FOR THE GOOD OF THE NET: THE PIRATE BAY AS A STRATEGIC SOVEREIGN

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Introduction

In this essay I will argue that as peer-to-peer (p2p)-based file-sharing increasingly becomes the norm for media acquisition among the general Internet public, entities such as The Pirate Bay and associated quasi-institutional entities such as Piratbyrån, Zeropaid, TorrentFreak, etc. have begun to appear less as a reactive force (i.e. 'breaking the rules') and more as a proactive one ('setting the rules'). In providing platforms for sharing and for voicing dissent towards the established entertainment industry, the increasing autonomy gained by these piratical actors becomes more akin to the concept of 'positive liberty' than to a purely 'negative,' reactive one.[1] Rather than complain about the conservatism of established forms of distribution they simply create new, alternative ones. Entities such as The Pirate Bay can thus be said to have effectively had the 'upper hand' in the conflict over the future of copyright and digital distribution. They increasingly set the terms with regard to establishing not only technical protocols for distribution but also codes of behaviour and discursive norms. The entertainment industry is then forced to react to these terms. In this sense, the likes of The Pirate Bay become – in the language of French philosopher Michel de Certeau (1984) – strategic rather than tactical. With this, however, comes the added problem of becoming exposed by their opponents as visible perpetrators of particular acts. The strategic sovereignty of sites such as The Pirate Bay makes them appear to be the reason for the wider change in media distribution, not just an incidental side-effect of it.

Gambit: Sweden and its p2p Hubs as Strategic Sovereigns

The Swedish file-sharing site The Pirate Bay is currently immersed in a legal dispute over the supposed illegality of its posting of links to copyrighted material on the Internet. In Sweden and abroad, the site has become one of the key focal points in the debate over peer-to-peer-based file-sharing, and arguments as to whether or not the decentralizing logics of these technologies disrupt established, centralized structures for media distribution. The dispute often pitches an alleged 'copyleft' against more institutionalized Intellectual Property (IP) traditionalists (the amalgamation of courts, corporations and interested organizations that want to defend the current system of extensive copyrights). However, at the root of the argument presented in what follows is the thesis that this is, for the most part, a popularized and somewhat simplified dichotomization of the issues at stake.

My current research is largely based on a sequence of interviews with Swedish file-sharers that I did in 2006. These interviews were conducted online, through email exchanges, where both I and my respondents were, except from the personas presented online, anonymous to one another. My central focus was on how Swedish file-sharers justified their activities in the light of this current 'copyfight' polarization; i.e. how the discourses of pro-file-sharing sites, forums, and blogs, as well as the discourses of the file-sharers I interviewed seemed to rely on a number of specific, largely consensual understandings of the nature of digital content, the nature of digitally mediated consumption and the nature of the actors involved. Among these file-sharers, illicitly downloaded content was the norm rather than the exception. According to my observations, p2p-based file-sharing is now so widespread in Sweden that the collective in question are beginning to make up a population quite similar to the 'conventional' music and movie audiences. Hence, what will be presented below as the common *activist bias* in much of the mainstream 'copyleft' literature might serve to overstate the radicalism of the phenomenon. Nevertheless, it should be emphasized that the file-sharing structures remain uniquely interactive and collaborative, considering that they are in many ways akin to the current 'Web 2.0' paradigm (a paradigm which stresses openness, interactivity and reliance on free, user-generated content). They thus have the potential to serve as facilitators for anyone to become an *occasional* activist. Further, any act of consumption that currently makes use of these infrastructures is often deemed by the entertainment industry and its allied lawmakers

to be transgressive, or activist-like, by virtue of the perceived sheer illegality of the phenomenon. The phenomenon thus becomes politicized, not so much by the file-sharers' own intent, but by the potentialities inherent in the technology in its current legal and economical context, and the ways these potentialities are strategically employed by the people administering the actual infrastructures, such as the administrators behind The Pirate Bay.

The dedicated p2p hubs such as The Pirate Bay and its associated, more peripheral sites (see below for a detailed list) can be said to adopt a publicly visible stance, supportive of unrestricted file-sharing. Moreover, they become actualized, spatially configured sites from which one can conduct actual file-sharing operations. It is in their interest to remain operational and to cater for a wide user base, not least since some of them carry adverts and have significant running costs. Thus, it makes sense to see these establishments as not only relying on activist, countercultural modes of agency for their making and upkeep, but as also decidedly strategic endeavours, with a 'mainstream' aim in terms of genres and availability, combined with an aim for permanence in their infrastructure. The theorist Hakim Bey (Wilson, 1991) emphasizes the utopian uprising made possible in 'pirate utopias' and 'temporary autonomous zones', and goes on to equate such uprisings with temporariness. However, I would rather equate these current operations with permanence and ultimately strategy. As BitTorrent-based file-sharing becomes the norm, the fact that the architecture of torrent distribution requires stable indexes of such torrent links means that web-based index sites have started competing for visibility and ease of access. These sites thus become more akin to publishers, who strive to maximize their brand and their advertising revenue in order to remain the most comprehensive service. Whether this changes makes p2p-based file-sharing a revolutionary or disruptive technology is probably too early to say, however. As Wilson writes,

> History says the Revolution attains 'permanence,' or at least duration, while the uprising is 'temporary.' In this sense an uprising is like a 'peak experience' as opposed to the standard of 'ordinary' consciousness and experience. Like festivals, uprisings cannot happen every day – otherwise they would not be 'nonordinary'. (Wilson, 1991: non-pag.)

In asserting this strategic dimension of file-sharing, I draw on the work of Michel de Certeau. His sociology of the everyday has been widely influential in cultural studies in the last few decades, mainly in debates on productive consumption and active audiences. There are some aspects of de Certeau's work that are particularly relevant here. To begin with, he argues for everyday consumption to be labelled as tactical, since it involves *poaching* (a form of 'making do' with whatever is at hand) and is largely *decentralized*, *provisional* and ultimately *quasi-invisible*. I would argue that this notion is being increasingly turned on its head by the solidifying effects of digital networking: the generative forces inherent to consumption are here being materialized in new, previously unexpected ways, as will be expanded upon below. The acquisition and exchange that makes consumption possible is visualized in numeric charts, listing the popularity and thus accessibility of each film, album or computer game. The exchange is routinely monitored both by market analysts (BigChampagne to mention but one company) and by legal enforcers. It is an exchange that is traceable - if not always on the individual level then most certainly on the aggregate level. The absolute majority of data exchange on the global Internet now consists of p2p-based file-sharing (see ipoque 2007). For de Certeau, as soon as a mode of agency changes from a temporary endeavour to a permanent, prescriptive factor, its nature changes from tactical to strategic.

The tactical nature of consumption is in other words increasingly replaced by more strategic instantiations of distribution and consumption, as the users themselves take more control and a new order gains permanence. Drawing from the above notion of consumption ceasing to be tactical as it gains *situatedness*, *permanence* and *visibility*, strategy is in de Certeau's account characterized by a double sovereignty: it need not be interpreted only as a literal command of a place or space, but as a mode of agency that is conditional also on rhetoric; a discursive 'upper hand'. While the guerrilla soldier or peasant opposition are forced to 'make do' with whatever terrain they are allotted, the ruling emperor has the benefit of a site of choice from which to strategically plan his action, as well as the place from which to formulate both legal terms and conditions which apply to his sovereignty, and actual hegemonic power to dictate what counts as truth and validity in any discursive argument. Relating this to the current 'copyfight,' the traditional narrative might imply that file-sharers are the guerrilla soldiers, 'making do' with the terms of conditions of the legal-commercial entertainment complex. However, as with the imagery

of piracy, which stipulates that pirate autonomy in fact might work in strategic rather than tactical ways (see below), a more accurate way to portray contemporary, p2p-based file-sharing might be to see it as an increasingly normative condition, upheld by a succession of situated, sovereign, and, ultimately strategic 'pirate bays.

As is noted in much of the literature on post-humanism and its recognition of reality as material-semiotic (see Haraway, 1991), once an adversary of a conflict has control of the ontological definition of terms, his/her agency in translating the world into strategically expedient discourse is significantly improved. Normative statements such as 'information wants to be free' (the hacker call-to-arms from the 1980s which remains valid for today's free content movements), or 'sharing is caring' (cf. Linde, 2006) entail an 'act of purification' (Latour, 1993) which serves to elicit certain understandings of the phenomenon at hand, highlighting positive externalities and discarding negative ones.

