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# Consuming the illegal: Situating piracy in everyday experience

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Considerations of media consumption typically focus upon the relationships fostered via economic exchange for the purposes of receiving a service, such as a licence fee, a subscription fee, or some other single-use cost. However, the growth of alternative electronic distribution channels enabled via the Internet have presented a number of challenges and opportunities for all involved, be the media organisations, artists, or consumers. Digitisation of media content, coupled with increased connectivity between individuals, has acted as a fertile breeding ground for the emergence of unofficial distribution of media and its subsequent consumption. The increasing affordability of technology that allows users to alter, modify, remix, or create their own content before sharing that across the network poses a range of problems to those groups who seek to control how content is accessed, distributed, and appropriated, especially if their ownership rights have been compromised in some manner. Anxieties of this type were manifested in several high-profile legal battles between the recorded music industry and music consumers in the United States (e.g. *Virgin/Capitol v. Thomas*, *Sony BMG Music Entertainment v. Tenenbaum*), after individuals were caught sharing music files across peer-to-peer networks.

Many subsequent discussions of illicit media consumption tended to concern themselves with economic predictions regarding the future livelihood of the content industries. Much has been made of the potential threat posed by networked digital distribution to the established interests and business practices of the culture industries. Lobbying on behalf of the content industries by powerful groups with deep pockets – such as the Motion Pictures Association of America, the Recording Industry Association of America (RIAA), the International Federation of the Phonographic Industry (IFPI), and so on – has produced a particularly skewed picture of the ‘problem’. This often features huge numbers, whether they are speculative estimates about the damage caused by piracy cannibalising sales or the estimated damages expected from a successful court ruling. Indeed, in March 2011, it was estimated that the peer-to-peer network Limewire owed the RIAA

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\$75 trillion in statutory damages, only for the case to be settled for the more modest figure of \$105 million.

A staple feature of the IFPI's annual Digital Music Report in recent years has been the claim that illegal file-sharing jeopardizes the future of the recorded music industry. Underpinning these claims are sales data pointing to a succession of declining year-on-year physical sales, scarcely offset by the gradual uptake of legal digital music sources and service (such as Napster, Spotify, We7, and so on). Frances Moore, chief executive of the IFPI, claims that 'more than one million jobs will disappear from the creative industries in Europe by 2015 if piracy is not addressed' (IFPI, 2010: 3). Even in countries where localised music sales seem to be bucking the global trend (such as the United Kingdom), stakeholders seem keen to downplay the growth in singles sales in favour of a more moribund prognosis. The BPI's website cites figures from Jupiter Research claiming that £1.2 billion worth of losses will damage the industry between 2007 and 2012 – with an estimate of £200 million worth of losses affecting the UK industry in 2009 alone (BPI). The BPI's Digital Music Nation 2010 report noted that the British music market has expanded but that this growth is slower than it should be due to 'widespread illegal downloading', put simply as:

The lack of action against illegal downloading continues to undermine the potential for the digital music sector to expand, eroding value for investors, discouraging innovation and harming Britain's musical culture. These effects are now felt right across the UK's creative industries. (BPI, 2010)

File-sharing has undermined efforts by rights holders to be compensated for new methods of consumption, but its impact on sales has been somewhat difficult to establish. In a report released by the US Government Accountability Office (GAO), they questioned the veracity of several estimates of the damage caused by intellectual property infringements:

Assumptions, such as the rate at which consumers would substitute counterfeit goods for legitimate products, can have enormous impacts on the resulting estimates.

(GAO, 2010: 15)

The report goes on to suggest that there is a tendency for 'crude' assessments to gauge the scale and scope of illicit behaviour, which 'rely excessively on fragmentary and anecdotal information' and 'where data are lacking, unsubstantiated opinions are often treated as facts' (BPI, 2010: 16). Some expert sources referred to in the report have suggested that 'there were positive effects', but because there have been very few studies in this area 'the net effect cannot be determined with any certainty' (BPI, 2010: 28). Nevertheless, the GAO study found that the estimated losses in the US economy due to piracy accounted for \$58 billion in output and \$2.6 billion in tax revenues (BPI, 2010: 24) – a significantly smaller figure than some earlier claims included in the same report that puts up the figure closer to \$200 billion.

