CRACK AND RELEASE: A STUDY OF PIRATE CULTURE, COMMUNITY, AND FOLKLORE

by

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Abstract

This dissertation is an ethnographic study of the culture and folklore of a digital media pirate community at the late Kickass Torrents (KAT) on the eve of its shutdown. Seized in 2016 by the U.S. Department of Homeland Security, KAT had been home to a community that was rich in folklore, folklife, and illegal file-sharing. Based on ethnographic fieldwork at KAT, I argue that piracy is a vernacular tradition in which digital media are materially and symbolically appropriated, transformed, and reproduced as folk variants to create in a virtual pirate commons.

Digital media piracy is highly contentious, yet, as a cultural practice, it is more nuanced than commonly depicted in discourse. Understanding it requires contextualizing it within a set of contested histories. Although legally considered a tort of copyright infringement, media piracy has for centuries been rhetorically linked with the crime of maritime piracy. This association is used strategically by anti-piracy campaigns but also by pirates themselves as they draw on folklore and outlaw folk heroes as they discursively create their identities. Similarly, media piracy is intertwined with the histories of and sociocultural anxieties surrounding the ideological origins of copyright and industrial mass production. Piracy calls into question issues of ownership and authenticity, values which lie at the heart of modernity. Far more than illegal downloading, piracy becomes a symbolic threat to the social order.

With digital technologies increasingly integrated into everyday life, media piracy is an issue that will only continue grow in significance. Although there is considerable literature on it, very little of it is ethnographic. I address this through interviews, questionnaires, and participant observation at KAT and I show how a folkloristic approach is best suited for interpreting the vernacular ways in which pirates negotiate illegality and a contested discourse by creating community and expressive culture.

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Abbreviations

Admin   Administrator

ARPANET   Advanced Research Projects Agency Network

BBS   Bulletin board system

BPI   British Phonographic Industry

BT   BitTorrent

C64   Commodore 64

CDN   Content delivery network

CMC   Computer-mediated communication

CODE   Controlled Object Deck Exploitation

CSE   Canadian Communications Security Establishment

DDL   Direct download

DDoS   Distributed denial of service

DHS   United States Department of Homeland Security

DMCA   United States Digital Millennium Copyright Act

DOJ   United States Department of Justice

DRM   Digital rights management

E.U.   European Union

FACT   Federation Against Copyright Theft

FBI   United States Federal Bureau of Investigation

FTP   File Transfer Protocol

GIF   Graphics interchange format

HTTP   Hypertext Transfer Protocol

ICE	United States Immigration and Customs Enforcement
ICH	Intangible cultural heritage
IFPI	International Federation of the Phonographic Industry
INTERPOL	International Criminal Police Organization
IP	[1]Internet protocol (address); [2]intellectual property
IRC	Internet relay chat
ISO	Optical disc image
ISP	Internet service provider
IRS	United States Internal Revenue Service
KAT	Kickass Torrents
MMORPG	Massively multiplayer online role-playing game
Mod	Moderator
MPAA	Motion Picture Association of America
MS	Microsoft
MUD	Multi-user dungeon
NSA	United States National Security Agency
OPSEC	Operational security
P2P	Peer-to-peer
RIAA	Record Industry Association of America
SPA	Software Publishers Association
TPB	The Pirate Bay
U.K.	United Kingdom
UNESCO	United Nations Educational, Scientific and Cultural Organization

U.S.	United States
VCR	Videocassette recorder
VPN	Virtual private network
WIPO	World Intellectual Property Organization

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1. Introduction

> Marking the repudiation of information capitalism at one extreme and its consummation at the other, it [piracy] has become the definitive transgression of the information age […] What is at stake, in the end, is the nature of the relationship we want to uphold between creativity, communication, and commerce. And the history of piracy constitutes a centuries-long series of conflicts—extending back by some criteria to the origins of recorded civilization itself—that have shaped this relationship. Those conflicts challenged assumptions of authenticity and required active measures to secure it. They provoked reappraisals of creative authorship and its prerogatives. They demanded that customs of reception be stipulated and enforced. Above all, they forced contemporaries to articulate the properties and powers of communications technologies themselves—the printing press, the steam press, radio, television, and, now, the Internet (Johns 2009, 5).

In July 2016, Kickass Torrents was shut down. The website and its servers were seized by the U.S. Department of Homeland Security. It made headlines, but not the front-page. A second or third-tier news story, mostly of interest to those in the know—pirates and pirate hunters. It came as a shock to the pirating world. For the uninitiated, it offered a brief glimpse into a rarely seen digital underworld; the dark side of the Internet. The news outlets covering it tripped over themselves trying to explain what Kickass Torrents actually was. For almost a decade, Kickass Torrents (or "KAT" for short), had been one of the largest hubs of illegal file-sharing. Just a day before, it had been a lively online gathering place where users hung out, told jokes, swapped life stories, and pirated media. It was replaced with a seizure notice (fig. 1.1), which has stood for years adorned with the officious shields of government agencies, like a gravestone marking the fallen and warning away passersby. Apparently, an undercover agent had brought it all down after two years of collecting evidence. I was there doing fieldwork around the same time. By that point, I had been there for just a bit under two years, about nineteen months, and was also engaged in a sort of collecting, though with evidently different goals. As far as I know, we never crossed paths, but it is hard to tell at a place like that, where anonymity is prized. I was there

conducting ethnographic fieldwork—or trying to, anyway. Pirates have never been the most forthcoming bunch, owing to the illegality of the practice. It hung like a shadow over everything that happened at KAT, even before the shutdown. Through an "improvised" mix of participant observation, interviews, and questionnaires, I managed to capture a slice of life at KAT before it, and my fieldwork, were cut short (Cerwonka and Malkki 2007).

KAT became a central focus of this dissertation, but it did not start out that way. Fieldwork rarely goes as planned. Ethnography can gain access and insight into places and peoples that other methods cannot, we can use it to study things that cannot be isolated in a laboratory, and it offers an empirical yet humanistic and holistic means of understanding culture. But ethnographic fieldwork can be unpredictable. The ability to adapt, improvise, and learn from a shifting fieldsite in order to refine analysis is a strength of the method. I initially envisioned the project as an ethnography of a Warez Scene cracking group. "The Scene" is a network of file-sharing groups active since the 1980s that compete to be the first to break copy protection on digital media. Although I made some inroads, Sceners were understandably reluctant to talk to me, a stranger, especially with the memory of FBI raids still fresh. So, I changed tack, shifting my focus from elite producers to everyday consumers (although perhaps "participatory culture" might be more accurate (Jenkins 2006)). This emphasis on the vernacular highlights a strength of folkloristics as a "way of seeing" (Berger 1972) the "hidden submerged culture lying in the shadow of the official civilization" (Dorson 1968, 37). While there are approximately one hundred cracking groups today, ordinary pirates, those who consume and share infringed media, number in millions.[1] That is a lot of people interacting with illegal underground economies on an

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[1] One report "measured 215 billion visits to piracy websites in 2022" (MUSO 2023, 1) and another called piracy "a $2 billion-plus industry" (Digital Citizens Alliance 2022, 4). Yet, there is no reliable demography or statistics of

everyday basis. The best places to find this type of piracy are torrent sites. These are public

websites that index files that can be torrented. Torrenting is a kind of collaborative downloading

method. As Chapter 2 details, I went through a number of fieldsites that ended up being shut

down by various law enforcement agencies. Piracy is a dynamic practice, constantly in motion;

when one website is shut down, a new one is launched. KAT was a torrent site known for its

unusually active and close-knit group of users. Although it ultimately shared the fate of many

torrent sites, I was there long enough to discover the complexity and nuance of its social

structure, observe and participate in its calendar customs, and start to understand the depth of its

sense of community and identity. At KAT, I began to see piracy as a kind of digital folk

tradition, at once both performance and process, that created networked flows of appropriated

and artistically transformed texts, reminiscent of copylore (Preston 1974; Dundes and Pagter

1975).[2]

Piracy is a polarizing topic, owing in no small part to the politico-rhetorical campaigns

waged since the 18th century to normalize and naturalize the association between sea robbery and

copyright infringement. Explaining my research often elicited strong responses from listeners.

One time, at a conference, I was introduced to a retired scholar, now legendary in his own right.

After recovering from being star-struck, I described my research to him—only to be taken aback

by his vehement response: "I hope you hunt them all down!" Here was a larger-than-life senior

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piracy. Reports like these are occasionally commissioned by industry trade groups and, while they tend to garner news media coverage, they have been repeatedly challenged on the bases of methodology (e.g., Benham and Wagner 1987; Oberholzer-Gee and Strumpf 2007) and discourse (e.g., Yar 2008; Patry 2009). My point is that there are many folks engaging in practices that can be labelled piracy—and who has the power to define those labels is one of the central themes of this dissertation.

[2] I use the term "copylore" as encompassing the tradition and materials that have been variously referred to as: typescript broadside (Barrick 1972); Xerox-lore (Preston 1974); photocopylore (Smith 1989); folklore by facsimile (Dundes and Pagter 1975); office copier tradition (Dundes and Pagter 1987); office copier folklore (Dundes and Pagter 1991); copier lore (Blank 2009); copylore (Puglia 2019); cf. faxlore (Preston 1994).

scholar in my field telling me to hunt down my research participants. I would like to be able to say that this was an atypical reaction, but it was relatively common. On one hand, I understand the sentiment, particularly from folks involved in media production. Within the dominant liberal-capitalist paradigm, piracy represents a threat, however ambiguous, to people's income, their ways of life, and, arguably, their very identities. Property law is the heart of our liberal order. Our sacrosanct theories of value tell us that you own what you create. Even though piracy—that is, copyright infringement—is not theft, it feels *close enough* to evoke the same understandable responses. On the other hand, it has also been my experience that copyright law, let alone the history and analysis of it, is popularly misunderstood at a fundamental level. The strong, negative reactions to piracy ultimately end up begging the question. That is, these reactions tend to presuppose the necessity, validity, and naturalness of copyright. Yet, copyright is a recent invention. How did societies exist prior to 1710? If copyright is a necessary incentive for innovation and creativity, how did humans create and invent for the previous several millennia? If copyright is an inextricable piece of natural and moral law, then is the great bulk of human history an exercise in immorality? These absurd questions are meant to highlight the parameters of copyright and conceptually de-embed it from its naturalization in order to begin to analyze its history, function, and power.

