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# Copyright Culture and Pirate Politics

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## Abstract

This article approaches the recent debates about copyright and piracy from a cultural and historical perspective, discussing how of the problems surrounding intellectual property rights reflect cultural conflicts that are central to cultural studies. It sets out with a study of how international copyright norms developed in nineteenth-century Europe and were implemented in two different national contexts: Sweden and USA. This historical background shows how copyright has been embedded in the cultural history of Europe and intertwined with the idea of an evolving Western civilization. The examples from the past are thus used to highlight the underlying cultural implications that affect the contemporary discussions. Particular interest is paid to how the historical association between the spread of copyright and the development of civilization has affected the understanding of Asian piracy and Western file sharing today, and how a multitude of social movements both in the West and the third world simultaneously challenge the cultural legitimacy of the current system of intellectual property rights. Eventually this is also taken as an example of how law and culture intersects and how the broad, interdisciplinary field of copyright studies that has emerged over the last decade can be seen as an extension of the cultural studies tradition.

Keywords: Copyright, Intellectual Property, Piracy, Postcolonialism, Cultural Studies

## **Introduction**

Naomi Mezey, professor of law at Georgetown University, defines law as an inherently cultural phenomenon: “Law is simply one of the signifying practices that constitute culture, and, despite its best efforts, it cannot be divorced from culture. Nor, for that matter, can culture be divorced from law” (Mezey 2003, p. 45). Nowhere is this more evident than in the case of copyright whose most fundamental function has always been to define the roles of and relations between actors on the cultural field. Since the late 1990s copyright has also become the object of a widespread and long-lasting political and cultural discussion. This is indeed not the first time that copyright is publicly contested – historians have shown that intellectual property rights and piracy has been under debate many times in the past (cf. Feather 1994, Johns 2009, Rose 1993, Saint-Amour 2003, Vaidyanathan 2001, Wilf 2011). It might however be fair to say that the criticism against the expansion of intellectual property rights has a greater global impact than ever before, mobilizing a wide range of groups, from young Western netizens concerned that laws like SOPA and ACTA will kill freedom and creativity on the Internet, to human rights groups in the third world that point to the social costs of drug patents and Western exploitation on indigenous knowledge (cf. Gillespie 2007, Halbert 2005, Haunss 2011).

These copyright debates cover a wide range of complex economic, technological and political issues, but in the end it all boils down to the question of how the production, attribution and circulation of culture and information should be regulated. This puts copyright right at the heart of cultural studies: a tradition that is essentially preoccupied with power and culture. Over the last decade several cultural scholars have turned their attention to copyright as a field of research where the frontiers of cultural studies are expanding into the discipline of law. This article focuses on that intersection of culture and law as it studies how copyright in the 1990s and 2000s has been contested in relation to two areas of conflict that are fundamental to the cultural studies tradition: a Western cultural hegemony in a postcolonial world, and the conflicts between a dominant majority culture and emergent countercultures in late-capitalist society. I will show how these conflicts converge in the contemporary copyright debate and how this highlights and challenges copyright as a legal construction with a long cultural and ideological heritage.

This article thus looks at the current discussions about copyright as a cultural conflict located within a historical context. It relates contemporary reactions on piracy to the history of copyright and explores how the cultural values inherent in a Western copyright discourse – and that discourse’s integration in a Euro-American paradigm of enlightenment, civilization and colonialism – affect the current debates. After a brief historical background the article focuses on how the representation of Chinese piracy in Western media relates to a colonial heritage, followed by a discussion of how the recent concerns about file-sharing in Europe and North America challenge a traditional understanding of the rights of authorship as interwoven with the progress of Western civilization. These two trajectories are then drawn together in a discussion about the multitude of resistance against a globally expanding IPR-regime that have developed in parallel within third world human rights groups and a Western digital rights movement. Eventually the article concludes with a brief look at how the conflicts and the recent research about copyright and piracy relates to the cultural studies tradition.

## **The Emergence of a European Copyright Paradigm**

The intellectual and cultural history of copyright has been thoroughly studied by many historians of law, culture and literature. This article takes this history as a starting point to discuss how copyright throughout history has been established as an ideological concept that

often hides other more prosaic and material, concerns. It also serves to show how the law over the past has been associated with cultural values and connotations that are crucial for how we can study and understand the cultural implications of copyright today.

According to the general historiography of copyright, the idea that the author has certain exclusive entitlements to whatever s/he has created was initially developed in eighteenth-century England and gradually introduced in other parts of Europe in late eighteenth- and early nineteenth-century. This development was closely connected to the birth of the romantic genius. In her article “The Genius and the Copyright” Martha Woodmansee describes how English and German romanticists gave rise to a new understanding of authorship. While the pre-romantic author had been regarded as a learned craftsman whose work was dictated by established aesthetic rules and conventions, the romanticists elevated the author to what Edward Young called an “original genius”, and the work of literature was no longer seen as the product of an intellectual craft but rather as a unique and original expression of the author’s personality (Young 1759/1918). This redefinition of authorship created an essential bond between the author and the work which the German writers could use to legitimize their claims of literary ownership and argue for a proper Prussian copyright law (Woodmansee 1984).<sup>1</sup>

Even though the struggle for a Prussian copyright law would be largely unsuccessful until the 1830s, the German and British romanticists nevertheless established a new understanding of the nature, and consequently also the rights, of the author in the early 19<sup>th</sup> century. Copyright was however not only a fruit of the romantic imagination; the idea that the author had certain rights to the work s/he had created was also embraced by many enlightenment thinkers (Hesse 2002). This became most evident in revolutionary France where the passing of the copyright law of 1793 was ideologically motivated as a reward to the authors for their important contribution to the creation of an enlightened society (Hesse 1991). In the French case copyright law was an integrated part of a constitutional, legal and cultural order spawned by the revolution – a brick in the construction of a new enlightened, French civilization (Hesse 1991).

