when its truly free

underground content sharing networks as models for sustainable commons based peer networks

Bodó Balázs

P2P file-sharing networks would be the ideal commons based peer networks if their legal standing wasn't in question. Millions of individuals share their resources for a common goal. Competing developers race to develop the most reliable technologies of sharing. Technological and norm-based rules limit free-riding. The recent political success of pirate parties in the European parliamentary elections strongly suggests that file-sharing was able to solve the collection action problem for a large, heterogeneous population: the consumers, users of culture. Only if what they did was legal.

The illegal nature of underground file-sharing seems to be a strong disincentive for the academic community to engage with these communities, with their practices. This cautiousness is, however, misplaced. First, it is misplaced because the legal status of this activity is always subject to change: the history of copyright is full of practices once considered unethical, illegal, harmful, that now we regard as socially beneficial, ethical and legal because the ideas they put into action proved to be irresistible. Pirates are moral and business entrepreneurs who mostly fail, but there are a few of them, who were stopped being called as a pirate, because their ideas on the production, distribution, consumption, use and reuse of culture proved to be the right ones. It may be too early to pass any judgment on the p2p file-sharing phenomena. Maybe they can and should be legislated and enforced away, rendering these modern pirates to just another footnote in the history of copyright. There is a chance, however, that today's stakeholders need to – or even more, should be forced to - incorporate pirates' practices in the near future.

Keeping a distance from illegal activity hinders our capacity to understand it and learn from it.

They may be forced out of existence, or they may be incorporated into the cultural sphere. Any of these decisions will have a profound effect on how we access culture, for what price, through what channels, with what kinds of freedoms attached. I strongly believe that it serves the interest of the free culture movement and the public at large to have a clear and undistorted picture of the conflict unfolding before our very eyes, so there is a chance to thoroughly assess and prepare for every possible outcome. It is clear from every statistic, that the stakes are very high. Either way the conflict goes, the public as well as the individual have a lot to lose.

It is for this reason I propose a discussion on illegal, underground file-sharing communities, and the lessons they can teach to the free culture community.

Parallel histories

I suggest reconsidering copyright piracy through the viewpoint of the ambitions of the free culture movement. There are several notable similarities in the circumstances that call piracy into, and fuel its existence:

- Persistent gaps between supply and demand due to artificial constraints on price or supply are filled by pirate producers.
- When faced with piracy, industry incumbents almost always turn to the state to defend their market positions, instead of trying to beat pirates by adjusting their business models;
- Conversely, pirate producers will tend to operate at the edges of those state jurisdictions, where differences in law create spaces of ambiguous or conflicted legality.
- Piracy, in this context, has a long-established role as a development strategy at the economic periphery, creating businesses that later go legit.
- Piracy, in this context, also acts as a counterweight to the centralized control of information—whether by states or private interests. The censorship of texts was continually undermined by pirate networks.

Looks familiar? This list might as well be the description of the free culture movement, ranging from the early days of open source software to the present day science commons movement. On the other hand there is a nearly 500 years long history of western publishing piracy with countless examples of both successes and failures. Is there anything the free culture movement can learn from these examples?

Conflicting interests

The free culture movement is between the rapidly changing 'All rights reserved' domain and the free-for-all of p2p file-sharing, a rock and a hard place. Can it fight on two fronts?

Consider the revolution in the 'All rights reserved' domain, as it is demonstrated by the case of the recent YouTube sensation, the 'JK Wedding Entrance Dance video'.

It was a phenomenal success by every possible metric. It is a home video of people dancing to Chris Brown's hit Fever. It has more than 17 million views, but what is more important, it was also a success in legal and business terms. YouTube apparently has a license to cover the distribution of a user created video that used a copyrighted tune. Also it has generated a massive amount of revenue (for itself and for the rights holders of the musical piece, if not for the creators and participants of the video itself) by displaying amazon.com and iTunes links to the song in question besides the video. The viewers, consumers of the video were granted by the YouTube TOS, "a non-exclusive license to access your User Submissions through the Website, and to use, reproduce, distribute, display and perform such User Submissions as permitted through the functionality of the Website and under these Terms of Service."   Based on the success they achieved, the creators of the video may very

well get an offer from YouTube to participate in their partner program and have a cut of the revenues generated by the video. Isn't exactly this the ultimate goal of the Creative Commons movement? To enable user creativity by allowing people to remix and share, and allowing users to enjoy and share, while providing remuneration for those who want to get remunerated?

On the other side, the de-facto underground free (as in beer) culture is a threat not only to the current status quo, but it is also in direct competition with the free culture movement. Which is easier? To pirate a proprietary operating system or to learn a free alternative? To pirate a copyrighted mp3 from a file sharing network or to find its CC licensed second best alternative? What does it take to persuade the hearts and minds of the people in the underground to abandon that cultural paradise they created and populate instead the Free Movement space? What does the Free Culture Movement have to offer beyond ideology and legality to a crowd that has its own of the former and apparently does not care about the latter?

I believe that since the first inceptions of the various initiatives, the environment has substantially changed around the different issues that the free culture movement tries to address. The 'All rights reserved' domain is in rapid transformation, therefore, I argue, we need to revisit the notion of free culture as well. I also believe that the change in the copyright industries is mostly a reaction to the p2p piracy that proved to be uncontrollable. I believe that the free culture movement cannot and should not avoid looking at itself from this perspective. I hope my expertise in the history of piracy and my research on the interaction of legitimate and underground markets may help this effort.

Bio

Bodó Balázs (1975), economist, assistant lecturer, researcher at the Budapest University of Technology and Economics, Department of Sociology and Communications, Center for Media Research and Education since 2001. He was a Fulbright Visiting Researcher at Stanford Law School in 2006/7. He is a Fellow at the Center for Internet and Society at Stanford. He is the project lead for Creative Commons Hungary.

His academic interests include copyright and economics, piracy, media regulation, peer-to-peer communities, underground libraries, digital archives. He has advised several public and private institutions on development projects of digital archives, content distribution, online communities, business development.

In his free time he enjoys hacking the brain of his 18 months old son.