Ethnologies

"Are We a Bunch of Robin Hoods?"
Filesharing as a Folk Tradition of Resistance

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Article abstract

On the edge of the digital frontier, far from the oceans of their maritime namesakes, pirate communities flourish. Called outlaws and thieves, these file-sharers practice a vernacular tradition of digital piracy in the face of overwhelming state power. Based on ethnographic fieldwork conducted with Warez Scene cracking groups and the Kickass Torrents community, this article locates piracy discourse as a site of contested identity. For file-sharers who embrace it, the pirate identity is a discursively-constructed composite that enables users to draw upon (and create) outlaw folk hero traditions to express themselves and affect small-scale change in the world around them. This article argues that pirate culture is more nuanced than popularly depicted and that, through traditional practice, piracy is a vernacular performance of resistance.

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Introduction

> Pirating is a way of life now. I have pirated movies for my grandma, pirated software for my dad to get back to work, pirated music for my mom, and much more. It's a way of life, and a feeling of freedom that nothing else can offer. Whether it's pirating that shitty comedy that you know is crap but watch on your TV, pirating that new Justin Bieber album for your kids even though you hate the guy, or catching up on your favorite TV show new or old, it will always be there for you. (Charsi, May 8, 2016)

For two years, when I woke up every morning I would sit down at my computer with my coffee and scroll through the latest releases. Every morning there were new offerings; new things to download. Every morning I exchanged greetings with the same virtual neighbours. A new day meant new conversations. I followed the discussions eagerly, noting down what seemed relevant and jumping in to answer questions or, more frequently, ask for clarification. It became like clockwork, almost ritualistic. Every day I watched as people went about their daily business, their everyday lives. And every day people around me routinely broke the law.

For many people at Kickass Torrents (KAT), breaking the law through copyright infringement *was* their everyday life. For the ideologically motivated, it constituted nothing less than their *raison d'être*, while for other Katians[1] it was a mundane aspect of their day, akin to going to the store or reading the news. Katians casually discussed and practised piracy amidst the ever-present danger of legal action. Yet Katians, as in Charsi's epigraph, were well aware of the risks involved and approached piracy as a calculated strategy, as a way of "working the system…to their minimum disadvantage"

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1. Demonym for denizens of the virtual community Kickass Torrents.

(Hobsbawm quoted in Scott 1985: xv). This infringement-oriented way of life rarely includes flashy or large-scale movements; rather, it is constituted of small acts, each imbued with symbolic significance but predicated upon its hoped legal insignificance. As tEktwo put it, "Pirating is not a crime, it is a protest" (tEktwo, KAT, July 24, 2014). These repeated individual acts of protest form (as well as draw upon) a tradition of resistance.

This article is based on ethnographic fieldwork conducted at KAT between 2015-2016 and explores the folk culture of piracy and the symbolic meanings Katians create through connections with historical sea piracy and outlaw folk heroes. The concept, and practice, of resistance is inherent in all forms of piracy, from maritime plundering to unauthorized copying. Although 17th century sea bandits have little in common with 21st century downloaders, they are conceptually and rhetorically entwined through popular imagination and discourse. Piracy discourse is influenced by powerful actors with vested interests, from nation-states to media conglomerates, who seek to maintain systems threatened by piratical resistance. My Katian informants perceive their small acts of resistance as moral responses to unjust laws. With an increasing number of consumer restrictions and the average copyright term lasting well over a century, they perceive copyright as an exploitative system of control. Ever aware of their illegality, Katians negotiate politics of morality and law to locate themselves within a tradition of resistance that stretches back in time to the earliest outlaw folk heroes. In this article, I trace the history of filesharing, linking it to historical anti-piracy ideology in order to contextualize the contested identity narratives of contemporary media piracy discourse. I argue that piracy is a creative vernacular tradition which lies at the heart of a collective discursive performance of resistance.

The Two Scenes: A Brief History of Filesharing

Katians are first and foremost filesharers. Filesharing refers to transferring digital content between persons and, while not inherently illegal, is often used for copyright infringement. When it involves unauthorized access or transmission, it is popularly known as piracy. Filesharing dates back to the 1960s,[2] when early computer programs and applications were freely shared

2.   I use "filesharing" here to distinguish *digital* media piracy from historical antecedents, such as vinyl LP bootlegging, radio piracy, and book reprinting. While analogue media piracy informs the history of digital media piracy, a full treatment of it is beyond the scope of this article. For analogue forms of media piracy, see: Johns 2009; Patry 2009. Although the term is rendered variously in the literature, I use it as a closed compound. This is partly because that reflects my informants'

between academic researchers and an emerging market of commercial computer enthusiasts. This reflected a nascent industry but also the socio-political counterculture of early adopters, exemplified by "hacker culture" at MIT in the 1960s (Levy 2010: 28). Prior to its current negative connotations, the term "hacker" referred to engineers and programmers who were concerned with optimizing code, which required an open-access environment. The era of modern filesharing began with the emergence of the Warez Scene (or "The Scene") in the late 1970s. The Scene is a loosely affiliated network of cracking groups: teams who follow strict community guidelines to compete in an eternal tournament to be the first to "release"[3] new copyrighted media.

To understand this highly secretive network, I interviewed Bacchus,[4] a retired leader of the Scene group FairLight, about the group's history and operations. FairLight is one of the oldest groups still active, despite an FBI raid in 2004 (Department of Justice 2005). Like most groups, FairLight operates like a multinational corporation, with different divisions dedicated to certain platforms (e.g.: PC, Mac, Xbox, PlayStation, etc.), each run by department heads with members spread across the world. Groups vary in size and scope, but all follow the "Scene Rules," which are community guidelines containing technical specifications for releasing content. The Rules describe Scene standards for video resolution, audio codecs, and file format, among others things, that any group's release must meet in order to qualify for competition. Releases with technical errors get "nuked" (disqualified), while groups that do not follow the Rules are ostracized from the network. Bacchus was a department head of FairLight's Commodore 64 division for a decade in the 1990s and specialized in cracking games. His team consisted of programmers who developed cracks[5] in order to make pirated copies of games function properly.

usage, and partly to emphasize the blending between identity and practice.
3. A "release" is the final product of a cracking group's attempt to pirate a given item. Releases are uploaded to private Scene servers as formal entries in the race to be the first group to pirate that particular material (e.g.: a video game). Although not intended for public consumption, releases are inevitably leaked to popular filesharing websites, such as KAT.
4. His screen handle by which he was known in FairLight.
5. A software modification that allows users to circumvent retail security features. There are different types of cracks, including patches (altered code that overwrites the original) and key generators (programs that generate fake but functional serial or product keys). For a release group, creating a crack involves reverse engineering and hacking, whereas end-users (downloaders) only have to apply the pre-made crack, which is usually simplified as a drag-and-drop executable patch or user-friendly key generator.

