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# **System of a Takedown: Control and De-commodification in the Circuits of Academic Publishing**

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Since 2012 the Public Library/Memory of the World<sup>1</sup> project has been developing and publicly supporting scenarios for massive disobedience against the current regulation of production and circulation of knowledge and culture in the digital realm. While the significance of that year may not be immediately apparent to everyone, across the peripheries of an unevenly developed world of higher education and research it produced a resonating void. The takedown of the book-sharing site Library.nu in early 2012 gave rise to an anxiety that the equalizing effect that its piracy had created—the fact that access to the most recent and relevant scholarship was no longer a privilege of rich academic institutions in a few countries of the world (or, for that matter, the exclusive preserve of academia to begin with)—would simply disappear into thin air. While alternatives within these peripheries quickly filled the gap, it was only through an unlikely set of circumstances that they were able to do so, let alone continue to exist in light of the legal persecution they now also face.

48 The starting point for the Public Library/Memory of the World project was a simple consideration: the public library is the institutional form that societies have devised in order to make knowledge and culture accessible to all their members regardless of social or economic status. There's a political consensus that this principle of access is fundamental to the purpose of a modern society. Yet, as digital networks have radically expanded the access to literature and scientific research, public libraries were largely denied the ability to extend to digital "objects" the kind of de-commodified access they provide in the world of print. For instance, libraries frequently don't have the right to purchase e-books for lending and preservation. If they do, they are limited by how many times—twenty-six in the case of one publisher—and under what conditions they can lend them before not only the license but the "object" itself is revoked. In the case of academic journals, it is even worse: as they move to predominantly digital models of distribution, libraries can provide access to and "preserve" them only for as long as they pay extortionate prices for ongoing subscriptions. By building tools for organizing and sharing electronic libraries, creating digitization workflows, and making books available online, the Public Library/Memory of the World project is aimed at helping to fill the space that remains denied to real-world public libraries. It is obviously not alone in this effort. There are many other platforms, some more public, some more secretive, working to help people share books. And the practice of sharing is massive.

—<https://www.memoryoftheworld.org>

## **Capitalism and Schizophrenia**

New media remediate old media. Media pay homage to their (mediatic) predecessors, which themselves pay homage to their own (mediatic) predecessors. Computer graphics remediate film, which remediates photography, which remediates painting, and so on (McLuhan 1965, 8; Bolter and Grusin 1999). Attempts to understand new media technologies always settle on a set of metaphors

(of the old and familiar), in order to approximate what is similar, and yet at the same time name the new. Every such metaphor has its semiotic distance, decay, or inverse-square law that draws the limit how far the metaphor can go in its explanation of the phenomenon to which it is applied. The intellectual work in the Age of Mechanical Reproduction thus received an unfortunate metaphor: intellectual property. A metaphor modeled on the scarce and exclusive character of property over land. As the Age of Mechanical Reproduction became more and more the Age of Discrete and Digital Reproduction, another metaphor emerged, one that reveals the quandary left after decades of decay resulting from the increasing distancing of intellectual property from the intellectual work it seeks to regulate, and that metaphor is: schizophrenia.

Technologies compete with each other—the discrete and the digital thus competes with the mechanical—and the aftermath of these clashes can be dramatic. People lose their jobs, companies go bankrupt, disciplines lose their departments, and computer users lose their old files. More often than not, clashes between competing technologies create antagonisms between different social groups. Their voices are (sometimes) heard, and society tries to balance their interests.

If the institutional remedies cannot resolve the social antagonism, the law is called on to mediate. Yet in the present, the legal system only reproduces the schizoid impasse where the metaphor of property over land is applied to works of intellect that have in practical terms become universally accessible in the digital world. Court cases do not result in a restoration of balance but rather in the confirmation of entrenched interests. It is, however, not necessary that courts act in such a one-sided manner. As Cornelia Vismann (2011) reminds us in her analysis of the ancient roots of legal mediation, the juridical process has two facets: first, a theatrical aspect that has common roots with the Greek dramatic theatre and its social function as a translator of a *matter* of conflict into a *case* for weighted juridical debate; second, an agonistic aspect not unlike a sporting competition where a winner has to be decided, one that

50 leads to judgment and sanction. In the matter of copyright versus access, however, the fact that courts cannot look past the metaphor of intellectual property, which reduces any understanding of our contemporary technosocial condition to an analogy with the scarcity-based language of property over land, has meant that they have failed to adjudicate a matter of conflict between the equalizing effects of universal access to knowledge and the guarantees of rightful remuneration for intellectual labor into a meaningful social resolution. Rather they have primarily reasserted the agonistic aspect by supporting exclusively the commercial interests of large copyright industries that structure and deepen that conflict at the societal level.