In this mode of interpretation it makes no sense to make any *a priori* decisions as to whether a course of action is strategic or tactical; this definition is contingent on how a course of action is related to the other actors involved. As we will see, even actions which need not initially be intended as either tactical or strategic – they might not be meant to be conflictual at all – might take on a more markedly conflictual meaning as they become caught up in a bigger game of morality and legality. This connects with the 'collective intelligence' trope, where local movements gain an altogether different logic when aggregated *en masse*. Andrew Feenberg (1999: 112) similarly compares de Certeau's theory with how games define the players' range of action 'without determining their moves'. In other words, this theory does not presuppose any form of predetermined hegemony or 'false consciousness' which would imply that the strategic, ruling entity is a *fixed* one to which the tactics would have to react; hegemony is here rather the upshot of whichever side finds itself in the dominant position. Similarly, hegemonic forces can arise on a macro scale from aggregated local interactions without hegemonic intent. The strategic endeavour is here to direct these forces, something which The Pirate Bay does on a daily basis.

Eric S. Raymond's concept of 'homesteading' in the meritocratic noosphere (1999) can also be related to de Certeau's theory. This 'homesteading' refers to how hackers come to inhabit and 'claim their own territory' in the malleable and practically unrestricted (in terms of storage space) topology of computer networks. On the

Internet, topology is defined largely by code, protocol and by textual configuration. A website is a spatial site located on a server somewhere on the planet, liable to the jurisdiction of whatever country it is hosted in, but it is simultaneously a textual entity, experienced as non-bound to any geographical location and capable of representing gigabytes of arbitrary data. The establishment of a successful Internet site is thus a double endeavour: it is both a spatial location and a much more abstract entity, operating semiotically through human- and machine-readable discourse, accessible through textual invocation (addresses, search strings, index pages, etc.) rather than the traversal of physical space (see Chesher, 1997). If we can link the notion of establishing such 'strategic sovereigns' with the politics of the everyday and with the processes by which this form of politics becomes part of the official doctrine that becomes expressed in the public debate and lawmaking practices, new possibilities for a more progressive understanding of file-sharing will be made possible.

Copyfighting as activism

> Optical fiber networks. People will be hooked to an information channel that can be used for any medium – for the first time in history, or for its end. Once movies and music, phone calls and texts reach households via optical fiber cables, the formerly distinct media of television, radio, telephone, and mail converge, standardized by transmission frequencies and bit format. (Kittler, 1986/1999: 1)

The current situation of computer end-users sharing copyrighted material with impunity – *en masse*, anonymously and with full discretion – is often depicted as a crisis of control: the spiralling by-product of the convergence of computer, audiovisual and telecommunication media making it possible to convert any textual product to instantly duplicable data. This convergence is also said to imply the interconnection and blurring of roles in-between users, distributors and producers, as well as 'narrowcasting', i.e. highly specialized choice and user activity (see Hirsch, 1998; Jenkins, 2006). If this poses a challenge more than an opportunity, as representatives of the entertainment industry (i.e. lobby organizations such as RIAA, MPAA, IFPI, BMR, etc.) seem to claim, this 'monster' was spawned largely due to the consistent digitization

of cultural products brought about by the content industry itself, through its dedicated conversion to formats such as CD and DVD throughout the 1990s. Thanks to increased broadband connectivity and the implicit potential of extensive p2p networking it was already clear in 1999, with the soaring wildfire popularity of Napster, that the situation was, at least in purely technical terms, irreversible.

Ironically, the praise of 'free flows of information', which has been so vital to the historiography and futurology of the Internet, suddenly became problematic when it was realized to what extent old media forms would be remediated by new ones. P2p-based file-sharing, which in its early days was more or less synonymous with Napster, thus came to prompt an extensive system of prohibition of information exchange through laws and technical implementations, as thousands of civil lawsuits have been issued by the entertainment industry in their worldwide clampdown on illegal file-sharing. Perversely, this tendency towards the constriction of civil liberties on purely commercial grounds seemed to coincide with the aftermath of a world-changing event which came to inhibit civic communicative exchange in much more sinister ways: 9/11.

A series of protocols that allow for unrestricted data exchange – in other words, the various networks which comprise 'the Internet' – were used in ways which were in part expected, as digitization (the encoding of cultural artefacts as pure data) and the subsequent exchange of this data had been prefigured as a fictional imaginary in a variety of discourses ranging from cyberpunk to neo-liberal, celebratory accounts of the Internet as an 'information super-highway'. What was wholly unexpected was how quickly this infrastructural transformation came about and how monumental its impact was on certain economic institutions, most notably the entertainment industry. File-sharing has thus moved the compass of information use 'in a direction that directly contradicts the carefully mapped-out plans drawn by some large corporate and government players' (Oram, 2001: 395). The question is often split into a proverbial tug of war between two views of how to use technology and information: one that gives consumers and users the maximum amount of control over the application of technology and information; the other that maintains that the provider of information or technology should control all uses of it.

What a number of authors, including Lawrence Lessig (1999; 2004) and Siva Vaidhyanathan (2001; 2004), have in common is that they take as their principal examples those spheres of agency where a

certain self-reflexive stance is pronounced among the actors involved: that of deliberately creating alternative platforms of peer-production or business models of user-generated content, or of using platforms such as blogs and wikis for expression (grassroots media production). Strangelove (2005) advances the proposition even further in his diatribe against the established copyright regimes, suggesting a polarity between allegedly 'active' (radical) and 'passive' (pacified) use, through embracing and arguably overestimating the 'expressive freedoms' of Internet users.[2] Michel Bauwens (2002), one of the founders of the P2P Foundation and an articulate proponent of p2p, presents a similar narrative of comparing the new, innovative practices of cooperative intellectual work by today's 'class of knowledge workers' with the solidarity of the labour movement that originated from the industrial working class of the past. He cites several commentators in order to argue for an analytical extension of the idea of p2p as a technical paradigm to the socio-cultural sphere at large. Like Pierre Lévy (1997), Bauwens appears to believe in a form of 'evolution's arrow',[3] pointing towards a future of mass-cooperation, self-organisation and sharing. When he quotes Dutch academic Kim Veltman in stating that 'the advent of Internet marks a radical increase in this trend towards sharing', what is presented is a teleological account of technology, a pre-destined history.[4]

There is, I would argue, an activist bias inherent in much of this espousal of p2p as an emancipatory technology which sometimes borders on the quasi-religious. Much of it comes from an assertion that many file-sharers, cyberactivists and net libertarians seem to believe that they are being actively persecuted by a looming, nefarious media industry which forces any alternative formation to become hard-lined and creative in inventing new ways to keep sharing. This assertion is somewhat misguided, however, when one comes to reflect on the fact that the very same media industry is striving to find similar ways of creatively harnessing user agency. Indeed, the whole 'Web 2.0' hyperbole is exactly about this: as Henry Jenkins (2006) writes, Web 2.0 enterprises are in effect instantiations of media corporations increasingly picking up on insights from fan forums and grassroots media activism. What is adopted, he argues, is increasingly a strategy of *collaboration* (or, in a more critical view, exploitation) rather than an outright *prohibition* of these consumer-led movements. The media industry is here seen to effectively appropriate decentralized consumer agency, for both the creation and circulation of media content – however, in ways

that rarely involve direct remuneration to these decentralized authors.

Further, the non-commercial aspect of the activist bias risks overstating the alleged altruism of file-sharing and is clearly at odds with the actual capitalist appropriation of p2p infrastructures that is currently seen with entities such as The Pirate Bay. Indeed, a more useful way to characterize the situation would be to regard p2p-based file-sharing as a vital part of the radically increased media convergence that is taking place due to the rapid digitization of consumption, production and distribution. Convergence brings about multiple ways of accessing media content and 'ever more complex relations between top-down corporate media and bottom-up participatory culture,' Jenkins argues (2006: 243). With the entirely digital modes of consumption and distribution that we see on the Internet, both legal and illegal, the roles of consumer and producer are blurred and occasionally clash, as media consumers become more like participants and co-creators of trans-media narratives, infrastructures and communities, and traditional media producers try to harness this participatory agency. The argument is congruent with Chris Anderson's concept of a 'long tail' of accessible media back catalogues (Anderson, 2006), which assumes a savvy media consumer actively seeking out content and recommending it to peers.

What is appealing about Jenkins's account is that – in contrast to much of the literature on hacker culture (see Jordan & Taylor, 2004; Atton, 2005; Strangelove, 2005) – it is based on fandom rather than political radicalism. Fandom fosters participation and knowledgeability, but not necessarily activism. The active, creative reappropriation of media forms here comes from the love of these media rather than from any allegedly oppositional political stance relating to the political organization extraneous to these media. And in those modes where use necessarily becomes more politicized, what is acknowledged are infrastructures which do not force users to take a specific political standpoint, but instead favour modes of use which generate possibilities for *occasional activism*, like the 'smart mobs' of Howard Rheingold (2003) or the 'adhocracies' of Cory Doctorow (in Jenkins, 2006: 251). However, the emphasis on activism described above often overshadows the important conditional fact of the word preceding it in this italicized form: as will be shown below, much of the productive activity online is indeed *occasional*.