In the digital age, copyright has been quietly expanded from its roots as an economic compromise to become a tool broad in scope. Copyright and "intellectual property" have become the legal backbone for a plethora of platforms for production, consumption, and social interaction. The myriad digital forms of expression, from blogs and tweets to YouTube channels and podcasts, are enabled by and liable to national copyright laws. A law that was originally designed to regulate the then-niche industry of book printing is now routinely used to takedown

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videos, block access to streaming services in certain countries, and even prevent farmers from

hacking their own tractors.[3] This is not an indictment of copyright but rather intended to point

out that its use is so widespread, so integrated into the daily lives of billions, that resistance to it

will only continue to grow. There is no single overarching rationale or motivation for piracy, it is

a constellation of related, sometimes conflicting, reasons ranging from the economic to the

ideological. The illegality of it varies between national jurisdictions, scaling from illicit to

criminal. There is a wealth of literature on piracy, but very little of it includes the voices of actual

pirates. To paraphrase Coleman and Golub, it collapses piracy into a moral binary, "threatening

to obscure more than it reveals about the cultural significance" of the practice (Coleman and

Golub 2008, 256). I neither advocate nor condemn piracy, but rather argue that it has meaning. I

seek to interpret piracy as a culture on its own terms. As Litman argued, "To the extent that

people find the Internet to be unfamiliar, intimidating, even frightening, the cyberpirate is a

convenient totem for everything about the Internet that's scary. So people *believe* in the cyber-

pirate" (Litman 2000, 10, original emphasis).

This dissertation does three things. First, it is an ethnography of an online pirate

community. To this end, I describe Katians' meaning-making and place-making work that

transforms an otherwise utilitarian website into a cultural home and folk group ("Katian" was a

demonym for KAT users, which will be discussed in Chapter 2). Second, it is an analysis of the

politics and poetics of piracy discourse. Tracing the political histories of the language and

rhetoric of "piracy," I show how it has been used to further state and business interests yet also to

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[3] In the last twenty years, "digital lock" clauses in copyright laws have led to the creation of right-to-repair movements and decidedly postmodern juxtapositional media depictions of farmers hacking their tractors amidst "a black market of pirated engine software" (Naughton 2017; see also March 2017; Seskus 2021).

empower a vernacular outlaw resistance. Third, it is a theoretical proposal to identify pirated

goods and the practice of piracy as a new analytical subgenre of digital folkloristics.

In the following sections, I introduce the political and ethnographic complexities of

piracy and the ways in which it has been conceived and performed in discourse and practice. The

first section deals with themes of definition, identity, and community, while the second and third

sections offer literature reviews that help locate my current folkloristic-ethnographic approach

within the broader scholarly discourse.

1.1 Defining Piracy

> Our historical analysis reveals how an "acceptable use" is a social construct that
> changes over time: What is just "use" today may be "piracy" tomorrow, or vice
> versa. Current legal, social, or contractual understandings of acceptable uses are
> not preordained—they come from past conflicts and historical sets of decisions […]
> As social constructions, various social groups create and seek to change dominant
> understandings of what is an acceptable use (Eschenfelder et al. 2011, 70).

Piracy is a term that appears as though it should be easy to define. There are laws and

international conventions outlawing the practice, and they are specific in their definitions, e.g.,

"any illegal acts of violence or detention, or any act of depredation, committed for private ends

by the crew of the passengers of a private ship or a private aircraft…on the high seas against

another ship or aircraft" (UNCLOS §101). Yet, piracy can also mean unauthorized copying or

distribution of unauthorized copies, even though the term does not appear in any copyright law

(e.g., Canada Copyright Act §27). At various times, it has been considered piracy to reproduce,

distribute, or sell copies, tune into certain radio stations, record broadcast signals, download

particular files, or share links. Piracy is also often conflated with similar practices, such as

counterfeiting and bootlegging. Like the often-blurry line between the maritime privateers and

pirates of old, definitions of piracy are always inherently political and ever-changing to align

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with the interests of power. Pirates exist in law and discourse as hegemonic subjects, yet they challenge subjectivity through a vernacular and counterhegemonic identity discourse.

1.1.1 What Piracy *Is*

The historical definitions of "pirate" and "piracy" and their related terminology, e.g., sea-rover, peiratēs, sæsceaða, buccaneer, have changed over time and between jurisdictions and are ultimately a matter of etymology. Chapter 3 takes up this history, linking the maritime to the media in popular English usage, but I provide a brief overview here. A useful way to approach the contested meanings of piracy today is to highlight the contrast between legal definitions and emic usage. Like its etymology, piracy's legal history has been remarkably stable yet also ultimately lost to time. The practice of maritime piracy seems to have always been present, probably since the beginning of maritime trade, and that practice has always been considered a crime. Piracy was considered a threat in the ancient world by classical Roman politicians (Tarwaca 2012) and has been a crime in English common-law since its very beginnings (Morrison 1932, 909). In both cases, piracy appears to have been popularly understood yet not legally defined, even in the ancient Roman law code. The issue was jurisdiction—a recurrent aspect in pirate history. A polity's sovereignty and jurisdiction extended only so far. Land borders were easier to define. Oceans have long been considered international waters and it has only been in recent decades that states have been able to effectively claim and control maritime boundaries. This ambiguity has been baked into conceptions of piracy. Pirates inhabited liminal spaces, existing "betwixt and between" (Turner 1967).

As Chapter 3 shows, the term "piracy" in English made the semantic leap to book reprinting by the late 17th century (Johns 2009, 23; Dawdy 2011, 377), contemporaneous with

the Atlantic Golden Age of maritime piracy, and emerging in the same sociopolitical milieu as the copyright movement.

> The countless legends of buccaneering that came to London from the naval campaigns fueled the war of print piracy. Stories about Edward Teach ("Blackbeard"), Captain Kidd, Mary Bonny, William Dampier, and Bartholomew Roberts filled the London press, where they were themselves pirated (Johns 2009, 43).

After being linked to copyright, "piracy" has since been applied to infringement using every subsequent medium and reproductive technology, including engravings (Scientific American 1863), telephones (Hafner and Markoff 1991; Fischer 1992), radio (McCain and Lowe 1990; Johns 2009; Dunbar-Hester 2014), vinyl records (Smith 1952; Wile 1985; Jamieson 1999; Dent 2012), photocopiers (Hattery and Bush 1964), television (Weisberg 1989; Williams 2003), audio cassette tapes (Bottomley 2015), video cassettes tapes (Patry 2009), and eventually computer code (Columbia Law Review 1964). In each of these sociotechnical instances, "piracy" has been used in two related yet distinct senses, initially to describe competitors and later shifting to refer to consumers. In the early years following the introduction of any new replicative technology, "piracy" is invariably used in popular and academic discourse to refer to commercial infringement committed by rival competitors. This is seen in the early English book trade, when piracy was a charge hurled at unauthorized reprints produced by competing print houses (Johns 2009, 27). With older replicative technologies, the means of (re)production were restricted to large commercial ventures. Early printing presses were costly and required skill to operate; bootlegging also required presses and was largely dominated by labels set up for that purpose; pirate radio and television stations needed broadcast towers.

The shift in usage from commercial competitors to individual end-users—from producers to consumers—began with radio reception licenses in the U.K. in the 1920s. In contrast to pirate

broadcasting in the U.S., radio piracy in the U.K. took the form of a receptive practice: unlicensed listening (Johns 2009, 358). Developing in parallel to pirate (re)production practices, pirate consumption became widespread by the 1980s with another aural technology, the audio cassette and the 1980s home taping crisis, "the first truly global piracy" (Johns 2009, 461). There has been some overlapping work on cassette music cultures by folklorists (e.g., Lovatt 2005) and ethnomusicologists (e.g., Manuel 1993). It is a conceptually short distance from authorizing *consumption* to authorizing *access*, which is the direction copyright has developed in the last twenty years starting with the U.S. Digital Millenium Copyright Act (DMCA). Digital media piracy followed these patterns. In the early decades of software, "piracy" meant tech companies copying each other's products. By the 2000s, the era of file-sharing lawsuits, the image of the individual, private end-user as pirate was firmly entrenched.

"Piracy" usage has also changed in another related sense; where it previously described a practice it now describes an identity. As Patry notes, "Copyright owners do not say, 'X acted *like* a pirate,' but instead that 'X *is* a pirate.' The Copyright Wars are an effort to recast somebody's character" (Patry 2009, 43, original emphasis). Transposing Foucault's view on authorial identity, it can be argued that "pirate" was created as an identity when it became subject to punishment; that is, when you could be punished for *being* a pirate (Foucault 1984, 108). The identity is constructed and assigned in totality based on a single action or behaviour indexical of "deviant" identity: "Piracy is thus predicated not on a precisely defined activity, but rather upon the perpetrating of some illicit activity by someone whose identity is a pirate" (Woodworth 2004, 176).

"Pirate" is an identity created through discourse. Yet, that discourse is contested. So-called pirates might be consumers of pirated media, but they are not passive consumers. As will

be shown in the following chapters, file-sharers labelled pirates have in turn embraced the identity, making "pirate" both an exonym and endonym. Crossing the etic-emic divide, piracy is enacted; it is both practice and performance. Pirates have created a culture of piracy with its own patterns of production and consumption, that can only be understood on its own terms, and is not reducible to mere infringement. While largely illegal and ethically questionable, piracy is more complex and more nuanced than popularly, or academically, believed.