This is not surprising. As many other elements of contemporary law, the legal norms of copyright were articulated and codified through the centuries-long development of the capitalist state and world-system. The legal system is, as Nicos Poulantzas (2008, 25–26) suggests, genetically structured by capitalist development. And yet at the same time it is semi-autonomous; the development of its norms and institutional aspects is largely endogenous and partly responsive to the specific needs of other social subsystems. Still, if the law and the courts are the codified and lived rationality of a social formation, then the choice of intellectual property as a metaphor in capitalist society comes as no surprise, as its principal objective is to institute a formal political-economic framework for the commodification of intellectual labor that produces knowledge and culture. There can be no balance, only subsumption and accumulation. Capitalism and schizophrenia.

Schizophrenia abounds wherever the discrete and the digital breaking barriers to access meets capitalism. One can only wonder how the conflicting interests of different divisions get disputed and negotiated in successful corporate giants like Sony Group where Sony Pictures Entertainment,<sup>2</sup> Sony Music Entertainment<sup>3</sup> and Sony Computer Entertainment coexist under the same roof with the Sony Electronics division, which invented the Walkman back in 1979 and went on to manufacture devices and gadgets like

home (and professional) audio and video players/recorders (VHS, Betamax, TV, HiFi, cassette, CD/DVD, mp3, mobile phones, etc.), storage devices, personal computers, and game consoles. In the famous 1984 Betamax case ("Sony Corp. of America v. Universal City Studios, Inc.," Wikipedia 2015), Universal Studios and the Walt Disney Company sued Sony for aiding copyright infringement with their Betamax video recorders. Sony won. The court decision in favor of fair use rather than copyright infringement laid the legal ground for home recording technology as the foundation of future analog, and subsequently digital, content sharing.

Five years later, Sony bought its first major Hollywood studio: Columbia Pictures. In 2004 Sony Music Entertainment merged with Bertelsmann Music Group to create Sony BMG. However, things changed as Sony became the content producer and we entered the age of the discrete and the digital. Another five years later, in 2009, Sony BMG sued Joel Tenenbaum for downloading and then sharing thirty-one songs. The jury awarded US\$675,000 to the music companies (US\$22,000 per song). This is known as "the second file-sharing case." "The first file-sharing case" was 2007's *Capitol Records, Inc. v. Thomas-Rasset*, which concerned the downloading of twenty-four songs. In the second file-sharing case, the jury awarded music companies US\$1,920,000 in statutory damages (US\$80,000 per song). The defendant, Jammie Thomas, was a Native American mother of four from Brainerd, Minnesota, who worked at the time as a natural resources coordinator for the Mille Lacs Band of the Native American Ojibwe people. The conflict between access and copyright took a clear social relief.

Encouraged by the court decisions in the years that followed, the movie and music industries have started to publicly claim staggering numbers in annual losses: US\$58 billion and 370,000 lost jobs in the United States alone. The purported losses in sales were, however, at least seven times bigger than the actual losses and, if the jobs figures had been true, after only one year there would have been no one left working in the content industry (Reid 2012). Capitalism and schizophrenia.

52 If there is a reason to make an exception from the landed logic of property being imposed onto the world of the intellect, a reason to which few would object, it would be for access for educational purposes. Universities in particular give an institutional form to the premise that equal access to knowledge is a prerequisite for building a society where all people are equal.

