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Piracy, globalisation and the colonisation of the Commons

Martin Fredriksson – Linköpings Universitet, Sweden

Abstract

Over the last decade piracy has become a source of constant debate. While copyright organisations describe piracy as simple theft, others regard it as a legitimate form of cultural consumption in a digital environment. Piracy is, however, not a phenomenon unique to digital media of the 21st century. This article takes the history of copyright and piracy as a starting point for a discussion about piracy as a cultural and political phenomenon that goes beyond the contemporary preoccupation with particular piratical practices such as file sharing. It seeks to show how copyright and piracy are integrated aspects of modern society, equally situated in the urban, social space of the modern city and the global, geopolitical landscape of colonialism in the past and the present. One might call it a study of how piracy is constituted in space over time.

The article sets out with a short overview of the colonial heritage of copyright, followed by a discussion of the re-contextualisation of copyright within the structures of international trade relations in the 1990s, moving on to discuss how this positioned piracy within a postcolonial order of power. It concludes with a brief discussion of how piracy has become an integrated part of everyday life in contemporary, postcolonial cities and how this development reflects piracy's role in the process of late capitalist globalisation.

Piracy, globalisation and the colonisation of the Commons

It is the beginning of a new century, and the music industry is facing a crisis. New technology, new media, and innovative business practices are challenging the copyright principles that have underpinned [the] industry for as long as anyone can remember. Taking advantage of a revolutionary process that allows for exact copying, 'pirates' are replicating songs at a tremendous rate. The public sees nothing wrong in doing business with them. The publicity, after all, speaks of a mainstream music industry that is monopolistic and exploitative of artist and public alike. The pirates, by contrast, are ostentatiously freedom loving. They call themselves things like the People's Music Publishing Company and sell at prices anyone can afford. They are, they claim, bringing music to a vast public otherwise entirely unserved. [...] In reaction, the recently booming 'dot' companies band together to lobby the government for a radical strengthening of copyright law – one that many see as threatening to civil liberties and principles of privacy. In the meantime they take the law into their own hands. They resort to underhand tactics, not excluding main force, to tackle the pirates. They are forced to such lengths they say, because the crisis of piracy calls the very existence of a music industry into question Adrian Johns (2009: 327).

Adrian Johns' description of how piracy threatens the established music industry is familiar to anyone who has followed the recent debates about file sharing. Yet Johns is actually not writing about peer-to-peer networks but about the flagrant piracy of printed notes that haunted the English music publishers in the early 20th century. During the last decades of the 19th century a combination of new technology and changing musical trends had redefined the conditions for distributing printed music in a way that opened up the market to a wave of unauthorised reprints. This spread of music piracy was largely a consequence of the piano mania that struck Victorian England in the second half of the 19th century, when the piano became a fashionable attribute for the growing middle class and was soon to be found in every respectable home. This trend gave rise to a growing demand for printed music, but the high prices charged by the established music publishers left the consumers looking for cheaper alternatives, and new technology supplied the means to meet this demand.

The newly developed technology of photolithography made it significantly easier and more cost effective to produce more-or-less exact copies of printed material, and particularly of single sheets such as music scores. The only obstacle to this new printing revolution was copyright which gave a few established publishers exclusive rights to the most popular works. The pirate publishers, as well as the majority of the consumers and also many music dealers and composers, regarded this as an

unjust monopoly that enriched a few publishers at the expense of the consumers and the culturally inclined public. Consequently, the pirate publishers were rarely despised by the general public but rather were appreciated for spreading music to the people at a reasonable cost. When the newly established organisation for music publishers, the Music Copyright Association (MCA), addressed the problem by setting up its own bands of pirate hunters that became infamous for their aggressive and thuggish investigative methods, this only served to reinforce the image of the publishers as greedy monopolists.

If the struggle against the maritime pirates of the past had taken place on the ocean, then the war on music piracy was fought in the modern cities. When the MCA's pirate hunters began to search the streets for illegal music, they faced an elusive enemy:

Almost always the men disappeared into the city's back streets, leaving no trace of their presence. They simply abandoned the seized copies [...] meanwhile the hawkers obtained more copies from their suppliers and returned to work (Johns, 2009: 336).

Johns depicts something that vaguely resembles a kind of urban guerrilla warfare that spread across London, and subsequently to other major cities in England. He notes how, "[a]t first it manifested itself mainly in metropolitan thoroughfares like the Strand and Fleet Street" but was soon "all over the place" (Johns, 2009: 331).