It is worth comparing and contrasting competing definitions of the term in order to gain a deeper understanding of the contested discursive field (Snow 2008). Legally, "piracy" is understood as copyright infringement, typically defined as "illicit copying" (Root 1984, 1264) or "unauthorized copying" (Gilbert 1985, 439). "Illicit" and "unauthorized" both evoke a sense of legal hesitation; neither carries a strong sense of illegality. This reflects the legal nuance that infringement is not necessarily a crime per se. It *can* be a crime, under certain circumstances in certain jurisdictions, but criminal infringement tends to have a higher threshold, reserved for more serious and more commercial offenses. In most states, ordinary infringement is a tort, or a civil offense, a liability for which you can potentially be sued but not imprisoned. Although often described as "stealing" in popular discourse, infringement is an entirely separate law unrelated to theft or larceny, let alone actual maritime piracy. As Stallman defined it, "Publishers often refer to copying they don't approve of as "piracy." In this way, they imply that it is ethically equivalent to attacking ships on the high seas, kidnapping and murdering the people on them" (Stallman 2010, 99). If you are charged with downloading copyrighted material, you are charged with infringement, not piracy. In fact, a 1985 U.S. Supreme Court ruling stated that copyright infringement did not easily equate with theft (*Dowling v. United States (1985)*). In 2013, a

Florida District court even ruled that the terms "piracy" and "theft" could not be used in conjunction with copyright infringement (*Disney v. Hotfile (2013)*).

In contrast, emic definitions often revealed reflexivity and nuance, suggesting that pirates were very aware of what they were doing, why they are doing it, and how it was perceived. If pirates can be considered a group, whether folk group or community (discussed further in Chapter 2), it is one that is heterogenous and diverse. An inter-pirate emic discourse, hidden from exoteric eyes yet aware of their gaze, exists and is expressed in IRC channels, community forums, communicative spaces where pirates congregate. Although loosely connected through practice, pirates are rarely unified in vision or belief. This discord is part of the on-going discourse through which pirates continually create themselves. It also leads to a wide range of different and sometimes contradictory answers to questions, such as "what does piracy mean to you?" The following examples are excerpts from my fieldwork at KAT, answering that very question as it was posed in a discussion thread:

> Totally agree with most of the mateys around here. 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 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 (Flauros, comment, KAT, February 7, 2016).

> I mean, ummm nope, never been on a boat before, so nope, no pirating here (greenconverse, comment, KAT, February 8, 2016).

> I think we can all agree that we pirates are against corporate thieves from getting our cash, especially when they LOVE to lobby the government to bend the laws in their favor (TheDels, comment, KAT, March 13, 2016).

> I like to think of myself as a citizen of the world, and my passport is piracy. That's the way I watch movies, listen to music and get to know the people from all around. This is our global village, not a castle surrounded by high walls. I firmly believe that any cultural creation of humanity is free to consume. Nobody creates anything alone. Kat is not a piracy site, is the Alexandria Library reborn! Proud to be a pirate,

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proud to have never had a financial profit with piracy (numtemnick, comment, KAT, January 19, 2016).

Sharing is caring. Steal from the rich and greedy, give to the poor (SL1DE, comment, KAT, May 4, 2016).

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 abuse their legal abilities for profit. The law 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, comment, KAT, May 11, 2016).

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. Thank you, KAT and fellow pirates, for your work and service (Charsi, comment, KAT, May 8, 2016).

I pay for local cable, international satellite TV, and regularly donate to our local library, but I will always continue to pirate movies, TV shows, and books. Pirating is an enjoyable part of life, and being part of a terrific sharing community (juan3, comment, KAT, July 25, 2014).

What people call "piracy" is just simple file-sharing. Like a kid sharing a new video game with his friends (Anon1115, comment, KAT, May 5, 2015).

As defined by Wikipedia, the definition of pirate is: Piracy is typically an act of robbery or criminal violence at sea. And since I am not at sea committing acts of violence, I don't see anything wrong with sharing the plunder some corporations fleece from the public (Praamsaga, comment, KAT, May 2, 2015).

Running through these excerpts are themes of access, control, and morality. Pirates are aware of and spend a good deal of time reflecting upon etic understandings of piracy, but they also create their own systems and hierarchies of morality and justice. I discuss these themes and hierarchies in greater depth in Chapter 4, which frames issues of access and

control as forms of enclosure and argues that they are addressed in part by a folk creation of a virtual commons—a pirate commons.

1.1.2 What Piracy is *About*

Arguably, piracy is about enclosure and resistance to it. As shown in Chapter 4, processes of enclosing public commons began centuries ago and have always been entangled with piracy, both maritime and media. Boyle argued that copyright is a "second enclosure movement," drawing on the history of enclosing land but instead enclosing ideas (Boyle 2003). Rose examined the ideological underpinnings of copyright, revealing the "romantic liberalism" at its heart (Rose 1988). The legacy of this politics can be seen today in the originality requirement common to every copyright law, which stipulates that a work must be "original" in order to be protected. The flipside to this requirement is the authentication of the work; a work granted copyright is therefore necessarily officially certified as original. As Chapter 3 discusses, the concept of "originality," like authenticity, is deeply political although it is often treated uncritically as a natural phenomenon. All ideas build upon the previous works of others, if only through inspiration. Until the development of the printing press and copyright laws, copying was not only a common practice but copying the works of others was integral to scribal pedagogy.

As Rose notes, ideas do not emerge fully formed out of thin air; creativity is not the exclusive product of individual genius (Rose 1988). Creativity and innovation draw on an intellectual commons. Modern copyright laws attempt to acknowledge this through a granular approach: it is not the idea(s) in the work that are enclosed but a particular fixed form of expression. Interpreted charitably, copyright is an attempt to balance the competing rights of the individual creator against those of the public, i.e., that creators should be compensated for their

creations while realizing that exclusivity ultimately runs contrary to the public good, hence temporary copyright terms. Less charitably, the shift over time towards copyright maximalism through corporate lobbying on behalf of what Patry calls the copyright industry has seen copyright terms expand from fourteen years with option to renew (for a total of twenty-eight years) in 1710, to exceeding the life of the creator, and potentially the lives of their heirs or assignees (life of creator plus seventy years, which has become the global standard), or one hundred and fifty years for a corporate work-for-hire (Patry 2009). Beyond this enclosure, even after a copyright term has expired, there are still ways to enforce exclusivity, such as Disney's attempt to use trademark law to effectively extend their legal control over the character Mickey Mouse, a specific version of whom entered the public domain in 2024 (Masnick 2023). Similarly, as copyright laws have shifted from a right to make copies to a right of access, the law has been weaponized for censorship in ways clearly not intended by legislators. Piracy is a response to this enclosure.

As an illegal everyday practice that has been created and transmitted by a loosely-knit folk group, I argue that piracy has become a traditional custom in digital folklife. Knowledge, skills, and lexicon comprise an expressive culture that is transmitted through unofficial, ad-hoc, often illegal, channels of communication. Due to the atemporal nature of Internet texts, this culture extends down through time and across space (as piracy is a global phenomenon where members are connected through the Internet). Pirated media themselves form a new subgenre of copylore. "Pirated versions" are illegal reproductions of popular commercial media that have been transformed through folk appropriation and modification by vernacular creativity and subsequently shared along unofficial vernacular networks. Whether created by statute or through

performance by file-sharers, piracy is entangled with but not reducible to copyright or infringement. Pirate culture is more than the sum of its infringement.

1.1.3 Who the Pirates are

The pirate identity is a discursive social assemblage. It is a dynamic and contingent performance rather than staid, essentialized, and totalizing. While individuals might perform piracy in one instance, it does not constitute the entirety of their lives. Insofar as KAT can be called a "community," it might be tempting to see it as an "aesthetic community" (Bauman 2001, 65). In Bauman's view, communities can be either "aesthetic" or "ethical." The former are essentially interest groups with temporary and superficial bonds that form around a social spectacle (Bauman 2001, 66), while the latter are comprised of ethical obligations and long-term commitments (Bauman 2001, 71). Bauman's view of community might be considered a kind of critical fandom studies, somehow mixing Adorno and Horkheimer's (1947) critique of the culture of industries with Jenkins' (2006) focus on participatory culture. Bauman offers a useful jumping-off point for discussing issues of community and identity. The aesthetic community offers a useful description of the sometimes-contingent nature of piracy. It is true that pirate communities come and go. Piracy as a network was often described by Katians and other pirates as a "many headed-hydra"—cut off one head only to have another take its place. Shut down one website, another one will rise. In a very broad sense, the piracy landscape is a global game of whack-a-mole, with pirate websites being taken down and new ones routinely popping up, constantly in flux. This metaphor lends itself to the notion (and another metaphor) of the pirate constantly "jumping ship" (because pirate sites are routinely referred to, tongue-in-cheek, as "ships"). This defies conventional ideas of communities as stable, coherent, enduring places with

deep roots. Can any sort of "real" social bonds ever really develop in such a harsh landscape? The answers to this are a set of themes that recur throughout this dissertation.

First, pirates are not wholly defined by their piracy; that is, people can have or express multiple identities and be part of multiple folk groups and communities. When wielded as a label, calling someone a pirate evokes associations with criminality, violence, and theft—despite the everyday practice involving none of those things. It is a rhetorical strategy, an appeal to emotion meant to conjure a moral panic (Patry 2009). It also has more *oomph* than "tortfeasor." When used in this way, the term piracy is a totalizing gloss; a projection of discursive power based on domination of the target's other existing—and possible—identities, and rendering them a subject (Foucault 1982).