In this noble endeavor to make universal access to knowledge central to social development, some universities stand out more than the others. Consider, for example, the Massachusetts Institute of Technology (MIT). The Free Culture and Open Access movements have never hidden their origins, inspiration, and model in the success of the Free Software Movement, which was founded in 1984 by Richard Stallman while he was working at the MIT Artificial Intelligence lab. It was at the MIT Museum that the “Hall of Hacks” was set up to proudly display the roots of hacking culture. Hacking culture at MIT takes many shapes and forms. MIT hackers famously put a fire truck (2006) and a campus police car (1994) onto the roof of the Great Dome of the campus’s Building 10; they landed (and then exploded) a weather balloon onto the pitch of Harvard Stadium during a Harvard–Yale football game; turned the quote that “getting an education from MIT is like taking a drink from a Fire Hose” into a literal fire hydrant serving as a drinking fountain in front of the largest lecture hall on campus; and many, many other “hacks” (Peterson 2011).

The World Wide Web Consortium was founded at MIT in 1993. Presently its mission states as its goal “to enable human communication, commerce, and opportunities to share knowledge,” on the principles of “Web for All” and the corresponding, more technologically focused “Web on Everything.” Similarly, MIT began its OpenCourseWare project in 2002 in order “to publish all of [MIT’s] course materials online and make them widely available to everyone” (n.d.). The One Laptop Per Child project was created in 2005 in order to help children “learn, share, create, and collaborate” (2010). Recently the MIT Media Lab (2017) has even started its own Disobedience Award, which “will go to a living person or group

engaged in what we believe is extraordinary disobedience for the benefit of society . . . seeking both expected and unexpected nominees.” When it comes to the governance of access to MIT’s own resources, it is well known that anyone who is registered and connected to the “open campus” wireless network, either by being physically present or via VPN, can search JSTOR, Google Scholar, and other databases in order to access otherwise paywalled journals from major publishers such as Reed Elsevier, Wiley-Blackwell, Springer, Taylor and Francis, or Sage.

The MIT Press has also published numerous books that we love and without which we would have never developed the Public Library/Memory of the World project to the stage where it is now. For instance, only after reading Markus Krajewski’s *Paper Machines: About Cards & Catalogs, 1548–1929* (2011) and learning how conceptually close librarians came to the universal Turing machine with the invention of the index card catalog did we center the Public Library/Memory of the World around the idea of the catalog. Eric von Hippel’s *Democratizing Innovation* (2005) taught us how end users could become empowered to innovate and accordingly we have built our public library as a distributed network of amateur librarians acting as peers sharing their catalogs and books. Sven Spieker’s *The Big Archive: Art from Bureaucracy* (2008) showed us the exciting hybrid meta-space between psychoanalysis, media theory, and conceptual art one could encounter by visiting the world of catalogs and archives. Understanding capitalism and schizophrenia would have been hard without Semiotext(e)’s translations of Deleuze and Guattari, and remaining on the utopian path would have been impossible if not for our reading of *Cybernetic Revolutionaries* (Medina 2011), *Imagine No Possessions* (Kiaer 2005), or *Art Power* (Groys 2008).

## **Our Road into Schizophrenia, Commodity Paradox, Political Strategy**

Our vision for the Public Library/Memory of the World resonated with many people. After the project initially gained a large number

54 of users, and was presented in numerous prominent artistic venues such as Museum Reina Sofía, Transmediale, Württembergischer Kunstverein, Calvert22, 98weeks, and many more, it was no small honor when Eric Kluitenberg and David Garcia invited us to write about the project for an anthology on tactical media that was to be published by the MIT Press. Tactical media is exactly where we would situate ourselves on the map. Building on Michel de Certeau's concept of tactics as agency of the weak operating in the terrain of strategic power, the tactical media (Tactical Media Files 2017) emerged in the political and technological conjuncture of the 1990s. Falling into the "art-into-life" lineage of historic avant-gardes, Situationism, DIY culture, techno-hippiedom, and media piracy, it constituted a heterogeneous field of practices and a manifestly international movement that combined experimental media and political activism into interventions that contested the post-Cold War world of global capitalism and preemptive warfare on a hybrid terrain of media, institutions, and mass movements. Practices of tactical media ranged from ephemeral media pranks, hoaxes, and hacktivism to reappropriations of media apparatuses, institutional settings, and political venues. We see our work as following in that lineage of recuperation of the means of communication from their capture by personal and impersonal structures of political or economic power.