The very fact that this pirate hunt initially took place in the streets largely contributed to its failure. While piracy was generally associated with street vending, public markets and certain infamous pubs and shops that served as underground hot spots for pirated music, significant aspects of the business actually took place in people's homes. The stocks were often kept in private dwellings, and it was there to which the hawkers went for new supplies when their goods were confiscated. Initially, it was hard for the MCA to gain access to these spaces, but they soon adopted a more forceful, and partly illegal, strategy that often involved pirate hunters forcing themselves into the homes of suspected pirates. This strategy was successful in the sense that it managed to curb the distribution of illegal reprints to some extent. But the violation of privacy was a controversial act that added to the image of the copyright owners as greedy, ruthless oppressors, with the pirates seen as some kind of cultural freedom fighters (Johns, 2009).

This example shows the long history of tension between the copyright holders' property rights, consumers' needs for affordable and accessible culture, and individuals' right to privacy that underlines the current copyright debates. This history has not only been acted out in a metaphorical public sphere of letters, but also in the highly material domain of the modern city and the intimate space of its citizens' private homes. The problem of privacy in particular, remains at the heart of the copyright debate, as various laws allowing the copyright holder to monitor and take actions against individuals suspected of piracy have been heavily criticised over the last years.¹ In this sense the actions against the music pirates of Victorian England exemplify how the struggle against piracy, in the past as well as the present, works at the very intersection between the private and public spheres.

Adrian Johns has shown that 19th century piracy was physically located in an urban, social space. Copyright and piracy are however, also inscribed in the global, geopolitical landscape of colonialism, and this article will focus on the interaction between these two spatialities, discussing piracy as a local phenomenon in a global context in both the past and present. One might call it a study of how piracy is constituted in space over time. In this article I will set out with a short overview of the colonial heritage of copyright, followed by a discussion of the re-contextualisation of copyright within the structures of international trade relations in the 1990s, and how this positioned piracy in relation to a postcolonial order of power. Finally, I will take a brief look at how piracy has become an integrated part of everyday life in a contemporary, postcolonial city and discuss how it reflects piracy's role in the process of late capitalist globalisation. But before I can turn to the present I would like to step even further back in copyright history.

Piracy, copyright and colonialism

Piracy was nothing new for the Londoners of 1900. The practice of illegal reprinting dated back to the days when the book market was still organised through literary privileges: when exclusive rights to print particular books were issued by the crown to members of the Publisher's Guild, which was trusted to uphold the censorship imposed by the state. Piracy had become particularly common throughout 17th and 18th century England, and by the late 17th century London's guild-associated publishers were describing un-associated printers who violated their privileges as "book pirates" (Johns, 2009: 23). Just like the Victorian music pirates, the earlier generations of renegade publishers also tended to see themselves as servants of the public interest. In many parts of Europe the business of reprinting was regarded as an honourable trade that merely provided people with cheaper books. The British book pirates – who usually came from Ireland or Scotland – frequently claimed that they only contributed to the public access to good literature by breaking the monopoly of the greedy London publishers (Drahoš & Braithwaite, 2003; Johns, 2009; Rose, 1993).

Even at an early stage piracy was a transnational problem since many of the pirate publishers that haunted national markets were based abroad. Large parts of the pirated literature on sale in England and France, for example, were actually printed in Ireland, Scotland, Germany or Belgium (Rose, 1993; Saunders, 1992). The problems with imported reprints took a particular form in the English-speaking colonies when Great Britain passed its Copyright Act of 1842. This was largely an attempt to stop the import of foreign reprints of British works, not only to England but also to all British colonies. To further protect the economic interests of the British Empire the Copyright Act was soon backed by a new Customs Act that made it easier to control the inflow of foreign reprints (Seville, 2006). Restrictions like these were particularly unwelcome in the English-speaking Canadian colonies where people were accustomed to buying cheap reprints from the United States of America. The British Copyright Act of 1842 was thus partly an attempt to protect the British Empire's borders against the unregulated

literary markets that reigned beyond, and the most prominent threat was the USA.

American reprints of English authors would be a long-lasting cause for conflict between the UK and the USA. The anti-English sentiments expressed by many Scottish publishers were even more evident in the USA. Adrian Johns (2009) describes how the first generation of American publishers came to constitute themselves as book pirates who openly violated British copyright law by systematically reprinting works that the British publishers considered their own lawful property. This practice laid the foundation for a vital but highly controversial book market in the new world, and Johns concludes that by "the 1820s, Jacksonian America had a secure and vibrant public sphere – but to European eyes an utterly piratical one" (2009: 180). In this context piracy was not driven by profit alone; it also signalled a resistance to the authority of the former colonial power. But unlike in the UK, this was not an illegal market since the American legislators refused to grant foreign authors protection under the copyright law of the United States.

