in infringing

products, which is stifling innovation and threatening jobs' (author's emphasis).

'Informal' sites of economy are established all over the world, particularly in impoverished regions of the planet. Informal economy sites are intrinsic aspects of neoliberalism in the sense that they generate new ways of capital expansion, accumulation and growth. In his study of neoliberal transformations of urban life, Davis (2006) demonstrated that the informal economy is a form of a 'forced entrepreneurialism' imposed through 'structural adjustment programs', particularly to the people worst struck by material realities. The development of informal economy can be understood as a means of survival in a competitive, social–Darwinian complex. The informal economy involves a huge pool of informal proletariat, both paid and unpaid. Though the informal sector has been praised by neoliberal ideologues, the informal economy is forced to stagnation through the accumulation processes of late capitalism and the extreme forces of antagonism, excluding minor players from the market competition processes. As such, the informal sector is the site where — made excessive by capitalism — a part of the global population is forced to reside. Piracy in this context can be understood in class terms; a form of paid (and also free) circulation of goods, from people that cannot otherwise afford them.

Scholars (May, 2008; Sell, 2003) note that IPR owners [28] 'allow' — in the sense of not pressuring local governments through the threat of sanctions to implement global IP legislation that binds them to implement transnational agreements — such as the infamous TRIPs — signed by most countries of the globe (May, 2006; 2009). Due to impoverished countries' lack of consumer power, piracy is 'allowed' [29] to exist in impoverished countries, to create market and brand consciousness for future exploitation of those countries' consumer potential. Lessig [30] and David [31] note that Hollywood itself started as a 'pirate' industry for film producers to avoid patent royalties for the use of Thomas Edison's cinematographic inventions. The issue of piracy then concerns the circumstances and contexts as well as the powers of those interested, in organizing and sustaining through law and norms, particular rules of usages of certain products.

To return to p2p, Bauwens (2006) argues that p2p is not a market, because neither market pricing, nor managerial command, are necessary for the function of p2p structures. Markets are exclusionary and function for those obtaining monetary power. Yet, p2p and markets are highly interconnected. Bauwens stresses the dependency of p2p structures to capitalist markets. Simultaneously, Bauwens also recognises an equal dependency of markets to p2p structures. Producers, Bauwens argues are dependent for income and hardware infrastructure on market and industrial mechanisms, with peer production covering immaterial needs related to meaning, social, and cultural capital. New capitalism relies on innovation of p2p production, the reflexivity of p2p networks for distribution, cooperative work.

The question of the previous analysis concerns a contradiction: since piracy — in the sense of an informal economic activity — is supplementary to 'free market' functions and compatible to neoliberal ideology, why does policy aims towards global draconian IPR regimes? The answer to such a question lies in a capitalist contradiction: although capitalism relies on competition, it also requires competition control. 'Contradiction refers to the way in which a process negates certain aspects of itself and/or wider society while pursuing its own reproduction' [32]. Policy regulation is important in maintaining limits to competition. Furthermore, capitalism requires the eradication of non-capitalist, non market models of economic behaviour. P2p practices demonstrate the possibility of a democratic economic model. As will be argued in the following section, IPR norms and laws are about establishing adequate mechanisms of control, in order to restrict competition and to insure capitalist accumulation.



3. Neoliberalism and control

Lessig [33] argues that control of intellectual and cultural goods occurs through four main ways: a) through national and international legal frameworks criminalizing the unauthorized usage of intellectual products; b) through the production of social norms to respect intellectual property rights policy regimes, particularly through the dissemination of discourses against piracy in media campaigns and forms of public education; c) through the supervision of 'code' through digital rights management (DRM) systems, that are technologies implemented in the format of circulation of an intellectual product, meant to prohibit unauthorized uses of the given product; and, d) through the mode that industry and markets themselves work.

This section will focus on the aforementioned aspects a) and b), which are central in the organization of their following two categories. Post–Fordist assimilation of broader commons requires an institutional organization, to prohibit subversive contingencies endemic to the lifeworld. IPR — as laws, policies and discourses — are institutional structures defining limits in social practices. Control is a leading principle of IP regulation, aiming to counter the contingencies entailed in post–Fordist social realities. The section theorizes two main aspects of control in the discussion of IPRs: a) the institutional framework of IP laws and norms, attempting to organize a universal framework of tight IP regulations; and, b) the individualized context that control occurs.

