



new media & society

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Los Angeles, London, New Delhi and Singapore
Vol10(4): 605-623 [DOI: 10.1177/1461444807087911]

ARTICLE

The rhetorics and myths of anti-piracy campaigns: criminalization, moral pedagogy and capitalist property relations in the classroom

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Abstract

This article deals with current attempts by copyright industries (music, motion pictures and computer software) to challenge and criminalize practices of piracy and copyright theft, especially in relation to internet usage. A number of anti-piracy campaigns, all aimed at schoolchildren, are critically examined. It is argued that their advocacy of copyright and their corresponding objections to piracy rest on a number of rhetorical strategies which encode capitalist and individualist conceptions of property, creativity and rights. These strategies are elucidated and examined so as to draw attention to their contingent, partial and mythical character. Alternative understandings of intellectual expression are mobilized so as to delineate a case for legitimizing, rather than demonizing, cultural copying practices.

Key words

capitalism • copyright • intellectual property • internet • myth
• rhetoric • piracy

INTRODUCTION

The Starting point for this article is the insight (often overlooked in the everyday circulation of criminological and legal discourse) that crime is more than a matter of legal, statutory prohibition (Lacey, 1995; see also Lacey 2002). Rather, crime and criminality need to be understood as constructions that emerge from processes taking place beyond the sphere of legislation and judicial judgment. The identification of conduct with crime depends crucially upon a wider consensus that the behaviour in question constitutes a breach of acceptable social norms, that it partakes of some moral wrongdoing or injury that offends against a society and its members. This socio-moral underpinning of crime was well known to thinkers such as Durkheim, who noted that crime 'consists of an act that offends certain very strong collective sentiments' (2003: 66), and that the efficacy of legal prohibition is sustained by this feeling of offence. Thus laws which lose their grounding in social sentiments are liable to atrophy, languishing on the statute books and unenforced in practice; conversely, the mobilization of censorious feeling against some category of behaviour may well be enough to institute a process of criminalization, marking its transition from mere social disapproval to formal prohibition, with all the force of the state's crime control apparatus arrayed against it (Becker, 1963). It is this latter process with which this article is concerned — the social process by which the criminal character of behaviour is negotiated. This article deals with recent attempts to construct rhetorically intellectual property offences (specifically breaches of copyright, dubbed 'piracy') as beyond the bounds of morally acceptable behaviour. These efforts can be viewed as forms of what Becker (1963) dubs 'moral entrepreneurship', a concerted enterprise on the part of empowered social actors to redefine the boundaries and limits of transgression; such entrepreneurship typically articulates and supports some sectional social, political, economic or cultural interest (Goode and Ben-Yehuda, 1994; Hall et al., 1978). In other words, what this article terms the 'moral pedagogy' of criminalization cannot be seen apart from the workings of power, the struggle for hegemony and control over various aspects and facets of social existence. Thus attempts rhetorically to 'demonize' piracy (Litman, 2000) need to be understood as integrally bound up with the institution of law and its social supports that reflect the ways in which society as a whole (the 'social totality') is organized (Whitehead, 1999). From a Marxist perspective, the content of law must be seen as 'structurally oriented towards the protection of property rights of the owners of capital' (Fine and Picciotto, 1993). More specifically, this article argues that current anti-piracy programmes are tied to the consolidation of intellectual property relations, which are a crucial element of the emerging mode of global 'information capitalism' (Castells, 1996, 1998). As Coombe and Herman note, the production of value increasingly 'takes the form of intangible, symbolic, or informational capital that is protected as intellectual

property' (2004: 561; see also the discussion in Wang, 2003). Therefore, anti-piracy campaigns must be viewed as ideological in character (Marshall, 2004), providing support for this construction of value by both drawing upon and extending longstanding (albeit contested) notions of property and individual property rights, which themselves ought to be seen as essential underpinnings of capitalist accumulation as such.

