Piracy Legislation versus Internet Sovereignty

by Lucio Leone

Free information is a term that has come into our lexicon recently. With the advent of the Internet and technology's rapid improvement, property has become nearly synonymous with data, shooting through the tubes at almost-light speed and satiating our newfound demand for instant gratification. However, the entitlement to free information we have grown spawns a less-than-savory mesh of desire and entitlement in the practice of piracy. Piracy of software has become a major issue in today's political and ethical landscape; it is, for all intents and purposes, robbery of intellectual property. The practice serves to undermine efforts of information freedom activists, who seek to build the Internet as a sort of sovereign nation ripe with new ideas and creations people are able to share without impediment. Naturally, legislation exists to combat piracy and attempt to police the Internet. However, critics find that attempts to limit Internet users that lawmakers propose are just as ethically unsound as piracy itself. Users feel their rights to property and privacy suffocating under the watchful eye of Internet service providers, who now have the capacity to patrol their wires for pirates. Meanwhile, those who fly the pirate flag often deem it an archaic misnomer, in the pursuit of free expression and social synergy on the web; open source software, for example, inherently wants to be "free" to share and customize. Ethically, a quandary arises from the collision between the desire for structurally-imposed limits, and the Internet's inherent values of freedom and transparency it was built on decades ago. Piracy, while wrong, is a niche practice; lawmakers enforce overly-broad, sweeping legislation by demonizing piracy as an ever-present boogeyman ready to steal your firstborn. Like I said above, Internet law as it now exists wrongly undermines more common, lawful approaches to Internet freedom, such as open source software and the oneness of producer and consumer.

Internet piracy is about as old as the Internet itself, but legislation has had a tough time catching up to it. 1998 saw the first line of defense rise under the Digital Millennium Copyright

Act (or DMCA); the act criminalized any attempt to get around copyright protections, often called Digital Rights Management (or DRM). At first, media companies found haven under the umbrella law, which gave them more control over the manufacture of media players that could match their DRM methods. A major milestone was reached by anti-piracy camps in July of 2001, when the Recording Industry Association of America won their lawsuit against now-mythical file sharing giant Napster.com, forcing them offline for years while they rebuilt the company as a cloud service (BBC News, 2001). Unfortunately, that was the first and last of the RIAA's victories, and marked the end of widespread anti-piracy support. Fueled by a sense of power and autonomy, the RIAA rattled off lawsuits against individual users for six years, attempting to instill fear in those who would violate their DRM schemes. Unfortunately, these lawsuits were often brought against normal people, for outrageous and disproportionate amounts of money in damages; these David-versus-Goliath-style cases deeply gashed the RIAA's public image, and they shamefully stopped suing people in 2008. Around the same time, the US government was attempting to prosecute the owners of a peer-to-peer file sharing site called The Pirate Bay. Since the site is based in Sweden, and Swedish law has no strong interest in Internet control, the owners freely mocked the American government (and the media companies it represented) for its attempt at "bullying" them; news traveled fast as the cases were publicized, and the government lost face as a result. This period of time marked a major change in the public's opinion of piracy legislation, as many people questioned its effectiveness and the dangers of overreaching power.

As people drifted away from the fight against piracy, more invested individuals created a counter-organization called the Electronic Frontier Foundation (or EFF). Seeing the potential danger of giving the government any sort of control over the Internet, members of the EFF sought to inform the public on proper avenues of legislation and the positive side of digital

freedom. The EFF exists today, having grown more influential over the years; they served a major role in pushing back more attempts at overreaching legislation, mainly two acts called the Stop Online Piracy Act (or SOPA) and the Cyber Intelligence Sharing and Protection Act (or CISPA). Both acts aimed to lift certain limits Internet service providers put on administrative ability to survey Internet user data, and would have allowed the Department of Justice to circumvent due process and warrants in seizing web assets (Tsukayama & Halzack, 2012). Thousands of websites and millions of individual users acted against the bills, including Wikipedia, whose existence would not be possible in the environment the bills would have created. However, this year a similar (though very restricted) version of these acts quietly came into practice: the aptly-named six strikes policy, which allows ISPs to act on behalf of the entertainment industry in disciplining potential file sharers. User Internet traffic is monitored by service providers, and they are free to issue "strikes" in the form of warnings, service shutdown, and even legal fees. In light of the current social and political environment, this policy is almost unanimously loathed, and believed to carry absolutely no power beyond its purpose as a scare tactic.

Despite the drop-off in publicity, legislation is still being sought against digital pirates. An ongoing battle is being waged between the government and Megaupload.com's founder, Kim Dotcom, over the site's legality. Megaupload, before the FBI shut it down, was a hosting site; users directly uploaded and downloaded material using the site's servers as a middle man, which is a very different (and much harder to trace) model than peer-to-peer systems. Evidence against the constitutionality of the website's seizure and Kim's extradition, as brought up by Kim's lawyers, offer a succinct portrayal of piracy law's continued growing pains. The US Department of Justice, in prosecuting Dotcom, seized his assets without serving the company at an American

address, since Megaupload is based in Hong Kong (US v. Dotcom, 2012). However, the Department of Justice has recently begun trying to amend the law in secret, removing the requirement for service at American addresses. Defense attorneys have called foul on what they call a denial of due process, and accuse the US government of knowing this and attempting to cover it up after the fact. Understandably, legislation is an organic construct, constantly growing and changing to adapt to new legal environments. Digital arenas demand forward social and legal thinking due to their complete separation from the physical realm. However, a line must be drawn between grooming the law and rewriting it on the fly, disregarding due process. Copyright news site TorrentFreak decries the Department of Justice for its "flip-flopping" on its execution of the law, and similar criticisms link it to the same mishandling of their attempts at prosecuting The Pirate Bay (TorrentFreak 2013).