Copyright was intellectually intertwined with the idea of the progress of civilization, but in most European cases it also served the more practical purpose of imposing some kind of order on an increasingly chaotic book market. In countries like England, France and Sweden, new copyright laws replaced an old system based on literary privileges where the state allotted exclusive publishing rights to members of the printer’s guild, who in return helped administering the censorship of printed books (Rose 1993, Petri 2008). When the privileges were abandoned, copyright became a new way to regulate the market and prevent multiple editions of the same work. In due time copyright would develop into an increasingly international system of regulation codified in the Berne convention that was passed as the first international copyright treaty in 1886 and came to be the guiding principle for internationalization of copyright for most part of 20<sup>th</sup> century. The Berne convention was nevertheless a significantly Eurocentric initiative, not to be signed by the USA until 1988 (Hemmungs Wirtén 2004, Ricketsson and Ginsburg 2006).

The birth of copyright can thus be regarded as a consequence of what Raymond Williams called “the cultural revolution”. In *The Long Revolution* Williams argued that the modern European civilization has been formed by three parallel revolutions that have evolved gradually over the last centuries: “the industrial revolution”, “the democratic revolution” and “the cultural revolution”. He describes the cultural revolution as a process of intellectual and social transformation that caught speed with the enlightenment and romanticism, giving rise

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<sup>1</sup> The historical relationship between copyright and aesthetics has developed into a minor field of research since the late 1980s. Cf. Feather (1994); Hesse (1991); Homestead (2005); Rose (1993); Saint-Amour (2003); Saunders (1992).

to new ways of thinking, communication and understanding the relationship between the individual and the society that came to shape the modern worldview. This partly rested on the discovery of what he calls “the creative mind”: the belief in an intrinsically human capability of original creation that found its most prominent example in the romantic understanding of authorship (Williams 1961, p. 3).

## Copyright in the Peripheries: Sweden and USA

The copyright laws that were passed across Europe in the eighteenth- and early nineteenth-century were thus conceptualized as parts of a modern civilization and intertwined with two lines of thought that laid the intellectual ground for the long revolution that transformed European culture in eighteenth- and nineteenth-century: romanticism and the enlightenment. This understanding of copyright emanated from the cultural centers of Europe, but a quick look at Sweden shows how this imagined bond between copyright and the progress of civilization could influence legislators in the peripheries of Europe as well. When the first Swedish copyright law was passed in 1810 it took the guise of a somewhat subsidiary paragraph in the new and radical Freedom of the Press Act that simply stated: “Every book is the property of its author or its legitimate proprietor” (Tryckfrihetsförordningen 1810: §1:8. My translations).<sup>2</sup> Calling this a copyright law is however somewhat ahistorical: it was basically a Freedom of the Press Act that was passed in the aftermath of a coup d’état in 1809 where the widely unpopular king Gustav IV Adolf was peacefully dethroned. This put an end to a disastrous war with Russia that cost Sweden the Finnish territories and thus marked the end of Sweden’s ambitions to be a major European power, but it also paved the way for extensive liberal, constitutional reforms that – among many other things – limited the power of the king and partially abolished censorship.

At this stage, the political debate in Sweden focused entirely on the issue of censorship while the copyright question attracted no attention whatsoever. That the rights of the author were even mentioned in the Freedom of the Press Act was partly a practical consequence of the fact that the law abolished literary privileges and thus opened up for new models of attribution of literary works. It was most likely also influenced by the fact that the first draft of the act had been written by a committee consisting of prominent authors and philosophers: a group of educated men who were inspired by the ideas of the French enlightenment and probably found it natural to adopt a continental view on *droit d’auteur* (Eberstein 1923, Fredriksson 2009). While most parts of the draft were heavily revised in the legislative process, this single paragraph remained unchanged, probably because no one paid much attention to it. The press’ and the politicians’ apparent lack of interest for the copyright question thus gave the committee free reins to implement the rights of authorship in Swedish law more or less in the passing, without arousing any attention at all.

The motives for introducing a copyright paragraph were never openly discussed and the preambles give no clue to what this was actually meant to accomplish. The most likely explanation is that this paragraph was not so much the product of a deliberate legislative campaign with a clear political or practical goal but rather a sign of the times: a turn of phrase influenced by romanticism, enlightenment thinking and partly also by the *droit d’auteur* incorporated the post-revolutionary French legislation (Petri 2008: 192 pp, Author 2009). Just like in France, the first – albeit embryonic – Swedish copyright law was part of a new constitution passed in the aftermath of a revolution. Swedish copyright legislation was thus from the beginning drawn into the forming of a new political order. In this regard one could argue that copyright was, at least in some countries, also part of an early stage of the

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<sup>2</sup> ”Hwarje skrift ware Författarens eller dess lagliga rätts Innehavares egendom.”

democratic revolution that Raymond Williams saw as parallel to the cultural (Williams 1961, p. x).