Yet the contract for our contribution that the MIT Press sent us in early 2015 was an instant reminder of the current state of affairs in academic publishing: in return for our contribution and transfer of our copyrights, we would receive no compensation: no right to wage and no right to further distribute our work.

Only weeks later our work would land us fully into schizophrenia: the Public Library/Memory of the World received two takedown notices from the MIT Press for books that could be found in its back then relatively small yet easily discoverable online collection located at <https://library.memoryoftheworld.org>, including a notice for one of the books that had served as an inspiration to us: *Art Power*. First, no wage and, now, no access. A true paradox of the

present-day system of knowledge production: products of our labor are commodities, yet the labor-power producing them is denied the same status. While the project's vision resonates with many, including the MIT Press, it has to be shut down. Capitalism and schizophrenia.<sup>4</sup>

Or, maybe, not. Maybe we don't have to go down that impasse. Starting from the two structural circumstances imposed on us by the MIT Press—the denial of wage and the denial of access—we can begin to analyze why copyright infringement is not merely, as the industry and the courts would have it, a matter of illegality. But rather a matter of legitimate action.

Over the past three decades a deep transformation, induced by the factors of technological change and economic restructuring, has been unfolding at different scales, changing the way works of culture and knowledge are produced and distributed across an unevenly developed world. As new technologies are adopted, generalized, and adapted to the realities of the accumulation process—a process we could see unfolding with the commodification of the internet over the past fifteen years—the core and the periphery adopt different strategies of opposition to the inequalities and exclusions these technologies start to reproduce. The core, with its emancipatory and countercultural narratives, pursues strategies that develop legal, economic, or technological alternatives. However, these strategies frequently fail to secure broader transformative effects as the competitive forces of the market appropriate, marginalize, or make obsolete the alternatives they advocate. Such seems to have been the destiny of much of the free software, open access, and free culture alternatives that have developed over this period.

In contrast, the periphery, in order to advance, relies on strategies of “stealing” that bypass socioeconomic barriers by refusing to submit to the harmonized regulation that sets the frame for global economic exchange. The piracy of intellectual property or industrial secrets thus creates a shadow system of exchange resisting the

56 asymmetries of development in the world economy. However, its illegality serves as a pretext for the governments and companies of the core to devise and impose further controls over the technological systems that facilitate these exchanges.

Both strategies develop specific politics—a politics of reform, on the one hand, and a politics of obfuscation and resistance, on the other—yet both are defensive politics that affirm the limitations of what remains inside and what remains outside of the politically legitimate.

The copyright industry giants of the past and the IT industry giants of the present are thus currently sorting it out to whose greater benefit will this new round of commodification work out. For those who find themselves outside of the the camps of these two factions of capital, there's a window of opportunity, however, to reconceive the mode of production of literature and science that has been with us since the beginning of the print trade and the dawn of capitalism. It's a matter of change, at the tail end of which ultimately lies a dilemma: whether we're going to live in a more equal or a more unjust, a more commonised or a more commodified world.

## **Authorship, Law, and Legitimacy**

Before we can talk of such structural transformation, the normative question we expect to be asked is whether something that is considered a matter of law and juridical decision can be made a matter of politics and political process. Let's see.

Copyright has a fundamentally economic function—to unambiguously establish individualized property in the products of creative labor. A clear indication of this economic function is the substantive requirement of originality that the work is expected to have in order to be copyrightable. Legal interpretations set a very low standard on what counts as original, as their function is no more than to demarcate one creative contribution from another. Once a legal title is unambiguously assigned, there is a person holding

property with whose consent the contracting, commodification, and marketing of the work can proceed.<sup>5</sup> In that respect copyright is not that different from the requirement of formal freedom that is granted to a laborer to contract out their own labor-power as a commodity to capital, giving capital authorization to extract maximum productivity and appropriate the products of the laborer's labor.<sup>6</sup> Copyright might be just a more efficient mechanism of exploitation as it unfolds through selling of produced commodities and not labor power. Art market obscures and mediates the capital-labor relation

When we talk today of illegal copying, we primarily mean an infringement of the legal rights of authors and publishers. There's an immediate assumption that the infringing practice of illegal copying and distribution falls under the domain of juridical sanction, that it is a matter of law. Yet if we look to the history of copyright, the illegality of copying was a political matter long before it became a legal one.