To compete with each other, Scene groups use a network of private file-transfer protocol (FTP) servers, called "topsites." This is where pirated media is "released." Being the first group to release pirated media in accordance with the Rules wins respect and, according to Bacchus, bragging rights. Contrary to popular misconception, the Scene centres exclusively on social capital rather than monetary profit; which distinguishes release groups from counterfeiters.[6] Scene groups do not always agree on what constitutes "piracy" *per se*, but they *do* agree that selling pirated content crosses a sociocultural boundary. FairLight considers themselves filesharers but not necessarily pirates, which they equate with counterfeiting: "Pirates sell copies of games in order to make a profit, and harm the legal business while doing so. FairLight doesn't sell games." According to Bacchus, "I don't say that we are pirates because it has the flavor of burning money on it" (Bacchus 2013). In addition to not selling pirated copies, the Scene also does not make public releases. Scene servers are private and the function of releases is to demonstrate technical prowess, not supply pirated goods.

Prior to the World Wide Web, Scene piracy took place over BBSes (bulletin board systems), which originated as text-based electronic message boards but developed into uploading and downloading hubs as storage size and modem speeds increased throughout the 1980s. While pirated software was acquired through BBSes, the Scene of this era also comprised informal local networks of physical media trading on floppy disks. With the invention of the World Wide Web and increasing commercial Internet adoption in the 1990s, the Scene expanded as groups became more organized and larger files became viable for transfer at higher speeds. The late-1990s saw the rise of Peer-to-Peer (P2P) filesharing applications, such as Napster and LimeWire. These applications allowed users bilateral access to each other's digital libraries. As direct one-to-one downloads, speeds were comparatively slow but the ease of access catapulted filesharing-as-piracy into Western popular culture. High profile court cases, such as *A&M Records, Inc. v. Napster, Inc. (2001)* (239 F.3d 1004) cemented the link between filesharing and illegality. Widespread use of applications like Napster led to the emergence of the "P2P Scene"—an (albeit chaotic) alternative to the Warez Scene. Up until the rise of P2P, the Warez Scene was *the* dominant source of

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6. Although he does not use the term, Bacchus' distinction between showcasing skill (read: artistic) and the more utilitarian counterfeiting designed for popular consumption has parallels with folkloristic discussions of folk art (Glassie 1989). Additionally, the it's-not-about-the-money rhetoric positions Scene groups alongside similar folk groups and/or vernacular movements, such as Anonymous (Coleman 2014) and vinyl LP pirates (Jamieson 1999).

pirated content. P2P software's technological reliance on 1:1 haphazard connections between individuals undercut the control and centralization of the Warez Scene. On one hand, filesharing was "democratized" in the sense that P2P allowed anyone to distribute their own cracked or ripped media rather than waiting for an elite Scene release. On the other hand, the lack of centralization led to a flood of un-curated pirated media of varying quality.

The invention of the BitTorrent protocol in 2001 fundamentally reshaped filesharing. The BitTorrent protocol is a method of decentralized downloading. Using client applications, such as µTorrent or qBittorrent, users download torrent files, which act as content maps. For example, if you wanted to download a film you would locate a torrent file of the film, fire up your BitTorrent client, and connect to other users who either already have a copy or are also looking for one. Torrent trackers are servers that facilitate these connections. Through the tracker, you download the film in pieces from users who have a complete copy (i.e. *seeders*) and others like you who are simultaneously downloading it (i.e. *leechers*). Because the film is downloaded in pieces, the download is distributed across seeders and leechers (taken together: *peers*), which increases download speed. BitTorrent was adopted by both the Warez Scene, which nevertheless attempted to maintain its private network, and the P2P Scene, where applications such as Azureus/Vuze and µTorrent replaced Napster and LimeWire. This spurred the organization of the P2P Scene into release groups similar to Warez groups, except that they followed no rules. It also led to decades of animosity between the two scenes. Bacchus noted that,

> I don't really respect that because any idiot can have used a program to rip it off the DVD and make it into a file. That takes zero technical skill. That is not proving yourself worthy of anything but being a user of a certain ripping program, and I can teach my mum to do that in fifteen minutes. I mean, it's competing by saying, "I can use a program." It's like typing a text in Word saying- showing off that you can type text in Word. So I have very, very limited respect for the DVD ripping scene because they don't show off skills. They do something else. (Bacchus 2013)

Although they appear similar to outsiders, the lack of community ruleset and skill-based social capital render the two scenes qualitatively distinct. Due to its lack of centralization, it is much more difficult to map the extent and scope of the P2P Scene. Many P2P groups claim to maintain the Warez Scene's anti-monetary stance, and while they function on a different type of social capital, the key difference is that their releases are

designed for public consumption. Where Scene groups have complicated relationships with the entertainment industry, P2P groups tend to be more often ideologically motivated. Bacchus describes how Scene groups have what approaches an almost conservationist view of filesharing ecology and their relationship with industry:

> I don't hold any grudge against the industry. I didn't want to harm the game companies. I wanted the game companies to make a shit load of money so they could make more games for me to crack. […] I know that the Scene is very, very keen on saying that Pirate Bay is a bad thing because they are harming the industry by spreading the games too fast, but I also know that most of them [Scene groups] are quite proud to see that people are playing their versions, so I guess the Scene of today has a very, very mixed feeling. (Bacchus 2013)

Although he was a filesharer, Bacchus does not necessarily believe that information should be free. Scene groups are not concerned with free, public access to content—even if most of what they produce for private consumption ends up there. As he reiterated,

> There was no kind of "information wants to be free" rebellion. It's the technical challenge, bragging in front of peers and being appreciated amongst peers. (Bacchus 2013)

With this ethos of showcasing technical skill on the one hand and a not-for-monetary-profit rhetoric on the other, Scene groups made a lasting contribution to piracy discourse. Although the Scene's illegality and high level of coordination sometimes cause observers to assume links to profit-driven organized crime (e.g.: Treverton *et al.* 2009), the money-eschewing ideology plays a central role in how pirates imagine themselves. The Warez Scene may not have embraced an anti-capitalist "information wants to be free" rebellion, but it helped position infringement as something *Other*. This helped set the discursive stage for later P2P groups and communities to view infringement as a Robin Hood-esque form of charity. This view is commonly (although by no means exclusively) in pirate communities, such as Kickass Torrents.