3.1. Monopoly tendencies and neoliberalism

Accumulation — capitalism's key process — requires relative stability of the reproduction process of capital. Competition, though, may foreground discontinuities and ruptures. Though an intrinsic aspect of capitalism, 'competition is internalized within the corporation and this in turn ratchets up competition for profits between corporations' [34]. Capitalism's tendency towards monopoly is contradictory to the reflexive and decentralized, post–Fordist mode of production. Oligopoly is the situation rising from the delimitation of competition to particular players, usually the most economically and politically powerful ones that can raise barriers of entry to the competition process [35]. Monopolistic tendencies can be demonstrated in EU copyright policies. The EU, representing one of the world's leading knowledge economies, is a key

producer of intellectual products, a large pool of IIP consumers and workers labouring in creative industries. The maintaining of IP monopolies is of high interest to the economic and politically central EU countries. In the *Directive 2004/48/EC* on the enforcement of intellectual property rights addresses the 'need' for regulation in order to guarantee the 'freedom of the market', against 'distortions', deriving from informal economic activities:

'The achievement of the internal market entails eliminating restrictions on freedom of movement and distortions of competition, while creating an environment conducive to innovation and investment. In this context, the protection of intellectual property is an essential element for the success of the internal market. The protection of intellectual property is important not only for promoting innovation and creativity, but also for developing employment and improving competitiveness.'

3.2. *The institutional level of control; global governance of IPR*

Strict IPR laws on national and transnational contexts penalize piracy. Global economic institutions, such as the WTO, and multilateral international agreements, such as the TRIPs, are important agents behind the construction of a global regime of IP laws [36] against different contingencies. Internet control in particular [37], is an important aspect of global ICT regulation, to transgress 'barriers' to 'free' trade by unwanted uses of the Internet.

Harvey [38] further stresses the transformation of the public character of law, where public law is meant to serve private interests, with the state's primary function is to guard private property (also Price, 2011). Policy-making in liberal states responds to changes of cultural production and distribution on a global scale, by adjusting local and global laws to industrial needs [39]. An excerpt from European Council's Resolution on 'competitiveness, internal market industry and research' demonstrates the business priorities of law-making:

'10. AWARE of the seriousness and the worrying growth of the phenomenon of counterfeiting and piracy, in particular in a globalized economy, for the competitiveness of the European Union, for its businesses, creative forces and consumers; aware of the scale of this phenomenon on the Internet too; aware of the risks involved in counterfeiting products, which poses a health and safety hazard;

11. EMPHASISES the importance of protecting intellectual property rights, which are fundamental to promoting culture and diversity, and for drawing full benefit from the research, innovation and creative activity of European undertakings, especially SMEs, in order to support growth and jobs in the European Union and make Europe more competitive in the world;

12. AWARE, against this background, of the need to give innovative companies the means to obtain the best protection for their inventions and to profit from them more efficiently; points out the advantages of a Community patent and a patent court system in order to give users the means to enforce their intellectual property rights throughout the Union.'

As mentioned, all countries are forced to sign IP agreements, irrespectively of their interests. Failure to comply with the general laws of IPR results in trade and political sanctions. Globalization, political economy and policy scholars (May, 2009; Sell, 2003; Litman, 1984; David, 2010) highlighted the bias of such regulations in favor of economically and politically strong countries — particularly those with developed industries. Furthermore, such regulations seem to benefit the owners of IPR, at the expense of the interests of creators and consumers. Critics also stress the power of particular lobbies of cultural industries that fight for strict IPR rules worldwide [40].

3.3. *Soft control; Piracy "awareness"*

To understand control as productive mechanism — in our case of capitalistic accumulation — one needs to view Foucault's (2002, 2008) work on discourse and power. Control is a penetrative mechanism functioning on the level of the individual, that besides oppressing, it also inscribes particular norms of conduct. Control is performed through educating, socializing, disciplining and shaping subjects according to particular discourses, moral values, incentives and ways of acting that reproduce and develop preferred social realities.