While most early copyright laws only protected domestic authors, the vast majority of Western countries started to introduce reciprocal protection for foreign authors in the second half of the 19th century, a process that eventually led to the passage of the Berne Convention for the Protection of Literary and Artistic Works in 1886. The idea of protection for foreign authors was initially met with resistance in many countries, but the principles of international copyright set down in the Berne Convention would nevertheless be implemented in most national legislations in the late 19th and early 20th century. The big exception was the United States. The objections in the US were largely similar to those that had circulated in Europe, and particularly in its more peripheral areas such as Scandinavia. They claimed that an international copyright protection would make imported literature too expensive for the average reader, thus impeding the circulation of literature and hampering cultural development (Balász, 2010; Fredriksson, 2009; Homestead, 2005).

But the United States' recent colonial history added another perspective to the issue. If marginal European countries such as Sweden had been eager to show that they were a part of European civilisation by conforming to its copyright norms, the American position was often marked by open defiance of the European copyright paradigm (Fredriksson, 2009; Homestead, 2005; Johns, 2009). Many American politicians and legislators thus took positions that European copyright 'hawks' regarded as blatant endorsement of piracy. This American scepticism toward an international coordination of copyright law prevailed long after most European countries had abandoned it. The US for instance, did not ratify the Berne Convention until 1989.

If early American copyright law was loosely intertwined with the history of colonialism, then China provides an even more obvious example of the connection between copyright and Western imperialism. As William P. Alford describes in his 1995 book *To Steal a Book is an Elegant Offense*, China's first modern intellectual property laws were an immediate consequence of Anglo-American 'gunboat diplomacy'. In the aftermath of the Boxer Uprising in 1900, the UK and the US imposed a number of new legal and economic reforms on China in order to open up the country to 'foreign', (that is, Western), trade. Some of the most significant reforms were the introduction of a new national currency for the entire Chinese empire, the abolition of certain trade restrictions and the passing of fundamental patent and copyright laws. China agreed to these conditions most reluctantly and the passing and implementation of the new intellectual property laws largely followed a strategy of appeasement, where the Chinese government did nothing more than what was absolutely necessary to ward off new interventions from the West (Alford, 1995).

Copyright and global trade relations

Today, history seems to repeat itself as new economic and technological conditions for production and distribution of culture once again call the copyright regime into question, putting the relation between private property and the public domain at the heart of the debate. The geopolitical context however, has radically changed. In the later part of the 20th century, the USA began to take a more active role in the development of international intellectual property rights, and a kind of Americanisation of copyright took place in the 1980s and 1990s. As the Reagan administration became aware of the huge economic value created by the American copyright industries, the US swiftly reconsidered its view on international copyright legislation. Not only did it ratify the Berne convention, but the US quickly became the driving force behind the internationalisation of copyright in the late 20th and early 21st century (Hemmungs Wirtén, 2003; 2004), the emphasis coming to rest on the trade-related aspects of copyright which can be seen as a change of paradigm in the history of copyright.

Copyright law has indeed always been strongly influenced by business interests and different economic considerations. The Statute of Anne of 1709, which is often referred to as the first copyright law, was essentially a trade regulation for the British book market, and, even though the Berne Convention was heavily cloaked in idealistic rhetoric, it largely served the business interests of publishers in the copyright exporting nations, reflecting what Drahos and Braithwaite (2003: 76) describe as a "harsh global economic reality of a cartelized publishing industry, prize fixing and world market-sharing agreements." But in the past, European copyright law still rested on the recognition of the authors' *economic* and *moral* rights: the copyright holder's rights to the material profit that the work generates versus the original author's rights to be recognised and respected as the creator of the work. The economic and moral rights thus reflect the recognition that copyright should protect both economic and cultural values that have been fundamental to European copyright thinking since the 19th century (Strömholm, 1975; Fredriksson, 2009; Sundara Rajan, 2011).

But over recent decades copyright has become more openly and formally intertwined with the structures of global trade relations. This is a consequence of a systematic campaign, as initiated by American companies such as Pfizer in the 1980s, to make "intellectual property protection into a trade issue" (Drahos & Braithwaite, 2003: 61). The campaign was largely directed against the World Intellectual Property Organization (WIPO), an agency within the United Nations (UN) that, until the 1980s, served as the main coordinator of what it describes as "a balanced and accessible international intellectual property (IP) system, which rewards creativity, stimulates innovation and contributes to economic development while safeguarding the public interest" (WIPO 2012). The predominantly American IP industry found the WIPO too lenient towards developing

countries that opposed a strict global implementation of intellectual property rights (IPR). Representatives of this industry thus set about creating a new "forum for global standard setting" that would enforce more consistently their interests (Draho & Braithwaite, 2003: 195). The first result was the inclusion of intellectual property rights in the General Agreement on Tariffs and Trade (GATT) in 1986. In 1994 the ties between copyright and trade relations were bound even tighter with the World Trade Organisation's (WTO) passing of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which required all members of the WTO to adapt their national legislation to a set of international standards for intellectual property rights (Draho & Braithwaite, 2003; Gervais, 2002).