On the back of crude economic estimates about the economic impact of piracy, policy negotiations have taken place at the national and international levels in recent years, aiming to tackle the problem of illegal consumption, drawing fierce public opposition. Several European countries have implemented legislative changes that have sought to tackle the 'problem' of copyright infringement. In April 2009 Sweden implemented a local version of the EU Intellectual Property Rights Enforcement Directive that gave copyright owners the right to request the IP addresses of suspected illegal file sharers. That same year saw France introduce the HADOPI law that gives rights to the holders the power to complain about copyright abuse based on IP addresses, which then would lead to a graduated response from the Internet Service Provider (ISP). The United

Kingdom introduced the Digital Economy Act 2010, seeking to monitor Internet users for copyright violations as well implementing domain blocking powers capable of taking entire websites offline. In 2011, the United States saw two bills introduced to the Senate and the House of Representatives, the PROTECT IP Act and Stop Online Piracy Act, respectively, which sought to give the state greater powers to tackle online copyright infringements and the counterfeiting of goods. The implementation of these bills was delayed following coordinated public protests as opposition from several thousands of websites, including Wikipedia, which implemented service blackouts. What these examples have failed to do is demonstrate that the legislation alters consumer behaviour.

Instead of a decline in illicit consumption, the perceived threat that the legislation posed, like that outlined above, has instead appeared to galvanise sections of the public and from this they have mobilized numerous protest actions. It is possible to view these attempts at legislation as threats to the perceived freedom that the Internet offers its users. Campaign groups like the Electronic Frontier Foundation in the United States and the Open Rights Group in the United Kingdom have been prominent in raising public awareness regarding threats to digital liberties and web freedoms. Similarly, since the Swedish Pirate Party emerged in 2006 to campaign against increasingly powerful copyright powers, it has gone on to win two seats in the European Parliament. Several other countries have had local election successes, including Germany, Austria, Spain, and Iceland. When a UK high court order instructed the major ISPs to block access to The Pirate Bay website, the UK Pirate Party established a proxy service via which the UK residents could access the site. What should be clear from these examples is that a significant proportion of Internet users, who may consume content illegally everyday, are concerned that their rights and freedoms are under threat as a result of the intersection between commercial lobbying efforts and legislative changes, often in the absence of genuine commercial alternatives to piracy.

## About the issue

This special issue of *Convergence* presents articles that think through the implications of everyday online consumption practices that may be commonly regarded as ‘illegal’ or as acts of piracy. Mainstream media discourses regarding piracy tend to coalesce around high-profile examples (such as The Pirate Bay and MegaUpload) with a tendency to view them from the position of legislative, criminal, behavioural, or commercial problems, the problems that frequently warrant either consumer prosecution or re-education (Yar, 2008). Instead of adopting *a priori* assumptions that consumers of pirated products are deviant or lacking appropriate morals, the underlying aim of this special edition of *Convergence* is to demonstrate that research into such consumption can start from an ethically neutral position and offer a more nuanced account of commonplace digital practices. After all, many of the people consuming ‘illegal’ content are also the consumers of ‘legal’ products and services – piracy is profoundly linked to established commercial modes of consumption despite the loaded rhetoric of industry representatives. The articles collected here extend across a broad range of subjects and cultural contexts addressing attempts to criminalise errant consumer behaviour via regulatory policy and industry rhetoric as well as focussing on the unintended consequences that emerge from such attempts to police piracy.

In ‘Framing the Consumer: Copyright Regulation and the Public’ Klein et al. begin the special issue by exploring the disjunctures between government policy and regulatory practice as well as industry discourse and consumer behaviours in relation to copyright. Focussing on the UK context, the authors note the discrepancies between the deployment of ineffective policies that seek to

regulate copyright infringement via the Internet and the community values, or social norms, that exist within cultures of Internet users. They chart the various ways in which consumer behaviour has been framed by summarising the type of work frequently undertaken by industry and policy researchers (typically those groups with close allegiances to the beneficiaries of the commercial copyright system) and contrast this with academic work that adopts a more sociological understanding of user behaviour. From this, they explore the limitations of copyright regulation and user resistance to it by drawing upon Boltanski and Thévenot's (2006) work on the 'economy of worth' in order to explain the justificatory discourses that mark the differences between those stakeholders from the industrial order who wield significant symbolic power, through to those groups less able to participate in such frames. Overall, theirs is a push for a more robust way in which the voices of citizens can be valued.

Following on from this in 'Making Plans for Nigel: The Industry Trust and Film Management in the UK' Michael Parkes focuses his attention on the framing of specific discursive practices associated with film piracy in a geographically restricted context, by institutional bodies concerned with policing copyright. By charting the antipiracy campaign efforts of various UK-based industry bodies, the article maps the movement away from traditional depictions of pirates as criminals – an increasingly redundant notion in that such labelling was ineffective in the context of changing consumer behaviour, and often produced unintended consequences wherein pirates became popular social rebels, both exciting and dangerous. Instead, Parkes charts the shift towards more recent strategies that have focussed on highlighting the positive contributions the film industry provides to the economy and society more generally, in order to recast the figure of the pirate as antisocial and lacking appropriate ethics. By positioning the paying consumer as a stakeholder in cinema, especially younger tech-savvy demographics, recent antipiracy efforts have sought to promote respect for the creative sector and its various employees, whilst at the same time raising public awareness of legal alternatives to piracy.