The article is organized into four sections. The first reviews the claims made by the copyright industries about the scope and scale of piracy activity (with reference to computer software, musical recordings and motion pictures). The second considers the commonplace association between youth and piracy, an association that draws upon already existing assumptions about juvenile delinquency and which helps to explain why current anti-piracy programmes are targeted at young people in particular. The third examines a number of such programmes produced by copyright industry bodies, all of which provide educational resources for classroom use, purportedly needed to teach young people about the importance of intellectual property. The content of these programmes is examined so as to draw out the moral tropes and rhetorical devices by which the fairness of intellectual property rights is asserted, and the criminality and harmfulness of their violation is communicated. These claims are subjected to critical analysis, in order to demonstrate their contingent and ideological character. The final section considers the way in which the practice of moral pedagogy is articulated through the responsabilization of parents for their children's conduct, a development which mobilizes parents as agents of criminalization on behalf of capital interests.

SCOPE AND SCALE OF PIRACY ACTIVITY

According to the copyright industries, piracy (the unauthorized copying, distribution and/or sale of copyrighted content) is approaching near-epidemic levels. Much of the available data emanates from US sources, reflecting that country's pre-eminent position in the global market for media and software goods. According to the International Intellectual Property Alliance (IIPA), piracy of US-copyrighted materials results in \$20 to \$22 billion in losses to rights-holders, excluding growing levels of piracy via the internet (IIPA, 2005). The major sectors affected are those producing computer software, music and motion pictures; each will be considered below in turn.

In the area of musical recordings, the International Federation of Phonographic Industries (IFPI) claims that the global production of pirated recordings now amounts to 1.8 billion units per annum, the bulk in the form of compact discs (CDs); this means that one in three CDs sold is an unauthorized copy. In financial terms, this amounts to \$4.6 billion (IFPI, 2003). These figures cover only commercial piracy and do not include copying by consumers and distribution via peer-to-peer filesharing internet sites. It is claimed that 81.5 million people (4.98% of the world's internet users) illegally

downloaded music in the course of 2003. This piracy is deemed to have led to an average monthly loss of \$450 million to copyright holders throughout 2004 (Digital Intelligence Centre, 2004).

In the area of motion pictures, the Motion Picture Association of America (MPAA) claims that the US film industry loses in excess of \$3 billion per annum worldwide as a result of piracy (MPAA, 2005). In 2002, more than 7 million 'pirate' DVDs were seized worldwide (Valenti, 2003). The MPAA further estimates that more than 350,000 unauthorized internet movie downloads take place every day (Valenti, 2002): if true, this would amount to a staggering 125 million film downloads per annum. The UK film industry, while dramatically smaller than its US counterpart, claims losses in the region of £400 million per annum, a piracy rate of some 30 percent (effectively, almost one in three British movies purchased in the UK is pirated) (FACT, 2003a). In 2002, UK seizures of pirated films on digital video disc (DVD) exceeded 1 million units, a three-fold increase on the previous year, while seizures of pirated films on VHS videocassette (a piracy format previously thought to be in decline) rose 100 percent (FACT, 2003b).

The computer software industry claims the largest financial losses to piracy. Global losses were pinned at \$13.08 billion for 2002 (Business Software Alliance (BSA), 2003). Central and Eastern Europe are deemed to have the highest piracy rate, where 71 percent of all software is claimed to be an illegal copy; however, rates are also high for North America (24%) and western Europe (35%; BSA, 2003).

Of course, the above figures ought to be subject to considerable critical scrutiny, since they emerge from partial and interested parties. They may be seen at best as 'guesstimates' which can only approximately track levels of piracy; at worst, they may be seen as the product of methodologically questionable forms of statistical inference and accounting (for an extensive critique of statistical constructions of piracy levels, see Yar, 2005a). As the Centre for Economics and Business Research (2002) notes, companies may well overstate their losses for lobbying purposes. Yet what is significant for present purposes is precisely the *rhetorical* force that is mobilized by citing such large monetary values for losses. Rather than seeing these statistics as facts, one should view them as discursive strategies for attempting to construct a political and public consensus about the immorality of piracy. Thus the first, most general level of the emerging moral pedagogy about piracy can be seen to lie in the realm of financial harm; in a world in which 'exchange value' is seen increasingly as synonymous with value as such, the citation of harm in quantifiable monetary terms furnishes a powerful rhetorical resource for the copyright industries.