Educating on "proper" intellectual product uses is central in IP policy worldwide. May [41] emphasizes the role of the World Intellectual Property Organization (WIPO) in distributing information and technical know-how in establishing IPR to different countries across the world. The EU likewise focuses highly in the development of "consciousness" over the "dangers" of piracy, through educational programs and campaigns, supported by copyright industries. An excerpt from the EU's Internal Market and Services Commissioner Michel Barnieran, on a competition initiated by the EU Commission's Directorate General for Internal Market and Services, for the design of a logo for the European Observatory on Counterfeiting and Piracy, carried throughout Europe between March and June 2010, is indicative of the educational aspect of policy objectives. The particular completion is one among several actions and initiatives aiming towards the raising of public awareness to IPR issues, organized by EU directories, often in collaboration to WIPO and business sectors:

"I am glad to see that the young generation has shown a high interest in participating in this contest. Everyone, regardless of age, can contribute to the fight against trade in fake and pirated goods which are a threat to our safety and our personal and **economic health**. It is vitally important that we jointly develop initiatives such as this to help fight this damaging phenomenon. **Raising awareness and educating young people** about the dangers of buying and using fake products is crucial. **This competition shows that messages about protecting and enforcing Intellectual Property Rights do not necessarily need to be repressive, and can actually be fun and engaging.** In this way we can bring a closer understanding to **a new generation of EU consumers.**" (Author's emphasis).

The emphasis in developing the future "citizen consumer" and the protection of "our" "economic health", discloses the magnitude of policy planning to secure the future of the (neo) liberal model [42] of production, accumulation and consumption, through civic indoctrination to particular behaviors and norms. David [43] suggests that discourse may be the most affective means to ensure individuals' respect to IPR. The hegemonic IPR discourse, stressing moralistic arguments against "piracy", may function as a control discourse, internalized and developed as a normative framework by individuals. Discipline in turn may produce forms of self-affirmation, despite the hierarchies and inequalities that IP discourses are caught in.

3.4. Neoliberal citizenship

A more subtle aspect of control is one relating to the particular constructions of political subjectivity that neoliberalism — as a mode of governance — requires. Social anthropologists (Brown, 2003; Lemke, 2001; Ong, 2006) argue that the endurance and expansion of neoliberalism as an ideology and as a mode of social organization and conduct, produces new forms of citizenship, alien and hostile to democracy. Indeed, as Harvey (2005) argues, the function and the ideology of free markets is undemocratic; historical examples have demonstrated that dictatorships are more efficient to market objectives. Polanyi (1944) argued that under classical economics, the economy is the most important sphere of the social. Under the (neo) classical economic ideology, the economy assimilates other spheres of the social (such as politics, or culture) and organises them under its own perspectives. Citizenship — in a context of a polity organised in capitalist economic terms — does not relate to democratic ideals and procedures. Citizenship instead becomes the mode of individual conduct of the self, in a society organised and driven by the calculative logics of accumulation and competition.

Neoliberal ideology, stressing individualism, self-interest, mobility and antagonism, disregards communal and public dimensions of social life, or the values of solidarity, equality and democracy, and is indifferent (if not hostile) towards commons, and generally towards aspects of life that do not relate to the 'free' market. Instead, neoliberal dogmas advocate selfish and socially autistic (Alcorn and Solarz, 2006) human 'qualities'. Combined with a conservative work ethic, grounded — reflexively but also contradictory [44] — on 'rational choice' and 'selfish interest' dogmas, neoliberal policies advance a new form of citizenship, disciplined to the service of 'free markets'.

The production of neoliberal citizens is a move towards the direction of curbing contingencies rising in post-modern societies, and instrumentalizing them towards accumulation ends. By emphasizing economic rationality, instrumentalism, precarity, creative destruction and conservative individualism, neoliberal ideology strives towards the production of a new public ethos. The symbolic figure of 'the entrepreneur' is central in the identity of the neoliberal citizen (Brown, 2003).

In line to the earlier discussion on the centrality of the informal economy to the reproduction of neoliberalism, free-sharing culture can (and already does) function as a resource of entrepreneurialism, where users can instrumentalize the possibilities of cultural goods, networking and ICTs usage to pursue their entrepreneurial ambitions. The amateurism spread by the new ICTs' affordances offers multiple possibilities for innovation and the invention of new strategies of neoliberal survival and most importantly, gratification. Most importantly, 'free culture' can provide a source for the maintenance of competition, which as Foucault [45] argues, is the central goal and value of neoliberalism.