Kickass Torrents: A Virtual Community

KAT was/is[7] a filesharing community: a digital space designed for

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7.   Despite the best efforts of law enforcement agencies, the "shutdown" of a torrent website is not always permanent. Websites such as The Pirate Bay have been "shut down" multiple times only to reappear with a new domain. KAT reappeared the

swapping media files that users through traditional practice transformed into a virtual place. For Katians, it was home. KAT was shutdown in 2016 by the U.S. Department of Homeland Security (DHS). Usually reserved for matters of national security, the involvement of DHS suggests the extent to which media piracy is considered a threat to the power of the state.

Like The Pirate Bay, KAT was initially established as a torrent tracker. These websites are part of the P2P Scene, although many of the most popular and high quality torrents continue to be Warez Scene releases. However, as Katian Philidor said, "I came to KAT because I was attracted by the files, and the positive mood. I joined because I wanted to give something back and to take part in the forum community" (Philidor, comment, KAT, 2015). I saw variants of this phrase repeated daily at KAT. It represents not only KAT's history as a tracker-*cum*-community, but also the depth of emotion felt by Katians toward their community.

In space and place theory, "space" refers to geographic area whereas "place" is a transformation of space after it has been invested by affect and practice – in short, by culture and tradition (Agnew and Livingstone 2011). KAT was a website existing in cyberspace to serve a utilitarian function by providing the infrastructure for torrenting, but, through the growth of a regular, tightly-knit core community of users centred on the fora,[8] it became a sociocultural place.

After my earlier fieldsites were either seized or shutdown by various law enforcement agencies, I focused my doctoral research on KAT because of its reputation as a strong, close-knit community. Methodologically, gaining access to pirate communities is fraught with difficulties. Warez groups are highly secretive, which is understandable given the legality of their activities as well as the intense competition (a game crack is akin to proprietary software, or even a trade secret). My access to the Warez Scene came through retired members, who were easier to contact and willing to be interviewed. In contrast, gaining access to the P2P Scene was easier, since communities, and some groups, host public websites; however, many

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following winter with a brand new website and under new management. While it is growing, it has yet to regain its former popularity.

8. An Internet forum is a text-based virtual space in which users interact through posting content. Today's fora developed out of 1970s BBSes and are perhaps best envisioned as an electronic version of a bulletin board upon which members of a group leave each other notes. A website can contain multiple fora, which are sometimes divided into sub-fora based on topic. Within a forum or sub-forum, discussions are typically grouped into "threads," which contain an initial message and subsequent replies from other users.

alleged pirates tend to be reticent about being interviewed. The scope and threat of legal action differ between the two scenes. Warez groups tend to be targeted by the FBI, DHS or equivalent agencies in their home countries, for criminal indictable offenses (Department of Justice 2005; Coleman 2014); while P2P groups and torrent website owners attract similar attention (Department of Justice 2016), the average end-users I ultimately chose to focus on face the less serious but significantly more common threat of civil copyright infringement lawsuits. Long-term participant observation as well as an anonymous ethnographic survey helped me over time to build rapport with some Katians and offer a safe avenue for their voices.

When I started fieldwork at KAT, one of the first things that struck me was how *open* it was. Unlike the highly secretive Warez Scene, torrent websites exist boldly, blatantly, out in the open. Such sites are inherently and necessarily public because people have to be able to find them. This echoes the openness of BitTorrent itself: one of the notable features of the protocol is that in order to function users must open their network ports, allowing external connections from other downloaders. Installing cracked software might require disabling firewalls or antivirus protection. While this openness enables filesharing on a technical level, it also represents a level of symbolic trust between pirates.

Despite often hyperbolic rhetoric in news reporting, breathlessly warning of the dangers of malware "infection" and "contamination" through symbolically "unclean" (à la Douglas 1970) pirated wares, pirate communities like KAT pride themselves on carefully curated and policed torrent indices. At its height, KAT had an army of volunteers who routinely examined newly uploaded torrents for public safety. This practice was in addition to the already rigorous uploader policy, which included an application process, screening, and probation period before being allowed to upload files. KAT's upload policy was comparatively strict (many torrent sites have no such restrictions) and while it was occasionally met with hostility from bewildered newcomers, it functioned as a public good for the community. Yet, this openness, this rigid attention to community safety, paradoxically flew in the face of the looming elephant in the room, the ever-present threat of legal action.

A by-product of BitTorrent is that every downloader's Internet Protocol (IP) address is visible to anyone accessing the same torrent. IP harvesting by bots hitching a ride on a torrent swarm[9] remains the entertainment

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9. All peers (seeders and leechers) using the same torrent, whether downloading or uploading, are collectively known as a "swarm."

industry's primary method of identifying BitTorrent-based copyright infringement. It is ironic that the very technology that enables piracy is also its greatest vulnerability. Pirates have typically responded with a number of security measures, including decentralized tracking, magnet links, and the use of VPNs (virtual private networks). However, these measures require a level of technical savvy not necessarily shared by all downloaders.

The paradoxical openness found at KAT extended beyond the technical and symbolic. As evidenced by the continuing popularity of certain forum threads, Katians were very aware of their illegal status. One of the first such discussions I came across was a thread entitled "Why we do what we do." It had been "stickied" (located permanently at the top of the forum) and contained a years-long discussion of Katian uploaders explaining why they risk uploading files when they know it could result in legal problems. Similar threads that saw daily explicit discussion centered on issues of country-specific legality, the ethics of piracy, and even the label "pirate." Yet, it was through this tension-filled discourse on piracy that Katians negotiated their group identity.