The interesting flipside to this argument (Jenkins is more vocal on this in his afterword in Gray *et al.*, 2007) is that the invisible, free labour of users is increasingly appropriated by media corporations, in ways that harness large amounts of work without making it clear who will benefit monetarily from this. As is visible particularly in Web 2.0 applications, the productive forces inherent to consumption are utilized through the accumulation that digital networking makes possible. New infrastructures are built around unpaid user activity, just as The Pirate Bay manages to build new infrastructure around the scattered activities of individual file-sharers. Further, this new infrastructure has, as we will see, implicit 'rules of engagement', or prescriptive agencies, which can be said to foster tacit assumptions, such as, for example, that a wide range of cultural content should be available entirely for free.

Piratology as an Assertion of Autonomy

The seemingly positive articulation of the term 'pirate' implied in the theme of this issue of *Culture Machine* points to an underlying question: Why is the 'pirate' ethos so popular? To begin with, practices of cultural appropriation that have always been around – the kinds of poaching, re-appropriating agencies that de Certeau elaborates on – are in fact deemed 'piratical' in relation to the way contemporary copyright is formulated. As Pang (2006) writes, the legalistic regime of copyright is in this sense bound to fail, in that it tries to shield off a field (everyday culture) which is in itself infinitely wider. This becomes increasingly apparent when digital technology allows for much more extensive re-appropriation, re-mixing and re-use, and – as is argued in this article – when the digital infrastructure helps in actually manifesting such uses materially. An exchange that previously happened in someone's living room now becomes instantiated and potentially multiplied in-between p2p hubs. Something that was once an intimate joke between friends now has the potential to spread virally in an instant over the Internet.

Hence, one central aspect of the multifaceted term 'piracy' is the way it works as a positive affirmation of this renewed user agency. Drawing on the 'piratology' of Armin Medosch (2003), piracy becomes visualized as an Open Source-based, productive response to the neo-liberal hegemony of the cultural industries. Along with its countercultural connotations and romantic aura of dissent, 'piracy' here invokes positive liberty: freedom *to* rather than the negative freedom *from*.[5] It is a means to assert one's autonomy, a way of

becoming proactive (strategic) rather than reactive (tactical). Piracy here defines the ability to make one's own destiny, to open the black box of technology and utilize it for one's own ends – while doing this in the open, even forming part of the 'mainstream.' It also evokes the redistribution of widely popular as well as obscure content and doing this through highly public forums.

The Pirate Bay is in this sense not only an institutional, collective actor of the pro-file-sharing copyleft; it is as tangible and visible as such an actor can currently become. It is vocal in its dissent against copyright stakeholders, and it is accumulating a superabundance of links to content and daily visitors. Its status among the many similar indexing sites in the BitTorrent ecosystem is significant, in a large part thanks to its decisive manifestation as a brand. The site's spokespeople have actually lamented the lack of competition from other trackers or torrent link indexes (enigmax, 2007).[6] This near-monolithic public image has enabled the site to become the focal point of the debate around file-sharing in Sweden and elsewhere. An increasing legal pressure against it has simultaneously mounted, as litigators currently strive to reinterpret or even change the Swedish law so that its posting of links will be judged a deliberate breach of copyright. On January 31st 2008, four of the site's administrators were prosecuted by Swedish authorities for promoting copyright violations (Kravets, 2008; Larsson, 2008).

A recent interview with The Pirate Bay's press spokesman, Peter Sunde, is revealing in this respect since it captures what makes the site special:

> Normally the people who ran file-sharing sites decided to close down when the entertainment industry appeared with their legal threats. They tended to be 18—19 year-old guys who got frightened and thought that what was in the letters was true. Other sites try to be silent and act in secrecy. They're afraid of the industry. We don't think file-sharing is in any way wrong, and it shouldn't be expulsed to become something one does in secret. (Kuprijanko, 2008, my translation)

The Pirate Bay did not close down or try to remain clandestine; instead they chose to publish the legal letters, alongside their own scornful replies. In 2006 it transpired that the perseverance of The Pirate Bay and the fact that Swedish authorities could do little by

way of forcibly closing it down had prompted Americans to lobby the Swedish government on the ministerial level. According to the Swedish public service broadcaster SVT (2006), this was the initial cause for the May 2006 police raid on the site. This indicates to what degree the site is considered a threat to U.S. IP regimes.

Sunde defines The Pirate Bay as an infrastructural actor, such as the postal service, its only intention being to help people file-share whatever they want. However, as a critical reply to this assertion of carrier neutrality, one need only mention the qualitative difference in intent that the legal authorities in Sweden and elsewhere are bound to pick up on in their attacks on the site. Although the site is almost certainly not-for-profit, The Pirate Bay is in no way entirely non-commercial as it relies on advertising, frequently of an explicitly sexual nature, to support its running costs.[7] Pornography is ripe among the shared material (although the index includes a function to filter out such material). Not insignificantly, the administrators involved are all male, the whole ethos and discourse of the site being geared towards the archetypal masculine tinkerer. 'Piracy' here becomes prowess, self-determination, two fingers put up against one's adversaries.

A more recent controversy illustrates how the split roles that The Pirate Bay finds itself in can potentially put the site in an ethically problematic position. On September 5th 2008, the Swedish commercial broadcaster TV4 made a discovery that the forensic evidence from a recent, very well-known Swedish murder case was circulating as a BitTorrent file, and that the initial link to this file had been posted on The Pirate Bay. As the evidence includes autopsy footage of murdered children, one of the victims' mothers had apparently contacted the site, asking the administrators to remove the torrent link to the material. Her request had, according to TV4, ultimately prompted this answer from one of the administrators: *'You're bloody nagging. No, no, and again, no'* (my translation). The Pirate Bay decided to keep the link despite protests from the victims' parents and negative coverage of the whole issue in the established mass media. Moreover, as a result of TV4's coverage, the number of downloads of the files in question suddenly increased significantly.

The Pirate Bay's spokesman Sunde justified not removing the links from the site's by invoking the above mentioned carrier neutrality ethos: the site does not host the material, it merely links to it. If a link is removed, the most likely effect is that the removal will generate a backlash, where numerous other Internet actors will take

over the file's circulation (this is commonly referred to as the 'Streisand effect'). Keeping the link posted is thus in the interest of everyone; removing it would not serve any purpose - in fact, it would probably increase its circulation, he implied. Moreover, in a press release the site publicly apologized for their initially clumsy treatment of the parent's complaints, explaining that the footage in question should have been censored by the prosecutor to begin with, and pointed out that the actual mass-download of the material had only started because of TV4's coverage.

The national debate that followed was, in my interpretation, essentially informed by the expectation that any redistribution of controversial data of this kind should have a clear sender, one who would hold ultimate responsibility with regard to the potential abuse of the personal integrity of the subjects involved. The anonymous posting enabled by p2p operators such as The Pirate Bay (where the users post links which are then indexed by the website) challenges this expectation. The Pirate Bay could have made public the identity of the user who initially posted the link and thus carried responsibility for the commencement of the files' circulation. However, a similar dilemma would arise here. If the site was to do this, it would instantly be rendered untrustworthy by its users. This is definitely not in the site's own interest, and would have had the likely bi-effect of undermining the current function of the Internet as a vehicle for the anonymous distribution of data. The whole operation of The Pirate Bay is based upon this notion – central to the pirate ethos – of facilitating a 'safe haven' for controversial links, 'for the good of the net'.

What made this particular affair so complex, I would argue, was that this original, nebulous, anonymous role of p2p-based file-sharing became counteracted by the very public nature of The Pirate Bay outlined above. Their index of links is centralized, and is presented under their eponymous, well-known banner. This makes The Pirate Bay visible as actors, and – in many people's view – orders them to fulfill some sort of general public responsibility. Sunde's principled assertion to let carrier neutrality take precedence over any such public concerns also had the effect of solidifying the site's position as a real-term institutional actor in Sweden. The national press ombudsman Yrsa Stenius was pressed to defend the established ethical norms of the press in relation to this novel form of redistributing public documents abetted by The Pirate Bay. Such norms are not legally mandatory in Sweden, where almost all public administration documents are legally available to the public; instead

they are optional, agreed rules which all public media adhere to. In refusing this mild self-censorship of traditional media, The Pirate Bay's administrators have asserted that they operate according to different principles, and that this new form of p2p-based publication is a phenomenon that is here to stay. This assertion of operational, institutional autonomy is countered, however, by the site's swaggering public appearance, as outlined above. The same attitude which has made the site iconic for Internet libertarians and copyists sharing their cause, here has made them appear ruthless and overly principled in the eyes of those who associate their visibility with some form of public responsibility.