When the question of authors' rights, from the 1840s and onwards, began to attract more attention in the Swedish parliament the association between copyright and the idea of a European civilization became more evident. A proposal for a new law for the protection of visual arts from 1863 explicitly framed the expansion of copyright as a matter of cultural progress:

As culture develops towards a higher level, the understanding of the rights of ownership, originally applied only on material objects, has made its way into the intellectual sphere, and in all civilized countries of today the law recognizes the fruits of the *author's* labor as his property. (Expeditionsutskottets förslag till underdånig skrifvelse, 1863:45, p. 37. My translation)<sup>3</sup>

These words indicate that the Swedish copyright discourse was, like in most other countries, by now founded on John Locke's theory that the product of someone's labor is his property according to a natural law that precedes man made legislation, but they also acknowledge that it is through the development of society that this natural law is realized. When Sweden passed its first separate copyright law in 1877, Adolf Hedin – well known minister of parliament and editor of the highly influential liberal newspaper *Aftonbladet* – also emphasized how the legal development rests on an ongoing process of cultural enlightenment and a growing public understanding of the rule of law: “even the simplest legal concepts, which are now obvious to everyone [...] have been nonexistent at some point in history. The rule of law can only evolve gradually” (Riksdagens protokoll, AK, 1877:38, p. 63. My translation).<sup>4</sup> Hedin seems to agree with Locke's basic assumption of a natural law, but he also acknowledges that it was only through the development of society at large that “what is right and proper in itself could be realized in this unfulfilled world” (Riksdagens protokoll, AK, 1877:38, p. 63. My translation).<sup>5</sup>

I would argue that these examples reflect a fairly common assumption that the expansion of copyright expressed a growing sense of justice among the citizens, which in its turn was a sign that society was approaching a higher cultural level. This idea echoed in many parliamentary debates of that time, where copyright's role as a manifestation of civilization was a reoccurring argument for stronger copyright protection of foreign works, and eventually also for a Swedish ratification of the Berne Convention. This desire to comply with the international copyright standards often seemed to be dictated by an anxiety that a refusal to do so would make the country look culturally undeveloped (Riksdagens protokoll, AK, 1877:38). The internationalization of copyright was nevertheless held back by the Swedish publishers who did not want to pay royalties to foreign authors. When Sweden finally signed the Berne Convention in 1904 it was made possible by a swift change of heart among the major publishers. This was most likely influenced by the fact that Sweden's literary export was growing and new authors such as August Strindberg and Selma Lagerlöf became popular abroad, which suddenly made mutual protection of translated works profitable for Swedish publishers (Fredriksson 2009).

The Swedish case shows how copyright was associated with the progress of European civilization in a partly ambiguous way. On the one hand, the supporters of a strong international copyright law saw this as stepping up to the legal and cultural standards of the

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<sup>3</sup> ”begreppet om eganderätt, ursprungligen tillämpadt blott på materiella föremål, [har] med en stigande kulturutveckling gjort sig gällande äfven inom tankens område, så att numera öfverallt i civiliserade länder lagstiftningen erkänt såsom en *författares* egendom frukterna av hans arbete”.

<sup>4</sup> ”äfven de enklaste rättsbegrepp, hvilka nu mera äro hvar mans egendom [...] har likväl en gång icke funnits till. Rättens välde kan endast småningom utvecklas”.

<sup>5</sup> ”i denna ofullkomliga verld så småningom förverkliga, hvad som i och för sig sjelft är rätt”.

rest of Europe, on the other hand those who opposed such a law (predominantly the publishers) feared that copyright protection of translated works would make foreign literature too expensive for the Swedish consumers and thus isolate Sweden from the rest of the European culture (Fredriksson 2009). Both standpoints however reflected the dilemmas of a culturally peripheral country with diminishing geopolitical impact trying to relate to the agenda set down by the culturally and politically dominant nations of the time.

Sweden is just one example of how the internationalization of copyright could translate in specific cultural and national contexts. There is a parallel story to be told about the United States whose blatant piracy of foreign authors was a cause of constant complaints from the British publishing industry throughout the nineteenth century. The American anti-international-copyright lobbyists' arguments were largely similar to those of their Swedish counterpart. Both claimed that an international copyright protection would impede the inflow of literature and hamper the cultural development in their countries that were, in this context, implicitly regarded as cultural developing nations (Balász 2011, Fredriksson 2009, Homestead 2005).

The United States' recent colonial history however added another perspective to the issue. If Swedish legislators expressed an eagerness to prove that Sweden was a part of the European civilization by conforming to the international copyright norms, then the American position was initially marked by sheer defiance. Adrian Johns 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 kind of renegade publishing 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" (Johns 2009, p. 180). The American pirate market was not fueled by lust for profit alone; it also thrived on a resistance against the authoritarian claims of the former colonial power. A resistance that to some extent was officially sanctioned since the American legislator's for a long time refused to grant foreign authors protection under the copyright law of the United States (Johns 2009). The Hungarian copyright historian Bodó Balász describes the whole situation as a kind of legalized piracy: "For roughly a century, American copyright law was a clear-cut case of situational piracy – of behavior legalized under US law but widely condemned abroad" (Balász 2011, p. 408).

In the second half of the nineteenth-century this officially endorsed piracy would however be questioned from within the USA by a growing social movement calling for America to respect international copyright. This movement was partly promoted by prominent American authors such as Mark Twain and James Fennimore Cooper who had to compete with cheap reprints of English literature, but it was not limited to them (Vaidyanathan 2001, Wilf 2011). The principles of copyright were also supported by a wider group of politicians and informed citizens who saw it as a moral obligation and a hallmark of civilization to protect the rights of authors, all in the name of enlightenment and education:

Copyright as the hallmark of civilization, of course reflected the role of print culture in the *mission civilisatrice*. By ignoring the protection of foreign authors, legislators showed a 'crude barbarous attitude'. 'The civilized world...for half a century has pointed the finger of scorn at us for this tolerance of wrong-doing. (Wilf 2011: 194)

When the United States finally recognized the rights of foreign authors in 1891 it was thus largely a reaction to a domestic opinion that had embraced the idea of copyright as a part of a western civilization.