Publisher's rights, author's rights, and mechanisms of reputation—the three elements that are fundamental to the present-day copyright system—all have their historic roots in the context of absolutism and early capitalism in seventeenth- and eighteenth-century Europe. Before publishers and authors were given a temporary monopoly over the exploitation of their publications instituted in the form of copyright, they were operating in a system where they were forced to obtain a privilege to print books from royal censors. The first printing privileges granted to publishers, in early seventeenth-century Great Britain,<sup>7</sup> came with the responsibility of publishers to control what was being published and disseminated in a growing body of printed matter that started to reach the public in the aftermath of the invention of print and the rise of the reading culture. The illegality in these early days of print referred either to printing books without the permission of the censor or printing books that were already published by another printer in the territory where the censor held authority. The transition from the privilege tied to the publisher to the privilege tied to the natural person of the author would unfold only later.

58 In the United Kingdom this transition occurred as the guild of printers, Stationers' Company, failed to secure the extension of its printing monopoly and thus, in order to continue with its business, decided to advocate the introduction of copyright for the authors instead. This resulted in the passing of the Copyright Act of 1709, also known as the Statute of Anne (Rose 2010). The censoring authority and enterprising publishers now proceeded in lockstep to isolate the author as the central figure in the regulation of literary and scientific production. Not only did the author receive exclusive rights to the work, the author was also made—as Foucault has famously analyzed (Foucault 1980, 124)—the identifiable subject of scrutiny, censorship, and political sanction by the absolutist state.

Although the Romantic author slowly took the center stage in copyright regulations, economic compensation for the work would long remain no more than honorary. Until well into the eighteenth century, literary writing and creativity in general were regarded as resulting from divine inspiration and not the individual genius of the author. Writing was a work of honor and distinction, not something requiring an honest day's pay.<sup>8</sup> Money earned in the growing printing industry mostly stayed in the pockets of publishers, while the author received literally an honorarium, a flat sum that served as a "token of esteem" (Woodmansee 1996, 42). It is only once authors began to voice demands for securing their material and political independence from patronage and authority that they also started to make claims for rightful remuneration.

Thus, before it was made a matter of law, copyright was a matter of politics and economy.

### **Copyright, Labor, and Economic Domination**

The full-blown affirmation of the Romantic author-function marks the historic moment where a compromise is established between the right of publishers to the economic exploitation of works and the right of authors to rightful compensation for those works. Economically, this redistribution from publishers to authors was made

possible by the expanding market for printed books in the eighteenth and nineteenth centuries, while politically this was catalyzed by the growing desire for the autonomy of scientific and literary production from the system of feudal patronage and censorship in gradually liberalizing and modernizing capitalist societies. The newfound autonomy of production was substantially coupled to production specifically for the market. However, this irenic balance could not last for very long. Once the production of culture and science was subsumed under the exigencies of the generalized market, it had to follow the laws of commodification and competition from which no form of commodity production can escape.

By the beginning of the twentieth century, copyright expanded to a number of other forms of creativity, transcending its primarily literary and scientific ambit and becoming part of the broader set of intellectual property rights that are fundamental to the functioning and positioning of capitalist enterprise. The corporatization of the production of culture and knowledge thus brought about a decisive break from the Romantic model that singularized authorship in the person of the author. The production of cultural commodities nowadays involves a number of creative inputs from both credited (but mostly unwaged) and uncredited (but mostly waged) contributors. The “moral rights of the author,” a substantive link between the work and the person of the author, are markedly out of step with these realities, yet they still perform an important function in the moral economy of reputation, which then serves as the legitimation of copyright enforcement and monopoly. Moral rights allow easy attribution; incentivize authors to subsidize publishers by self-financing their own work in the hope of topping the sales charts, rankings, or indexes; and help markets develop along winner-takes-all principles.

The level of concentration in industries primarily concerned with various forms of intellectual property rights is staggering. The film industry is a US\$88 billion industry dominated by six major studios (PwC 2015c). The recorded music industry is an almost US\$20 billion industry dominated by only three major labels (PwC 2015b).