The GATT and TRIPS agreements thus moved the issue of intellectual property rights from the sphere of international civil and cultural rights as codified in the Berne Convention and enforced by the UN to a sphere of global trade regulations enforced, in practice, by the US, with some assistance from the EU (Draho & Braithwaite, 2003). It is significant that the TRIPS agreement does not recognise the author's moral rights, but only protects the copyright holder's economic rights (Sundara Rajan, 2011), which is an obvious expression of the general disregard for any cultural aspects of copyright that characterises this new paradigm of intellectual property rights.² This is a one-sided enforcement of what Draho and Braithwaite (2003: 177) call the "financer's copyright", under which "all other interests, those of authors, performers and states in supporting their own cultural industries, are subordinated to the producer's interest in maintaining a global system of production and distribution." These agreements were important means for the developed countries, and particularly the US, to set their own IPR agenda on an international level, but this did not make WIPO irrelevant. It remains one of the most important fora for international intellectual property rights and, when the WIPO Copyright Treaty was passed in 1996, the USA ensured its say in the process.

The American law professor Pamela Samuelson (1997: 370) has described how the US took this opportunity to impose its own digital agenda that "aimed to write the rules of the road for the emerging information superhighway so that copyright owners would have considerably stronger rights than ever before." In short, it is an agenda to ensure that the (US-dominated) multinational companies that had invested in copyrighted content would retain maximum control over their products in relation to consumers and public institutions in the information society of the 21st century. The USA's attempts to steer the WIPO in its direction were largely, though not entirely, successful in the sense that the final treaty included fairly far-reaching restrictions on the distribution and reproduction of copyrighted material (Samuelson, 1997).

In a European context, the WIPO Copyright Treaty came to be enforced through the Directive 2001/29/EC on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society – also known as The Information Society Directive – that was passed by the European Parliament in 2001. The Directive aimed to create common, European minimum standards of copyright protection, mainly relating to digital media, and by 2006 it had been implemented in all European Union countries. This Directive was also incorporated within the Lisbon Agenda's strategy to make Europe, "the most dynamic and competitive knowledge-based economy in the world", which identified intellectual property rights as an important tool to promote the knowledge economy (Guibault, et al., 2007: vii). Apart from merely implementing the WIPO's treaties, the central purpose of the Information Society Directive was to improve the conditions for exchange of immaterial goods on EU's common market by harmonising and adapting the national copyright acts within Europe to the international technological development. This goal was also emphasised in the Directive, whose first seven paragraphs entirely focused on copyright's importance for the development of the common market and the European economy in general (2001/29/EC, §1-7). The guiding rationale of the Directive was most forcefully summed up in §4:

A harmonised legal framework on copyright and related rights, through increased legal certainty and while providing for a high level of protection of intellectual property, will foster substantial investment in creativity and innovation, including network infrastructure, and lead in turn to growth and increased competitiveness of European industry, both in the area of content provision and information technology and more generally across a wide range of industrial and cultural sectors. This will safeguard employment and encourage new job creation. (2001/29/EC, §1-7)

By explicitly defining copyright as a tool to promote economic growth and job creation, the Information Society Directive articulates and motivates copyright law within a new and fashionable discourse of *creative industries* and *knowledge-based economies*.

It can thus be seen how both the US and EU heavily emphasise the economic aspects of copyright and increasingly imagine intellectual property rights within a context of global finance and trade relations. This is not to say that these trade related aspects of copyright are essentially new, but does reflect the emergence of new grounds of legitimacy for copyright which is now – at least in the context of international politics – being increasingly motivated by its contribution to economic, rather than cultural, development. This, however, raises the question: economic development for whom?

Copyright and piracy in a postcolonial world

This paradigmatic shift in the development of copyright law highlights IPR's role in the postcolonial power structures that global trade relations embody. Many have pointed out how IPR have become means for wealthy nations and multinational companies systematically to appropriate and exploit the intellectual resources of the Third World, from natural medicine to folk tales, and sell them back to poor countries under the protection of agreements such as TRIPS and GATT (see, for instance, Boyle, 1996; Draho, 1997; Draho & Braithwaite, 2002; Halbert, 2005; Hemmungs Wirtén, 2004 & 2008). In this sense, global intellectual property rights tend to uphold a one-sided flow of resources that was established under colonialism, or as Deborah Halbert (2005: 138) puts it, by "ignoring the possibility of alternative property systems governing the use and transfer of traditional knowledge and culture, Western agents reproduce the discourse of colonization today."