Folklorists have long been concerned with group and group identities (Janzen 1959; Bauman 1971; Noyes 2003). A growing literature on virtual folklore suggests that folk cultures can thrive in online spaces (Dorst 1990; Mason 2007; Blank 2009; Staple 2010). As a virtual community (Rheingold 2000; Boellstorff 2008), KAT was home to the Katian folk group. Katians were loosely connected to the broader group of pirates/filesharers, but actively maintained their own traditions and practices. Through this social base, Katians created, shared, and debated lore about the place of piracy in society and their own relationships to piracy. The esoteric Katian dialectic of piracy was informed, and acted upon, by the broader exoteric popular discourse on piracy.

At KAT, in any forum discussion about piracy, particularly the ethics of piracy, multiple camps would emerge. In effect, these constant and frequently repeated discussions ultimately functioned to create an intragroup vernacular discourse of piracy. Omnipresent topics in the discourse included: morality and ethics, national copyright laws, industry economics and business models, socioeconomic disparity, perceived governmental and corporate corruption, philosophy of access to data, conspiracy theories, archiving and preservation (an interesting piratical subset of "Prepper" subculture), historical piracy, and historical outlaws. In fact, the title of this article comes from an eponymously titled forum thread (User Lifehouse, thread, KAT, January 24, 2015).

One of the most revealing facets of this identity discourse is the plethora of emic definitions of "piracy." Where Bacchus distinguished filesharing from piracy-as-counterfeiting, the filesharing camp at KAT similarly separated filesharing from piracy-as-sea-robbery. As Uploader greenconverse put it, tongue in cheek: "I mean, ummm nope, never been on a boat before, so nope, no pirating here" (Uploader greenconverse, comment, KAT, February 8, 2016). This distinction was borne out by other Katians:

> Totally agree with most of mateys around 'ere... I wouldn't call piracy just downloading something for "free." Piracy is when you board some ship and mistreat the crew to steal from it, or when you crack some code/system, or even, if you want, when you make money from something you don't own/aren't authorized to sell. But sharing and downloading? Can't be piracy, no way. Just be careful with the terms you use, and the meaning you give them. Don't let them fool us. (Uploader Flauros, comment, KAT, February 7, 2016)

> I've said before, apart from the wonderful people I get to meet on KAT, it's my testing ground for movies, tv and music. If I can't get it, I download it; if I like it I buy the hard copy. That's not piracy, I've got no street stall out the front of my house selling multiple burnt copies of the stuff I download. (Uploader Badwolf, comment, KAT, August 4, 2015)

> […] the term "piracy" is loaded with a historical and material significance that just doesn't apply in a digital context. It alludes to armed robbery, when the reality of its modern usage is that "pirates" don't seize anything for themselves, they share it with others. Copyright sympathizers often retort, as if it's a mathematical fact, that "pirates" seize profits from the original authors, but that's a fallacy. It equates "pirated download" with "lost sale," and I can safely say that is not the case, for a variety of reasons. But in conclusion, that is why I tend to not use the term "piracy" (Anonymous Katian 12439095, 2016)

Emic distinctions such as these suggest that pirates are not unthinking criminals; rather, it is a vernacular echo of copyright law debates heard for the last three centuries in courtrooms over the nature and scope of copyright.

Pirates as Political Other: Contested Histories

The debate over the very definition of "piracy" is central to piracy discourse and the imaginings of Katians. In order to understand the folk culture of piracy at KAT, it must be contextualized. Who and what constitutes a pirate has a long and contested history in law and popular

culture. The history of infringement flows back to the first copyright law, the 1710 Statute of Anne, but ultimately derives from the impact of the printing press. In this way, media piracy has always been about the relationship between technological reproduction and legislation. Yet, infringement is also inexorably linked to the sociopolitical history of sea banditry. As both historian Adrian Johns and copyright lawyer William Patry contend, the rhetorical shift in usage of the term "pirate" emerged in the 1650s and represented an intentional strategy on the part of booksellers and printers to demonize unauthorized reprinting (Johns 2009: 23; Patry 2009: 43). As anthropologist Shannon Lee Dawdy notes,

> The rhetorical expansion of the term to cover intellectual banditry corresponded to the same time period, in the late seventeenth century, when Caribbean and South Seas piracy was in full swing and fuelling public imagination through images both romantic and horrific […]. (Dawdy 2011: 377)

Dawdy suggests that the weaponization of the word was the 18th century insult *du jour*. According to Patry, that strategy continues to be used by the copyright industry to intentionally create moral panics:

> Conjuring up moral panics and folk devils occurs through metaphors casting the other side in an unfavorable light, in the case of copyright, by painting those who use works without permission as thieves, trespassers, pirates, or parasites. (Patry 2009: xviii)

Like "Communism" in the McCarthy era or "terrorism" post-9/11, piracy is the exotic, romantic Other. Indeed, this in the keeping with an older tradition concerning sea piracy: *hostis humani generis,* or, "enemy of the human race." The Latin phrase hints at an origin in Roman jurisprudence, and indeed the Roman statesman Cicero is often credited with its first use; however, while Cicero and other Roman legal scholars used similar language to describe hostile groups that attacked without formal declarations of war, its statutory standing is unclear (Goodwin 2006: 989). While the Roman Empire, with its vast maritime territories, contributed to the romanticization and othering of piracy (de Souza 2008), the use of *Hostis* as a legal term referring specifically to pirates was first used by Lord Coke in 1638 (Goodwin 2006: 991) and later codified in British Admiralty Law by the time of the trial of Major Stede Bonnet in 1718 (Trott 1719: 3). *Hostis* was an extraordinary declaration. Its usage asserted that persons suspected of piracy existed in an indiscriminate, perpetual *de facto* state of war with all nation-states and, as such, were not subjects or citizens of any recognized sovereign power. This meant that pirates were often considered ineligible

for due process under any national or international law: they could be killed on sight. At the trial of Major Stede Bonnet, Vice Admiralty Judge Nicholas Trott explained to the court that:

> […] a *Pirate* is called *Hostis Humani Generis*, with whom neither Faith nor Oath is to be kept. And in our Law they are termed *Brutes* and *Beasts of Prey*; and that it is lawful for anyone who takes them, if they cannot with safety to themselves bring them under some Government to be tried, to put them to death. (Trott 1719: 3)

The number of pirates who met extrajudicial ends has been lost; however, between 1712 and 1726, 500-600 people were hanged for piracy (Parker 2009: 181). Beyond a crackdown on maritime crime, these trials served a function as public spectacle for nation-states; since they always resulted in at least one death sentence (crews were sometimes pardoned while captains were invariably hanged), pirate trials such as that of Stede Bonnet, were a public reaffirmation of state power and authority (Burgess 2009: 894).