PIRACY AND THE YOUTH PROBLEM

Perhaps the most urgent imperative for the copyright industries to engage in a moral pedagogy about copyright violations arises from the reality of

widespread public indifference. Despite the *defacto* and ever-tightening legal prohibition of such activities, there is little resonance in public sentiment about either the inviolability of intellectual property rights or the harmfulness of their transduction. Numerous opinion polls and surveys attest to the ways in which intellectual property violations fall largely outside public conceptions of crime. For example, in a US-based survey of professional workers, only 26 percent opposed software piracy 'in principle' (IPSOS, 2004). A UK-based poll in 2004, conducted on behalf of the BSA, found that 44 percent of 18—29-year-olds owned pirated intellectual property; the figure for the 30—50 year age group was 28 percent and 17 percent for the over-50s. The survey further found that 'there is little stigma to owning counterfeit goods' (Thomson, 2004). The findings of the government's 2003 Crime and Justice Survey reports that 9 percent of people over 18 years in the UK admit to committing 'technology offences' such as 'illegally downloading software or music' (Budd et al., 2005: 25). Significant from the viewpoint of the copyright industries is the apparent inverse relationship between age and propensity to commit copyright offences. Thus surveys of young people's attitudes toward computer-related activities such as downloading show high levels of participation and minimal reservation about doing so (Bowker, 1999). A 2004 poll in the USA found that 'more than half of all 8—18-year-olds have downloaded music, one-third have downloaded games and nearly a quarter have downloaded software illegally from the internet' (Snyder, 2004: 1). A number of studies worldwide have found high levels of 'softlifting' (downloaded copyrighted software from the internet) among college students and little weight attached to the legal and moral objections (see the discussion in Kini et al., 2003). A 2004 survey of young people in Canada found that 47 percent of 12—21-year-olds intended to 'download music, video or software from the internet over the next six months' (Jedwab, 2004: 1). It further found that 70 percent of respondents 'deemed [it] acceptable to download music, video or software from the internet' (Jedwab, 2004: 1).

Figures such as those presented above have led the copyright industries to view young people as especially problematic when it comes to ignoring intellectual property rights. This problematization of youth can be seen to partake of a longstanding popular association of youth with 'crime' and 'delinquency' (Muncie, 1999: 2). Historically, youth have been the subject of successive waves of social anxiety or moral panics, which focus upon the threat that young people supposedly represent to morality, body and property (Pearson, 1983; Springhall, 1998). Recently, discourses on young people's participation in computer crime have drawn upon associations of adolescence with emotional and psychological turmoil, as well as with notions of ethical deficit and underdevelopment (e.g. DeMarco, 2001; for discussion see Yar, 2005b). Such identifications support the conviction that when it comes to young people most especially, intervention and moral guidance are a necessity

to curb their predilection for violating others' property rights. The anti-piracy education programmes considered in the next section furnish us with just such instances of moral pedagogy aimed at instilling respect for intellectual property.

FROM IPPY TO THE COPYRIGHT CRUSADER: (RE)EDUCATION IN THE CLASSROOM

The analysis that follows will view the content of anti-piracy campaigns as forms of rhetorical performance. 'Rhetoric' here does not denote the commonplace reference to speech that is simply insincere and disingenuous (Coombe and Herman, 2004). Rather, the term refers in the Aristotelian sense to the art of persuasive and effective speech (Aristotle, 1959; Edmondson, 1984). As such, rhetorical performances can be seen as attempts to establish effectively the legitimacy of a given point of view, set of claims or assertions of rights, entitlements and responsibilities. Thus the various tropes analysed here can be treated as forms of what Boltanski and Thevenot (1991) term 'repertoires of justification', the various discursive resources and strategies that actors mobilize to justify their normative claims upon others. Such repertoires function as the basis upon which different socially shared notions of value, including both economic and moral value, are constituted (for discussion, see also Stark, 2000). However, given the inherent plurality of such repertoires, there are always alternative justifications available which favour alternative norms and claims. The discussion below will excavate some of these other repertoires which do not legitimate copyright laws, but conversely support their restriction or even wholesale removal.

Five different anti-piracy campaigns are considered here, all aimed at educating children aged between eight and thirteen years. Four of the five have been produced by umbrella organizations that represent various sectors of the copyright industries: software, music and/or motion pictures. The first of these is the FA©E (Friends of Active Copyright Education) initiative of the Copyright Society of America — their child-oriented programme is called Copyright Kids. The second is the Software & Information Industry Association's (SIAA) Cybersmart! School Program. The third is the BSA's Play It Cybersafe programme, featuring the cartoon character Garret the Ferret, aka the Copyright Crusader. The fourth campaign is the MPAA's Starving Artist schools' roadshow. The fifth campaign is produced by the Government of Western Australia's Department of Education and Training, Ippy's Big Idea. Through analysis of these five programmes, this article outlines four different tropes around which the legitimacy of copyright is justified and its violation is condemned as criminal.