Sweden and USA are two examples of how the ideology of copyright has translated differently in different cultural contexts. As a peripheral part of the old world

Sweden reacted with a compliance dictated by a will to be accepted as belonging to a common European civilization. In contrast, the United States first responded with open defiance against the colonialist claims of the old European masters but eventually yielded to a domestic pressure, partly dictated by American author's self-interest and partly by moral sentiment. There are two important conclusions to be drawn from these examples. First of all, they show how copyright in the course of history has been invested with cultural values and connotations that affect how people understand and discuss piracy. Secondly, they reveal how these cultural values have served as legitimizing factors for policies that have partly been dictated by more material interests.

## **Piracy and the Postcolonial Other**

Over the last two centuries copyright law has been intertwined with the construction of the so called *Western Civilization* and the global expansion of intellectual property rights is still very much imagined as part of the continuous spread of civilization across the world. This becomes particularly evident if we look at the reactions against Asian and Eastern European piracy over the last 20 years. The most striking example is probably China which is not only notoriously targeted as the pirate nation par excellence by American policymakers, but also has an interesting copyright history in common with England and the United States. As William P. Alford describes in his book *To Steal a Book is an Elegant Offense*, China's first intellectual property law was an immediate consequence of the Angol-American gun boat diplomacy. In the aftermath of the boxer uprising in 1900 the UK and the USA imposed a number of new legal and economic reforms on China in order to open up the country to foreign trade. Those reforms included the introduction of a new national currency for the entire Chinese empire, the abolishment 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 IPR-laws largely followed a strategy of appeasement where the Chinese government did nothing more than what was absolutely necessary to ward off interventions from the West (Alford 1995).

This has set the tone for much of China's postcolonial copyright history which has been marked by an opposition between China's claim to national sovereignty and foreign demands for compliance with international IPR-standards. In the 1990s the US repeatedly targeted China as one of the most notorious violators of American intellectual property rights. China's stubborn refusal to yield to the United States' demands for a stronger enforcement of international IRP-regulations would more than once bring the two countries to the brink of trade war that were only avoided through last minute negotiations (Wang and Zhu 2003). The fact that the Bush administration threatened China with trade sanctions to enforce better copyright protection for American software in May 1989, while the US stubbornly refused to take any actions against the massacre on Tiananmen Square that was taking place at the same time, tells of the priority that was given to the copyright issue (Alford 1995). For a long time, China in its turn seemed to apply a strategy of appeasement that dated back to the period after the Boxer uprising, once again making the official commitments and concessions necessary to keep the trade sanctions at bay without seriously tackling the piracy problem.

There is no denying the actual problems with Chinese counterfeits, but it is nevertheless significant that the picture of Asian piracy has largely been formulated by American interests and based on statistics reported by US-based copyright organizations that are inclined to exaggerate the damages caused by piracy to further their own agenda (Hesmondhalgh 2007, Karaganis 2011).<sup>6</sup> Regardless of the validity of these allegations, it is

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<sup>6</sup> For further discussions on Chinese piracy, see Liang (2005); Lu and Weber (2008); Pang (2004); Pang (2005); Wang (2006); Wang and Zhu (2003); Jie (forthcoming).

nevertheless interesting to see how the extraordinarily harsh reactions that Asian piracy provoked in the 1990s and early 2000s seem to communicate with a colonialist past. The Chinese-American professor of law, Frankie Fook-Lun Leung blames the spread of piracy in China on a combination of low living standards and the Chinese culture's lack of respect for traditional Western concepts of originality and authorship. If the Western copyright culture of the last two decades has been based on veneration for the original creator, then the Chinese tradition on the contrary regards the act of copying as a highly esteemed art form. Copying is thus not looked upon as theft and violation of intellectual property rights are simply not considered a moral offense (Fook-lun Leung 1996).

Fook-Lun Leung's article is characteristic of a way of explaining Asian Piracy that is common in media discourses. China's radically different view on originality, creativity and authorship was for instance a reoccurring motif in Western news reports on Asian piracy in the 1990s and early 2000s. Kavita Philip has pointed out how American and European media conceptualizes Chinese piracy within a framework where a traditional Western understanding of originality, creativity and cultural and symbolic consumption is taken for granted as a universal norm that China is expected to grow into:

China must be taught shame at this naked reproduction; it is called upon to grow into a more adult culture of sameness (in business practices, and in individual rights) – one which is regulated and guaranteed by the rule of law, and in which coveting consumer goods is fine, as long as it is done in the same manner in which advanced capitalist consumers covet. (Philip 2005, p. 209)

Her examples are taken from American business journals, but a quick look at Swedish media reveals a largely similar perception. When the Swedish newspaper *Göteborgsposten* for instance reported about China's attempts to develop its domestic creative industries, China's lack of proper IPR protection was presented as the major obstacle. This was in its turn described as a consequence of China's traditional lack of respect for originality, which has been reinforced by the communist regime that privileged craftsmanship and skillful reproductions of canonized works from the past over capitalist ideals such as originality and creativity (Nilsson 2007). These ideas can even be found in a multinational car magazine like *Auto, Motor & Sport* where the Chinese editor explains to the Swedish readers how the Chinese car industry's habit of copying foreign innovations rests on an old, traditional understanding of the reproduction of existing works as a respected art that does not violate but rather honors the original (Dong 2008).

Even though this might be a perfectly accurate characterization of the Chinese understanding of artistic labor, it becomes normative when it is set in contrast to the European cultural history. In this context the Chinese values are made to resemble a pre-romantic understanding of creativity in Western culture where aesthetic quality was measured by the ability to follow the examples set down by ancient masters rather than by originality or individual self-expression (Woodmansee 1984). Returning to Williams one could say that it looks like China has not yet reached the stage in their "cultural revolution" where they are ready to embrace the "creative mind" (Williams 1961, p. 3). Raymond Williams himself would hardly have made such a simplistic, universalistic claim based on a strictly European history, but it seems like the current discourse on global intellectual property rights has a much stronger tendency to take the European course of development for granted as globally predetermined route of progress.