The extraordinary nature of *Hostis* suggests the extent of the threat piracy was believed to represent. Dawdy argues that piracy revealed the inherent contradictions in liberal capitalism and thus represented a grave threat to the system (Dawdy 2011: 363). Similarly, historian Marcus Rediker locates apoplectic opposition to piracy within the framework of emerging overseas capitalism. Pirates, he says (2014: 60), represented a material threat by menacing maritime trade routes but, perhaps more significantly, also an escape from, and alternative to, capitalism and European social hierarchy.

> Cotton Mather summed up the situation in 1726. Pirates, he said, were "Guilty of all Sins." Their detestable way of living "banished every Social Vertue." Having escaped the disciplinary effects of church, family, and labor, the pirate was denounced as bereft of wisdom and reason, possessed by madness, rage, temper, drink, and lust, behaving like a wild beast, and sowing massive disorder on distant but strategically important seas, especially the west coast of Africa. Stripped of all human characteristics, the pirate was now a wild fragment of nature that could be tamed only by death. According to the King's attorney, the pirate "can claim the protection of no Prince, the privilege of no Country, the benefit of no Law; he is denied common humanity and the very rights of Nature." Another added that pirates "have no country, but by their Guilt, separate themselves, renouncing the benefit of all lawful Society." The pirate's enemies had slowly but thoroughly disconnected him from the social order, showing him to be the enemy of all individuals, property owners, the colony, the empire, the King, the British nation, the world of nations,

and all mankind. It remained for the pirate to be "hanged like a dog" and his corpse put on public display so that everyone could learn the lessons of property and order. (Rediker 2004: 146)

Pirate trials are some of the only extant historical documents concerning piracy and were also one of the few places where Euro-American publics were exposed to actual pirates. Although many of these trials fall short of 21st century legal standards, court reporters are the only remaining repositories of pirates' own voices. Like most outlaws, historical pirates left little record but have been subsequently fleshed out by legend. Perhaps owing to this, it was only in the past few decades that research on piracy has been taken seriously by academia. Rediker, one of the first academics to study piracy, found that pirates have been "mythologized" over time into villains or romanticized as anti-heroes (Rediker 2004: 10). In his social history of "ordinary" pirates, Rediker argues that, contrary to popular depictions of bloodthirsty murderers, the average pirate tended to avoid violence (Rediker 2004: 18). Piracy was less a lifestyle choice as it was a means of escape and survival. Most pirates in the 18th century turned to piracy in order to escape cruel and dangerous labour conditions on European merchantmen; yet they only averaged a mere two years as pirates (Rediker 2004: 18). Since pirates did not have supply lines, reinforcements, or access to necessaries such as medicine, any combat endangered not only the lives of the pirate crew but also their ability to operate the ship. It should then come as no surprise that one of the recurring themes was the frequent charge of stealing medicine chests (as well as doctors themselves. See Johnson 1724: 73, 301, 309; Eloesser 1926: 53; Sheridan 1986: 81; Longfield-Jones 1992: 202). As far as plunder goes, medicine chests are not particularly spectacular. They represent a more human, less Hollywood view of pirates.

From Robin Hood and his merry men in Sherwood Forest to Captain Jack Sparrow living a life of adventure in the *Pirates of the Caribbean* films, the lives of outlaws once divorced from their social, historical, and political contexts are romanticized even as they are condemned. In 1726, Judge Cotton Mather exasperatedly wondered at the trial of Captain William Fly why the public considered pirates to be heroes (Rediker 2014: 151). Rediker notes that "because the North Atlantic had long been an important theater in the history of robbery by sea, pirates themselves were deeply embedded in popular consciousness and memory, as both "enemies of all mankind" and folk heroes" (2014: 150). This was due in part to the spread of literacy which along with the printing press, saw the emergence of a reading public —and, therefore, a market – for literature. Beginning with Daniel Defoe's *Robinson Crusoe* (1719) and Charles Johnson's "The Successful Pyrate"

(1712), pirates entered Euro-American popular culture through print and stage where they became stock characters in drama (Schweikart and Burg 1984: 220; Burgess 2009: 888; Parker 2009: 173). Piracy has always been entwined with drama. Dramaturgical depictions of pirates edited them to fit narrative roles for dramatic effect. In a different sense, Rediker described the relationship between pirates and Western nation-states as political drama (2004: 11). As essentially anti-nationalists, the existence of pirates undermined the power of the nation-state:

> Theirs [pirates'] was a terror of the weak against the strong. It formed one essential part of a dialectic of terror, which was summarized in the decision of the authorities to raise the Jolly Roger above the gallows when hanging pirates: one terror trumped the other. (Rediker 2004: 10; see also Johns 2009: 122)

In a final third sense, pirates have been incorporated into folk drama as outlaw folk heroes. Pirates have been frequently identified with Hobsbawm's "social bandits" (Burgess 2009: 896; Parker 2009: 171; Rediker 2014: x; Dawdy and Bonni 2012: 676); that is, legendary figures outlawed by the state but supported by the populace (Hobsbawm 1981). Folklorist Michael Owen Jones identifies a process of what might be termed "legendization" through which historical individuals are decontextualized and transformed into folk narrative heroes (Jones 1971; see 'mythologization' in Rediker 2004: 10; Burgess 2009: 896). Folklorist Graham Seal has argued that outlaw folk heroes are "created" by "traditional scripts," schemas which function as both instruction manual and folk drama. Seal reasons that outlaw folk hero legends share a common motifemic sequence because more recent heroes are guided by the narrative actions of previous generations. He notes that,

> Outlaw heroes frequently appear among groups who […] are also deprived of adequate political representation, thus deepening and increasing their sense of oppression and frustration. […] All outlaw heroes operate outside and against the official legal system of the state, but remain within the unofficial legal and moral code of those who seem them as one of their own. […] Almost invariably it is the oppression or injustice of others – usually those with authority and power – that compels the hero to take to the forest, bush or other marginal area where the control of the coercive oppressor is weak or non-existent. Not only is this peripheral or liminal space important from a logistic and tactical viewpoint, it is also a symbolic indication of the hero's change of social status. (Seal 1996: 6)

Building on Hobsbawm, Seal's "outlaw hero cycle" argues that the cultural script is the mechanism that drives a vernacular ostensive tradition which ultimately feeds back on itself (Seal 2009: 69).