Trope 1: the myth of property as a natural right

The first trope of justification used in these programmes turns upon the advocacy of a Lockean conception of property rights as natural. It will be

recalled that for Locke the right to property (along with the rights to life and liberty) is held to exist in the state of nature. Property rights emerge when man adds his honest labour to nature, generating a product over which he has not only rights of possession and use, but also of transfer (Lemos, 1975). Thus, for example, the Copyright Kids programme informs its audience:

As the creator of your work, you should have the right to control what people can and cannot do with your work. (Copyright Kids, 2005)

The Play It Cybersafe campaign provide a Cyber-Ethics Champions Code, a set of pledges to which the child signs up. The second point of the code states:

I know that the copyright owner gets to decide how many times a software programme can be copied. (Play It Cybersafe, 2005a)

Similarly, the SIAA's Cybersmart! Program provides an activity sheet for children in which it asserts that:

The author or artist is the only person who has the right to make copies or to give permission to make copies. (Cybersmart!, 2005)

What is interesting here is the way in which a natural, unquestionable right to control, use and decide upon the dispersion of property is asserted on the basis of the creator's claims over their creations. Thus, in the Lockean framework, the creator's 'honest labour' in the act of production naturally and inevitably accords proprietorial rights (Bently and Sherman, 2001).

This notion of individual property rights as a myth is referred to in the sense given to the term by Roland Barthes (1973). For Barthes, myth is a form of cultural representation in which we find 'Nature and History confused at every turn' (1973: 11). In other words, myths serve to naturalize what are in fact historically, culturally and politically contingent phenomena. Mythification takes such contingencies and represents them as something simply given *in natura rerum*, in the nature of things and, as such, enduring and inviolable. The conception of individual property rights promulgated in the copyright industries' campaigns is just such a myth. Contrariwise, one can deconstruct this conception to demonstrate that it is in fact a political and ideological artifact of modern, western society. Historical and cross-cultural investigations illustrate many alternative conceptions of property. For example, Erich Kasten's fieldwork among the First Nation tribes of the Canadian-Pacific north-west reveals conceptions of property radically different from those dominant in the West; among these peoples, primacy is given to obligations to ancestors to preserve and transmit the group's shared heritage intact to future generations, not to individuals claiming proprietary rights which can be exploited for commercial gain (Kasten, 2004; see also Onwuekwe, 2004). Other examples of non-western approaches to property include the *adat* customary laws of Indonesia and the

collectivization of Yoruba art in Nigeria, to name but a few (Story, 2003). This anthropological diversity in conceptions of property has recently inspired in the West alternative notions of intellectual property, based around the idea of the commons. The commons refers to 'a wide variety of creations of nature and society that we inherit freely, share and hold in trust for future generations' (Bollier, 2003: 2). As such, 'creative works' are seen as constitutive of 'our common culture' (2003: 2) rather than the private property of individuals or organizations. Advocates of the natural rights position may respond by mobilizing the moral principle that one who creates something by virtue of their 'honest labour' justly deserves to enjoy benefits from that labour. However, as Martin (1998: 38) points out, while we may agree that the individual concerned deserves some 'fitting reward', this in no sense entails that this reward should comprise the full market value of that which is produced, or does it in any way entail that the individual should have a right to determine under what conditions others may make use of what has been created (see also Epstein, 2004; Hettinger, 1989). The notions that products are naturally the property of 'individuals' (be they individual persons or judicial entities such as companies) and that production naturally confers rights to control subsequent uses, is a myth which functions primarily to 'facilitate the increasing consolidation of ownership' (McLod, 2001: 2) by the copyright industries.