These are a few examples of how piracy tends to be understood in a context where the cultural history of Europe is turned into a universal path of civilization that the rest of the world is expected to follow. China is simply fitted into a teleological narrative that explains why Asia needs to adopt traditional Western standards of intellectual property rights in order to develop. In this context China's lack of respect for intellectual property is taken as

a proof that China still has not attained the level of cultivation required to fully comprehend and respect the rights of creativity – a cultural level that Europe reached with the breakthrough of romanticism more than 200 years ago. China is thus turned into the undeveloped *Other* in a postcolonial logic where Western values, norms and institutions are regarded as neutral and universal. An editorial in one of Sweden's leading broadsheets, *Svenska Dagbladet*, spells it out when it contrasts China's lack of respect for private property against the rule of law in "our more civilized world" where the state has learned to uphold the respect for private property – in this article exemplified by the American authorities' closing down of the alleged pirate site Napster in 2000 (Rätt att stänga Napster 2000).

## **The Napster Generation**

Today, the Napster case appears to be an exceptionally bad example to illustrate the respect for copyright in the Western world. If piracy in the 1990s had been attributed to the underdeveloped *Other*, predominantly located in South East Asia, then a phenomenon like Napster effectively undermines any attempts to define piracy as alien to Western culture. In the year 2000, the political editor of *Svenska Dagbladet* described the closing down of Napster as a victory for the civilized societies' respect for private property. Ten years later, the Napster case looks more like a starting point for a new era of digital piracy where the copyright regime is contested from within the Western world rather than from abroad. Even though Napster eventually went legit (and failed) it was soon followed by other similar networks for illegal file sharing, and the fact that most of these networks are centered in North America or Europe – not the least in Sweden – stands as a reminder that piracy is fundamentally a Western phenomenon that has existed parallel with copyright within the European culture for more than 300 years (Johns 2009). Over the last decade semi legal sites like Kazaa, Grokster and Gnutella have turned a new page in this long history of piracy, provoking harsh resistance from media companies and copyright organizations that has resulted in occasional law suits (Hesmondhalgh 2007). Since Napster opened the gates for a flood of illegal file sharing, uploading and downloading copyrighted material has become a natural part of everyday life for many young Americans and Europeans as well as for a growing number of Asians and South Americans (Andersson 2010, Crisp forthcoming, Da Rimini and Marshall forthcoming, Svensson and Larsson 2009).

As with Chinese piracy it can be questioned whether this kind of file sharing really poses such a grave threat to the copyright industry as the media companies – and sometimes also the pirates themselves – claim. The British sociologist David Hesmondhalgh argues that the digital piracy's responsibility for the music companies' falling revenues in the early 2000s has been heavily exaggerated and that the music industry is more or less returning to business as usual as it gradually finds ways to profit from new technology. Yet the picture of file sharing as the new threat to the cultural industries has been widely spread and Hesmondhalgh concludes that this mainly serves the interests of the music industry: "While this exaggeration may not have been deliberately cultivated by the recording industry, it has favored their interests in arguing for policy change" (Hesmondhalgh 2007, p. 11).

The legislators and the copyright industry have indeed met these challenges with increased regulation, enforced surveillance and extended terms of copyright protection. On a European level that has resulted in a number of new legislations, most notably the Information Society Directive of 2001 (2001/29/EC) that harmonizes and strengthens the rights of copyright holders within the European Union, and the IPRED Directive of 2004 (2004/48/EC) that gives media companies and copyright organizations extensive rights to monitor individual Internet users in order to uncover copyright violations. The former was met with widespread criticism when it was implemented in Sweden in 2005 and the debates caught new life when the IPRED Directive was implemented in April 2009 (Svensson and Larsson 2009).

Simultaneously, the war on piracy was intensified. In May 2006 Swedish police raided the server halls of the infamous and hugely popular file sharing hub The Pirate Bay and three years later, in March 2009, the owners were sentenced to one year in prison and fined 30 million SEK (approx. 4,5 million USD). The verdict was appealed but sustained with slight revisions in November 2010 (BBC News 2009, The Economist 2009, Andersson 2010, Andersson and Snickars 2010, Stiernstedt and Söderling 2010).

The legal actions against The Pirate Bay were partly instigated by international copyright organizations that sent a letter to Sweden's minister of infrastructure, requesting the Swedish authorities to take action against this "global icon for the violation of copyright" (Andersson and Snickars 2010, p. 14). The Pirate Bay trial was thus an event of big symbolic significance as the interference of foreign business interests made The Pirate Bay look like a victim of an inquisition from the global media industry. Even though the media companies and copyright organizations proclaimed the verdict as an important statement in their favor, it had ambiguous implications since the Pirate Bay soon adopted a new, semi-legal, technical platform that allowed them to carry on more or less as before while this "victory" for the media companies just trigger an even stronger support for file sharing as a cultural right. (Dagens Nyheter 2010).

That the infamous trial against the Pirate Bay on top of it all coincided the IPRED debate undoubtedly contributed to the radicalization of a pirate movement that had been brewing for a few years (The Economist 2009, Edwards 2009). The Swedish Pirate Party was originally formed in January 2006. Even though the party quickly attracted a large body of members, it made no significant impact in Sweden's national parliamentary election in September 2006 (Spender 2009, pp. 24, Rydell and Sundberg 2010, pp. 115.). The Pirate Party had nevertheless made a name for itself, and the big breakthrough would come with the Swedish election to the European Parliament in June 2009, where people elect their national representatives for the parliament of EU. Here the Swedish Pirate Party surprised everyone by getting 7,1 % of the votes, giving the pirates two of Sweden's 20 seats in the European Parliament, which all of a sudden turned them into a potential political force (Erlingsson and Persson 2011). The Swedish Pirate Party inspired similar initiatives all across the world and by 2012 pirate parties had been initiated, in one form or another, in more than 60 countries (Edwards 2009, Kihlström and Olsson 2009, Pirate Party International 2012). In November 2011 the German Pirate Party took this one step further when they got 8,9 % in the regional election in Berlin and this was soon followed by similar results in other regional elections in the spring of 2012 (Bengtsson 2012).