Richard Mason, a digital ethics scholar, proposes that today's information-driven world faces four main ethical issues: privacy, property, accuracy, and accessibility (Mason, 1985). These four dimensions form a great ethical measuring stick, so to speak, with which one can judge the current state of piracy legislation.

Privacy on the Internet has been a hot-button issue for a few years now, with the SOPA/CISPA debacle having sparked major concern over who owns the information you willingly release into the tubes. Surveillance of online information has become a government standard, between scanning for trigger phrases in emails and making thousands of data requests to Google over the course of six months (Kleinman, 2013). Proponents of Internet freedom have cried out for policies of transparency in private organizations that deal with online data, for the sake of user safety. By trafficking private data on users, these organizations shoulder a responsibility to treat the data with care and not let it be used in ways which can harm the user.

Transparency policies allow users to make sure companies are upholding this responsibility, in a very "watching the watchers"-esque manner. In the fight against piracy, many ISPs have been armed with what are called packet sniffers, clandestine programs that closely monitor and cache incoming and outgoing data from each household the ISP serves. Many users attack this practice as a blatant invasion of privacy; service providers can watch over every website one visits, every search term one queries. Between packet sniffing and the looming shadow of legislation like SOPA that could potentially come around, legislators have unwittingly evoked a Big Brother sense about invasive privacy law. However, this slippery slope mentality fallaciously tries to predict the bleakest future possible. Counter to this view, some activists argue that ISPs have every right to track user data. They aren't called service providers for nothing, after all; users pay ISPs for access to the Internet through their physical and digital infrastructure. Building and keeping up said infrastructure is expensive, and ISPs have a right to patrol and enforce the law in order to protect their investments. Still, unending surveillance of user activity raises a red flag for legal precedents the practice may set, and warrants active monitoring and demands for fair practice in what one's ISP can see.

As a capitalist nation, America lives and dies on consumerism and clings to free-market economics and regulation to keep it chugging along. The Internet, as mentioned before, follows a very different, almost amorphous model. Consumer and producer mesh together into one, instead of clearly belonging to one group or the other. Mass-media websites like Youtube, Soundcloud, and Tumblr allow users to create something and release it to the world, to be consumed by the millions of other users who have presumably done the same. Even monetized sites like Etsy, a do-it-yourself-style online marketplace, works on this model of a singular consumer/producer. There is not specific arena of exchange (aside from being online), and rarely do physical objects

or paper money (if any at all) get involved; everything is digital and done in credit transactions. Without a mediating factor between them, the producer and consumer can also act without weaving through giant faceless corporations; this point in particular attracts creators to free sharing of their work. Recently, bands like Radiohead, Streetlight Manifesto, and Nine Inch Nails all spearheaded a move towards online direct distribution, circumventing record labels and production firms. Encouraging others to follow the model, sites like Soundcloud and Bandcamp allowed bands to add prices to song downloads while retaining their free streaming services. As one can see, development and deployment of the single producer/consumer model has empowered users with autonomy of choice and creation. Radiohead, in sidestepping record labels and making their online album by themselves, felt in control and more prideful of the album as something they made themselves outside of the cycle of industry (Yorke, 2013). Preservation of user autonomy is paramount to properly respecting and protecting the basic rights of freedom of choice that everyone has. However, due to the way copyright law worked when it created and Hollywood's refusal to change it, many online resources are rendered unlawful for following the sharing-based model the Internet is based on. Anti-piracy law seeks to wrench away this autonomy by applying capitalist legal structure to the Internet, essentially criminalizing the producer/consumer model (Chaudhry & Zimmerman 94). This has already proven to be intensely damaging to the freedom of the Internet and user autonomy, in the case of Aaron Swartz. Swartz, a hacking prodigy in his own right, believed in the free exchange of information for everyone, in both senses of the word; "free" meaning both costless to the consumer, and without barriers to access. Penning the Guerilla Open Access Manifesto, Swartz lambasted what he called "corporate greed" on the part of the media industry-government tandem: "Forcing academics to pay money to read the work of their colleagues? Scanning entire

libraries but only allowing the folks at Google to read them? Providing scientific articles to those at elite universities in the First World, but not to children in the Global South? It's outrageous and unacceptable" (Swartz, 2008). In protest, he would buy up collegiate articles and research papers, and then share them freely online to spread knowledge. The Massachusetts Institute of Technology, working with the government, prosecuted Swartz on grounds of copyright infringement, in a very similar way to how the RIAA's piracy lawsuits in the mid-2000s were brought and conducted. The stress of the situation led Swartz to take his own life. Like many others online, he believed in the human right to knowledge. While MIT and other copyright-holding firms will claim they are entitled to the property rights, in reality they serve as middlemen between producers and consumers; the Internet has proven these to potentially be obsolete, and definitely questions the validity of their claims of right to ownership. Ownership belongs to the creator, not the mediator, and the only way to ensure that is to operate in a free environment.