Trope 2: the myth of equivalence between tangibles and intangibles

The second trope apparent in the programme materials relates to the justification of intellectual property rights by asserting a straightforward equivalence between tangible and intangible properties. The programmes must deal with children's (and indeed many adults') reservations that a particular arrangement of words, images, etc. entails rights of possession in that same way as one enjoys rights over tangible, material goods. Therefore, the programmes go to great lengths to establish a logical equivalence between the two. The Play It Cybersafe campaign has produced a comic strip featuring its mascot, Garret the Ferret, otherwise known as the Copyright Crusader. The comic tells the story of Shawn, a fourth grader (eight-year-old) who is at his computer and about to make a copy of some software lent to him by his friend Erika. Garret suddenly materializes through his computer screen and proceeds to teach Shawn about the principle of equivalence:

Copyright Crusader: Would you steal this programme from a store without paying for it?

Shawn: Whoa, I never thought of that before. If I copy the programme from Erika, it is stealing. (Play It Cybersafe, 2005b: 2)

Other Play It Cybersafe materials assert that 'violating copyright laws ... is equivalent to stealing' (Play It Cybersafe, 2005c: 3). Similarly, Cybersmart's children's activity sheets make recourse to the language of 'stealing' in

relations to copyright laws (Cybersmart, 2005). By recourse to everyday conceptions of 'stealing' and 'theft' and by drawing analogies between tangible and intangible goods, the programmes seek to establish a moral equivalence between 'violations' of these two forms of property 'rights'.

This equation between tangible and intangible goods can be seen as unpersuasive at best and spurious at worst. Material objects are limited by nature as to their use — if one person is using an object, this means others cannot. As Martin puts it: 'If one person wears a pair of shoes, no one else can wear them at the same time' (1998: 30). A tangible object 'can only be in one place at a time' (Kasten, 2004: 21) and only utilized by one party at a time. This limit to use justifies the prohibition on unauthorized use — if you take my shoes and wear them, I am denied their use. However, intangibles are fundamentally different. The particular expression of an idea can be taken and used by someone else, but this in no way deprives the possessor of the original expression — they still have the original and can make full use of it. Thus, in the case of digital content (music, movies, software), it can be endlessly reproduced, but this does not entail dispossessing anyone. Through copying there is no limit to sharing the good, without encroaching upon any owner's possession of their version of the good (Bunz, 2003). Hence it is impossible to 'steal' copyrighted content in the way in which it is possible to steal a physical object. If we take the Copyright Crusader's argument, we see that in fact Shawn's 'stealing the programme from a store' and his making a copy from the programme that Erika has already purchased are quite different; in the first case, the storekeeper is deprived of a tangible asset, whereas in the second case, it remains in their possession. In instances of piracy no one is deprived of their property, but only of possible opportunities to *exploit proprietary control over forms of expression for commercial gain*. Whether or not individuals in fact ought to be accorded such rights of control will be considered in the next section.

Trope 3: the myth of individual creativity

The third rhetorical trope rests on the promulgation of the idea that the production of cultural goods is essentially a matter of individual creativity, effort and excellence and hence that there is a moral obligation to 'recognize' and 'reward' the individuals concerned. Thus the Copyright Kids programme answers the question: 'Why should I care about copyright?' by arguing:

When you create something, aren't you proud of your work when you spend a lot of time and energy creating it? How about that social studies report you finally finished, that poem you wrote for your Mom that made her smile ... Well, all these are your creations and you'd probably be pretty upset if someone just copied any of them without your permission. (Copyright Kids, 2005)

All the programmes considered here make repeated reference to individualized notions of creative production, using terms such as 'author' and

'artist'. The Australian campaign personifies this creator, who makes something wholly 'original' seemingly *ex nihilo*, in the form of a cartoon character called Ippy. Children are invited to play an online computer game called 'Ippy's Big Idea'. Ippy starts with an appeal to the children:

Hi there, my name is Ippy! Come and help *me* protect *my* Big Idea from the Evil Rip Off. (Ippy, 2005; emphasis added)

The children are then asked to 'help Ippy get to the intellectual property Australia office so *he* can protect *his* Big Idea' (Ippy, 2005; emphasis added). The repeated use of the first, second and third-person possessives (mine, your, his) serves to naturalize linguistically the idea that intellectual goods are the unique product of individuals, thereby conferring upon them proprietary rights over those goods.