The political historian Lars Ilshammar explains the rapid and largely unexpected growth of the Pirate Party as a "consequence of the central conflict of the information society, sometimes called 'the struggle over knowledge' which can be described as a matter of openness, transparency and free movement for information, innovations and ideas" (Ilshammar 2010, p. 286. My translation).<sup>7</sup> The fact that the Pirate Party became the most popular candidate among young Swedish voters in the EU election of 2009 indicates that this 'struggle of knowledge' is an important question among young people, and the international growth of pirate parties is just one of several signs that this expansion of copyright law does not sit well with large parts of the younger population across the world. The new laws have provoked harsh resistance from the Napster generation, culminating with the massive popular opposition against the infamous Stop Online Piracy Act (SOPA) that the US Congress was forced to withdraw in the spring of 2012 and the Anti-Counterfeiting Trade Agreement

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<sup>7</sup> "Piratpartiets framväxt kan därför också ses som en konsekvens av informationssamhällets huvudkonflikt, ibland kallad 'kampen om kunskap', som kan sägas handla om öppenhet, insyn och fri rörlighet för information, innovationer och idéer".

(ACTA) that met a similar fate in the EU parliament in July 2012 (Cieply and Wyatt 2012, Masnick 2012).

In spite of the copyright organization's efforts to spread the picture of file sharing as a serious crime, the public understanding of copyright tends to move in the opposite direction (Andersson 2010, Svensson and Larsson 2009, Da Rimini and Marshall forthcoming). A survey including 1000 Swedes between the age of 15 and 25 reveals a striking discrepancy between the social norms among young Swedes and the legal regulations of contemporary Europe. This comprehensive study reaches three important conclusions:

1. The respondent's social context – which involves not only friends and classmates but also parents and teachers – imposes virtually “no moral or normative obstructions” for illegal file sharing of copyrighted material.
2. The current “legal trend does not correlate to this social norm in any way”.
3. There are no indications that stricter copyright regulations will change these norms. The intensified attempts to enforce the copyright legislation rather seem to provoke a stronger tendency to circumvent those laws and a willingness to pay for VPN-services that make this easier (2009 pp. 59).

The fact that many respondents are prepared to pay monthly fees for services that can help them keep on downloading copyrighted material indicates that the resistance against the new copyright regulations is not only economically motivated but also grows out of a sense of being deprived of something more than just money (2009).

When Napster hit the headlines in the late 1990s it was just the first example of a new generation of piracy that takes place in the well-kept suburbs of the Western countries, rather than in alleys in South East Asia, and makes use of Internet rather than of low tech formats such as VHS, CD and VCD. As Sean Johnson Andrews has pointed out, the openness of this new and more blatant form of piracy tends to amplify the “moral panic” it arouses (Andrews, forthcoming). If the reactions against Chinese piracy in the 1990s and early 2000s exposed an implicit understanding of copyright as a part of a Western civilization that was threatened by the uncivilized *Other*, then the significantly liberal attitudes towards illegal file sharing among young Westerners further imply that the ethos of copyright is also contested from within the Western culture. So, what does it mean that the stereotypical pirate has transformed from an Asian street peddler to a well-educated Westerner who makes use of the very fruits of modernity – advanced technology – to circumvent the copyright laws that embody that same society's inherent respect for private property?

Regarded in this context, the growth of piracy as an ideological force in Europe and North America could be taken as a popular (some would say populist) indication that copyright is losing its cultural legitimacy and its given place within a public sense of justice in the Western world. It is tempting to return to Raymond Williams' more than 40 year old book *The Long revolution* and declare the closure of the long revolution. This might be a somewhat premature conclusion, but it is nevertheless interesting to see how the current digital do-it-yourself culture renegotiates the understanding of the author inherited from romanticism – the archetypal creative mind that was a protagonist of Williams' cultural revolution – from an autonomous original creator to a collective actor.

Hundreds of books and articles have been devoted to the transformation of creativity in the digital society, but Lawrence Lessig sums it up pretty well in what he calls a Read/Write culture where artistic creativity is a collaborative act and the work of art is open to continuous recreation (Lessig 2008). The new possibilities for free sharing and collective creativity, offered by digital media, form a cultural and technological context that seems to challenge traditional ideals of individual authorship. It might however go deeper than just to the definitions of authorship. Speaking with Raymond Williams one could also see this

changing attitude as part of a new structure of feeling:

In one sense, this structure of feeling is the culture of a period: it is the particular living result from all the elements in the general organization. [...] And what is particularly interesting is that it does not seem to be, in any formal sense, learned. One generation may train its successor, with reasonable success, in the social character or the general cultural pattern, but the new generation will have its own structure of feeling, which will not appear to have come 'from' anywhere. For here, most distinctly, the changing organization is enacted in the organism: the new generation responds in its own way to the unique world it is inheriting, taking up many continuities, that can be traced, and reproducing many aspects of the organization, which can be separately described, yet feeling its whole life in certain ways differently, and shaping its creative response into a new structure of feeling. (Williams 1961 pp. 48)

A structure of feeling is a way of experiencing the world that is not based on learned values but grows out of an individual experience of the social organization in which one lives: an organization where technologies of communication and social interaction play an increasingly fundamental part. When the members of the Napster generation appears unable to relate to copyright they react according to their own structure of feeling – formed by the digital, networked society – that cannot accommodate the restrictions on the free circulation and re-articulation of information and culture that intellectual property rights presupposes.