Second, pirate communities are, like any community, heterogenous (Noyes 1995, 454). Pirates pirate for a variety of different reasons, many conflicting, just as they put in and expect varying degrees of social participation. Most pirates have experiences as digital nomads and the search for pirated content can lead them to range far and wide across the Internet. This is particularly true of "drive-by downloaders;" pirates who grab content wherever they can find it, lingering on a site just long enough to find what they want before disappearing. Sometimes it is just best practice and risk mitigation. Take, for example, The Pirate Bay (TPB). Founded in 2003 by Swedish activist group Piratbyrån, it became the most-accessed torrent site in the world. Despite being raided and shut down several times, including the landmark prosecution of its founders (*B 13301-06 (2009)*), the site continues to be synonymous with digital media piracy. Yet, the raids have taken their toll. Ownership and administration of the site has changed hands several times and, although it remains online, it is increasingly considered a morass of malware, a shadow of what it once was. Although the fall of The Pirate Bay has a special place in pirate

rumour and legendry, the notion of pirate sites as liminal spaces is not uncommon, in terms of both their fleeting existence and as transitory towns or temporary stops along a pirate's migratory journey for content. However, perhaps due to this constantly disrupted landscape, pirates tend to be comfortable with migration, whether "washing ashore" somewhere new and building a new community or migrating with their "crew" to a new "ship." Digital groups *can* stick together when they move between platforms, whether that is on social media or online gaming (Staple 2010).

Third, pirates *can* build "real" long-term communities—when they wish to and when they are being not being "whacked." Sometimes, for some reason that is probably still classified, a "mole" pops up and…*just stays up*. The mole becomes sedentary, puts down roots, starts building, becomes the envy of other moles, all while living under the constant threat of impending doom, as if the Sword of Damocles was a whack-a-mole hammer waiting to fall—which it eventually inevitably does. This is the story of Kickass Torrents. A file-sharing website *cum* community. KAT was different. In contrast to the "Plague Bay" (that is, TPB), KAT had a reputation for safety and quality. Although it had its share of drive-by downloaders, it was more than a gas station. As described in Chapter 2, KAT was more akin to a "railroad town."

KAT grew up around its infrastructure. It was launched in 2008, during what I consider to be the second generation of torrent websites. The first generation of sites, such as The Pirate Bay and Suprnova, had been founded in the early 2000s and had already been shut down at least once by the time KAT arrived on the scene. As a semi-private tracker,[4] KAT was indexed on

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[4] Torrent trackers are servers that essentially keep track of who is downloading what and who needs to connect to whom to complete the download. Trackers are no longer required by modern torrent clients and although some still operate, the meaning has shifted to refer to any torrent website. See glossary.

search engines[5] and open to anyone who registered a free account. KAT's early history is murky.

The website was owned by Artem Vaulin, a Ukrainian businessman who is alleged to have made

millions from ads served on the site, until his arrest in 2016.[6] It is unclear to what extent he was

involved in the day-to-day operation of the site, as the shutdown of the site was the first time

many Katians heard of him. Most of the Katians active during my fieldwork joined around or

after 2010. However, how everyone found their way to KAT was a popular discussion topic,

often expressed through personal experience narratives (PENs). Some washed ashore following

the sinkings of other sites, like The Pirate Bay or Demonoid, while others arrived from a

haphazard Google search. A common narrative structure running through the PENs was a failed

drive-by or unintentional stop followed by an unexpected discovery. I collected some of these

stories through answers to my questionnaire (more on that later), but most came from participant

observation in discussions threads. With its active userbase and aggressive moderation, KAT

offered a safe and welcoming experience—a contrast to many other pirate sites. I never managed

to trace the origin of the Katian demonym, but it was in use at least by 2014 and both described

an existing group identity and offered new members something to become.

     KAT created a social hierarchy supported by an extensive list of rules that were regularly

enforced in order to regulate both torrenting and social interaction. Aspiring uploaders were

required to undergo a screening process followed by a probation period. These processes weeded

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[5] Up until recently, pirate sites were accessible on the Clearnet (the publicly accessible Internet indexed by search engines), which was a popular means of locating pirated content. Google began downranking torrents sites in 2012 in response to legal pressure from rightsholders and started deindexing such sites altogether in 2017 (Van der Sar 2014; 2017).

[6] The allegations were published in a criminal complaint and indictment in *U.S. v. Vaulin (2016)*, but were never proved in court due to Vaulin's fugitive status, which will be discussed in Chapter 5. It remains unclear how much of the alleged profits went into running the site, but raises the hotly contested notion of profiting from piracy, which is discussed in the next chapter. It is also worth noting that few if any Katians would have seen the ads since any pirate worth their salt uses an adblocker.

out malefactors and fears of malware and were reflected in KAT's hierarchical user ranking system: registered *users* could apply to become *uploaders* and, upon completing their probation period, become *verified uploaders*. These ranks, along with others such as *super user*, *translator*, and *elite staff*, were "worn on the sleeve" and represented a form of social capital. The rigidity of the community rules, and the uncompromising nature in which they were enforced, may seem illogical or even paradoxical for a pirate site. Swearing, for example, was heavily regulated and only allowed in designated areas, specifically the "Free Speech" forum and personal blogs. Swearing in non-designated areas, i.e., anywhere else on the site, resulted in a formal warning from moderators who would even edit and censor the offending post. Repeat offenders were permanently banned. For an *outlaw* community, they had an almost absurd number of *laws*. It was as if the community was trying to show that just because they might be considered criminals did not mean that they lived like barbarians—or, that they, like outlaw folk heroes, followed a moral code (Hobsbawm 1969).

For all of the things they *couldn't* do at KAT, there were many more that they *could*. Katian vernacular creativity was expressed in variety of ways that went beyond the practice of sharing copyrighted content. They created their own cultural productions—their own art— expressions of both individual artist and group. The KAT forums were primarily text-based, but included a small space at the end of a post for a signature line, which usually took the form of artistic renderings of screen names or meaningful or humorous GIFs or video clips, often including the KAT logo. There was a group of Katian artists who were known for creating signature artwork and could be commissioned by other members. Like profile pictures, custom signatures on their posts were one of many small ways Katians created or remixed media to express their identities. Vernacularly produced by and for Katians, and emphasizing themes of

group identity, signature art was likely a type of folk art. KAT also held regular art and poetry

contests. For example, on November 10, 2015, upon logging in I was met with colourful

notifications congratulating the winner of the recent "Mr. Black Signature Competition" and

announcing a new art contest to "design a banner for the Dutch community" at KAT (fig. 1.2).

The Annual Christmas Poem Competition, a tradition which had run for at least five years,

typically garnered dozens of entries. Katians marked calendar customs like Christmas and

Halloween with seasonally-themed social activities and folk art, such as website banners and

signatures (fig. 1.3). KAT also created their own calendar customs, such as Torrents Day (March

30), which exhorted Katians (but only properly-vetted ones) to celebrate torrenting by uploading

as much content as possible. It served a functional purpose, to grow the database and replenish

removed torrents (especially in the later years nearing the shutdown), but it also created more

space for social interaction. Folk art and calendar customs reflect artistic cultural production and

social performance (e.g. Santino 1985; Etzioni and Bloom 2004). Tying this together was *The

KATalyst: The Official Magazine of Kickass Torrents*, the short-lived KAT newsletter published

from 2015-2016.[7] It included site news, entertainment reviews, user profiles and interviews,

creative fiction and poetry, jokes, and obituaries (fig. 1.4).

     In addition to the articles in *The KATalyst*, there was an official memorial forum thread

that listed the names of all Katians "lost at sea" (the emic phrase Katians used to describe their

passing), and then individual threads dedicated to specific Katians that served as virtual

memorials. The memorial threads were easy to miss. They were buried at the bottom of the

Community forum. However, as Katian Forestheart described, for a core group of Katians, the

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[7] In 2014, prior to the launch of *The KATalyst*, there was the equally short-lived but much more half-hearted *KAT Times: The (Un)Official Newspaper of KAT*, which was a forum created ostensibly for site news but ultimately ended up being used for sharing jokes.

memorial forum represented "the heart of the community" (Forestheart, comment, KAT, May 22, 2017). It is through this kind of social interaction, the creation of sociocultural meaning, that transforms geographic space into cultural place (Tuan 1991). Virtual memorials not only mark an individual's relationship to a virtual space, but they also function to *create* place. The memorials strengthened the community's sense of itself as a place and were some of the first to be replaced when the new website ("New KAT") came online, following the shutdown of the original site.

So, returning to Bauman, was KAT an aesthetic community? KAT was partly a loosely-knit, contingent interest network with the fleeting, haphazard connections characteristic of the aesthetic community. Yet it was also a tightly-knit group connected by emotional bonds who interacted daily and developed and shared their own collective identity and expressive culture—how do you quantify or classify a group of folks who care enough to claim and mourn *their* dead? Do the idealized social bonds of the ethical community actually exist outside of theoretical models? The point is that KAT was neither wholly an aesthetic or ethical community. Binaries and dichotomies obscure nuance and complexity. Noyes points to the fragility of concepts of community, group, and identity, instead framing "group" as a dialogue between a culture-producing network of interaction and a performative social imaginary (Noyes 1995, 452). Katian social relations were contingent and strategic, forming the structure through which they constituted themselves through collective action and performance from piracy to poetry. Bauman's communities are useful for thinking through social relations, but also reflective of the early scholarly debates over whether "virtual communities" could exist as "real" and meaningful groups (e.g., Hine 2000; Rheingold 2003; Boellstorff 2008) or merely shallow and illusory networks (e.g., Calhoun 1991; Foster 1997; Light 1999). These questions formed the basis of an

expanding virtual ethnography literature that is discussed in greater depth, both ethnographic and folkloristic, in Chapter 2.

Virtual ethnography, however, is one of the most recent approaches to Internet and digital cultures. There is a substantial and substantive literature on digital media piracy stretching back decades. Piracy has been a concern in the literature since the dawn of the computer age. Although it has only been comparatively recently that scholars have turned to the cultural and political dimensions of piracy, the wealth of previous literature continues to shape academic discourse. The following section offers a history of the literature on piracy.