The attribution of cultural creativity to an individual author-creator is in fact one of the most contestible claims of the copyright discourse. As authors such as Bently (1994) and Jaszi (1994) have demonstrated, this notion of individual creativity owes its origins in significant part to 18th and 19th-century Romantic conceptions of the self. In this view, the individual subject is the origin for the creation of unique meanings with no prior reference to societal or cultural sources. Such notions of the individual, authorial origins of creative expression can and have been assiduously critiqued. Thinkers such as Barthes (1977) and Foucault (1984) have exposed the ways in which all iterations of knowledge partake of a web of intertextual meanings, drawing upon meanings always already present in the cultural system (see also Vaidyathan, 2003). Similarly, philosophers such as Hans-Georg Gadamer (1989) have explored how meaning production takes place within a shared cultural 'horizon' — without recourse to and use of this already existing horizon of meanings, utterances would be literally unintelligible to any audience. Thus, against the Romantic myth of the author as the divine locus of creative origins, instead one can see creativity as a social activity that entails copying and borrowing from cultural texts already in circulation (Bunz, 2003). This sociocultural interdependence in cultural production becomes clear when one examines the purportedly novel forms of expression generated by the copyright industries themselves: Hollywood films borrow generic and narrative conventions from previous movies (how would Woody Allen's *Play It Again, Sam* be possible without *Casablanca*, or *Star Wars* without *Flash Gordon*, or Austin Powers without James Bond?); films freely adapt and are inspired by novels, plays, comic books and videogames; popular music is parasitic upon generic conventions which make particular styles recognizable (how else would one even know that a tune is an instance of, for example, jazz, rap, hip-hop, R&B, heavy metal, grunge, reggae and so on?); computer software utilizes the recombination and adaptation of codes

produced by a multitude of other 'hackers', and so forth. If cultural creativity is shared, intersubjective and public, then how can any particular individual rightly stake claims to an iteration as their sole private creation? To do so merely restricts the ability of a voice to re-enter that common stock of cultural resources out of which creativity emerges. From this viewpoint, the allocation of proprietary rights is a means for 'locking away a large part of our culture into the vaults of a very small number of large corporations', instead of an acknowledgement that 'information is a raw material that needs to be freely available' (Becker and Stadler, 2003: 1).

Trope 4: the myths of harm

Building upon the individualization discussed above, the programmes seek to moralize copyright violations by identifying, in consequentialist terms, that individual authors, creators, artists, etc. will be harmed materially by the practice of piracy:

When another person copies an artistic work to sell or give away, the person who created it loses money. (Cybersmart, 2005)

A similar strategy of personification is used by the Copyright Crusader:

Copyright Crusader: Companies lose billions of dollars every year. It also means people can lose their jobs.

Shawn: My friend's dad lost his job at a software company last year. I never thought about the bad things that can happen when I copy software. (Play It Cybersafe, 2005b: 3)

This argumentative strategy reaches its apotheosis in the 'Starving Artist' role-playing game designed for schoolchildren and taken on tour in 2003 in 36,000 classrooms across the USA. The game invites students 'to come up with an idea for a record album, cover art and lyrics' (Menta, 2003). Having completed the exercise, the students are told that their album is already available for download from the internet and are asked 'how they felt when they realized that their work was stolen and that they would not get anything for their efforts' (Menta, 2003). This and other elements of the anti-piracy campaigns seek to make direct connections between copyright infringement and embodied suffering to other ordinary individuals (as opposed, for example, to the stock market valuations and profits of Sony, Time Warner, News International and other global media corporations). This embodiment of harm is backed up by aggregate numerical claims, such as the Business Software Alliance's (BSA) assertion that software piracy has resulted in 'more than 111,000 jobs lost' (BSA, 2005a: 1).

A second way in which harm is adduced in these discourses is through claims that piracy threatens to undermine cultural and creative production as such, since the absence of financial rewards will act as a disincentive for artists

and others to invest further their time and energy in productive activity. Thus the FA©E Copyright Kids programme asserts that:

These talented musicians, authors, illustrators and screenwriters deserve to make a living from the hard work they put in ... otherwise most of them won't be able to produce as many (or any) of the songs, books, plays and TV shows that you like. (Copyright Kids, 2005)

Again:

Ironically, piracy may hurt the pirates. When software developers and video game creators don't make money on the works they've created due to piracy, they may scale back on creating anything new, thereby reducing the number of available software packages and games. (Snyder, 2004: 2-3)

Such claims are continuous with the fundamental ideological credo of copyright, namely that it stimulates cultural production by assuring creators suitable compensation for their efforts and that piracy fundamentally undermines the wellsprings of creativity. The World Intellectual Property Organization (WIPO) sums up this connection of intellectual property rights and cultural flourishing thus:

WIPO seeks to help creators across the globe generate economic value from their creations and so to contribute to the social, cultural and economic advancement of their own societies and of the wider world. (WIPO, 2005)

Let us reflect upon these two conceptions of harm that are mobilized in favour of copyright. The first, that which imputes to piracy direct material harm to individual creators, can be seen to rest upon a significant factual inaccuracy. In today's cultural economy, authors and artists seldom retain control over copyright, but routinely assign those rights to corporate entities who then have virtual *carte blanche* over decisions as to the work's commercial exploitation. In 2000, rock musician Courtney Love launched what has been dubbed the 'Love Manifesto', a critical reflection on intellectual property theft, artists and the recording industry. Love begins her 'Manifesto' thus:

Today I want to talk about piracy and music. What is piracy? Piracy is the act of stealing an artist's work without any intention of paying for it. I'm not talking about Napster-type software ... I'm talking about major label recording contracts. (Love, 2000)

She goes on to demonstrate how standard practice within the recording industry deprives musicians of copyright and the monies advanced to artists are recouped largely from them by the industry under 'expenses' for recording and promotion. As a consequence, the musicians see little return from their efforts and, she opines, 'the band may as well be working at a 7-Eleven' (Love, 2000). The appeal to artists' well-being as an anti-piracy strategy is based upon the

erroneous claim that royalties earned from authoring provide anything like a viable living. Critic and activist Brian Holmes points out that, of the 100,000 members of the world's best established composers' rights organization, only 2500 have a vote on organization policy, since the privilege of voting is reserved for those who earn more than 5,000 Euros per annum from their compositions; he claims that only 300 members of the organization make a viable living from royalties derived from copyright (Holmes, 2003). In fact, it has been argued that piracy is in the financial interests of most recording artists; most performers make their living from concert performance and this is best supported and promoted by having their music circulated as widely as possible, including via copying. As musician Ignacio Escolar puts it: 'Like all musicians, I know that 100,000 pirate fans coming to my shows are more profitable than 10,000 original ones' (Escolar, 2003: 15).

Let us now consider the second variant of the harm argument deployed in anti-piracy campaigns, namely the utilitarian appeal to copyright as a necessary incentive to cultural production. Hettinger notes the paradoxical nature of this appeal:

It establishes a right to restrict the current availability and use of intellectual products for the purpose of increasing the production and thus further availability and use of new intellectual products. (1989: 48)

Thus increased production perversely goes hand-in-hand with restricted consumption. Consequently, we must question the nature of the restriction on use imposed by copyright protection — given that access or use is available upon financial remuneration, such use of an increasing array of goods will necessarily be restricted to those with the greatest ability to pay. Following this logic, we end up with a 'tale of two worlds' — one is information as well as economically rich, the other is information and economically poor. Advocates of the incentive-oriented argument may still insist that such limitations, use are necessary to ensure that there are any goods produced in the first place, as without incentives, cultural production will decline. However, the presupposition that cultural production is driven primarily by financial incentives has been subjected to cogent criticism. Drahos and Braithwaite note that:

In the vast sweep of the history of human creativity the impact of intellectual property rights has been negligible because for most of that history those rights have not existed and, where they have, for the most part they have been poorly designed and even more poorly enforced. (Drahos and Braithwaite, 2002: 211)

Hence it is 'cultures without copyright' which in fact have generated some of the world's greatest and most enduring cultural goods: *The Iliad* and *The Odyssey*; the epic of *Gilgamesh* and *Rubaiyat of Omar Khayyam*; the *Bible*, *Koran*, *Upanishad* and *Bagavadghita*; *Hamlet* and *The Canterbury Tales*; the *Mona Lisa*

and the ceiling of the Sistine Chapel. All this goes to suggest that economic gain is not the only, or even the primary, basis upon which cultural production is stimulated; it can be suggested fairly that nothing stimulates production so well as an audience to see, hear, watch and appreciate artistic endeavours. As such, the widest possible reproduction and circulation of cultural goods would appear to be the most secure basis for a engendering a society in which cultural endeavour plays a prominent part.