After a vitriolic TV debate (SVT, 11/9[8]) where Sunde was lured into the studio under the false pretence that the victim's father would not be present, Sunde expressed his disbelief in how the traditional media had depicted The Pirate Bay. On September 12th, The Pirate Bay renounced all contact with the traditional mass media for the foreseeable future. On his personal blog, Sunde expressed his disappointment over the whole issue by stating:

> In the following days [after TV4's news story] we had to try explaining to people how the Internet works. We also got to stand responsible for everything existing on the Internet. Since the Internet is a replica of ordinary society, because both worlds have the same inhabitants, in practice we get to represent all evil. It is a role we have often been given earlier, since our opponents (often the same media reporting on us) think it fits their purpose well. (Sunde, 2008, my translation)

The roles that actors such as The Pirate Bay are cast into (partly by themselves, partly by extraneous discourses, the most influential of which are produced by the established mass media) thus come to have a direct bearing on what the actors involved are understood to *be*. 'Piracy,' even as a trope, a façade, an act, is in no way innocent. In fact, the term itself makes for a very confrontational standpoint – one that has the potential to be all the more controversial in that it is not based on a simple dialectic of resistance, but rather lays claims to something much more harrowing: self-sufficiency.

However, this utopian thrust of self-sufficiency only applies to its autonomous channels of distribution. So-called 'Internet pirates' are

not so much producing their own media, in a community which exists in isolation from that of the mainstream, but are instead re-appropriating the products of mainstream media, often without paying for them, and finding alternative ways of distributing and sharing them. Arguably, here is where contemporary Internet piracy differs from the accounts of the likes of Bey (Wilson, 1991) of 18th century 'pirate utopias,' since the former redistributes its re-appropriated products *within* the mainstream, whereas the latter did so in a utopian community attempting to exist outside of, and separately from, conventional society. Still, one can argue that the ripped .avi and .iso files that carry the digitized mainstream movies which circulate via BitTorrent in effect constitute artefacts of their own, ontologically different from a purchased DVD or even a downloaded legal file (which most often comes with a set expiration date). An Internet user can today live his/her entire life as a consumer without ever opening a legally produced DVD sleeve; his/her experience of the film as a cultural artefact thus becomes an affair largely autonomous from the expectations of the mainstream corporate establishment. It might be worth noting, though, how this would constitute a rather extreme behaviour, given that virtually all file-sharers interviewed in my own study noted the permeability between 'pirate' and 'legitimate' consumption: all of them did occasionally purchase DVDs and specifically noted the practicality of illegal files for giving a 'preview' of whether material was worth purchasing or not. Also the example of the forensic material made available on The Pirate Bay shows that the material published online, albeit having formal properties of its own, is highly permeable vis-à-vis the non-digitized world.

Nevertheless, this self-sufficiency of distribution certainly acts to empower the users, in ways that are in a large part orchestrated, premeditated by service providers such as The Pirate Bay and hence strategic. In what follows I will look closer at how this ethos of self-sufficiency thrives on a certain form of consensus: namely, that the primary mode of agency characterizing the file-sharing networks is an autonomous one. It is an ethos that is not only about actively seeking out new cultural experiences, but also about building an alternative infrastructure and discourse by doing so.

A move has thereby taken place from the dialectical tactic of always being the enemy's opposite, something which is ultimately reactive, to a more enunciated, proactive stance. If we place p2p-based file-sharing in a historical lineage – especially as it comprises a return to a mode of usage which relies on self-sufficiently distributing data in-

between structurally equal peers – it directly resembles the modes of use that were foundational to the Bulletin Board Systems, warez subcultures and floppy disk exchanges of the 1980s and 1990s, activities that were largely exclusive to hackers or expert users. These are all modes of use that thrive on a clandestine approach towards the outside world and reward meritocracy and the prowess of (largely male) tinkerers in its internal workings. More fundamentally, such an approach relies on the tweaking of technocultural condition to suit one's own needs, and thereby creates an altogether new technocultural condition as the preceding one in effect becomes outmoded. From hacking as an activity torn between having to either co-opt or resist its technocultural condition (which often has its origins at the intersection of military-industrial and corporate interests), the term 'hacktivism' has been introduced as its more dynamic, more recent mode, characterized primarily by positive liberty and the establishment of new (free and open source) infrastructures that are arguably disconnected enough from these origins to be labelled autonomous (see von Busch & Palmås, 2006: 17).

'Hacktivism' emphasizes the 'do-it-yourself' ethos implicit to hacking: why be dependent on large corporations when one can learn the protocols or acquire the templates for becoming one's own producer or distributor? What becomes central to this realization, what in fact constitutes it, is how political mobilization becomes much more unavoidably intermingled with its material conditions, the nature of the non-human infrastructures and artefacts that it is premised on in the first place.[9] The future of cultural production, consumption and distribution is in this sense 'premised' on some of the defining certainties of file-sharing technology, such as the near-ubiquitous duplicability of digitized media content. The success and subsequent strong autonomy of The Pirate Bay is made possible by such material preconditions, but this autonomy simultaneously becomes problematic as the public visibility that follows discloses also the strategic rationale involved in actually *being* autonomous. The site becomes the focal point both for praise and critique. Commentators start to charge it with expectations of an agency that might overstate its radicalism and scope of action. The Pirate Bay becomes to be seen as a *mechanism that publishes*, rather than *a mechanism harnessing those latent possibilities of the Internet which let individual users anonymously publish*.

To create 'well-functioning self-organized structures (self-consistent aggregates) which can replace the previous structures' (von Busch &

Palmås, 2006: 19) is to be a productive agent in one's own right, since one's structures need *not* in fact necessarily be the enemy's opposite, simply replacing one set of structures with another and thus falling back into a response that is purely reactive. Rather, as has often been the case with, for example, Web 2.0 ventures such as *Flickr*, *Last.FM* or *MySpace*, such sites start out not as oppositional entities but as more open and (arguably) more free alternatives to existing corporate structures which then become co-opted or copied as they acquire popularity. Likewise, The Pirate Bay is not an 'anti-commercial' or 'even anti-corporate' operation: it is rather an alternative means of utilizing the new potentialities in the infrastructures our computers are enmeshed in. The ontological status of these new self-organized structures, and in fact the hacker ethos itself, are premised on alterity – this is makes them political in some sense (but this varies from time to time!) – but not on outright opposition. It is an alterity which co-opts and remoulds that which it finds an obstacle to its own *modus operandi*, and by doing so moves from a position of being the alleged 'other' to becoming the new norm in itself. Here, tactics is merely a temporary deployment of an agency that already from the outset has laid its eyes on a goal of self-sufficiency; a goal which is, in other words, strategic.

It is a sentiment akin to Raymond's notion of 'homesteading in the noosphere' (1999), in which code becomes generative of new entities of form that are expedient and operational, thus comparable to spatial settlement in the digital 'frontier'. It thus clearly echoes the above notion of facilitating platforms for everyone to become an occasional activist: it is in the nature of sites such as *The Pirate Bay* to facilitate forums, message boards, chat and comment functions. In fact, these interactive functions are expected to be engrained into the design of contemporary websites of this level of ambition so it would be more work *not* to include them since their operability in letting users detect bugs, flaws and errors is key to the running of such a large site. Primarily a utilitarian function for the maximization of site functionality, due to the textual nature of the web this interactivity also becomes a facilitator for political expression. Almost any of its online, message board comments can be taken as an example here, as they often tend to include a range of affective sentiments besides the technical discourse on the mediation of the particular file posted.[10] By the very existence of such open infrastructures – where the users can 'leave their marks' to a much higher extent than most comparable corporate structures – significant possibilities for engagement in the collaborative maintenance of the infrastructure itself, and for occasional activism

(and, as in the forensics case, occasional controversy!) are thus opened up. Once again, the material nature of the structure itself (in this case, the particular textual virtuality of the web) is to a significant extent what makes this possible to begin with.

This positive conception of piracy, championed by Medosch (2003), is one that cannot hide its indebtedness to the infamous writings of Peter Lamborn Wilson, aka Hakim Bey (Wilson, 1991). Bey emphasizes two central aspects of piracy: firstly, its radical, emancipatory autonomism; and secondly, its constructive agency in generating alternative (underground/illegal) economies.[11] This romanticism of 'pirate utopias' might at first glance appear as nothing more than a radicalized version of the cybercommunity thesis of Rheingold *et al.* – establishing a spatially configured 'safe haven' for alternative economies to thrive – but it becomes more potent if coupled with de Certeau's notion that strategy comprises more than just spatiality; that it is a *mode of agency* more than a literal space or place.

The Ideal of the Community

In the typically American 'net libertarianism' of Rheingold, Bauwens, Lessig *et al.*,[12] the term *community* is regarded as foundational to society. It is therefore perhaps not surprising that analysts are trying to seek this quality in online milieus, ever since Rheingold's virtual community thesis of 1994 (see Rheingold, 2000). Perhaps this is why the amorphous mass phenomenon of p2p is often described in the activist terms the way I outlined it above, fuelled by the narrative seduction that is offered by the often anecdotal tales of *de facto* instances of innovation and establishment on the digital frontier. Activism implicates a strong emphasis on individual agency, and serves well to tell those stories of ground-breaking innovation that the historiography of culture is so keen on capturing (in the same way art historians always value *the first* of whatever style of expression).[13] But as the preferred uses and behaviours become embedded in the emergent infrastructure by the pioneering hacktivists who build the applications and configure the networks, another narrative is needed for capturing the experience of making-do with what is already in place.