- 60 The publishing industry is a US\$120 billion industry where the leading ten companies earn in revenues more than the next forty largest publishing groups (PwC 2015a; Wischenbart 2014).

## **The Oligopoly and Academic Publishing**

Academic publishing in particular draws the state of play into stark relief. It's a US\$10 billion industry dominated by five publishers and financed up to 75 percent from library subscriptions. It's notorious for achieving extreme year-on-year profit margins—in the case of Reed Elsevier regularly over 30 percent, with Taylor and Francis, Springer, Wiley-Blackwell and Sage barely lagging behind (Larivière, Haustein, and Mongeon 2015). Given that the work of contributing authors is not paid but rather financed by their institutions (provided, that is, that they are employed at an institution) and that these publications nowadays come mostly in the form of electronic articles licensed under subscription for temporary use to libraries and no longer sold as printed copies, the public interest could be served at a much lower cost by leaving commercial closed-access publishers out of the equation entirely.

But that cannot be done, of course. The chief reason for this is that the system of academic reputation and ranking based on publish-or-perish principles is historically entangled with the business of academic publishers. Anyone who doesn't want to put their academic career at risk is advised to steer away from being perceived as reneging on that not-so-tacit deal. While this is patently clear to many in academia, opting for the alternative of open access means not playing by the rules, and not playing by the rules can have real-life consequences, particularly for younger academics. Early career scholars have to publish in prestigious journals if they want to advance in the highly competitive and exclusive system of academia (Kendzior 2012).

Copyright in academic publishing has thus become simply a mechanism of the direct transfer of economic power from producers to publishers, giving publishers an instrument for maintaining their

stranglehold on the output of academia. But publishers also have control over metrics and citation indexes, pandering to the authors with better tools for maximizing their impact and self-promotion. Reputation and copyright are extortive instruments that publishers can wield against authors and the public to prevent an alternative from emerging.<sup>9</sup>

The state of the academic publishing business signals how the “copyright industries” in general might continue to control the field as their distribution model now transitions to streaming or licensed-access models. In the age of cloud computing, autonomous infrastructures run by communities of enthusiasts are becoming increasingly a thing of the past. “Copyright industries,” supported by the complicit legal system, now can pressure proxies for these infrastructures, such as providers of server colocation, virtual hosting, and domain-name network services, to enforce injunctions for them without ever getting involved in direct, costly infringement litigation. Efficient shutdowns of precarious shadow systems allow for a corporate market consolidation wherein the majority of streaming infrastructures end up under the control of a few corporations.

## **Illegal Yet Justified, Collective Civil Disobedience, Politicizing the Legal**

However, when companies do resort to litigation or get involved in criminal proceedings, they can rest assured that the prosecution and judicial system will uphold their interests over the right of public to access culture and knowledge, even when the irrationality of the copyright system lies in plain sight, as it does in the case of academic publishing. Let’s look at two examples:

On January 6, 2011, Aaron Swartz, a prominent programmer and hacktivist, was arrested by the MIT campus police and U.S. Secret Service on charges of having downloaded a large number of academic articles from the JSTOR repository. While JSTOR, with whom Swartz reached a settlement and to whom he returned the

62 files, and, later, MIT, would eventually drop the charges, the federal prosecution decided nonetheless to indict Swartz on thirteen criminal counts, potentially leading to fifty years in prison and a US\$1 million fine. Under growing pressure by the prosecution Swartz committed suicide on January 11, 2013.

Given his draconian treatment at the hands of the prosecution and the absence of institutions of science and culture that would stand up and justify his act on political grounds, much of Swartz's defense focused on trying to exculpate his acts, to make them less infringing or less illegal than the charges brought against him had claimed, a rational course of action in irrational circumstances. However, this was unfortunately becoming an uphill battle as the prosecution's attention was accidentally drawn to a statement written by Swartz in 2008 wherein he laid bare the dysfunctionality of the academic publishing system. In his *Guerrilla Open Access Manifesto*, he wrote: "The world's entire scientific and cultural heritage, published over centuries in books and journals, is increasingly being digitized and locked up by a handful of private corporations. . . . Forcing academics to pay money to read the work of their colleagues? Scanning entire libraries but only allowing the folks at Google to read them? Providing scientific articles to those at elite universities in the First World, but not to children in the Global South? It's outrageous and unacceptable." After a no-nonsense diagnosis followed an even more clear call to action: "We need to download scientific journals and upload them to file sharing networks. We need to fight for Guerilla Open Access" (Swartz 2008). Where a system has failed to change unjust laws, Swartz felt, the responsibility was on those who had access to make injustice a thing of the past.