4. Contingency: Limits and potentialities

This section aims at exploring the possibilities against neoliberal closure, opened by the contradictions of new ICTs, and entailed in the emancipatory potential of the multitudes. Totality and closure of a given form of order is never fully attainable: contradictions, events or ruptures, offer possibilities of subversion or change of any given order of things. New media and new ICTs affordances are possible ruptures in the global neoliberal enterprise. This section discusses the development of social movements against IPR globally, as well as strong counter-cultural trends through new ICTs. The section finishes by suggesting the need to imagine and to create new politics and new social subjectivities, as a prerequisite for social change.

4.1. Contradictions

Contradictions are intrinsic to capitalism (Harvey, 2010). Harvey [46] argues that contradictions rise in the interaction between different spheres of social activity; these involve a) technologies and organizational forms, b) social relations, c) institutional and administrative arrangements, d) production and labor processes, e) relations to nature, f) mental concepts, g) the reproduction of daily and species' life [47]. Harvey emphasises the unequal form of development

between different spheres of life as the locus of contradictions. Virno [48] stresses the Italian example of industrial workers, subtly revolting against Fordism, due to their rural experiences and background. Contradictions rise in all social processes and foreground different trajectories to those planned or initially intended, thus unfolding the potential for progressive social change.

Capitalism attempts to assimilate contradictions; Virno [49] underlines that post-Fordism was a capitalist response to Fordist workers' struggles. Virno notes that although pioneering, the multitudes are not inherently subversive but rather reactionary, tending to comply with hegemonic principles. In that sense, piracy, though potentially subversive by changing the established industrial mode of production, consumption and distribution of cultural and intellectual goods — with a substantial loss of corporate profits — can and does function in line to neoliberal objectives. Whether the failure of IPR policies to regain control of ICT users' activities can lead to further resistance and new (post-capitalist) modes of production is a possibility concerning the politicisation of the multitudes' potency.

4.2. Piracy and ICTs affordances: A pre-political culture

The extended, popular practice of free digital file-sharing of IP across the globe, despite its illegality, is a possibility enacted by the affordances of media technologies that circumvent the original intentions of their developers. Piracy — through the development of p2p networks by the Internet users' creative and free labor — is an unintended trajectory for the industrial development of reflexive technologies. The development of p2p structures demonstrated a potentially different model of economic activity, based on free sharing, exposing the contingency and the political character of the no-alternative, 'free market' orthodoxies, over 'appropriate' economic behaviors that naturalize exploitation and inequality. P2p technologies offer a potential antagonistic paradigm to the current (capitalist) mode of production, distribution and consumption of cultural goods.

Participation is a possibility entailed in new ICTs that scholars (Castells, 2001; Jenkins, 2006) perceived as a democratizing factor. Cultural theorists argued that new media structures are sources of empowerment (Bakardjeva, 2009), or new politics based on notions of the self (Papacharissi, 2010). Critical accounts note that participation relies on power relations defining the meaning, the scope and the architecture of participatory structures. Carpentier (2011) stresses the open character of technology, susceptible to political interventions defining its usage; May (2008) drawing on the work of Lewis Mumford (1967), further stresses the political bias of technologies, which can be understood as totalitarian or democratic techniques, according to the political power producing and deploying them. Indeed, politics as Hall [50] notes are the least popular reason behind the popularity of file-sharing.

Participatory and peer-production structures entail important questions over new forms of exploitation. As earlier discussed a contradiction rises in industrial attempts to circumvent ICTs users' freedom, while — in the post-Fordist sense — industrial prosperity relies on users' freedom. Immaterial labor, generated by users' habits and practices of ICTs, particularly online, is appropriated by the owners of the technological structures, particularly of media sites of peer-production and publication. Appropriation means the exploitation of user generated content a) in the form of the assimilation of users innovations on digital loci (such as Web 2.0 platforms) b) the tracking of users' data for marketing analyses of people's habits and interests c) of the 'proprietyization' of user generated content (UGC) in return for the potential of publication (e.g., the hosting of users' own music or images in particular social media). In that sense, the established unequal power relations existing in capitalist societies, are recycled and renewed through the free practices of users in different participatory ICT structures [51]. As the work of Foucault stresses, existing structures are likely to integrate to various forms of social practices and changes.