This structure of feeling finds aesthetic and political expression in a various manifesto-like texts that have been spread in different forums over the last years. David Shields book *Reality Hunger: A Manifesto* that seeks to re-acknowledge the artistic potentials of plagiarism and remix and promote a more collaborative form of creativity, is one example that has drawn a lot of attention in the cultural and academic sphere (Shields 2010). Another example that has gone viral on hacker oriented mailing lists and forums like *Techdirt*, *boingboing* and, not the least on the Pirate Party founder Richard Falkvinge's own blog is Piotr Cerski's manifesto 'We, the Web Kids', (Doctorow, 2012, Cerski 2012, Moody, 2012). In a polemic against the older so called "analog" generation Cerski tries to explain how the subjectivity, worldview and everyday life of the digital natives – which he calls the Web Kids – are fundamentally formed by the radically new media context into which they were born:

We grew up with the Internet and on the Internet. This is what makes us different; this is what makes the crucial, although surprising from your point of view, difference: we do not 'surf' and the internet to us is not a 'place' or 'virtual space'. The Internet to us is not something external to reality but a part of it: an invisible yet constantly present layer intertwined with the physical environment. We do not use the Internet, we live on the Internet and along it. If we were to tell our bildungsroman to you, the analog, we could say there was a natural Internet aspect to every single experience that has shaped us. We made friends and enemies online, we prepared cribs for tests online, we planned parties and studying sessions online, we fell in love and broke up online. The Web to us is not a technology which we had to learn and which we managed to get a grip of. The Web is a process, happening continuously and continuously transforming before our eyes; with us and through us. (Cerski 2012)

Cerski's manifest is basically a celebration and defense of a new structure of feeling based on the social and communicative possibilities offered by the Internet. The same could be said of pirate politics in general, and it is significant that the pirate activists also tend to see themselves as involved in a political struggle that takes place at the historical turning point that the coming of the network society marks. In their pamphlet *The Case for Copyright Reform*, Rick Falkvinge and the Pirate Party member of European Parliament, Christian

Engström, for instance argue that “The internet is the greatest thing that has happened to mankind since the printing press, and quite possibly a lot greater [...] And we have only seen the beginning. But at this moment of fantastic opportunity, copyright is putting obstacles in the way of creativity, and copyright enforcement threatens fundamental rights...” (Engström and Falkvinge, p. 2012: 7, see also Piratpartiets Principprogram 4.0, 2012)

## **The Multitude of Copyright Resistance**

The long established copyright paradigm seems to be suffering from a crisis of legitimacy on many fronts. Both activists and academics have criticized the current copyright regime for privatizing what was once public, cultural and natural resources (cf. Arvanitakis 2006, Boyle 1996, Drahos 1997, Drahos and Braithwaite 2003, Hemmungs Wirtén 2004, 2008, Lessig 2001, McLeod 2007, Vaidhyathan 2001). The former head of WIPO, Daniel J. Gervais, claims that the internationalization of copyright law entered a new, more trade related phase in the 1970s and 80s when IPR became increasingly integrated in the sphere of international trade regulations – most prominently through the inclusion of intellectual property rights in the GATT agreement in 1986 and WTO’s passing of the TRIPS agreement in 1994 (Gervais 2002). The latter meant that all member countries of the World Trade Organization were required to adapt their national legislation to a set of international standards for intellectual property rights. As Stefan Larsson points out, copyright has become “part of trade agreements that can circumvent more democratic legislative processes on a national and supranational level” (Larsson 2011). On a global level copyright’s alienation from democratic influence also intersects with a postcolonial exploitation of the third world and some argue that the TRIPS agreement has turned intellectual property rights into a means for developed countries and multinational companies to appropriate the immaterial resources of the third world (Drahos 1997, Drahos and Braithwaite 2003; Halbert 2005; Robinson forthcoming).

The report *Media Piracy in Emerging Economies* shows that the authorities’ and copyright organizations’ attempts to foster a public understanding and respect for the principles of copyright in emerging economies has failed in all the six developing countries covered by the study (Karaganis 2011). This is hardly surprising since these are the parts of the world that are most vulnerable to the exploitation that the TRIPS agreement enforces. It is however interesting that a different but parallel resistance against the expansion of intellectual property rights has emerged in the Western world and how these sometimes converge. In a forthcoming book on *Pirate Politics* Patrick Burkart discusses how the European Union’s handling of the ACTA agreement was met with wide opposition not only from European “pirate parties and digital rights groups” but also from “India, China and other developing nations which claim that ACTA violates TRIPS and imposes unfair enforcement costs that would be better spent on infrastructure and public health” (Burkart forthcoming).

In her book *Resisting Intellectual Property* Deborah Halbert gives a glimpse of the multitude that characterizes the opposition against the expansion of intellectual property rights in the 21<sup>st</sup> century. Her study explores how a critique against the contemporary IPR regime is articulated from a wide variety of political, cultural and geographical positions, from AIDS activists in South Africa to file sharers in North America. Halbert shows how the two areas of conflict that I have discussed in this article – the (post)colonial struggles that arise when a few industrialized nations implement their own intellectual property agenda on a global level and the clash between the existing copyright regime and a growing body of, mostly young, people who see file sharing as a perfectly legitimate cultural practice – come together around a common yet highly heterogeneous concern over how the current intellectual property legislation protects the interests of multinational businesses at the expense of what is perceived as human or civil rights.