Whether Swartz's intent actually was to release the JSTOR repository remains subject to speculation. The prosecution has never proven that it was. In the context of the legal process, his call to action was simply taken as a matter of law and not for what it was—a matter of politics. Yet, while his political action was pre-

empted, others have continued pursuing his vision by committing small acts of illegality on a massive scale. In June 2015 Elsevier won an injunction against Library Genesis, the largest illegal repository of electronic books, journals, and articles on the Web, and its subsidiary platform for accessing academic journals, Sci-hub. A voluntary and noncommercial project of anonymous scientists mostly from Eastern Europe, Sci-hub provides as of end of 2015 access to more than 41 million academic articles either stored in its database or retrieved through bypassing the paywalls of academic publishers. The only person explicitly named in Elsevier's lawsuit was Sci-hub's founder Alexandra Elbakyan, who minced no words: "When I was working on my research project, I found out that all research papers I needed for work were paywalled. I was a student in Kazakhstan at the time and our university was not subscribed to anything" (Ernesto 2015). Being a computer scientist, she found the tools and services on the internet that allowed her to bypass the paywalls. At first, she would make articles available on internet forums where people would file requests for the articles they needed, but eventually she automated the process, making access available to everyone on the open web. "Thanks to Elsevier's lawsuit, I got past the point of no return. At this time I either have to prove we have the full right to do this or risk being executed like other 'pirates' . . . If Elsevier manages to shut down our projects or force them into the darknet, that will demonstrate an important idea: that the public does not have the right to knowledge. . . . Everyone should have access to knowledge regardless of their income or affiliation. And that's absolutely legal. Also the idea that knowledge can be a private property of some commercial company sounds absolutely weird to me" (Ernesto 2015).

If the issue of infringement is to become political, a critical mass of infringing activity has to be achieved, access technologically organized, and civil disobedience collectively manifested. Only in this way do the illegal acts stand a chance of being transformed into the legitimate acts.

## Where Law Was, there Politics Shall Be

And thus we have made a full round back to where we started. The parallel development of liberalism, copyright, and capitalism has resulted in a system demanding that the contemporary subject act in accordance with two opposing tendencies: “more capitalist than capitalist and more proletarian than proletariat” (Deleuze and Guattari 1983, 34). Schizophrenia is, as Deleuze and Guattari argue, a condition that simultaneously embodies two disjunctive positions. Desire and blockage, flow and territory. Capitalism is the constant decoding of social blockages and territorializations aimed at liberating the production of desires and flows further and further, only to oppose them at its extreme limit. It decodes the old socius by means of private property and commodity production, privatization and abstraction, the flow of wealth and flows of workers (140). It allows contemporary subjects—including corporate entities such as the MIT Press or Sony—to embrace their contradictions and push them to their limits. But capturing them in the orbit of the self-expanding production of value, it stops them at going beyond its own limit. It is this orbit that the law sanctions in the present, recoding schizoid subjects into the inevitability of capitalism. The result is the persistence of a capitalist reality antithetical to common interest—commercial closed-access academic publishing—and the persistence of a hyperproletariat—an intellectual labor force that is too subsumed to organize and resist the reality that thrives parasitically on its social function. It’s a schizoid impasse sustained by a failed metaphor.

The revolutionary events of the Paris Commune of 1871, its mere “existence” as Marx has called it,<sup>10</sup> a brief moment of “communal luxury” set in practice as Kristin Ross (2015) describes it, demanded that, in spite of any circumstances and reservations, one takes a side. And such is our present moment of truth.