Simultaneously, under certain non-commercial conditions, p2p networks have been seen as carriers of potential for radical socio-economic change; the unlimited potential for costless production and particularly reproduction and distribution of digital goods has been seen as a new form of economic activity that will organically grow to replace capitalism, through the autonomous and creative people's usages, free exchange and a practice based on the notion of a gift economy (Bauwens, 2009). An economy of commons is generated through freedom of participation and usage of non-commercial p2p structures. Nevertheless, the development of such communal and emancipatory structures relies on broader structural and ideological issues.

4.2. Resistances and contingencies

Global IPR regimes have been challenged, debated or simply trespassed by different people and movements around the world. On one hand, a great number of people across the world are involved into the free sharing and downloading of copyrighted intellectual products, without conscious political framing of IPR, mainly for reasons of trend, fandom, status, or free cultural accumulation and consumption. On the other hand, there are conscious movements, groups, parties and organizations of people articulating a political discourse against IPR laws. IPRs have been particularly politically confronted outside what is generally understood as the 'West', because the intensification of IPR regimes (particularly through patenting) has resulted in the impoverishment, dependency and further exhaustion and exploitation of impoverished regions (May, 2009; Sell, 2003).


The practices of ignoring, challenging and contesting rules and norms of mainstream IPR vary from active opposition to patents (e.g., Indian farmers against crop seed patenting; South African government fighting for the right to use derivatives of medicine patents in order to produce inexpensive vaccines; Sell, 2003), to free and open source software (FS) systems and alternative (to copyright) licenses of intellectual rights that exclude exclusivity of rights (Söderberg, 2002; Berry, 2008; Xiafaras, 2010), such as the GPL (general public license) commonly known as 'copyleft', open source licenses (which are used to 'boost' innovation, competition and free market reflexivity, but nevertheless allow possibilities for non-commercial uses); anti-copyright DIY tactics of distribution of culture; to p2p file-sharing communities online (e.g., different wikis, different torrent trackers), to hackers, to civil organizations and think tanks (like the p2p Foundation), or to the formation of international pirate parties, seeking participation in governance and representation in public affairs.

Activist groups across the world deploy p2p structures in order to distribute freely informational material on political issues and thus contribute through free channels of information to emancipatory struggles.

What is of further importance concerns the politicization of file-sharing and piracy, through the legal persecution of users and administrators of torrent tracker sites. The criminalizing discourse of piracy has worked against the initial intentions of corporate, media campaigns and economic policy. The term 'piracy' was colonised and re-articulated by anti-copyright practices and discourses producing a clandestine and 'heroic' frame for the multitude of users and file-sharing sites' administrators persecuted by multinational corporations. The persecution of the Pirate Bay — to mention the most obvious example — led to the formation of the pirate office (Piratbyrå) and later of the Pirate Party in Sweden, in order to defend privacy and free culture and to demand progressive IPR reforms. The further development of pirate parties worldwide, with important electoral success in Sweden contributed to the developing of a counter hegemonic, political discourse against the hegemonic frames of 'piracy'. Whether such issue-based politics and mobilization actually contribute to broader politics of social change, has yet to be seen.

5. Conclusions: IPR and social change

The availability and popularity of new ICTs offer unlimited possibilities for creation, information and connectivity to different people across the world to form new virtual collectivities, to empower themselves, or to fulfill their cultural and communicational needs irrespectively of income. Private interest-orientated regulations, attempt to securitize IPRs, by restricting free uses of ICTs. Although inefficient, the possibility of IP regulations' success is a matter of both ideology and material conditions [52], relating to prevailing societal structures. An issue of crucial importance concerns the pressure on people across the globe of material scarcities — external to digital networks — that can 'channel' alternative practices to capitalist ends. What is also important to note is that economic activity is strategic and plans ahead.