Protection of open access to the vast mines of data the Internet provides us ties very closely to the careful crafting and deployment of piracy law. Structurally, the Internet spits in the face of capitalism and bureaucracy; it is an inherently open, peer-to-peer network, the polar opposite of representative and consumerist ideals that form the foundation of our country. Cultures clash messily when computers are removed as mediators, and trying to sort everything out has only resulted in red tape constricting lawmakers' power. The RIAA has long since lost any credibility it once had as an ally to the government's efforts, all Pirate Bay cases were abject failures that raised serious questions about the limits of American law, and Megaupload has been bouncing from court to court battling the government and gaining international support. Some of the problem lies in the aforementioned difference between how our country runs and how the

Internet, as a sort of "nation," does. US law has remained largely the same since the country's birth; aside from amendments meant to polish some details, the basics have remained constant. Two-hundred years of tweaking to fit our legal system to the exact mold of America, its society, culture, ideals, business, and so on, is now being applied to a different entity entirely. This is a reckless, egotistical disregard for the values of freedom and sovereignty the Internet has built upon. Legislators cannot expect to apply a capitalist viewpoint to, say, China, and expect the law to be carried out as such (which coincidentally is exactly what happened to Kim Dotcom). By extension, then, it is futile to try to apply constructs that would barely fit other nations to the Internet, a practically anarchistic society. It's a question of our deontological fortitude. We, as a nation of consumers, have no right to name ourselves gatekeepers to a place our lawmakers aren't able to accommodate and comprehend. Granted, the men and women in charge right now are still at least half a century old, and were not afforded the web-immersed upbringing ours and other generations had, thereby making their work with digital spaces far more difficult. Status-quo bias has bred within politicians a fear of the large-scale changes in structure and ideals application to the Internet would require. Still, it's a large-scale execution of one's "responsibility to the other;" we are responsible for nourishing the other and respecting it, which is currently being ignored.

One of the main victims of legislative neglect and lack of understanding is the online hacking community. Hackers arguably fathered the home computer as we know it, through crowdsourcing their work with hobby kits and programming calculators in the 1970s (Bellis, 2009). Open source "hobbyist" software appears in many online companies, even those like Google and Amazon whose main interests are in proprietary software; Apple's OSX is even based on UNIX, an open source programming language/operating system hybrid. As a

community, hackers operate under the assumption that anyone can take part in their budding practice. Barriers of entry are set at one's own willingness to invest their time into projects, and coding knowledge. However, hacking and free programming have been wrongly framed as gateways to piracy, if not the same thing entirely (Chaudhry & Zimmerman 160). Hence, open source software is met with criticism often, believed by the uninformed to be shoddy, illegal copies of "real software." Moreover, because of the lack of understanding about hacking and open source, prospective programmers are often met with unjust barriers like IP blocking, methods meant to deter piracy by blocking off suspicious individuals. Once again, the government is failing to uphold their responsibility to the user and what he or she would expect in the digital realm, in this case putting an entire community at risk of choking away under multiple sweeping restrictions.

Above all else, the Internet must be considered a sort of "sovereign nation" parallel. It acts as a physical space and basic structure, yet has no agenda or interest in users' lives and doings. Full autonomy is granted to all users, due to the lack of distinction between producer and consumer that would allow for the categorization of who is allowed to do what. Culture is allowed to flourish almost unhindered; this entails a responsibility on every user to uphold their moral obligations to others. One must intend to do no harm. Easy anonymity is an ongoing issue online, and is especially pertinent to these aforementioned social responsibilities. Behind a computer screen, through a series of tubes and wires, nobody knows who you are (as long as you don't disclose your identity.) Part of the moral obligation we have to others comes from positive self-representation and building of how others see our virtues and values. As a lifeless mass of data, we are freed from this dimension of morality; all we are left with is a trust in others to uphold our basic rights as we may do the same. Some people take advantage of their

disconnection between online and offline persona, which is an original facilitator of piracy's widespread popularity online. One could claim online piracy is a sort of "ground-level" problem in this way; through the Internet's inherent ethical approach to virtue, piracy is made appealing, building it into web culture in a way. Does this not justify the law's abuse of power over the Internet, fighting fire with fire? In time, I believe we will have a much better idea of how to police the web and make it a truly free space; between the youth of the technology, and the disparity between our immersed generation and the more jaded, baby-boomer lawmakers, the Internet is still experiencing major growing pains. Until it reaches maturity, though, I feel we should bite the bullet and let it take its natural course, instead of chaining it up in asylum from wrongdoers. If not, the Internet as we (and programmers, musicians, filmmakers, writers, and so on) know it will die…and you can bet, for the government's part in it, the coffin will be draped in the stars and stripes.

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