If the European copyright order of the 19th century was contested by the postcolonial United States of America, then the

current system of intellectual property rights is conceived to be under attack by forces from outside what could be called the Western cultural hemisphere. When the Office of the United States Trade Representative (USTR) recently listed 17 of the world's most notorious pirate markets, all of them were located in Asia, South America or Eastern Europe (Out of Cycle Review of Notorious Markets, 2011). From the perspective of Western governments and copyright organisations, the notorious markets in Asia and South America are violations of international agreements, giving piracy a political weight that can even, as has been the case with the USA and China, lead countries to the brink of trade wars (Wang & Zhu, 2003; Alford, 1995). Even though the USA tends to take the lead when it comes to international enforcement of intellectual property rights, the EU largely shares its view on Asian piracy, and the European Trade Commissioner has also expressed concerns about Chinese piracy of European brands and its consequences for the trade relations between Europe and China (Mandelson, 2007).

The Indian-based lawyer and activist Lawrence Liang (2005: 6), on the other hand, describes this kind of Third World piracy as "leaks in modernity": a way for the people of the third world to get at least some limited access to the cultural and technological fruits of modernity (Philip, 2005: 213). Regarded in that perspective, the Western attempts to stifle piracy in Asia can be interpreted as part of a colonialist urge to mend these leaks and contain the privileges of modernity within the boundaries of Western civilisation. Ironically, the well-known copyright lobbyist and head of the Motion Picture Association of America (MPAA), Jack Valenti, also envisions piracy as a kind of leakage. Tarleton Gillespie has shown how Valenti's melodramatic appearances in the American Senate and elsewhere in the early 2000s paved the way for a more restrictive policy on copying, downloading and file sharing by framing the conflict between the American film industry and emerging P2P networks as a struggle between good and evil, civilisation and chaos (Gillespie, 2007). Valenti employed the same kind of rhetoric in regard to Asian piracy, and in a speech before the Senate in 2004 developed his view on China as the "great enemy" of American copyright owners:

The spread of theft of America's creative works flows like a swiftly running river in every nook and cranny of this planet. Today I'd like to focus on China and Russia, where ... the piracy problems are spilling out beyond their borders to infect markets all around the world ... (quoted in Wang 2006: 414).

Valenti's picture of Asian piracy as a "swiftly running river" that threatens to disperse the American media industry's valuable products all over the Third World has an undertone of colonial anxiety: a fear that the empowered *Other* might pilfer the West's culture and knowledge. The historical parallel is obvious, especially if one recollects the words of a previous representative of the American entertainment industry – a 19th century publisher – who addressed the very same Senate and made the following appeal in 1886:

All the riches of English literature are ours. English authorship comes to us as free as the vital air, untaxed, unhindered, even by the necessity of translation; and the question is, Shall we tax it, and thus impose a barrier to the circulation of intellectual and moral light? Shall we build up a dam to obstruct the flow of the rivers of Knowledge? (Balász, 2010: 408).

The metaphors are strikingly similar because the basic conflict is the same: both speakers discuss how media companies in the privileged part of the world prevent the leakage of cultural commodities from developed to developing countries. The great difference is, of course, that the 19th century publisher and the 21st century movie producer belong on different sides of this border.

This border is however, currently and constantly changing. In an Asian context, China's urge to be more than just a manufacturer for Western companies and to develop its own content-based economy – to change the paradigm from "Made in China" to "Created in China" – has given China incentives to take a new position on the copyright question. Since it joined the WTO in 2001, China has, at least officially, taken the copyright question more seriously than before. Its sincerity has often been called into question, but there are recent signs that China is finally accepting IPR enforcement. In the mid-1990s the Chinese-American IPR-lawyer and Professor of Law, Frankie Fook-Lun Leung, claimed that China is not likely to make any serious efforts to fight piracy until it threatens its own economic interest (Fook-lun Leung, 1995). As if to confirm this thesis, China reformed its copyright policy in preparation for the Olympic Games in Beijing in 2008, largely in order to enable the Chinese state to enforce its own immaterial rights to the graphic profile and the merchandising surrounding the Games (Burrows, 2008; Dorgan, 2008). In this context China joined the ranks of the copyright hawks as they, together with the International Olympic Committee, attempted to stop the spread of unlicensed recordings from the Games through fora such as the infamous Swedish pirate site, The Pirate Bay (Marshall, Walker & Russo, 2010). Furthermore, in February 2009, Chinese authorities opened a copyright centre in Beijing, servicing the public with legal advice and help with copyright licensing in order to promote the growth of domestic copyright industries. According to the Mayor of Beijing, Cai Fuchao, this new centre will play an important role in developing China's emerging cultural economy:

In the coming three years, the centre will become the most influential development zone of the copyright industry covering music, video, animation, games, software and other copyright fields (China Daily, 2009).