1.2 A Chronological Literature Review of Digital Media Piracy, 1960-2020

This review is multidisciplinary in order to match the inherent interdisciplinarity of the topic. It is intended to be comprehensive but not necessarily exhaustive. It is limited to literature on digital media piracy and excludes non-digital (i.e., analog) media piracy and maritime piracy (which is discussed in Chapter 3). Similarly, it includes works on copyright insofar as they are concerned with infringement, but excludes broader copyright literature (also covered in Chapter 3). Each of these exclusions is a field with extensive literature in its own right and although I draw on each, proper treatments are beyond the scope of this dissertation.

1.2.1 The 1960s

One of the earliest discussions of digital piracy was in an editor-authored 1964 article in the *Columbia Law Review* advocating for the expansion of copyright out of the then-theoretical concern about "pirated programs" (Columbia Law Review 1964, 1293). This was emblematic of the early pre-Internet era of computers running on punch cards and magnetic tape as depicted in

Levy's *Hackers: Heroes of the Computer Revolution* (1984). As Levy shows, the 1960s and

1970s saw the emergence of hacker culture and a sharing ethos regarding copied software—the

foundation of the "hacker ethic" (Coleman 2013). Levy's history is centered on university

campuses, computer start-ups, and later "homebrew" enthusiasts, and while his work has only

increased in value as academia gains the benefit of time and a retrospective lens on the industry,

he also left out large companies, such as IBM who are described negatively:

> All you had to do was look at someone in the IBM world and note the button-down
> white shirt, the neatly pinned black tie, the hair carefully held in place, and the tray
> of punch cards in hand. You could wander into the Computation Center, where the
> 704, the 709, and later the 7090 were stored—the best IBM had to offer—and see
> the stifling orderliness, down to the roped-off areas beyond which unauthorized
> people could not venture. And you could compare that to the extremely informal
> atmosphere around the TX-0 [at MIT], where grungy clothes were the norm and
> almost anyone could wander in (Levy 2010, 30).

Yet it is this world of stifling orderliness that dominates the scholarly literature, as it was

companies like IBM that lobbied for copyright for software. Arguably, digital media pirates did

not yet exist since copyright would not be extended to software until the 1980s (if piracy is

defined as a violation of copyright law, then pirates could not exist prior to it). As seen with

extending copyright to the media of any new reproductive technology, the threat was considered

to come from rival commercial competitors rather than ordinary individual users—at least

initially. "The exclusive right to copy other types of writings is largely intended to prevent mass

production and distribution by unauthorized persons; private copying, although perhaps not rare,

is of limited economic significance" (Columbia Law Review 1964, 1293). These early concerns

were limited to commercial counterfeiting, or corporate pirating for profit.

A literature on digital piracy was also in its infancy, largely made up of an intersection of

the disciplines of law and computer science. Owing to the applied and then-industrial nature of

computer science, the early literature on piracy is infused with semi-popular industry

publications, such as *Computerworld* (1968) and *Byte* (1975). In 1968, the industry magazine *Computerworld* ran an editorial with the headline, "Is System 'Theft' a Scandal or Rumor?" (Computerworld 1968a). The article described an alleged incident of copying software for an early airline reservation system as "theft," with a heavy use of scare quotes questioning the association and reinforcing its legal ambiguity. In contrast, the same magazine also covered what may be the first anti-piracy software, C.O.D.E. (Controlled Object Deck Exploitation), which was a computer program designed to poison output by requiring a variable input code (Computerworld 1968b). It was swiftly followed by so-called "lock and key" systems, including a sort of proto-serial key to "prevent software theft" by "would-be pirates" (Computerworld 1969, 5) and a receipt system for accounting software that basically worked like a coat-check to "prevent unauthorized copying" (Computerworld 1970, 21). These examples reflect the existence of parallel practices or cultures of computing with different views about copying, and the emergence of, and anxieties about, a piracy discourse.

1.2.2 The 1970s

Throughout the 1970s, prompted by the looming threat of piracy, however realistic, software copyright became an increasingly significant issue for the computer industry and computing cultures. This was reflected in computer science literature (Galbi 1971) as well as law (McHugh 1974; Soma and Fischl 1974; Nycum 1978) and even prompted the founding of new academic journals, such as *Computer/Law* (Scott 1978) and a new legal focus on "computer crime" (Taber 1978). This era also saw efforts to classify and define illicit copying practices:

> There is a legal nicety involved in the theft of programs and computerized records. Generally, the theft does not involve asportation, i.e., there is no "taking" in the legal sense, since the owner is not deprived of the program by the theft. […] Instead, the theft involves a wrongful copying. Thus the thief cannot be charged with

larceny (common law theft), but must be charged instead with a theft of trade secrets or a copyright violation (statutory charges). There are some who feel that the law should be modified to support common law theft charges in these cases (Taber 1978, 525).

Perhaps the most (in)famous charge of piracy at the time was by Microsoft founder, Bill Gates, in a widely published open letter. By the mid-1970s, the microprocessor revolution had made possible the emergence of a computer hobbyist movement organized as a network of clubs, in which sharing software was commonplace (Levy 1984, 201). When Microsoft's first product was heavily pirated, Gates admonished hobbyists, alleging they "stole" the software: "As the majority of hobbyists must be aware, most of you steal your software" (Gates 1976; cf. Driscoll 2015). As Levy described the incident, following the hacker ethic meant that clubs "charged what in hacker terms was the proper price for software: nothing. The only stipulation was that if you took a tape, you should make copies and come to the next meeting with two tapes. And give them away" (Levy 1984, 232). Although Gates' letter had little direct legislative impact itself, it was widely re-published and refocused debate about software copyright from corporate competition to individual users.

1.2.3 The 1980s

In 1980, the U.S. Congress passed the Computer Software Copyright Act, which amended the existing copyright law by expanding protection to computer code (although not all types of code were protected (see Stern 1981)), and would be followed by other countries over the next decade (e.g., Canada in 1988, E.U. in 1991). This came about during an era of heightened concerns over commercial counterfeiting, epitomized by the landmark "Betamax Case" (*Sony Corp. of America v. Universal City Studios (1984)*), which tested whether VCRs and "time-shifting" (recording TV broadcasts) constituted infringement. Behind the case was a

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broader concern with orientalist undertones about blocking what Americans perceived as an Asian counterfeiting industry (Lawler 1988; Wong 1988), and it was also partly an anti-competitive strategy by the film industry (Patry 2009, 151). Directly at issue in the case was the manufacture and sale of a new reproductive technology (VCRs), but it also indirectly highlighted the role of the consumer in piracy. During the case, counsel for Universal Studios used the theft metaphor to describe alleged infringers and although the case was ultimately decided in favour of Sony, i.e., that using a VCR to record a broadcast was not infringing (let alone theft), the metaphor stuck (Patry 2009, 50). In addition to the maker of a technology, the *user* of a technology became a pirate. This was the beginning of a shift in how copyright was perceived and used, away from being seen as a regulation or incentive and towards using it as a means for control of use and users (Litman 2000, 5). In public discourse, this shift was marked by the launch of new public-oriented anti-copyright campaigns, notably the much-parodied "Home Taping is Killing the Music Industry" produced by the British Phonographic Industry (BPI) in 1981 (Bottomley 2015) (fig. 1.5).

Literature on piracy continued to be dominated by computer scientists and legal scholars. As the software industry grew in size and revenue, legal scholars called for stronger anti-piracy legislation (Fetterman 1986). Using militaristic rhetoric, Coolley bemoaned "the inadequacy of weapons available to software owners to combat pirates" (Coolley 1984, 143), while Mihm proposed criminalizing infringement, including a (light) prison sentence (Mihm 1983, 188). Saltzberg (1984) published the first in-depth study of the legality and enforceability of "software locks" ("technical measure[s] employed by a software vendor to prevent unauthorized use of the software" (Saltzberg 1984, 163)). Today these measures are known as "digital locks" and more broadly as a type of digital rights management (DRM), the violation of which has been widely

criminalized under various countries' copyright legislation (e.g., U.S. DMCA §1201; Canada Copyright Act §41). A growing number of legal scholars, including Wilson (1984) and Fleischmann (1987), argued that the protection offered by digital locks was inadequate and instead advocated for a second emergent type of DRM, the now-ubiquitous software licence, despite noting that it eroded consumer rights in the first sale doctrine. While the broad scope of legal literature in this decade swung towards expanding copyright laws and increasing penalties, a minority of scholars critiqued this maximalism (Menell 1989), notably Friedman (1989), who warned against adverse affects on the industry from over-protection (Friedman 1989, 17).

Following the Betamax case, and similar in scope to it, the "Pre-Internet Downloading Controversy" threatened to turn ordinary users into pirates but ended up enshrining downloading as a use right (Eschenfelder, Desai, and Downey 2011). Previously, file transfer between machines was a physical affair, with data stored on removable storage, e.g., floppy disks. Modems allowed remote access to other computers, and the possibly to print what was on the screen, but not necessarily to reproduce local digital copies. This changed with the adoption of FTP (file transfer protocol) in 1985, which created infrastructure still in use today. The "controversy" saw the database industry (academic publishers in particular) attempt to outlaw downloading as piracy, but ultimately settle for new licensing regimes and some of the first paywalls (Eschenfelder, Desai, and Downey 2011, 78). Interestingly, although the "controversy" involved legal aspects it did not draw much interest from legal scholars but instead marked the entry into piracy literature of education and library studies (Jansen 1984; Gray 1985), for which institutional copyright policy became a major concern (Green and Gilbert 1987; Crow 1989).