Des Freedman makes an important observation in this respect:

> While the figures for downloading music are almost certainly understated, the low levels of 'creative' behaviour are more surprising and do little support to the notion that the Internet is an intrinsically more sympathetic environment for mediated activity. Blogging and online discussions are undertaken vigorously but, thus far, only by a minority of enthusiasts rather than the general online population. The figures demonstrate that the Internet is more commonly used as a tool of individual research and connection rather than as a site of mass-mediated production and interaction. (Freedman, 2006: 285)

In fact, many investigations of the nature of file-sharing networks show that relatively few users contribute new, unique content to the networks, and that many more download material without actually contributing anything to any considerable extent. Of course, while the fact that vast amounts of people download 'pirated' material itself serves as an indication of a general acceptance of so-called piracy, the active, sustained uploading of material is what is more controversial in that it is in practice what upholds the integrity and quality of the networks as pools of content. On p2p networks everyone has an opportunity – though not an obligation – to be a contributor as well as a recipient. Nevertheless, as many researchers have asserted, those who 'produce' may actually be relatively few. Oram (2000) quotes a study which found out that only 2% of Gnutella users actually contributed content, and even on Usenet News, he maintains, the ratio of posters to total readers was only about 7%. 'Perhaps the gift economy is a little less public-spirited than its promoters suppose? A lot more receiving/taking than giving is evident', claims Christopher May (2002: 102), referring to a survey quoted in *The Economist* (2000). According to that survey, the amount of users who offered *no* files to download for other users (i.e. who only received and did not contribute content) was a lavish 70% of the group of about 31,000 people who connected to the Gnutella file-sharing system during the 24-hour survey period.[14]

Jenkins (2007) refers to a 2005 Pew Internet and American Life study (Lenhardt & Madden, 2005) which might initially suggest the opposite interpretation: it claims that 57% of U.S. American teens who use the Internet could in fact be considered 'media creators'. However, the definition of a creator is rather broad here: it is taken

to mean someone who has 'created a blog or webpage, posted original artwork, photography, stories or videos online or remixed online content into their own new creations'. This begs the question of how long-lasting, accessible and/or politically relevant the produced content is. Contrast this with Hans-Magnus Enzensberger's classic rebuttal of the idealism of activist media uses (1970/2003), when he says:

> For the prospect that in future, with the aid of the media, anyone can become a producer, would remain apolitical and limited were this productive effort to find an outlet in individual tinkering. Work on the media is possible for an individual only insofar as it remains socially and therefore aesthetically irrelevant. The collection of transparencies from the last holiday trip provides a model of this. (Enzensberger, 1970/2003: 266)

Without determined collective organization, 'the individual, so long as he remains isolated, can become with their help at best an amateur but not a producer', Enzensberger argues (1970/2003: 266). To mobilize the inherent productive powers in the new, granular, dispersed media in any effective way, these powers need to be systematized, or at least aggregated. P2p networks make visible an aggregated body (or, more correctly, an amorphous mass) of users that becomes politicized due to the controversy of its actions in the present copyright climate. This does not of course remove the possibility of local, tactical, limited political movements taking place, but as such these would remain comparatively limited, if not even unnecessarily exclusive, according to Enzensberger. In order to truly make a difference, the aggregation has to be purposeful, and its local instantiations have to have potential beyond the trivial; they have to be part of a body that is overseeable, accessible and visible to the public eye. As the Internet pundit Clay Shirky recently pointed out (2008), most of the 'user-generated content' embraced by the Web 2.0 ventures is not actually 'content' intended for mass consumption: it is merely personal communication in a public forum. If we take Enzensberger's thesis and apply it to these Internet ventures of the current period, the fact that new, Web 2.0-derived channels are so widely promoted and made easily accessible is actually proof of their relative political impotence. These channels are thus reduced to 'harmless and inconsequential' hobby projects.

As a result of this relative impotence, what is required for political efficacy, we might argue, is the presence of more lasting, (semi)institutional actors. This is also what has happened in Sweden, one of the more interesting countries for 'copyfight' analysis, where one particular form of homesteading purporting to systematize file-sharing is now seeing its aftermath played out in court.

Strategy as Network Effect and Political Solution

With the creation of more explicitly political entities, such as *Piratbyrån* and *The Pirate Bay*, the social cohesion generated as a result of their activities seems to be of a very particular kind: its sociality appears to have the sub-function of serving as a material consolidation and a discursive nexus, rather than just a facilitating a 'community' in the traditional sense. Piratbyrån describes itself as follows:

> *Piratbyrån* (The Bureau of Piracy) is not an organization, at least not primarily. First and foremost, *Piratbyrån* is since its beginning in 2003 an ongoing conversation. We are reflection (sic) over questions regarding copying, information infrastructure and digital culture. Within the group, using our own different experiences and skills, as in our daily encounters with other people. These conversations often bring about different kinds of activities. (Piratbyrån, 2008)

The role of *Piratbyrån* is manifold. This 'cousin' of The Pirate Bay can be described as a gateway. It provides 'how to' guides to file-sharing; it is also an alternative news agency, a message board, an opinion-making organization and a think-tank facilitating a platform for more academic/intellectual discourse around the phenomenon. The primary cohesion of this entity, I would argue, lies in its material grounding (its concrete nature as a *de facto* site for file-sharers), rather than in any alleged social cohesion or homogeneity. It is not explicitly designated to represent each and every file-sharer, yet it has become a handy tool not only for learning about the technology, but for also the social exchange that goes with it (note here the importance of human, relationally acquired 'word-of-mouth' knowledge). In facilitating such a pedagogic site, with message boards allowing users to share expertise, even the more factual

discourse used implies a stance which is pro-file-sharing. Indeed, some message boards allow users and administrators to vent explicitly partisan views. This latter, political aspect makes the cohesion of *Piratbyrån* more akin to a curious mix of an ideologically instigated pamphleteering organ and a communicative hub or 'semi-public sphere', rather than to the *Gemeinschaft* of closely knit communities. The heterogeneous actors behind The Pirate Bay and *Piratbyrån* somehow manage to function as if they were a cleverly orchestrated unity, although their methods are often fragmented, with deliberately branch-like, ad hoc offshoots and temporary interventions:

> http://playble.com/ [English] – a new business model for alternative compensation for music artists that would still allow for free sharing of their material;
>
> http://jesperbay.org/ [Danish] – a détournement site that derides the Danish blocking of The Pirate Bay and shows how to circumvent the ISP censorship;
>
> http://courtblog.thepiratebay.org/ [English] – a blog that surveys the ongoing court proceedings that The Pirate Bay are involved in;
>
> http://bayimg.com/ [English] – an online image hosting service;
>
> http://piratbyran.org/walpurgis/ [English] – *Piratbyrån*'s Deleuze-inspired Walpurgis performance in 2007 documented as a rhetorical vehicle to assert file-sharing in ways that are ontologically more relevant and expedient to their cause;
>
> http://www.propiracy.org/ [English] – international site, allegedly for the 'Pro Piracy Lobby'; an attempt to merge the Scandinavian pro-file-sharing sites under a unified banner;
>
> http://kopimiklothing.com/ [English] – selling pro-piracy-branded t-shirts;
> etc.

Because of their near-ubiquitous presence in the Swedish mass media discourse around file-sharing, it could be argued that *Piratbyrån* and The Pirate Bay have come to appear representative of all file-sharers. This is something that was refuted by many of my respondents' accounts. Nevertheless, this ubiquitous role needs to be taken into consideration: although *Piratbyrån* might not deliberately strive to represent the larger sphere of file-sharing, its mediating role makes it a force which is continuously present – materially, socially and discursively. This strategic action could in the context of the file-sharers who I interviewed be summarized as 'maintaining doing what they are doing' in the face of harshening legal frameworks and public disapproval. It would comprise a reinforcement of the sovereignty of material networks, communities and applications for a sharing which remains uncontrollable by legal/corporate authorities, essentially through a continuation of the activities already being routinely performed. This would strengthen the material manifestation of the phenomenon – a 'property of a proper' as de Certeau describes it (1984: 38) – both in a spatial and rhetorical sense. The site thus *serves* as a convenient, stable, sovereign point for its owner from which he can formulate a viable alternative to the preceding order. It also helps to make its owner and this new order more *respectable* (both in the sense of inspiring awe in its opponents and making the new practices customary). In practice, it comes to provide an amplificatory fulcrum for the pro-file-sharing rhetoric:

> The best strategy is to keep file-sharing, sampling, deriving, copying, getting better broadband connections/'mp3-players' so that we become even more dependent on these phenomena and our actions make copyright so washed out that it is no longer needed. Since in practice, it is already non-existent on certain levels. (sign. 'Blenda' commenting Copyriot, 2006, my translation)

Following from this, if these p2p-based technologies are seen *as aggregated totalities* (this is what is they are usually referred to as in debates on the phenomenon) embodying altruism, community or even resistance, individual user intention arguably only plays a parenthetical role. What appears to play a more central role are the infrastructural particularities of the network architecture. Take, for example, the default BitTorrent setting that makes the user share each fragment of the file as soon as it has been downloaded, hence reinforcing the protocol's particular logic of sharing from the very

outset, improving the resilience of the network while discouraging 'leeching' behaviour. Or, likewise, take the negative aspect of the very same protocol: the problem of file 'death' as peer interest trickles off and no more seeders are available (see Pouwelse, 2004).