Although the discursive framing of infringement as piracy was initially political hyperbole in booksellers' propaganda, its continued use has seen it become entrenched in the worldviews of current actors. Yet, instead of inspiring guilt on the side of infringers, it can inspire resistance. As Dawdy notes,

> Three centuries ago, the crises and protests of pirates and smugglers were major forces that precipitated the Age of Revolution (Lane 1998, Linebaugh and Rediker 2000). The agitations of today's pirate battles are worth attending to, despite the temptation to trivialize the self-fashioning of pirates in consumer culture as a romantic label for solipsistic appetites. The pirate label as used by The Pirate Bay and other intellectual pirates has a strong and steady history reaching back to the time of Sir Francis Drake, often symbolizing an ideology that is both antistate and anticapital. (Dawdy 2011: 363)

Weapons of the Weak

Copyright can be perceived as oppressive in the sense that it offers a system of control, or, more recently, a system of exclusion. A creator-centric view sees it as the moral right of creators to exploit their creation. Infringement is thus both illegal and immoral as it deprives the creator. A public-centric view sees a new creation as a public good—ultimately a contribution to the public domain but granted a temporary exemption as an incentive or reward (Patry 2009: 59). One of the primary criticisms of copyright concerns the length of the monopoly. In 1710, the Statute of Anne provided for a 14-year term, renewable once for a total of 28 years. In contrast, the United States' current term is 70 years, plus the life of the creator. Canada's term is currently 50 years, plus the life of the creator but will be extended to match the American model when Canada ratifies the United States-Mexico-Canada Agreement (USMCA). The passage of the U.S. Digital Millennium Copyright Act (DMCA) in 1998 also fundamentally changed the nature of copyright from a right-to-copy to a right-to-access. The 2012 Copyright Modernization Act introduced similar access-based legislation to Canadian copyright law. The interface between copyright and digital software licensing, resulting in Digital Rights Management (DRM), has seen the criminalization of previously legal uses, such as re-sale and repair of legally obtained products (Ginsburg 2001: 1635; Johns 2009: 506; Patry 2009: 161).

Many Katians are vocal on the subject of copyright and, while individuals do not necessarily speak for the whole community, ideological

complaints against capitalism and, in particular, copyright law(s) were a common sight. For example, Katian deadhampton contended that, "Copyright is not a tangible thing. Copyright is merely an idea enforced by threats, weapons & dungeons that gives greedy people or groups the ability to horde resources & or ideas while oppressing others for sharing those resources & or ideas" (deadhampton, KAT, May 11, 2016). In the same forum discussion, brk18 agreed, saying:

> I do believe that information, art, and resources in general should be free/shared among all, and that the corporations that hold large amounts of the copyrighted material over-use their legal abilities for profit. The law (in this case, and many others) does not represent what is fair, right, or moral, nor does it represent what is best for society in general. It represents monied interests, which is the general rule currently. What we are doing is illegal, but that is a long way from wrong, and if it is stealing, then I view it as very different from other forms of stealing. (brk18, KAT, May 11, 2016)

When asked why they pirate, QueenOfPain put it succinctly: "Culture should not be a commodity" (QueenOfPain, KAT, May 13, 2016). Similarly, one of my anonymous informants responded:

> Sharing is caring. If you were to visit my home and to eat, I would not ask you to pay for it, if I were to give you a story I wrote, again, you would not be expected to pay. Everything is created for profit, not to simply improve the world we live in, [but] file-sharing is a way to do that. (Anonymous Katian 12434452, 2016)

This sentiment reflects the "public good" argument found in copyright discourse. While the "caring is sharing" proverb is a common sight at KAT, what struck me about this quote is the way my informant locates filesharing as a moral action: filesharing is a way to improve the world. The majority of Katians harbour no illusions of overthrowing capitalism through downloading television programs, but "improving the world we live in" can be done piecemeal, through small, minute actions. Lokisminion is one of a group of deaf Katians who turned to piracy when legal options failed:

> I turned to torrenting because there was and still are [a] lack of subtitles at legal streaming sites but there are some fantastic subtitles sites [where] I can get subtitles for torrents, which means I can follow the whole dialogue because of my total deafness. Despite all the [industry] promises, the progress is very slow and there's no clear clarification whether they have subtitles or not. I refuse to pay for something that I cannot follow unless they improve or clearly state captions. Cinemas are the worst - they do show subtitles but at the most inconvenient times or wrong

> location. It's like we do not have the choice to choose where, when and
> how, so I choose torrents because it opens my world up, I choose when
> and wherever I want to watch it. (Lokisminion, KAT, April 9, 2015)

For Katians, piracy is an openly accessible, if widely illegal, way to
"improve the world." You do not need to be rich or possess technical skill
to engage in filesharing (at least as a downloader). Beyond the affluence
required for a device and Internet connection, anyone can be a pirate. In
this sense, the practice of filesharing begins to look like James C. Scott's
"weapons of the weak" (1985).

In his class analysis of Malaysian peasants, Scott found villagers engaged
in what he called "*everyday* forms of peasant resistance—the prosaic but
constant struggle between the peasantry and those who seek to extract
labor, food, taxes, rents, and interest from them" (Scott 1985: xvi). These
individually minor acts, such as footdragging and pilfering, became powerful
methods of resistance when combined together over time.