By this time, a number of industries had developed around computer hardware and different kinds of computer software, e.g., databases and security. In this sense, business had

always been engaged with piracy, mostly combatting it, but by the late 1980s it began to draw the concern of a growing literature centered in economics and business management. Although most of the seminal economics studies of piracy would not be published until the 1990s, some important early quantitative papers included Novos and Waldman's (1984) study of the negative effects of "free riders" (pirates) and, conversely, Benham and Wagner's (1987) critique of industry claims of lost revenue.

Outside of the courtroom, the decade also saw the first online spaces and the first malware. The earliest public online spaces were bulletin board systems (BBSs), so-named because their asynchronic messaging system was reminiscent of actual-world cork bulletin boards. BBSs were online servers remotely accessed by direct connection via telephone modem. Crocker published one of the first descriptions of BBSs that detailed not only connection instructions but also his experiences, recommending some "wholesome" ones, which he found "refreshing after visiting some of the other boards" (Crocker 1984, 35). Some of Crocker's *other* boards probably included pirate BBSs. Given the nature of development of the technological infrastructure for copying and downloading, coupled with the hacker ethos of free software and the apparent human penchant for trading things, it should come as no surprise that the earliest interactive online spaces were used for piracy. It is similarly unsurprising that this development attracted legal scholarship that analyzed the (many) new avenues for liability (Gilbert 1985; Soma, Smith, and Sprague 1985). These analyses depict BBSs as disreputable places, hangouts of hackers and phreakers (Soma, Smith, and Sprague 1985, 572), and claimed that BBS-based piracy was a $1.5 billion (USD) problem by 1987 (Beall 1987, 502).

The 1980s also saw the creation of malware (malicious software). Computer scientists had previously theorized self-replicating programs (von Neumann and Burks 1947) but computer

worms and viruses had remained the stuff of science fiction (e.g., Benford 1970; Brunner 1975)

until being created over the course of a series of experiments in the 1970s and early 1980s, as

demonstrated by Shoch and Hupp (1982). Publishing a regular column in *Scientific American*,

Dewdney introduced malware to a non-computer-science public (Dewdney 1984; 1985; 1989).

In his first column he described the origin of viruses through a legend about the early ARPANET

experiments "Creeper" and "Reaper," hinting at what folklorists call *ostension* (Dégh and

Vázsonyi 1983):

> In spite of fairly obvious holes in the story, I believed it, perhaps because I wanted
> to. It took some time to track down the real events that lay behind this item of
> folklore. (I shall give an account of them below.) For now it is sufficient to note
> that my desire to believe rested squarely on the intriguing idea of two programs
> doing battle in the dark and noiseless corridors of core. Last year I decided that
> even if the story turned out not to be true, something like it could be made to happen
> (Dewdney 1984, 14).

Cohen's 1986 PhD dissertation, "Computer Viruses," was the first in-depth study of malware

"infections" and "viral attacks" (Cohen 1986, 12). As discussed in Chapter 4, malware became

conceptually (and, in some cases, structurally) entangled with piracy very early and was

weaponized as anti-piracy strategy (Marshall 1988, 133). As early as 1984, computer security

companies were designing "booby-trap[s] to punish those who made illicit copies"—or at least

were rumoured to be (Howitt 1984, 45). Vault Corp. announced that the latest version of its

Prolok lock-out software would include a disk-erasing worm that could be triggered by

unauthorized duplication, while Defendisk packaged a worm with a logic bomb, boasting "Our

booby traps will make Vietnam look like a birthday party" (Howitt 1984, 45; Manes 1986).

Neither worm-enhanced retributive business model came to fruition and Defendisk actually

collapsed later that year, as summarized in *Klein v. Grynberg (1995)*. These hyperbolic responses

to unauthorized copying point to underlying anxieties about piracy. As the first malware

"epidemics" hit in the late 1980s, viruses began to attract scholarly attention outside of computer science (Elmer-Dewitt, 1988a; 1988b; Marshall 1988; Highland 1997; Rheingold 1988). Marion (1989) was one of the first legal studies of computer crime that focused on malware itself and how it worked.

The 1980s also saw the emergence of a pirate aesthetic. In 1981, *BYTE* published a special issue on software piracy, offering rundowns on legislative lobbying efforts (Becker 1981; Kern 1981) and featuring a striking cover design depicting a Viking longship with a floppy disk for a sail (fig. 1.6). The relationship between Vikings and pirates was made explicit by a description on page four, which asked the reader, "Did you know that the Vikings were notorious pirates?" before noting that pirates were "underhanded" and "unscrupulous" (BYTE 1981, 4). While the connection between maritime and media piracies was not new, this is one of the earliest depictions of said connection in the particular context of *digital* media piracy. It also ushered in an iconographic tradition of mixing hi-tech and maritime motifs, the anachronistic juxtaposition of which creates a semiotic tension that drives its rhetorical and emotional appeal. This tradition was initially created, like the metaphor of piracy itself, as a rhetorical device *against* file-sharers, yet was appropriated by the so-called pirates and ultimately formed for them an aesthetics of piracy, which can be seen in the iconography of The Pirate Bay logo (fig. 1.7).

1.2.4 The 1990s

The 1990s was marked by a significant expansion in piracy literature, likely influenced by the launch of the first commercial Internet service providers (ISPs) in 1989 and the World Wide Web in 1991. Where studies in the 1980s can be considered a series of "firsts," in the following decade there is a noticeable shift in the literature as more research began to investigate

the *why* of piracy. In copyright law, the concern with infringing foreign competition resulted in increased calls for an international system of copyright (Kang 1990; Miyashita 1991; Weisband and Goodman 1992). Copyright has always been a matter of national jurisdiction and has proven resistant to internationalization efforts dating back to the 1886 Berne Convention and continuing today in multilateral treaties administered by the World Intellectual Property Organization (WIPO). An alternate camp argued that existing copyright systems were flexible enough to adapt to these new technological challenges (Ginsburg 1994; Fraser 1997). Legal scholars were also increasingly concerned by the legal implications of malware and computer crime more generally, especially given the socio-legal debate that emerged over the morality of hacking in the wake of the 1990 conviction of Robert Morris under the new Computer Fraud and Abuse Act (1986) in the U.S. (Nelson 1990).[8] Scholarship at the end of the decade was dominated by two more U.S. laws, the No Electronic Theft Act (1997), which expanded criminalization of infringement (Goldman 2003), and the Digital Millennium Copyright Act of 1998, an update to U.S. copyright law that codified controversial "digital lock" provisions (Samuelson 1999).

Emerging at the intersection of computer science and business, information management scholars were some of the first to attempt to study pirate motivation (Simpson, Banerjee, and Simpson 1994) and demography (Solomon and O'Brien 1990; Wong 1990; Himmel 1996; Rahim, Seyal, and Rahman 1999). This represented a significant shift in how piracy and pirates were viewed. Although corporate commercial piracy remained a driving force behind legislation, this shift increasingly viewed "the pirate" as an individual end-user, both agentive and liable. Part of this meant studying individual beliefs about ethics and morality, which largely involved

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[8] Morris had released a worm in 1988 and became the first person charged under the Act. Although the Act has always been controversial due to its broad scope and arguably strong penalties, Morris was sentenced to probation and a fine, avoiding a potential five-year prison sentence.

quantitative approaches using data gathered from university students as proxies for pirates (Solomon 1990; Wong 1990; Im and Van Epps 1991; Al-Jabri and Abdul-Gader 1997). The increasing sociological scope also led to overlap with criminology (Gopal and Sanders 1997; 1998; Skinner and Fream 1997). It was in this period that the *Journal of Business Ethics* became one of the central journals for these types of piracy studies, publishing seminal articles such as Swinyard, Rinne, and Kau (1990), which demonstrated a cultural aspect to morality—an unsurprising conclusion for culture-oriented disciplines, such as folkloristics and anthropology, yet these disciplines were themselves only just beginning to consider digital culture at all (e.g., Dorst 1990; Escobar et al. 1994; Correll 1995).

Although hidden from the literature, piracy had grown alongside consumer computer and Internet adoption. Piracy had initially involved physical media, such as floppy disks, but spread to BBSs and later to FTP servers. The notable public anti-piracy campaign of the 1990s, "Don't Copy That Floppy," launched by the Software Publishers Association (SPA) in 1992 focused on physical disk trading and consisted of a ten-minute rap video (see Vilardi 1992). By the late 1980s, the Warez Scene had emerged as a network of organized cracking groups that only further grew throughout the 1990s (McCandless 1997). In 1999, the peer-to-peer (P2P) file-sharing application Napster was released, and it, along with its subsequent shutdown, brought piracy firmly into popular consciousness and led to a veritable explosion of literature over the next decade.

1.2.5 The 2000s

The new millennium began mired in litigation and alternating between hope for and fear of computer technologies. Although the apocalypse prophesied by the Y2K panic failed to

materialize, the underlying sociocultural anxieties about technology and power fueled a new moral panic about hacking and piracy. At the same time, the Dot-com Bubble had burst, casting doubt on the commercialization of the growing Internet. As the "irrational exuberance" (Greenspan 1996) of the 1990s Information Superhighway era ended, in its place emerged a new kind of techno-utopianism based around the idea of virtual communities (Rheingold 2003).

In 2000, the now-infamous "Eisner Memo," written by former Disney CEO Michael Eisner, was leaked to the public. It detailed the media giant's strategies—and anxieties—about piracy and rhetorically tied piracy to violence, stating: "There's just no way around it—theft is theft, whether it is enabled by a handgun or a computer keyboard" (Eisner 2000). Although the conflation was not new, it represented a new breed of organized and aggressive anti-piracy strategies. Public campaigns by industry trade groups continued unabated with the "Piracy. It's a Crime" video (popularly known as, "You Wouldn't Steal a Car") produced by the Federation Against Copyright Theft (FACT) and the Motion Picture Industry of America (MPAA) (see FACT 2004). Like previous campaigns, it too was popularly parodied (Van der Sar 2021a; Gault 2022). In previous decades, the software industry had emphasized government lobbying for legislative change, demonstrated by the various copyright and computer crime laws passed in multiple countries since the 1980s. Litigation was largely confined to inter-corporate infringement claims, such as *Apple Computer, Inc. v. Franklin Computer Corp. (1983)*. The 2000s saw litigation expand with the introduction of a deterrence strategy: aggressive lawsuits and criminal complaints from trade groups targeting individual downloaders as well as infrastructure, including Scene groups and torrent trackers (Morris 2008, 283).