That the global homogenization of intellectual property rights is met by an

equally global multitude of resistance movements can be seen as part of the tensions of globalization that Michael Hardt and Antonio Negri analyze in *Empire* and *Multitude*.

You might say, simplifying a great deal, that there are two faces of globalization. On one face, Empire spreads globally its network of hierarchies and divisions that maintain order through new mechanisms of control and constant conflict. Globalization, however, is also the creation of new circuits of cooperation and collaboration that stretch across nations and continents and allow an unlimited number of encounters. This second face of globalization is not a matter of everyone in the world becoming the same; rather it provides the possibility that, while remaining different, we discover the commonality that enables us to communicate and act together. (Hardt and Negri, 2004, p. xiii)

Elsewhere I have discussed how the global implementation of intellectual property rights through international agreements like TRIPS and GATT can be regarded as part of this global “network of hierarchies and divisions” that Hardt and Negri calls “Empire” (Fredriksson 2012). It is however equally striking how well the reactions against this expansion of intellectual property rights reflect the other face of globalism: the multitude of voices and social movements that are heterogeneous in the sense that they represent different people, serve different goals and adopt different kinds of social organizations but still converge through the globalizing forces of the very processes they oppose.

### **Postscript: Law - Culture - History**

This article has been an attempt to analyze copyright and piracy as cultural phenomena that have taken shape over a longer period of time. It set out with a brief look at how the birth of copyright was influenced by romanticism and enlightenment philosophy in late eighteenth- and nineteenth-century. The implementation of international copyright law in Sweden and the USA served as examples of how copyright at an early stage came to be associated with the spread of Western civilization. This was followed by a discussion of how the understanding of copyright as the hallmark of Western civilization has affected the contemporary postcolonial discourse on third world piracy as well as the new Western generation’s reconsideration of traditional concepts of authorship, creativity and intellectual property rights. In the end I have tried to show that this is not just a conflict between generations, between east and west, or between the first and the third world, but rather a part of a more profound cultural dynamic where global networks of power provoke a multitude of resistance across many of the zones of conflict that make up postcolonial, digital, late capitalist society.

The purpose of this historical background has been to show how the contemporary debates about copyright and piracy rely on inherited values and structures of power, which means that they cannot be fully comprehended without acknowledging the extent to which they are culturally and historically situated. Steven Wilf concludes his study of the pro copyright movement in late nineteenth century America with a meditation on the role of culture and history in legal studies:

This article offers an antidote to the reified narrative of authorship, the turn to culture in academic intellectual property law, by making a turn to the contingent, surprising and deeply contested terrain of history. In the end there must be a deeper understanding of how historical actors have *sought* to recast the contours of intellectual property law (Wilf 2011, p. 216).

Wilf’s point is that history is the key to deconstructing law as a naturalized and reified order of things. Just as Hart and Negri examine the history of colonialism to analyze the current state of globalization and Raymond Williams returns to the age of romanticism and enlightenment to map the construction of modern Europe we often need to return to the past to study the processes that have shaped the cultural values, norms and expressions that are at

stake in present day conflicts.

If history provides one leg on which the deconstruction of copyright law can stand, then the concept of culture provides the other. Recently, copyright has become a focal point where many of the core issues of cultural studies come together. My point is thus not that we need to apply the experience and knowledge of cultural studies on the field of copyright; my point is that we already have. In fact, I would argue that much of the research on copyright that I have drawn on in this article, and elsewhere, applies the basic perspectives of cultural studies on the law. Deborah Halbert's study of social movements opposing intellectual property is just one of several examples of how the deconstruction of a Western cultural hegemony that has always been an important aspect of the cultural studies tradition carries through in the contemporary discussion about copyright as a postcolonial structure of power. The work of academics such as Kavita Philip (2005), Lawrence Liang (2005) and Ravi Sundaram (2010) represents a growing field of research set on deconstructing western concepts of copyright and piracy from a postcolonialist perspective.

The cultural studies heritage becomes even more prevalent in research about file sharing and the Napster generation. Even though few of them make direct references to the classics of British Cultural Studies, it is nevertheless striking how studies such as Siva Vaidyanathan's *The Anarchist in the Library*, Tarleton Gillespie's *Wired Shut: Copyright and the Shape of Digital Culture* or J.D. Lasica's *Darknet: Hollywoods War Against the Digital Generation* address the very same questions that once underlined the groundbreaking work of scholars like Stuart Hall and Angela McRobbie; namely how different youth- and subcultures try to create their own cultural spaces, forms and norms for cultural production and distribution in relation to a hegemonic majority culture.

Furthermore, the recognition of the media user as an active participant in the construction of meaning that cultural studies scholars such as Janice Radway once put on the academic agenda, is now becoming increasingly relevant with the expansion of the read/write-culture. This resounds not only in research on digital media in general but also in studies of the law where academics like Lawrence Lessig (2001, 2008) and Kembrew McLeod (2001, 2005, McLeod and DiCola 2011) have begun to discuss participatory media's implication for the law. These are just a few examples of how fundamental perspectives of the cultural studies tradition are reinvented when a new generation of legal studies takes the reconfiguration of what Raymond Williams called the creative mind as a starting point for a reconsideration of copyright.

By exposing the cultural practices hidden at the heart of legal doctrine the conflicts over piracy and copyright realizes law as "one of the signifying practices that constitute culture" (Mezey 2003, p. 45). To take one step further in deconstructing this bundle of inherited cultural values and institutionalized legal norms one must however also expose the past that has formed these cultural practices. By highlighting how the values and ideas attributed to copyright has been received by and acted out against countries like Sweden and the USA in the nineteenth century as well as against present day China, I have tried to if not deconstruct then at least destabilized some of the cultural superstructure that over the course of two centuries has been built up around the idea and practice of copyright law.

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