Although there is an element of class conflict in piracy discourse, the
globalized demographics of KAT make it difficult to generalize. Viewing
piracy through a class lens yields interesting results but threatens to obscure
nuances. Nevertheless, socioeconomic class factors into the perception of
many Katians, such as SL1DE:

> I'd be in like $1,000,000 debt if I legally purchased all of my music and
> movies, so basically I would have never been able to enjoy such art or
> luxuries. It's the same with most people. Everybody should be able to
> enjoy everything equally and freely. (SL1DE, KAT, May 4, 2016)

Other Katians raise issues with access relating to geopolitics. Katians
living in the Global South, particularly postcolonial countries, often
reference geoblocking[10] and a lack of availability of services. For example,
peakoz lamented, "Living in Cambodia, no cinema, no film rental, pirating
is the only option" (peakoz, KAT, August 16, 2014). This is echoed by
SenegalStyle: "I live in West Africa where nothing is available online
from Netflix or anyone else. […] I get lots of stuff here on KAT and I am
appreciative of that" (SenegalStyle, KAT, May 4, 2016). Katian imshadman
agreed: "I'm from Bangladesh and as much as I would like to pay for the
content to support the creator(s) – I cannot – The media is not available
anywhere. In my country piracy is the only means of getting your desired
media. In a way what I'm doing is not "illegal" as I have no other option"
(imshadman, KAT, May 8, 2016). It was not uncommon to see entire forum

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10. The restriction of digital services is based on geopolitical location, usually due to
     inconsistent international content licensing schemes.

threads dedicated to this issue. This is not to say that pirates are analogous to Scott's peasants, but rather that pirates use similar strategies.

The view of pirates as an oppressed group is contested by some scholars who suggest methods relying on interviews with, or self-reporting from, pirates cannot be trusted because pirates engage in psychological neutralization in order to justify their deviant actions (Hinduja 2001; Higgins 2004; Marcum *et al.* 2011; Kirwan and Power 2012). Controversy is an inherent and inescapable element of the outlaw folk hero tradition. A *priori* assumptions about criminality and ethics aside, rather than asking, "What justifications do my informants use to neutralize their crimes?" this article instead asks "What is the sociocultural effect of this discourse?" Perhaps my informants do not actually believe what they say; maybe they are, in fact, merely struggling for ways to justify their behaviour, as scholars who insist on the psychological deviance of pirates suggest. However, the discourse created by competing rhetoric remains, irrespective of the individual, and must be engaged with. Studies focused solely on the criminality aspect are inherently reductive as they seek to "explain away" piracy (Hufford 1982).

Discourse analysis has been used by folklorists primarily in the study of oral literature (Hymes 1981; Basso 1990; Butler 1992). In applying it to the Internet, folklorist Robert Glenn Howard locates the "vernacular web" as a class of online discourse (2008). He argued that new frameworks are needed to understand the Internet as a process rather than a text (2008: 194). In this view, online written communication, such as a forum post, is more reliably read as a communication event. However, this framework also entails a shift in methodological valuation. Folkloristics has historically specialized in orality, which has given us a unique toolkit to study vernacular expression; however, folklorist Charles Briggs notes that this is a metadiscursive strategy that has also caused us to fetishize orality and perceive authenticity only insofar as the proximity of a text or performance to an oral source (1993: 396). Howard illustrates this with a quote from folklorist Linda Dégh: "Because both the language and background information are heavily influenced by the media, how can we be sure which had priority, the media or the oral text?" (Dégh quoted in Howard 2008: 200). Viewing the vernacular web as an ongoing and adaptive communication process enables us to locate "authenticity" in online discourse itself (or at least in the perceptions of users) and better situate particular discourses within discursive fields.

The discursive field of piracy is hotly contested by a variety of actors of

varying power whose views tend to align along long-established perspectives on copyright. In sociologist David Snow's typology of discursive fields, this suggests the field is "contested" yet also "structured" (2008: 11). In terms of a pirate vernacular web, the field is structured not only by the histories of maritime and media piracy, but also by the discursive identities that have formed and re-formed over time.

> It may be that this is so because the struggles to reorient identity, often in the face of terrible odds, are struggles that involve narrativization (or textualization) as a way of achieving coherence. The very fact of acting in the hope that someone will preserve one's story is thus simultaneously a performance, an optimistic personal strategy and an ideological one. […] This will hopefully encourage listeners to *project forward*, that is, to plan and to anticipate, to figure out solutions to *private* problems that could also involve more general plans for solutions to broader, society-wide problems that the individual recognizes as the source of private difficulties. (Basso 1990: 6)

While folklorist Ellen Basso was thinking of oral discourse, her points about narrativization and "projecting forward" apply to pirate discourse and the formation of a discursive pirate identity. When Katians debate piracy, they do so through personal experience narratives. For example, memmer62 described in a forum post his rationale for pirating at KAT:

> I was injured back in 1995 while working at a major wholesale store and now have chronic pain, etc. Sitting in a theater becomes intolerable after the first 15 minutes or so and since SSI is a limited income, these films, documentaries and TV shows would not be affordable otherwise. So thank you all for making life a little nicer for me when it hurts too much to really do anything, so that's why I greatly appreciate the uploading community. (memmer62, KAT, May 8, 2016)

Here a private problem is solved, albeit illegally, through piracy. While not every Katian shares the same private difficulties, they find that their individual situations can be solved or improved through group action. As Basso says, "It is through this process of projecting forward […] that new ideological formations arise" (1990: 7). In projecting forward, Katians draw on earlier traditions of resistance in order to access the "traditional scripts" (Seal 1996) that offer a way to order social reality and, more prosaically, to enact performance. As Scott noted,

> […] *All* identities, without exception, have been socially constructed: the Han, the Burman, the American, the Danish, all of them […] To the degree that the identity is stigmatized by the larger state or society,

it is likely to become for many a resistant and defiant identity. Here invented identities combine with self-making of a heroic kind, in which such identifications become a badge of honor. (Scott 2009: xii)

From 17th century reprinters to 21st century filesharers, the media pirate identity has always been socially constructed. It was invented for a political function but has been appropriated and imbued with competing meanings (Patry 2009). The contemporary popular culture figure of the pirate, then, is a composite symbol embodying sociopolitical histories and sociocultural values and aspirations. It is a transgressive identity rooted in practice. As one of my informants described,

I deeply believe [that] a world controlled by corporations, where life itself is outsourced, is not an ideal one. And I upload for empathy. I can see myself in others, so I put that human quality to use. I believe I am helping. In a world where apathy is the main attraction and "look the other way" is the requiem of the indifferent, I care. And I am content by the thanks I receive from those I help, like I will always be grateful for those who helped me. (Anonymous Katian 11638413, 2015)