The preservation of digital games built to run on hardware and software configurations that are no longer supported due to the evolution of technology, protocols, and standards forms the basis of James Newman's article, 'Illegal Deposit: Game Preservation and/as Software Piracy'. His research points to the challenges and opportunities presented by the desire to preserve a cultural heritage that is in danger of losing many game titles to the annals of history, unless that is, video game code (commonly known as 'ROMs' or data stored in Read-only Memory) is illegally extracted in order to function with emulation software. The long-term future for many older games is, without emulation, rather bleak yet there are few practical concessions or legal defences available to support this practice of preservation. Despite the potential risks involved, there are numerous examples of game preservationists operating outside of domestic and international legal frameworks to ensure that the future generations will have some form of access to digital games from the past. Newman speaks to the difficulties facing game preservation practitioners as they attempt to curate and archive game code against a backdrop of punitive copyright restrictions.

In 'Dismantling the Guitar Hero' Jörgen Skågeby touches on the questionable copyright status of music videos that show concert footage of musicians in which a guitarist performing a solo has had their virtuoso moment overdubbed by third party as an act of parody – a process in which these videos are commonly referred to as 'shreds'. The article calls into question the legitimacy of copyright ownership claims following the banning of several videos uploaded to YouTube – the audio parody in question is performed by a YouTube user rather than the musician featured in the video footage, blurring the distinction between production and consumption. Through an analysis of the music video genre and the application of multimodal semiotic analysis Skågeby highlights

the significance of the 'shred' as a site of tension between cultural critique and cultural homage in which the uploader occupies a frequently contradictory position of empowered creator and the commercially exploited 'producer' of user generated content.

By focussing on the high profile release in 2009 of *Merriweather Post Pavillion* by the musicians Animal Collective, Eric Harvey explores the significance of early prerelease album leaks in 'Collective Anticipation: The Contested Circulation of an Album Leak'. Whilst it may be taken for granted nowadays that musicians may find their work being distributed across peer-to-peer networks, frequently in advance of an official release date, very little critical attention has been dedicated to exploring the significance of such 'exclusives' to the fans that consume them other than typical industry-centred complaints regarding the economic damage 'piracy' does. By focussing on the anticipation created and fostered by an upcoming release, a fairly standard method of ensuring there is a market for the product (aka 'hype'), the article explores the ways in which music fans negotiate the complexities of ownership of digital files as well as looking at the assumed rules that govern fan communities who transform and modify the digital content they come across online.

The final article in this issue comes from scholars working within the Cybernorms Research Group at Lund University, Sweden, whose recent research has explored the norm creating processes that are engendered through the changing uses of technology. Stefan Larsson, Måns Svensson, and Marcin de Kaminski focus their attention on the use of anonymity services amongst young Swedes, especially as this pertains to engagement with illegal file-sharing, in order to better understand the relationship between the two practices. Building upon their earlier research 'Online Piracy, Anonymity and Social Change – Innovation through Deviance' points to an unexpected set of emergent behaviours – namely, that the greatest uptake of anonymity services is by those groups who are not the biggest file-sharers. Drawing upon Merton's strain theory, Larsson et al. highlight the importance of innovative anonymity services to rebellious users as a means of protecting their identity and Internet usage in a context that has seen a drive for increased government identification, retention of personal data, and greater levels of surveillance in online environments.

The articles collected in this special issue of *Convergence* are varied in their subject matter and their approaches, but there are a number of thematic confluences. First, it is noticeable that the authors reject a simplistic notion of piracy as a coherent moralising discourse – something that tends to limit these debates to discussions of the economic value of 'good' consumers as opposed to 'deviant' consumers – preferring instead to put consumption of the illegal at the centre of the debate. Second, the symbolic power to label certain types of consumption as illicit and to subsequently campaign for more punitive sanctions to be levelled against such everyday acts of piracy has tended to ignore the significance of emergent behaviours. Whether consumers are remixing musical performances (see Skågeby), creating their own parody album releases (see Harvey) or preserving video game show through Tool-Assisted Speedruns (see Newman), the threat of legislative sanctions has not hindered moments of creativity from the group of people formerly thought of as the audience. This is not to argue that policies that have the potential to criminalise specific consumer practices will not emerge (e.g. the Digital Economy Act in the United Kingdom, Hapodi in France, in Sweden, etc), but it does suggest that more research into the significance of illegal consumption practices is valuable and should bring greater insight to the complexities of contemporary piracy. Taken together, these articles contribute to a critical debate around a range of illicit forms of consumption in which piracy can be seen as an everyday set of practices and experiences.

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