It is in the interest of The Pirate Bay and *Piratbyrån* to emphasize the growing ubiquity of file-sharing, user generated content and p2p-type media user behaviour, since the more consolidated such media uses become, the more out of sync the current legal system will appear, and the less awkward they will appear when taking a principled yet controversial position as in the forensics example above. The radicalism of the collective sharing of resources enabled by p2p networking only becomes radical in relation to its preceding historical context that can itself be of a very specific nature: the current norm of unidirectional mass media, which guides conventional press ethics; the current norm of typical 'big media' capitalist accumulation of revenue from copyright, which guides the rhetoric of lobbies such as RIAA, MPAA, IFPI, and so on. These modes of administration of media content are safeguarded by the present copyright system. A question one might want to ask, however, is *what new, possibly technocratic modes of administration will replace this older system, as the emerging media uses of p2p and Web 2.0 become consolidated?*

Ontology as Rhetorically Expedient

The role of an index of links, such as The Pirate Bay, is to simplify the users' search for content. However, p2p-based file-sharing still requires users to actively seek out the material they are after, and to signpost the material they want to upload. The current network applications are configured to beget engagement and tinkering in that they reward individual user skills. To instigate one's acquisition of content is a decidedly active operation, while the speed of the actual download, once it has begun, depends more on the overall network. This emphasis on individual activity can be associated to least three images of the archetypal media user. The first is the 'active audience' of 1980s and 1990s Anglo-American cultural studies; the second is the hacker ethos of Torvalds, Himanen (2001), Raymond (1999), Wark (2004) *et al.*; and the third is the entrepreneurial, progressivist spirit sometimes labelled 'the Californian ideology' typified by Silicon Valley and *Wired* magazine. The uncanny amalgam of a poaching, highly selective yet world-wearily casual file-sharer is congealed through the particular

interpretation of gift economies underpinning the latter two images, but also by the spirit of other, historically much older modes of media activism (cassette culture, radio activism, video activism), in addition to the pirate ethos that this issue of *Culture Machine* is exploring. The file-sharer image is often charged with the connotations of these more radical propensities, especially since the technical infrastructures used by the outright activists are often the same as those of more casual file-sharing, as in the case of BitTorrent.[15]

The expression 'information wants to be free' is similarly rooted in the cyperpunk/hacker movement of the 1980s and 1990s.[16] It has a strong activist thrust, both in the sense that information, as an agent, has an active will, desire or purpose, and in the sense that humans, as agents, have an active role in maintaining the dispersal of said information. According to N. Katherine Hayles, it also echoes what she defines as the main cultural condition of virtuality: the perception that (decontextualized) information is 'more mobile, more important, more *essential* than material forms' (Hayles, 1999: 19, emphasis in original). This normativity, I argue, is significant for the individual justification of continuing to copy files in the face of disapproval and denigration, as is evident in this quote by some of the leading voices of *Piratbyrån*: 'With the remix as the norm, steps to a democratization of creativity are taken and in the process we are liberating the myth of a special class of artists isolated from the rest of us fans, amateurs or consumers' (Fleischer & Torsson, 2005).

In this rebuttal of the old binary of consumer-versus-producer, this traditional binary is replaced with uncertainty. It is not only the ontological status of the agents involved that is questioned. Another question that arises is: are users to be seen as consumers or producers? This relates directly to the ontological question of what is actually being shared: files as content or communication? Further, the infrastructural network in itself starts to become contentious: is the Internet a vertical broadcast medium or a horizontal assembly? The authors continue:

> The copyright industry today likes to present the problem as if internet were just a way for so-called 'consumers' to get so-called 'content,' and that we now just have 'a reasonable distribution' of money between ISPs and content industry. But we must *never* fall in that trap, and can avoid it by refusing

> to talk about 'content' altogether. Instead, we talk about internet as communication. (Fleischer & Torsson, 2005)

This is a rhetoric that is based on a very convincing interpretation of 'the nature of the beast': namely, that the Internet is premised on copying, and that any effort from the content industries to thwart this process is bound to fail. What is interesting here, from a post-humanist point of view, is how the rhetoric operates within a discursive-material 'double bind' (see Haraway, 1991; 1997): it discursively construes the defining properties of the technology while becoming a means of actual power by simultaneously harnessing these properties.[17] An act of *translation*, in Bruno Latour's terms, is thus laid bare: the material infrastructure is translated to mean different things to different actors, and the actual nature of said 'content' changes depending on this ontological framing. As Latour (2005: 56) points out, actors constantly criticize each other and other agencies, accusing them of being fake, absurd, irrational. Following these dismissals of the actors involved, one can follow the way in which the landscape of the new media circuits of distribution is in effect construed.

Further, user agency not only involves affective or economical investments, it also involves proficiency. Through informal modes of expertise, p2p users open up the 'black box' of the Internet as a distribution network of audiovisual content and relay it to serve their own interests. Agentially active, users are here thriving on circulated, informal expertise, disseminated throughout the Internet, and utilizing this in ways that are expedient, casual, haphazard, serving individual desires and impulses. This goes beyond the already established semiotic literacy implied in the 'active audiences' hypothesis; it extends the user agency to question also the rigidity of the material infrastructures of distribution.[18] Still, one needs to heed the trap of overstating the activist bias that I would argue underpins the more partisan points of view, and recognize that file-sharing does not constitute a utopian 'free-for-all' but rather involves some determining agencies of prescription of its own. Noting the inherent normativity in the activists' own ontological framing, and drawing on Latour and Andrew Feenberg (1999), we can see how infrastructures penetrate the everyday in ways that are almost always technocratic to some degree. They become structures not entirely of our own choosing, but they offer the range from which we can choose. We are forced to negotiate with them.

Individual Agency Relies On (and Makes Possible) Mightier, More Durable Entities

Bauwens (2002) quotes Michael Hardt (2002): 'The traditional parties and centralized organizations have spokespeople who represent them and conduct their battles, but no one speaks for a network. How do you argue with a network?' Hardt argues that the network contains movements that are too disparate, and seemingly too contradictory, to form a unified opposition in the traditional sense. He implies that the force of networks is instead exerted as a form of undertow. What could be observed, though, is how this 'undertow' takes on a material form through being manifested in the very infrastructures and discourses embedded in user forums, FAQs and 'how to' documents. Although generally moderated by elite groupings, these forums allow for an open discourse, which is more representative of the file-sharing body at large (thanks to the inherent openness of these discursive structures elaborated above). The very indexing of numbers of up- and downloads makes for an added visibility of content, thus attesting to the popularity of particular entries and even patterns of activity.

The distributed agency of the peers is reinforced in the physical exchanges, and hence actually perpetuates the material networks at hand (simply put: 'without peers, without content, no network') – albeit in an amorphous, ever-changing manner.[19] This amorphous agency leaves traces, in sheer aggregated numbers of data up- and downloaded, in the occasional logging of IP addresses and in the indexical inscriptions above. This traceability in turn compromises the 'quasi-invisibility' that De Certeau associates with traditional consumption, as everyday consumption and hand-to-hand dissemination are normally thought to be acted out in clandestine, individually scattered, largely unrecognized ways (de Certeau, 1984: 31; Buchanan, 2000: 93). With file-sharing, what we are seeing is an aggregation of these earlier fragmented acts on a near-industrial, hyper-efficient scale. Singular acts that may seem banal individually are accumulated and the alternative tinkering, the establishment of expedient shortcuts and the do-it-yourself ethos that they comprise slowly becomes a societal norm. Simultaneously, the material networks generated become evidence of the sheer scale of the exchange. When the quasi-invisible practices that constitute the everyday are made visible, documented and materialized in concrete flows and texts, they are no more invisible.

'The file-sharing movement', if there is such a thing, may have occasional spokespersons and activists, but what is more convincing is the way in which the collective accumulation is itself manifesting the general direction of the process. The statements issued by The Pirate Bay *et al*. merely confirm the scale and pervasiveness of what is already happening on the Internet. Perhaps this is why the 'technological determinism' card is so often attached to the pro-file-sharers: their argument that the Internet has certain properties that 'have always been there' and that are now harnessed in previously unanticipated ways makes them a likely target for accusations of a blindly technocratic approach to culture. This was also one of the arguments thrown out in their defence when they got criticized for linking to the murder footage. The active choice to remove the links was discounted by invoking the very same technological determinism, this irresistible 'undertow'.