For many Katians, filesharing is about "not looking the other way." Perceiving injustice or oppression, these people actively try to do something about it with whatever means available to them. By sharing pirated content, filesharers spread access. When read as subversion of control, filesharing spreads a kind of empowerment. It gives ordinary users the ability to do *something* in their own small way, albeit illegally, to contribute to a larger resistance. One of my informants described why they chose KAT for this:

I have not been a member long, but what makes the community seem special is how anyone can contribute to it, or feel like he's contributing to it, in a significant way. People seem to have a lively attitude towards the communal space and support each other in a way that doesn't necessarily involve the transference of files. Not many file-searching/ database types of places in the internet can say the same. (Anonymous Katian 12439095, 2016)

While rights holders and entertainment industry groups attempt to reinforce public perception of torrent communities as inherently dangerous (Yar 2008; Andy 2018), a competing Katian narrative suggests that they are hubs of access, sites of resistance, and centres of vernacular morality.

Conclusion

It's capitalism that treats my country as a protectorate and they want us more as their clients instead of citizens. I'd rather download pirated

movies and mp3s instead of giving them a part of their gigantic fortune. The only thing we common people [share] with these rich slavers is that nobody gets to take their money with them when they die. (Gr_Jobber, KAT, May 8, 2016)

Threads of tradition and identity, real and imagined, connect 18th century sea rovers with 21st century filesharers. Although the two practices are worlds apart, piracy discourse has been embraced by both copyright infringers and the entertainment industry. Within it, we see competing narratives forming a dialectic of piracy. Are Katians "a bunch of Robin Hoods"? Is copyright infringement "stealing from the rich?" Are Warez groups concerned with "giving to the poor"? Studies of outlaw folk heroes have shown that such figures are more complex than often depicted (Paredes 1958; Hobsbawm 1981; Knight 1999). Similarly, just as historical sea pirates sought escape and medicine, so are filesharing communities and practices more complex and nuanced than they appear.

Unpacking nuance is an important step in understanding a sociocultural practice in depth. The differences between the Warez and P2P scenes may appear trivial to the outsider yet play an important emic role in structuring pirates' identities. Dismissing pirates merely as "criminals" and explaining away piracy as deviant behaviour is a rhetorical strategy that trivializes the phenomenon by obscuring depth and complexity, which makes it easier to reinforce a simplistic and repetitive anti-piracy message. One of the aims of my research, and a central aim of this article, is to engage with the nuanced complexity and give voice to the vernacular discourse that is so often marginalized or dismissed. Considering that the ordinary case of infringement is a tort,[11] not legally a crime, labelling filesharers "criminals" is not only legally incorrect but is also a reductive perspective which fails to account for all of their other, non-illegal dimensions and identities. Like historical maritime pirates before them, contemporary piracy discourse glosses over individual and even group realities to overwrite them with imagined Hollywood-esque fantasy. Although filesharers are yet a ways away from the extrajudicial fates of their historical namesakes, fines and prison terms have increased significantly over the last decade. The war on media piracy has entered its fourth century.

To become a Katian is to become embroiled in the discursive field of piracy. The field is made up of competing discourses expressed through a variety of media. A vernacular discourse of piracy exists on Internet fora within pirate communities, such as a KAT. This discourse draws on

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11. A tort is a violation of civil law, not a criminal offense.

romanticized imagery of piracy in popular culture and tempers it with folk interpretations, beliefs, and morality. The resulting pastiche of piracy is more legend than reality. Legends can inspire belief and ostensive action. In Seal's (1998) model, the ostensive script for would-be heroes includes historical knowledge of the originating hero. However, the selective editing of the legendization process blurs historical fact with folklore (Jones 1971). Therein lies a certain malleability. Situated within vernacular discourse on the Katian fora, the pirate identity is constructed and contoured through debate. As an imagined construction, this pirate identity can be reshaped to meet the community's needs, reinforcing its relevance and continuing to inspire acts of piracy.

Piracy, whether by ship or keyboard, is not inevitable. Diagnosing the phenomenon as individual acts of illegality misses the broader structural context. Leaving aside for the moment the vernacular creativity inherent in piratical production, piracy is a symptom of a larger issue. An estimated 300 billion visits to pirate websites in 2017 (Spangler 2018) and an alleged 30 billion incidents of infringement in the last three years (MarkMonitor 2018) suggest that pirates number at least in the millions. Piracy this widespread and mundane raises questions of its structural relationship to capitalism. As *hostis humani generis*, historical maritime pirates were considered by nation-states a threat to economy and social order on a scale disproportionate to their material impact. This rhetoric has been adapted for media and reproduced in court rooms since the 18th century and can still be heard today in infringement litigation as filesharers are sentenced under different laws but eerily similar discourse. In the era of platform capitalism (Srnicek 2016), digital media piracy threatens to be become increasingly popular as users seek ways of resisting streaming fragmentation and restrictive licensing. Where copyright law is intended to balance creators' rights against the common good, piracy as a vernacular and traditional resistance suggests that the balance is off. Dismissing or explaining away these people simply and totally as "criminals" misses an opportunity to understand the root causes of the phenomenon. There are potentially millions of people worldwide engaging in piracy, hidden from popular and academic view by underground networks and secretive practices. These communities and discourses challenge conventional notions of "community" and represent a fertile field for the creation and transmission of folklore.

Those filesharers that embrace the terms intended to demonize them step into the traditional scripts of outlaw folk heroes, participating, however minutely, in informal vernacular resistance. Following a traditional,

everyday practice, pirates appropriate materials around them to work toward creating a better world: one without the need for piracy.

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all condemn'd for PIRACY. As also The TRYALS of Thomas Nichols, Rowland Sharp, Jonathan Clarke, and Thomas Gerrat, for PIRACY, who were Acquitted. At the Admiralty Sessions held at Charles-Town in the province of South Carolina, on Tuesday the 28th of October, 1718. and by several Adjournments continued to Wednesday the 12th of November, following. To which is Prefix'd an ACCOUNT of the Taking of the said Major BONNET and the rest of the PIRATES. London: Printed for Benjamin Cowse at the Rose and Crown in St. Paul's Churchyard.

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