MORAL PEDAGOGY IN CONTEXT: PARENTS, CHILDREN AND 'RESPONSIBILIZATION'

A final dimension of these campaigns is deserving of attention, namely the ways in which they attempt to recruit parents into the process of deviance construction and criminalization by making them responsible for their children's behaviour. This strategy can be viewed as part of a more general trend in the reconfiguration of social control, what has been dubbed the 'responsibilization' of citizens in relation to issues of law and order (Burchell, 1996; Garland, 2001). In this situation, the burden of crime control is shifted away from the neo-liberal state and toward individuals (Muncie, 2005). This process has been particularly marked in relation to the responsibilization of parents in an attempt to curtail youth offending (Kelly, 2001). Many of the programmes examined here include 'guidance notes' for parents and guardians that displace responsibility for controlling children's piracy from formal agencies to the parents themselves:

Explain copyright laws and talk to your child about why it is illegal ... Help your child notice the copyright symbol ... Encourage your child to make the right decisions when using protected works ... Use positive reinforcement. (Play It Cybersafe, 2005c: 1)

Particularly noteworthy is the emphasis placed upon parental supervision:

Stay close. An involved parent is the best teacher. (BSA, 2005b)
Supervise your child's time on the Internet. (Play It Cybersafe, 2005c: 1)

The suggestion that parents have a moral obligation to 'supervise' their children's activities in relation to copyrighted materials effectively institutes a regime of disciplinary surveillance within the home (Foucault, 1991). Parents become the copyright industries' agents, recruited for the purposes of a moral pedagogy that promulgates and legitimates the industries' favoured understanding of property rights and incrementally criminalizes children's cultural, leisure and learning activities:

[T]here are very real consequences of violating copyright laws, including potential legal action against pirates ... By educating ... your children, you can protect your own family from these consequences. (Snyder, 2004: 4)

Conversely, it could be suggested that protecting the interests of one's children depends crucially upon encouraging their engagement with information, knowledge and culture and ensuring that they have the fullest possible access to such goods, irrespective of economic barriers. As such, the interests of 'the family' might coincide more fully with the flouting of anti-piracy laws than their observation.

CONCLUSION: CONTESTING COPYRIGHT EDUCATION

This article has explored the ways in which the boundaries of criminal and deviant behaviour are rhetorically redefined. It has suggested that current attempts to moralize intellectual property rights and criminalize their violation make recourse to a range of repertoires of justification that attempt to naturalize a capitalistic conception of private property. In such discourses, proprietary claims over intangibles are promulgated as an individual right and a social good; their violation is presented as socially harmful and unfair. The focus of anti-piracy campaigns has fallen in particular upon young people as, in keeping with more general social anxieties about youth delinquency, children are seen as especially problematic. Particularly worrying is the ease and effectiveness with which the copyright industries have co-opted the educational system as a collaborator in (re)educating children about copyright and the ongoing attempt to mobilize parents as agents of surveillance and disciplinary correction. From a critical perspective, one must note the absence of any acknowledgement that the concept of intellectual property is itself contested and contestable, or any consideration of alternative views about how access to cultural goods might be organized. Neither is there any consideration of how the incremental tightening of intellectual property regulations may undermine people's ability to access knowledge (Bishop, 2004; Story, 2003), nor of the ways in which such extensions in fact might threaten rather than foster cultural creativity (Vaidynathan, 2003). Yet, from the Marxist-inspired starting point of the present inquiry, the mobilization of both school and family as sites for articulating class interests comes as no surprise; after all, such social institutions are not neutral with respect to the interests of capital, but may be viewed as focal sites in which capitalist property (as well as labour) relations are ideologically reproduced (Althusser, 1994). Therefore, for a critical contestation of capitalist constructions of intellectual property and criminality, we must look largely outside this institutional sphere and its curricula. Currently, such voices are emerging, often making use of those new communication media about which copyright industries are so exercised.¹ However, whether such voices from the margins will, in the longer term, be effective in sustaining a viable counter-hegemonic discourse on copyright remains to be seen.

Acknowledgements

My thanks to Alan Story for kindly reading and commenting on an earlier draft of this article, and to Rodanthi Tzanelli for her unstinting intellectual as well as moral support.

Note

- 1 See, for example, BOYCOTT-RIAA.com: <http://www.boycott-riaa.com/>, Boycott the RIAA: <http://dieriaa.net/firms.com/index.htm> and VIRAL COMMUNICATIONS: <http://detritus.net/vircomm/>

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