As the overall exchange is governed by technical protocol (see Galloway, 2004) and machine-readable code, some particularities inherent to digital communication come into play, for better or for worse: the nature of data as machine-readable trace bound to a physical carrier (see Hayles, 1999) makes it possible to trace the circuits of communication that used to be hidden from view. This is what allows file-sharing to be potentially monitored and ultimately policed (although the sheer superabundance of the phenomena makes any totalizing attempt at this a practical impossibility). Yet simultaneously this is also what manifests its strategic characteristics, as this essay has attempted to show. It becomes discursively irresistible, due to its material inevitability: 'no reason to complain about it since it is the nature of the net'.

Secondly, code facilitates new uses, but similarly these uses are premised on a system that translates 'old' media into forms governed by an informational logic; in other words a logic that is operative and efficacious (and thus technocratic). In fact, file-sharers are arguably as economic in their approach to 'content' as the 'IP traditionalists' discussed at the beginning of this essay. As has been argued by Ross (1998), Miller and Slater (2000) and others, the 'net libertarian' ethos of Barbrook, Rheingold, Lessig *et al*. is more similar to its neo-liberal cousin than many Internet activists would care to admit. Both share the same highly principled, martinet idea that culture can in fact be governed by technical protocol, and both see culture as information, and thus ultimately a utility. If only everyone were using Creative Commons licenses, the net libertarians seem to argue, everyday culture would automatically become freer. What

unites these ideologies is their assumption of semi-institutionalised appropriation and accumulation of information where the very *management* of information determines everyday culture. For one, information wants to be free, for another, it needs to be owned.

I have hoped to show here that p2p-based file-sharing need not be interpreted in similarly dualistic terms. The fact that p2p makes massive data exchange possible without a monetary valuation of the 'content' exchanged does not, however, remove it from the economic realm. It is still an economic activity, having economic repercussions, generating externalities, and it still requires outposts of institutionalization and safeguarding. Despite being labelled 'anti-commercial' it still helps spread the mainstream products that the corporate establishment want us to consume.

'Was not Marx's very quarrel with the utopian socialists based on the insight that the problem of domination in capitalist relations cannot be solved at the level of distribution, no matter how egalitarian such distribution might be?' (Brown, 1995: 14). File-sharing, as a means of cultural exchange, can therefore never be equated simply with 'resistance' since it thrives on the same capitalist system of cultural exchange that it forms part of. Sure, the seductive arguments underpinning the current 'pirate' ethos help to frame the activity in a way that makes it seem radically different from the earlier accumulation and exchange of cultural products. When cultural products are encodeable as information, and thereby malleable, expedient and duplicable, it becomes easy to see them more as raw data than as precious artefacts.

If Bolter and Grusin's remediation thesis (1999) holds – i.e. that new media not only incorporate older ones but actually by their very existence, re-shape the nature of that older media – then Lash's argument (2002) that the digitization of 'old' media forms brackets these forms within an informational (data-based) regime would mean that this regime would also come to haunt the original, not-yet-digitized 'old' media in question. It thus makes sense to talk about a looming 'inflation' of content in which cultural artefacts are much more freely available as data. This cheapening of content acts as a lubricant for the general economy, much like the falling prices and increasing availability of oil served to lubricate the Fordist economies of the 20th century. Digitization appears to contain its own economic externalities, some of which might not be directly observable or measurable in monetary terms, and which perhaps only emerge over time. As the debate stands at the moment, only

those systems of exchange that explicitly admit these externalities ('information *wants* to be free!') become branded as anti-corporate, if not anti-capitalist. Those systems that help lower barriers of access but which are more vague on the topic of these externalities, or which explicitly try to conceal the cheapening of access and exchange implicit in digitization (here we can place Web 2.0 start-ups together with those budding corporate initiatives to promote 'legal file-sharing'), are not as vilified. In fact, much of their economic rationale is embraced in corporate circles.

Political 'by Association'

To summarize, entities such as The Pirate Bay are controversial, despite the fact that the existing technical infrastructure of the Internet favours this type of data exchange. The pirate ethos that is repeatedly claimed through the Bay's discursive ardour is one which is currently widely popularized as a countercultural trope, with all that this implies in terms of being useful as both a brand and a business model (see Mason, 2008).

So why does *The Pirate Bay* still evoke controversy? It does so, I suggest, partly due to the impossibly awkward position in which it is positioned legally, but partly also due to the active, deliberate upholding of an avowedly anti-IP or – more correctly – autonomous stance by the network administrators and their spokespeople. The risky game, irrevocably embodied in the 'pirate' ethos, of keeping one's chin up and publicly defacing the nomenclature of the IP lobby, has had the negative effect of branding the entire operation as oppositional, although the majority of regular file-sharers populating the networks would probably see it differently. As was maintained by many of the respondents in my own research, file-sharing is simply an everyday means of consuming culture, something which needs to be perceived as neither a calamity nor a godsend. The 'necessary fight' that The Pirate Bay *et al.* are upholding has had the secondary consequence of the infrastructures managed by these macro-actors becoming political as if *by association*. Users who might not agree on the political agenda come to use their platforms simply out of convenience and personal gratification, yet the individual agency of these users becomes usurped as part of the wider, accumulated operations in these macro-actors' strategic games. One of the respondents' main points was exactly this; she suggested that the usage becomes politicized to appear much more radical, activist and decisive than it was ever intended to be. In most instances, the

intention is not more politically explicit than a general dissatisfaction with 'value for money', she argued:

> It would have been more controversial if it was a civil revolt against the market and the powers that be, but I think that the reason it appears a civil revolt is an *unconscious effect of it being so easily accessible*. To challenge the market in order to lower prices might have been an initial idea but not a deliberate act for many users. (anonymous respondent, my emphasis)

The initial act of acquisition is paralleled by the secondary act of sharing, which is in this sense imposed as part of the 'rules' for participation, embodied in the material infrastructure, and coupled with the social 'netiquette' or common 'courtesy' of the network which prescribes that one better share what one has got. Following this reasoning, a clearly understandable tendency of locating responsibility primarily with the collective – that is, with the machinic architecture and infrastructural institutions that the p2p collective helps constituting and is itself constituted by – rather than with the individual appeared in the respondents' discourse. This appears to be the case especially with regard to those forms of responsibility which pertain to potential *negative* side-effects or externalities of the phenomenon. Not that the individual choices made online would be unwitting, or innocent (as noted above, individual, self-determined and highly pragmatic *choice* is paramount here), but the moral justification for these choices is shifted over from the individual to the collective.

In the particular Swedish context, this dynamic between the individual and the collective makes good sense: the ubiquity of file-sharing among broadband users and the 'everyman' embrace of the phenomenon thrives on the very qualities that the archetypal Swedish social contract[20] values: apparent operational neutrality for all peers (leveraging all users involved to 'the same level'; every peer systemically equal to the network), efficacy, infrastructure – the p2p network here becomes a metaphor for *a structural totality allowing for each individual to maximize utility*. Further, the long history of organizational life and corporatist 'people's movements' in Sweden makes the above mentioned institutional efforts effected by the file-sharers themselves, such as *Piratbyrån*, the Pirate Party and The Pirate Bay appear logical, if not expected. The individual user can thus take solace in the fact that his/her usage is the expected one –

as everyone else seems to be doing it – and that the added political weight of these users is safely and efficiently taken into consideration and strategic use by the administrators of The Pirate Bay itself.

Endnotes

[1] In contemporary philosophy, the concepts of positive and negative liberty have been comprehensively outlined by Isaiah Berlin (1958/1969) and Friedrich Hayek (1960/2006).

[2] He duly states how he deliberately wants to counter (in his view) dominant narratives of a pacified, commercialized media audience through arguing that 'culture jamming' and anti-corporate activism would be the most prominent elements of online youth culture, emphasizing the 'individual's new role as a content producer' (Strangelove, 2005: 6) with a significant 'ability to create and disseminate cultural products' (2005: 7).

[3] This exact phrase is borrowed by Bauwens from evolutionary psychologist John Stewart.

[4] The idealism implicit in much of this praise of p2p is observable in Röttgers' (2003) formulation 'P2P: Power to the people' and the P2Pnet.net slogan: *'person-to-person, people-to-people, peer-to-peer, 'puter-to-'puter'*.

[5] See Berlin (1958/1969) and Hayek (1960/2006).

[6] Of the various so-called 'meta' torrent search engines, which are accumulated indexes built on data from original torrent trackers and indexes, most of the original data comes from The Pirate Bay, *isoHunt* and *Mininova*, according to Peter Sunde. Of these latter two indexes, *isoHunt* is partially based on The Pirate Bay's torrents, and both *isoHunt* and *Mininova* strongly rely on The Pirate Bay's tracker, he continues. As with large parts of the Internet's media ecosystem, there exists a kind of 'echo-chamber effect' in other words, with various 'meta' indexes mainly rehashing data which originally comes from influential sites such as The Pirate Bay.