Initiatives like these suggest that Chinese politicians and policymakers are beginning to regard copyright as a tool to promote China's own economic interests. This pragmatic strategy is not unique to China. The USA made a similar move in the 1980s, and many nations have adopted a more positive attitude towards international copyright regulations only as they have developed profitable cultural industries of their own.³ China's change of heart in the copyright question thus highlights the fluidity of global IPR-politics. If copyright and piracy are inscribed in a landscape of colonialism, that landscape is never static. The lines between perpetrator and enforcer are rarely as clear and stable as the rhetoric of the latter might imply.

Pirate cities

Copyright is essentially spatial, not only because it is inscribed in a postcolonial structure of power, but also because it deals with the regulation of "the commons". Copyright law has always in some regard been a struggle over public and private spaces, where the copyright owners' attempts to monitor and regulate the distribution of what they regard as their own private property interferes with the freedom of the public domain. But with the recent impact of neoliberalism, the balance between the public and the private has shifted towards the latter, and the drive towards privatisation has increased significantly, leading to what James Arvanitakis (2006: 13) describes as "an ongoing commodification and enclosure of the commons."

The enclosure of the commons is a process whereby a wide range of common goods, from land and natural resources to culture and knowledge, are transferred from public into private control. The recent expansion of intellectual property rights contributes to this development in regard to culture and information, which James Boyle describes as a "second enclosure movement" (Boyle, 2003: 33). Boyle refers to the first "enclosure of the commons": a series of land reforms in England between the 15th and 19th century that gradually transferred collectively used agricultural areas into the hands of a small group of wealthy landowners. This is often described as necessary cultural reform that turned small-scale, inefficient farms into large-scale, well-organised production units. But it was, in fact, also a huge privatisation of common resources.⁴ Boyle sees a strong parallel between the enclosure of the agricultural commons of the past and a contemporary enclosure of the cultural commons, whereby the IP-industry appropriates a constantly growing field of cultural and intellectual resources, from folk tales and indigenous art to biomedical substances (Boyle, 2003).

The commons, however, are not only an immaterial or a rural phenomenon. Recently, we have witnessed a growing concern over how real estate companies privatise public space by fencing in, monitoring and restricting the access to social hubs, such as shopping malls and railway stations, all across the developed world. The struggle over urban space takes an even more concrete form in the megacities of the Third World, where the lack of space and the masses of impoverished citizens create a seemingly uncontrollable proliferation of illegal settlements. In cities like Bangalore, about 60-70 per cent of private housing has been developed spontaneously by squatters independently of any official city planning and in breach of existing real estate laws (Liang, 2005). These dwellings have arisen out of people's need for affordable accommodation and the private as well as the public sector's inability to provide for that need.

Likewise, 70 percent of the software sold in India is pirated – it circulates independently of the official distribution networks and in breach of existing intellectual property laws (Liang, 2005). The exactness of the statistical similarity might be coincidental, but it is nevertheless telling. Both piracy and squatting are, at least in the Third World, largely reactions to a general lack of legally accessible and affordable resources. These are not just two separate problems, they are intertwined as these pirate networks are physically integrated with the illegal city. Liang describes a mutual relationship where the illegal city provides a perfect, uncontrollable space for the distribution of pirated goods, while piracy constitutes the most important distribution chain to supply the illegal city with culture, information and technology:

While the older illegal city has been in existence for a while, another layer has been integrated into the experience and narration of this illegal city in the past ten years. The proliferation of non-legal media practices ranging from pirated VCDs, DVDs and MP3s to grey market mobile phones inform the practices and imagination of the illegal city. As Ravi Sundaram says:

pirate electronic networks are part of a 'bleeding' culture, constantly marking and spreading in urban life. [...] In a world where information bleeding is part of the contemporary (SMS, television text scrolling, newspaper inserts, lamppost stickers, Internet pop ups, event branding), pirate culture uses the ruses of the city, but *immanently*, not transcendently (Liang, 2005:7).

Together with the notorious pirate markets and the street peddling of imitation watches, pirated DVDs and counterfeit handbags taking place in major cities all over the world, this set of practices creates the impression of a currently emerging postcolonial pirate city. One of the best pictures of the pirate city can be found in Ravi Sundaram's (2010) book *Pirate Modernity*, which describes contemporary Delhi as an ever growing and increasingly ungovernable social organism where piracy has become a rationale for everyday life for many of inhabitants:

Pirate culture has utilized the technological infrastructures of the post-colonial city – electricity, squatter settlements, roads, media networks and factories. These are siphoned off, or accessed through informal arrangements outside the existing legal structure of the city. By disrupting existing technologies of control and expansion, piracy provides a key interface between media technologies and larger urban infrastructures (Sundaram 2010: 13).