A&M Records, Inc. v. Napster, Inc. (2001) was a landmark case in the U.S., notable for being the first major file-sharing lawsuit. Napster was a software application released in 1999 by

Napster, Inc. One of the first widely popularized P2P file-sharing applications, Napster enabled

users to publicly share their media libraries with each other. Napster, Inc., was sued almost

immediately by a group of Recording Industry Association of America (RIAA) members and, as

result, shut down in 2001. As Patry has argued, it was designed to preserve existing business

models and have a chilling effect on P2P piracy (Patry 2009, 2). Yet, Napster was followed by a

series of P2P applications, including Morpheus, Grokster, BearShare, KaZaA, LimeWire, to

name just a few. Each ultimately shut down in the face of legal action. *Capitol Records, Inc. v.*

Thomas-Rasset (2007) was filed by the RIAA against an individual user, Thomas-Rasset,

alleging the use of KaZaA to share twenty-four copyrighted songs. The case dragged on for a

decade and bankrupted Thomas-Rasset. It was notable for being the first high profile lawsuit

against an individual file-sharer, although Thomas-Rasset, a natural resources coordinator at the

Mille Lacs Ojibwe Nation and mother of four, did not exactly conform to the pirate stereotypes

described in "Piracy. It's a Crime."

The BitTorrent protocol was released in 2001, enabling a new method of decentralized

file-sharing (discussed in greater depth in Chapter 2). Suprnova, one of the first torrent trackers

to use the new protocol, was online by 2002, and torrenting became one of the most popular and

enduring forms of piracy by the end of the decade. Torrent trackers, like Suprnova, The Pirate

Bay, and KAT, all faced legal action and seizing and shutting down these sites became the game

of whack-a-mole described above. Parallel to these, largely civil, legal actions, was a strategy of

criminal complaints prompting law enforcement action against not only downloaders but also

producers. Over the decade, Scene cracking groups were directly targeted by large-multi-agency

joint law enforcement operations, such as Operation Buccaneer and Operation Fastlink, the latter

of which arrested members of the group FairLight (Goldman 2003, 386; Department of Justice

2005). Some cracking groups, like Pirates with Attitude, one of the oldest groups from the BBS era, were wiped out entirely (Department of Justice 2000; *United States v. Rothberg et al. (2001)*).

Law literature was occupied with analyses of the DMCA and similar laws, either calling for yet further expansion (Morris 2008; Szuskin, de Ruyter, and Doucleff 2009) or critical of encroachment on user rights and the public domain (Litman 2000; 2001; 2003; Bowrey and Rimmer 2002; Herman 2008; Pyun 2009). Law scholars also wrestled with a proliferation of warez sites, torrent trackers, and the increasing potential for a pyrrhic victory playing piracy whack-a-mole (Ginsburg 2000, 10). This decade also saw renewed discussions of an international copyright regime (Austin 2006; Kopczynski 2007; Strowel 2009). Katz (2005) argued that rather than combatting piracy, the entertainment industry was in fact beginning to use it as a content dissemination business model. Goldman (2003) offered one of the most in-depth discussions of Scene piracy and case law that remains valuable to this day and was one of the first scholars to include direct quotes from alleged pirates, although he sourced them from existing popular interviews.

Beyond law, piracy literature in the 2000s continued its rapid growth in the disciplines of economics, criminology, sociology, media studies, and the emerging interdisciplinary Internet studies field. Economics research in particular dominated the literature with quantitative studies examining piracy's economic impact (Haruvy, Mahajan, and Prasad 2004; Zentner 2006; De Vany and Walls 2007), often using regional case studies (Samtani et al. 2001; Kini et al. 2004; Moores and Dhaliwal 2004), and otherwise attempting to isolate various factors that influenced individuals towards piracy (Becker and Clement 2006; Bezman and Depken 2006; Goel and Nelson 2009; Yang et al. 2009), including culture (Husted 2000; Moores 2008), ethics (Gupta,

Gould, and Pola 2004; d'Astous, Colbert, and Montpetit 2005; Zamoon and Curley 2008), and income (Andrés 2006). Oberholzer-Gee and Strumpf's study of the effect of piracy on record sales, finding piracy has no statistically significant effect, has become a much-cited critique of industry claims of losses (Oberholzer-Gee and Strumpf 2007, 38).

Often aligning with the same research questions as economists (at least when it came to piracy), criminologists became interested in determining the factors that influenced people to become pirates (Hindjua 2001; Gunter 2009; Higgins et al. 2009), especially focusing on motivation and self-control (Higgins 2004; Higgins and Makins 2004; Malin and Fowers 2009), gender (Higgins 2006) and anonymity (Hindjua 2008). Although criminology can be methodologically interdisciplinary, the majority of the work on piracy was quantitative, with some notable exceptions (e.g., Fisk 2009). While qualitative researchers, such as ethnographers, including folklorists (e.g., Howard 2017), have found themselves turning to quantitative analyses and data science methods in order to grapple with the volume of data in virtual ethnography, the reverse has rarely been true but perhaps should be. Much of the criminological literature on piracy is predicated on *a priori* assumptions about culture, identity, and belief that could benefit from an ethnographic understanding.

As sociologists became interested in piracy, they brought a mix of quantitative methods (Rutter and Bryce 2008) alongside qualitative studies, such as ethnography (Whelan 2008). Marshall (2002) contextualized the rhetoric used in *Napster* discourse within the Romantic politics of copyright history, while Neely (2007) argued for piracy as an expression of Gramscian counter-hegemony. This emphasis on cultural studies was paralleled by media studies scholars, who critiqued the "myths" of anti-piracy discourse (Yar 2008), theorized piracy as a media culture (Sundaram 2004) that needed to be reframed as participatory culture rather than

criminal regime (Apperley 2007), and critiqued the abuse of copyright and DRM as a means of controlling culture (Gillespie 2007) as well as investigating the motivations of early DRM circumvention tools (Eschenfelder, Howard, and Desai 2005). These critiques also considered the philosophical basis of cultural property, such as Rodman and Vanderdonckt's argument that the equation of piracy with theft "is based on the flawed assumption that culture is a privately owned, commerce-driven phenomenon, rather than something ordinary, ubiquitous, and shared in common. It's a philosophy that denies us the right to make use of the most prevalent aspects of our surrounding environment in anything but the most narrowly circumscribed ways" (Rodman and Vanderonckt 2006, 259).

In an early Internet studies collection, Tetzlaff's discussion of a Warez network is one of the first ethnographic-like accounts of piracy (Tetzlaff 2000). Tetzlaff found the Scene's bartering-based relations a "more personal" type of piracy, distinguishing it from profit-driven counterfeiters (2000, 103), even going so far as to distinguish between "hackers, crackers, pirates, and the warez elite" (2000, 106). Although there was no fieldwork component, Tetzlaff theorized piracy with a granularity and "true skepticism" (Hufford 1987) uncommon in the literature; yet, due to the siloed nature of the literature, Tetzlaff's work was not recognized much beyond cultural studies and media studies circles. This raises a broader (and worsening) problem, the lack of interdisciplinarity in what should be a very interdisciplinary topic. The role is to some extent filled by the field of Internet studies, which draws on various fields, exemplified perhaps by Logie's social history of copyright law (Logie 2006), but disciplinary boundaries remain strong. This has led to each discipline re-inventing the wheel.

The end of the early 2000s saw a significant increase in social and cultural studies of piracy, and, notably, research that was if not sympathetic then leaning towards neutral (cf.

Hufford 1987) and interested in interpretation and nuance rather than explanation and solution. This was perhaps best exemplified by Patry's argument that piracy as a metaphor for file-sharing was a rhetorical strategy designed to create (or prolong) a moral panic (Patry 2009), and by Johns' sweeping socio-political history of piracy, contextualizing digital media pirates within a creative tradition of copying reaching back to the 17th century (Johns 2009).

1.2.6 The 2010s

The dramatic increase in the sheer volume of scholarship on piracy continued through the 2010s. Despite the decade allegedly witnessing the decline of the practice brought about by a combination of litigation and enforcement, DRM, and the rise of streaming services, piracy not only survived but arguably thrived (Burkart 2010, 15). That is not to say that the piracy landscape remained unchanged; the end of the Napster P2P era and the cat-and-mouse games between torrent trackers and law enforcement changed where and how pirates interacted. As an underground vernacular tradition, piracy has a dynamic relationship with popular culture (Narváez and Laba 1986; Peck and Blank 2020) and although it is never far from popular discourse, it goes in and out of the immediacy of popular consciousness. Similar to the popularity of Napster in the early years of the last decade, torrenting in the 2010s became headline news with the widespread piracy of the HBO television series, *Game of Thrones* (2011). *Game of Thrones* regularly topped "most pirated media" lists and "broke piracy records" (Sweney 2014; Van der Sar 2015b), which were not something that had been previously recorded, at least by respectable outlets. Through being used as an index for popularity, piracy discourse has become standard fare in news media (e.g., Gibbs 2015; Aquilina 2023) and attracted scholars' interest (MacNeil 2017).