[7] It is worth noting that the people behind The Pirate Bay, such as Peter Sunde, claim that they do not earn a living from the site: the ad revenues are said to only cover running costs. At the moment, the site is embroiled in a legal hearing which will eventually come to

disclose the economic circumstances of The Pirate Bay, according to Sunde (private correspondence). He says:

> We are not interested in being a commercial entity, we don't want to be the only entity, we don't want to be the outward face of file-sharing.
> …
> The commercial aspect is so extremely easy to account for. There has been some income, which has been used to buy machines. Bandwidth has been paid for. There are debts still to be paid. The money which has come in (that I know of) are SEK 800,000 during a 3 year period, everything with VAT and all that. That money is also there in the criminal investigation. These are no huge sums we are talking about, it's a gigantic minus project. We reluctantly carry ads on the site, but I wouldn't say we've been treated particularly well when applying for money from cultural funding bodies and such things.
>
> I would most of all see TPB as a cultural organization with state funding solving the economic bit. Get rid of the ads and no-one would be more happy than us. We deeply dislike it but in some way things have to keep rolling. All this is visible in the investigation protocols if you look through it. They say SEK 1.2 million 'at least' in the investigation – but then they have multiplied some invoices a couple of times and then you have the usual thing. 'We have no evidence for there possible being more transactions'. 'We can't prove that he is involved'. It's the implied meaning which makes these things flare up – it's hard for us to prove that we DON'T have accounts on the Cayman Islands full of gold. How do you prove that? It will come to show during the trial. (private correspondence with Sunde, September 2008, my translation)

[8] As an avid blogger on Internet-related issues, I was contacted by the editors to actually participate in this debate. However, I was not able to, but was still offered to write an analysis of the entire case, which was then published on the SVT Opinion website.

[9] Von Busch & Palmås demonstrate a line of thinking strongly influenced by Deleuze, where the notion is picked up from Manuel DeLanda, Michel Serres and Fiedrich Kittler that the prime conceptual models through which we understand the world in a given era can be derived from the machinic metaphors of that era. Thus, the authors argue that the diagram or 'abstract mechanism' of the motor is now being replaced by the abstract mechanism of the computer, with a whole range of immanent prospects for creativity and duplication as a result. This focus on abstract machinic modes as organizing principles of culture is perhaps the central tenet of McLuhanite thought as well. An example is how Kevin Kelly, editor of *Wired* magazine, draws on McLuhan in his conclusion that the Internet encourages 'modular, non-linear, malleable and co-operative' thought (Lister *et al.*, 2003: 19), which implies a contrasting paradigm to the historically preceding 'typographic man'.

[10] For those not acquainted with The Pirate Bay, any string of comments on the film clips provided by YouTube will do: they display an uncanny mix of sentiment ranging from outright personal attacks to comments on the quality of the film clip itself to political sentiment of almost any kind or colour.

[11] Wilson (1991) describes the early pirate colonies of the 18th century as 'Pirate Utopias' and instances of what he embraces as 'Temporary Autonomous Zones' – quasi-institutionalized communes, operating as if they were hidden or disconnected from the wider society surrounding them. Overstating piracy as a 'negative refusal' (ibid.) of established conventions is nevertheless arguably a fallback into the dichotomized understanding above, as this would constitute and approach which is essentially reactive.

[12] Both Jenkins and Bauwens explicitly draw on Pierre Lévy's concept of 'collective intelligence' (1997) as an attainable utopian tendency implicit to p2p networking. The roots of this particularly U.S. American, technologically progressivist communitarianism are traceable not only to McLuhan but back to Amitai Etzioni's (1968) visions of an 'active' society of mass participation and community-based media (cf. Mattelart, 2003: 89—91). Alvin Toffler expressed similar visions of an impending 'de-massification' of the media thanks to an all-encompassing digitization.

[13] Advertisers are often doing the same: by focusing their market research on groups of highly committed consumers (Harley

Davidson riders, Apple computer users, etc.) a narrative is shaped that centres a lot of the advertising attention on 'brand communities', since these are seen to exert an increasing influence in an era of convergence and in fact embody the guiding principles for this era (Jenkins, 2006: 79).

[14] *The Economist* (2000) reports on Adar & Huberman's study: 'those who did share their collections [of CDs] did not contribute evenly. A mere 20% provided 98% of the material. Indeed the most generous 1% served up about 40% of it' (cf. Adar & Huberman, 2000). Another study (Sen and Wang, 2004) found that less than 10% of the IP numbers on a particular network filled about 99% of all p2p bandwidth. More findings indicate the same tendency: Saroiu *et al.* (2002) debunk the myth that all peers behave equally, in terms of both contributing and consuming resources. Approximately 26% of Gnutella users shared no data; these users were clearly participating to download data and not to share. Similarly, in their observation of Napster, on average 60—80% of the users shared 80—100% of the files, implying that 20—40% of users were sharing few or no files. Furthermore, their study shows that there was a significant amount of heterogeneity in both Gnutella and Napster; bandwidth, latency, availability, and the degree of sharing vary significantly among the peers. Secondly, even though these systems were designed with symmetry of responsibilities in mind, Saroiu *et al.* maintain that they recorded clear evidence of client-like or server-like behaviour among the populations of both systems. Thirdly, they assert that peers tend to deliberately misreport information about, for example, what bandwidth they should be optimized for, especially if there is an incentive to do so (in this case, to optimize their own bandwidth over others).

The BitTorrent/Supernova case study conducted by Pouwelse (2004) found that only 17% of the users remained online longer than one hour after they finished downloading. For 10 hours this number went down to 3% and for 100 hours to a mere 0.34%. These figures are important. With BitTorrent, every minute the user stays online after the download is completed is significant, because the entire file then acts as a seed, being available to other users. Liebowitz *et al.* (2003) similarly confirm that KaZaA traffic is highly concentrated around a small minority of large, popular items – their observations actually imply that this concentration is even more pronounced than previously reported. The user behaviour they noticed was very pronounced: they observe that as few as 2500 files

(a mere 0.8% of all detected files) account for as much as 80% of the traffic. The traffic in file-sharing systems can often be found to follow a mathematical principle, 'Zipf's law' (see Hart, 2004). This law is most commonly expressed as a 'power log', a logarithm of diffusion of variability. Put simply, it is a mathematical expression of the fact that networks generally contain only a few files that are extremely widespread, at the same time as containing extremely many different files that are not widespread at all (see Ripeanu et al., 2002; Liebowitz et al., 2003). This phenomenon has also been observed among Internet usability experts in an era of 'Web 2.0', a small percentage of users contributes the vast majority of material (see Nielsen, 2006).

[15] This refers to BitTorrent in particular, due to its increasing ubiquity as technical protocol for self-publishing audiovisual content – thus lending itself as an expedient tool for grassroots film makers and/or alternative forms of TV broadcasting. One example of this mode of explicitly activist usage is Adnan Hadzi's *Deptford.TV* project (http://deptford.tv). A predecessor was *Torrentocracy*, a project launched by Gary Lerhaupt (graduate student in computer science at Stanford University), which aimed at combining RSS flows and BitTorrent with ordinary TVs to potentially create a two-way model of media consumption, integrated seamlessly into the conventional domestic context. It is, however, no longer active. More conventional BitTorrent search engines for explicitly alternative or non-commercial content include *Indytorrents* (http://indytorrents.org) and *Legaltorrents* (http://www.legaltorrents.com).

[16] According to hacker legend, it was coined by Stewart Brand at the first Hackers' Conference in 1984 (http://en.wikipedia.org/wiki/Information_wants_to_be_free).

[17] 'I'm trying to say *both*, *and*, *neither*, *nor*, and then a lot of confusion arises. ... I'm talking about a mode of interacting with the world that is relentlessly historically specific. Technoscience is a materialized semiosis. It is how we engage with and in the world' (Haraway and Nichols Goodeve, 2000: 133). 'The technical and the political are like the abstract and the concrete, the foreground and the background, the text and the context, the subject and the object' (Haraway, 1997: 37).

[18] Comparatively, these used to be much more ontologically stable. Hall's encoding-decoding model presupposes the very stability of

producer versus consumer, a dyad that was indicated already in Shannon and Weaver's communication diagram and the relatively crude 'hypodermic needle' models of early communication theory.

[19] This is similar to Hine's (2000) characterization of Internet discourse as being textually materialized while enacted.

[20] This 'social contract' is further elaborated upon in my PhD thesis. In this article it will suffice to say that characteristics such as national particularities shape the uses of media and affect the construction of sociality. For literature on the particularity of Sweden as a country, see, for example, Berggren & Trägårdh (2006).

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