This perspective also indicates that there is no essential difference between the piracy of intellectual property and squatting: both are practices that give underprivileged people access to physical and cultural space, which is otherwise withheld from them by the property regime. Referring to the anthropologist Brian Larkin, Sundaram (2010: 12) characterises this process as a "creative 'corruption' of the urban infrastructure and the media technologies that went on to create its own spatiality."

If we look at the history of piracy, this spatiality seems vaguely familiar. With all its informal and illegal – yet surprisingly well ordered – networks of distribution, this new Piratropolis of the 21st century actually resembles Adrian Johns' Victorian London: a place where pirates take cover in the ungoverned urbanity that is the privilege of the unprivileged. The response from the media industry is largely the same as it was in 1900. Sundaram (2010) describes how the fight against piracy in Delhi is mainly carried out by private firms that employ field agents – "private investigators/musclemen" – to go after the pirates on behalf of foreign copyright organisations, such as the MPAA, and domestic media companies who want to curb the illegal distribution of a specific release. Sometimes they act together with the police, but they might also perform raids and confiscate materials on their own, on occasions even masquerading as police (Sundaram, 2010:

131).

It is, of course, striking that the pirate hunters in postcolonial Delhi resort to methods that are similar to those employed by the Music Copyright Association in London more than a century ago. But the postcolonial pirate city also reflects the global relations of late capitalism. It is probably characteristic of the adaptability of late capitalism that the fight against the disruption of the copyright- and patent industries in itself has turned into a business. Ramon Lobato and Julian Thomas (2012: 609) have pointed out that one of the "characteristic features of the copyright system has been the role of the rights holders in do-it-yourself policing". Recently, this private policing has expanded into an industry of commercial anti-piracy enforcement that exists separately from the media companies as such, and includes not only law firms but also companies specialising in digital rights management, surveillance and research (Lobato & Thomas, 2011:5). It is a business that has its own global hierarchy where lawyers in Los Angeles are at one end and the Indian field agents are at the other. Just as in many other businesses, the "dirty jobs" of the anti-piracy business are situated in the Third World, undertaken by an underpaid group of retired policemen, or even by former pirates who Sundaram (2010: 131) dubs "the derided subaltern foot soldiers of the anti-piracy conflict."

Lessons learned?

By historicising the concept of piracy, I have tried to look beyond the contemporary preoccupation with some of its particular expressions, such as file sharing, discussing piracy as an integrated aspect of the capitalist mode of exchange past and present. Like capitalism itself, piracy has always been an international phenomenon, simultaneously located in local contexts and global structures in the sense that it caters to the needs of local audiences while relying on international networks of distribution that affect, and are affected by, international relations. Consequently, we can see how its practices, as well as its social and political meaning, change because of the restructuring of the relationship between the local and the global involving the decline of the nation state, the fall of traditional colonialism, and the emergence of a new kind of postcolonial globalisation.

Michael Hardt and Antonio Negri (2000) have described globalisation as a transition from a world order dictated by a few imperialist nations' struggle for territorial dominance to one where power is relocated to transnational structures that assume the guise of new supernational sovereignty:

The primary factors of production and exchange – money, technology, people and goods – move with increasing ease across national boundaries; hence the nation-state has less and less power to regulate these flows and impose its authority over the economy. Even the most dominant nation-states should no longer be thought of as supreme and sovereign authorities, either outside or even within their own borders. *The decline in sovereignty of nation-states, however, does not mean that sovereignty as such has declined.* [...] Our basic hypothesis is that sovereignty has taken a new form, composed of a series of national and supranational organisms united under a single logic of rule. This new global form of sovereignty is what we call Empire (2000: xii, emphasis in original).

Hardt and Negri are talking about a new kind of global governance – a conglomeration of supernational structures of control and regulation – closely connected to the ideology of a world market that emerged in late 20th century, "a world defined by new and complex regimes of differentiation and homogenization, deterritorialization and reterritorialization" (Hardt & Negri, 2000: xiii). One of the most notable of those regimes is the World Trade Organisation and the trade regulations that it imposes, which also include the new copyright paradigm codified in the GATT and TRIPs agreements. Contemporary international intellectual property rights can even be taken as a text book example of what Hardt and Negri call a regime of "differentiation and homogenization, deterritorialization and reterritorialization", as it increases global inequalities by making the IPR agenda instigated by the US an internationally homogeneous and universally enforceable legal standard.