Criticism addresses the political character of IP norms and laws, and contextualizes IP policies in broader undemocratic processes defining contemporary social order. Socio-political thought and knowledge behind the free and innovative praxis of multitudes is necessary. Unless politicized, free culture — as introduced by ICTs affordances and the reflexive and creative practices of a multitude of individuals — is a process that has the potential in generating profit through a variety of ways, such as assimilation of innovation, free labor and informal marketing. Politicization though should also relate to broader social issues and struggles that relate to a social imaginary for a post-capitalist society. In line to Mouffe's (2005) thought, political articulation and a form of internal organization is needed to connect the dispersed forms of opposition, sophisticated, open and reflexive enough to foster deep democratic social change. 

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Notes

1. Problematisation is an analytical concept developed by Michel Foucault (Lemke, 2001), to study the systematisation of different discourses and practices that constitute a particular social phenomenon at a given era as problematic, resulting to the coining of different forms of solution, according to the framing of something as a problem. Problematisation in the context of this article is used to describe the destabilisation of certain concepts and forms of knowledge from their 'lay' meanings, by asking critical questions relating to agency, power and exclusion.

2. Harvey, 2010, p. 36.

3. Perelman, 2003, p. 308.

4. May, 2009, p. 49.

5. David, 2010, p. 56; Lessig, 2004, p. 88.

6. Garcelon, 2009, p. 1,308.

7. Heywood, 2004, p. 317.

8. May, 2009, p. 24.

9. Lister, *et al.*, 2009, p. 188.

10. Mathews, 2008, pp. 5–6.

11. Lessig, 2004, p. 64.

[12.](#) Cammaerts and Meng, 2011, p. 15.

[13.](#) Larsson, 2011, p. 20.

[14.](#) Price, 2011, p. 32.

[15.](#) Virno, 2004, p. 36.

[16.](#) Boyle, 2008, p. 43.

[17.](#) Virno, 2004, p. 26.

[18.](#) Virno, 2004, p. 49.

[19.](#) The multitude is theorised (Hardt and Negri, 2004) as a form of a new radical political agency, aiming towards emancipatory social aspirations. This article follows a more reflexive conceptualisation of the multitudes that stresses their ambivalent subjectivity in the scarce and alienating conditions of late capitalism. The concept of the multitude is primarily used in this article to describe characteristics of post-modern subjectivity, its potentialities towards social change, and its relation to post-Fordism. IPR and ICT are central variables in the post-Fordist mode of production. Simultaneously, IPR and ICT are also caught in capitalist contradictions, where critical possibilities for progressive and emancipatory social goals may rise.

[20.](#) Virno, 2009, p. 59.

[21.](#) Wayne, 2003, p. 70.

[22.](#) Lemke, 2000, p. 7.

[23.](#) David, 2010, p. 73.

[24.](#) Lessig, 2004, p. 62.

[25.](#) Dahlgren, 2009, p. 152.

[26.](#) Wayne, 2003, p. 56; Gauntlett, 2011, p. 160.

[27.](#) Lessig, 2004, p. 69.

[28.](#) Most typically transnational corporations; see Garcelon, 2009, p. 1,309.

[29.](#) May, 2009, p. 137.

[30.](#) Lessig, 2004, p. 21.

[31.](#) David, 2010, p. 52.

[32.](#) Wayne, 2003, p. 262.

[33.](#) Lessig, 2004, p. 121.

[34.](#) Wayne, 2003, p. 63.

[35.](#) Wayne, 2003, p. 64.

[36.](#) Lister, *et al.*, 2009, p. 194; Hesmondhalgh, 2007, p. 150.

[37.](#) Freedman, 2008, p. 14.

[38.](#) Harvey, 2010, p. 234.

[39.](#) Hesmondhalgh, 2007, p. 152.

[40.](#) Hesmondhalgh, 2007, p. 73.

[41.](#) May, 2006, p. 87.

[42.](#) Price, 2011, p. 83.

[43.](#) David, 2010, p. 95.

[44.](#) Harvey, 2005, p. 41.

[45.](#) Foucault, 2008, p. 147.

[46.](#) Harvey, 2010, p. 138.

[47.](#) Harvey, 2010, p. 123.

48. Virno, 2004, p. 8.

49. Virno, 2004, p. 110.

50. Hall, 2009, p. 2.

51. chaefer, 2009, p. 156.

52. Price, 2011, p. 29.

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