Digital networks have expanded the potential for access and created an opening for us to transform the production of knowledge and culture in the contemporary world. And yet they have likewise facilitated the capacity of intellectual property industries

to optimize, to cut out the cost of printing and physical distribution. Digitization is increasingly helping them to control access, expand copyright, impose technological protection measures, consolidate the means of distribution, and capture the academic valorization process.

As the potential opening for universalizing access to culture and knowledge created by digital networks is now closing, attempts at private legal reform such as Creative Commons licenses have had only a very limited effect. Attempts at institutional reform such as Open Access publishing are struggling to go beyond a niche. Piracy has mounted a truly disruptive opposition, but given the legal repression it has met with, it can become an agent of change only if it is embraced as a kind of mass civil disobedience. Where law was, there politics shall be.

Many will object to our demand to replace the law with politicization. Transitioning from politics to law was a social achievement as the despotism of political will was suppressed by legal norms guaranteeing rights and liberties for authors; this much is true. But in the face of the draconian, failed juridical rationality sustaining the schizoid impasse imposed by economic despotism, these developments hold little justification. Thus we return once more to the words of Aaron Swartz to whom we remain indebted for political inspiration and resolve: "There is no justice in following unjust laws. It's time to come into the light and, in the grand tradition of civil disobedience, declare our opposition to this private theft of public culture. . . . With enough of us, around the world, we'll not just send a strong message opposing the privatization of knowledge—we'll make it a thing of the past. Will you join us?" (Swartz 2008).

## Notes

- 1 We initially named our project Public Library because we have developed it as a technosocial project from a minimal definition that defines public library as constituted by three elements: free access to books for every member of a society, a library catalog, and a librarian (Mars, Zarroug and Medak, 2015). However, this definition covers all public libraries and shadow libraries complementing the work of public libraries in providing digital access. We have thus decided to rename our project as Memory of the World, after our project's

- initial domain name. This is a phrase coined by Henri La Fontaine, whose mention we found in Markus Krajewski's *Paper Machines* (2011). It turned out that UNESCO runs a project under the same name with the objective to preserve valuable archives for the whole of humanity. We have appropriated that objective. Given that this change has happened since we drafted the initial version of this text in 2015, we'll call our project in this text with a double name Public Library/Memory of the World.
- 2 Sony Pictures Entertainment became the owner of two (MGM, Columbia Pictures) out of eight Golden Age major movie studios ("Major Film Studio," Wikipedia 2015).
  - 3 In 2012 Sony Music Entertainment is one of the Big Three majors ("Record Label," Wikipedia 2015).
  - 4 Since this anecdote was recounted by Marcell in his opening keynote in the Terms of Media II conference at Brown University, we have received another batch of takedown notices from the MIT Press. It seemed as no small irony, because at the time the Terms of Media conference reader was rumored to be distributed by the MIT Press.
  - 5 "In law, authorship is a point of origination of a property right which, thereafter, like other property rights, will circulate in the market, ending up in the control of the person who can exploit it most profitably. Since copyright serves paradoxically to vest authors with property only to enable them to divest that property, the author is a notion which needs only to be sustainable for an instant" (Bently 1994).
  - 6 For more on the formal freedom of the laborer to sell his labor-power, see chapter 6 of Marx's *Capital* (1867).
  - 7 For a more detailed account of the history of printing privilege in Great Britain, but also the emergence of peer review out of the self-censoring performed by the Royal Academy and Académie de sciences in return for the printing privilege, see Biagioli 2002.
  - 8 The transition of authorship from honorific to professional is traced in Woodmansee 1996.
  - 9 Not all publishers are necessarily predatory. For instance, scholar-led open-access publishers, such as those working under the banner of Radical Open Access (<http://radicaloa.disruptivemedia.org>) have been experimenting with alternatives to the dominant publishing models, workflows, and metrics, radicalizing the work of conventional open access, which has by now increasingly become recuperated by big for-profit publishers, who see in open access an opportunity to assume the control over the economy of data in academia. Some established academic publishers, too, have been open to experiments that go beyond mere open access and are trying to redesign how academic writing is produced, made accessible, and valorized. This essay has the good fortune of appearing as a joint publication of two such publishers: Meson Press and University of Minnesota Press.
  - 10 "The great social measure of the Commune was its own working existence" (Marx 1871).

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