The birth of Empire also incorporates the transition from a colonial to a postcolonial world order:

The boundaries defined by the modern system of nation states were fundamental to European colonialism and economic expansion [...] Imperialism was really an extension of the sovereignty of the European nation-states beyond their own boundaries [...] In contrast to imperialism, Empire establishes no territorial center of power and does not rely on fixed boundaries or barriers. It is a *decentered* and *deterritorializing* apparatus of rule that progressively incorporates the entire global realm within its open, expanding frontiers (2000: xii).

This development marks the decline of European dominance, which is replaced, not by American imperialism, but by a deterritorialized Empire that no single nation can control, but where the USA indeed holds an influential position as its grand architect – a transition that is extraordinarily well exemplified in the Americanisation of copyright in late 20th century.

The changing role of copyright has obvious consequences for how we can understand piracy. I have attempted to show that piracy in the past has incorporated elements of protest against repression from a sovereign colonial state – not only in the American or Chinese cases but also regarding book pirates in London who, at least until the early 18th century, demonstrated a refusal to acknowledge the royal privileges handed out by the sovereign state to a few publishers entrusted to uphold its censorship. Likewise, contemporary piracy in developing countries can be seen as a spontaneous reaction to disadvantageous intellectual property regulations imposed on them by the Empire. In this sense piracy is an alternative system of consumption and distribution that grows out of, and reflects, whatever dominant structures for controlling the appropriation and distribution of immaterial resources are at hand. Consequently, it should come as no surprise that piracy thrives as the expansion of intellectual property rights privatises a growing field of formerly public resources.

This is not a reason to glorify piracy. It does not mean that piracy as such is a political statement or an expression of resistance. In most cases piracy is not an act of rebellion but rather of necessity or, in some cases, even of greed or

selfishness. As Ravi Sundaram (2010:13) points out, piracy "is not an alterity, or a form of resistance, though it clearly offers creative solutions outside the property regimes to subaltern populations." So, even if piracy is not an ideological standpoint *per se*, it is nevertheless a spontaneous response to a malfunctioning market that embodies a potential critique of that market and the property regimes that it upholds. This role as an indicator of market failure stands as a common denominator for all disparate practices of piracy, from 17th century book pirates to the postcolonial pirate cities of the Third World, or the recent explosion of peer-to-peer file sharing. While none of them should be idealised as movements of resistance, neither should they be disregarded as examples of simple theft that can be remedied through increasing surveillance, stricter control and heavier fines. Instead, there might be something to learn from piracy. If the European pirates of the 17th century exposed the problems of state privileges and the American pirates of 19th century questioned the legitimacy of colonialist jurisdiction, then the sudden explosion of piracy at the turn of the 20th century should be taken as a warning signal of what the Empire of late capitalism does to common, global recourses.

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1 The most notable and controversial examples would be the European Union's Intellectual Property Rights Enforcement Directive (IPRED), the multilateral Anti-Counterfeiting Trade Agreement (ACTA), and the recently abolished American bills SOPA and PIPA.

2 As Mira Sundara Rajan points out, the TRIPS agreement's exclusion of moral rights had the somewhat unexpected consequence that the Berne convention put even more emphasis on moral rights. This omission led many countries to strengthen the moral rights in their national legislation. So, the fact that moral rights had no place in the global structure of intellectual property rights that the TRIPS agreement enforced did not mean that they vanished from the global copyright agenda on the whole (Sundara Rajan, 2011).

3 Swedish copyright history provides another example. When the Swedish legislators finally ratified the Berne Convention in 1904, they were most likely influenced by the fact that Sweden's literary exports were growing as new authors such as August Strindberg and Selma Lagerlöf became popular abroad, suddenly making international copyright agreements profitable for Swedish publishers (Fredriksson, 2009).

4 An even greater, and in many ways more brutal, privatisation of land in the history of civilizations is the huge land grab of colonialism where the legal doctrine of Terra Nullius – that was generally recognized by the colonial powers in the 17th century – declared that any territory not yet claimed by a European nation was open to be appropriated by whoever found it (Liang, 2002).

About the author

Martin Fredriksson has a PhD from the Department of Culture Studies (Tema Q), Linköping University, Sweden, and is executive editor of *Culture Unbound* (<http://www.cultureunbound.ep.liu.se/>) and previously coordinator at the Advanced Cultural Studies Institute of Sweden (<http://www.isak.liu.se/acsis/english?l=sv>). He works at the Department of Culture Studies at Linköping University, where he is currently conducting a three-year project about pirate parties and the ideology and politics of piracy in Sweden, North America and Australia, funded by Riksbankens Jubileumsfond.