While difficult (and problematic) to estimate, the scope of piracy is extensive, suggesting that pirates number in the millions at least, depending on how one defines a pirate. If anyone who torrented even a single episode of *Game of Thrones* can be considered a pirate, then the extent of the scope of piracy starts to become clear when we consider that the torrent for the show's season five finale recorded over 14 million downloads (Van der Sar 2015c). The sheer scale of infringement presents government and industry with a socio-juridical problem of people not obeying laws they do not believe in, and a practical problem of enforcement. Torrent trackers and pirate streaming sites continued to be taken down by national law enforcement, including Demonoid, isoHunt, and Kickass Torrents, often at the behest of industry trade groups. Although civil litigation against individual users remained a threat for pirates, industry strategy shifted away from high-profile deterrence cases to focus on infrastructure, demonstrated by lawsuits targeting ISPs (Van der Sar 2018), CDNs (Van der Sar 2021b), and VPNs (Sharma 2022).

This socio-legal turbulence is reflected in the law literature throughout the 2010s, with law scholars advocating for stronger copyright laws (Price 2011) or critiquing the continuing erosion and commodification of the public domain (Jones 2010; David and Halbert 2014) and trying to reconcile it with regulation (Filby 2012; Okidegbe 2014), or suggesting a reframing of copyright around users' rights (Litman 2011; Meese 2018). This coincided with a low-level moral panic over the so-called Dark Web, with piracy often being lumped in together with organized crime and dark markets (Wood 2010; Glenny 2011; cf. Siuda et al. 2022). However, Litman (2011) described a shift in the literature away from a maximalist stance, which is borne out by pro-user arguments, such as Karunaratne's (2012) study of mass lawsuits and Sag and Haskell's (2018) critique of copyright trolls.

In addition to law, piracy literature in the 2010s saw increasing interest from anthropology but was otherwise dominated by media studies and business and economics. Economics literature continued to build on previous decades but its scopes and understandings remained unchanged. Typically characterizing piracy as a problem to "fight" (Al-Rafee et al. 2010; Andrés and Asongu 2013; Elton 2014), many studies continued to look for underlying social or economic factors that caused someone to become a pirate (Nill et al. 2010; Ho and Weinberg 2011; Moores and Esichaikul 2011; Tang et al. 2014; Gomes et al. 2015), including software bundling (Gopal and Gupta 2010), cynicism (Woolley 2010), corruption (Andrés and Goel 2011) and morality (Arli et al. 2014). Conversely, economists were also concerned with the (economic) effects of piracy (Andrés and Goel 2012; Rasch and Wenzel 2015) and investigated the size of the pirate "shadow" economy (Goel and Nelson 2012). However, a growing minority embraced a critical approach (Herings, Peeters, and Yang 2018; Lee 2018), including questioning the efficacy of anti-piracy measures, such as DRM (Vernik et al. 2011) and "three-strikes" punitive policies (McKenzie 2017).

Similarly, criminological research either continued the now-traditional search for causes and influences (Gunter, Higgins, and Gealt 2010; Morris and Higgins 2010; Marcum et al. 2011; Burruss et al. 2012; Piquero and Piquero 2016) or adopted new approaches and more qualitative research methods. In a detailed study relying on vernacular texts produced by Scene members, Basamanowicz and Bouchard (2011) proposed a policy guide for disrupting warez operations. Through a literature survey combining quantitative and qualitative approaches, Décary-Hétu, Morselli, and Leman-Langois (2012) offered a similarly in-depth discussion of the Scene, focused on its social organization.

There was also increased interest in histories of piracy as ways of interpreting contemporary pirate identities, including the "pre-Internet downloading controversy" (Eschenfelder et al. 2011), computer code broadcasting (Skågeby 2015), the "home-taping crisis" (Bottomley 2015), the Demoscene (Alberts and Odenziel 2014), and the BBS scene (Delwiche 2018).

Media studies (along with communication studies and cultural studies more broadly), constituted the bulk of 2010s literature, mostly using discourse analysis and critical theory (Bender 2011; Dahlberg 2011; Andersson 2012a; Guidi 2012; Lindgren 2013; Mueller 2019). During the early 2010s, piracy became, for a time, a central theme in media studies (Fredriksson and Arvanitakis 2014). Caraway (2012) found that the label "pirate" obscured the practice's complex social dimensions and called for more nuanced treatment and in a similar vein, Lewis (2015) argued that "mainstream arguments against and for intellectual property define pirates before pirates are able to define themselves" (Lewis 2015, 45). Lindgren and Lundström (2011) positioned pirates as a culture and site for political mobilization, while Spilker and Højer (2013) described the "technologies of piracy" that created and mobilized pirates. Andersson (2012b) and Jewitt and Yar (2013) discussed piracy as an everyday practice, and Lobato and Tang (2013) emphasized the anxieties created by it. De Kosnik (2012) and Tenen and Foxman (2014) considered the practice through the lens of collecting and preservation, aligning with some of my participants' motivations I encountered at KAT, particularly a form of what I consider "vernacular archivism."

Although late to the game, anthropologists also contributed critical approaches to piracy culture and practice. Anthropology had been interested in virtual culture since the 1990s (e.g., Escobar et al. 1994), and although there were some analog antecedents (Jamieson 1999) and

work from related disciplines such as ethnomusicology (Burkart 2010; Stobart 2010), Dawdy's article, "Why Pirates Are Back" (2011), represented a significant addition to the literature. Connecting maritime piracy to contemporary file-sharing, Dawdy's view of piracy as a challenge to neoliberal order was further theorized in Dawdy and Bonni (2012), arguing that pirates are organized social bandits—outlaw folk heroes—whose "pirate heterotopias" reveal and resist the contradictions in neoliberal capitalism. Dent (2012a) argued that piracy is used by neoliberal property regimes to define themselves and claim moral "circulatory legitimacy" and cited the urgent need for "an anthropology of piracy" (Dent 2012b). Drawing on both Dawdy and Dent, Ashley (2015) found piracy an expression of subjectivity in instances of fraught citizen-state relations yet also a cultural and material infrastructure for social change. Most recently, Dent has argued for piracy's role in a dialogic discourse with copyright that enables apparati of policing and control,

> This IP–piracy dialogic profoundly shapes the media ecologies in which we all operate, shifting the dynamics of who is authorized to speak or to listen and the channels available for both creation and consumption. Finally, understanding this dialogue explains why much of the globe experiences IP not as some liberating tool for the production and reception of texts, but rather as a set of complex, shifting, and frequently capricious interdictions on their creation and use (Dent 2016, 20).

Although anthropology's contribution to the literature is minor in scale compared with economics or law, I have found it fundamental to shaping my analysis of piracy at KAT.

In reviewing the broader scholarship, a considerable amount of time (and probably funding) was spent trying to explain piracy rather than describe or interpret it. Framing piracy as something to be "fought" invokes a problematic maritime history of *hostis humani generis*, as described in Chapter 3. Framing it as something to be "solved" or "explained" often results in being "explained away," to the *a priori* exclusion of other possibilities (Hufford 1987). Quantitative studies relying on student samples might isolate individual variables but miss the

interconnections of practice embedded in place. Conspicuously absent in much of the literature are the voices of pirates, reflecting a decades-long engagement with piracy without actually talking to any pirates. This is a similarity shared with maritime pirate historiography. As Rediker notes, pirates left little behind and the only time we hear their voices is during pirate trials (Rediker 2004, 10). The 2009 trial of The Pirate Bay founders offers an eerie similarity. Chapter 2 adds a discussion of virtual ethnography, which allows for the blend of critical theory with the cultural immersion of participant observation necessary for developing an interpretation of piracy as a practice. Folkloristics, with its focus on vernacular expressive culture, is well-placed to offer theoretical and methodological insight into this digital tradition.

1.3 Folklore, Copyright, and the Internet

Missing from the literature on digital piracy is folkloristics. Maritime pirates occasionally appear in folkloristic literature, mostly in ballad collecting (Barry 1905; McIntosh 1935; Baer 1995) and legend studies (Horsford 1899; Suplee 1918; Bonner 1944; 1946; Halpert 1957), or they are discussed as motifs in treasure narratives (Coldwell 1977; Lindow 1982; Rose 2009), yet no substantive definition or theory has been attempted. My previous work (Staple 2019) remains the sole folkloristic work on digital media piracy. I suspect there are several reasons for this, including the discipline's historical focus on orality and more recent support of intangible cultural heritage (ICH) policy frameworks.

Questions of the relations between folkloristics and mass media arrive bundled with implications that inquire about the fundamental nature of the general category we named "technology." From performance studies, we know that performance is situational and changes based on context of performer and audience. Following from McLuhan's (1964) and Postman's

(1985) theories of media ecology, we know that the media used to deliver a message in turn influence the form and content of the message. Bausinger (1961[1990]) argued that new technologies did not spell the end of the folk, who in fact adapted to not only create folklore about those technologies but indeed used them to further the transmission of existing folklore. Preston (1974) and Dundes and Pagter (1975) claimed a new genre of folklore—copylore—based in technological mediation and reproduction. Decades of copylore collecting firmly established the possibilities for the existence of folklore outside of the confines of orality (Bell and Forbes 1994; Roemer 1994; Hatch and Jones 1997). This expanded view of media was concomitant with the disciplinary paradigm shift from older 19th century antiquarian and Romantic Nationalist conceptions of "the folk" and folklore as inherently rural phenomena to a broader lens of vernacular culture and expression (Dorson 1970; Ben-Amos 1971). Folklorists have since explored a variety of mass media and reproductive technologies means for the transmission of folklore (Denby 1971; Bird 1976; Smith 1985; Dégh 1994), from print (Smith 1981), to radio (Clements 1974; Hiscock 1986; Lovelace 1986; Narváez 1986), to film (Koven 2003; Sherman and Koven 2007; Greenhill and Matrix 2010) and television (Dégh 1994; Greenhill and Rudy 2014), all of which operate within a "folklore-popular culture continuum" (Narváez and Laba 1986).

This trend has continued with a considerable and exponentially growing literature on folkloristic interest with digital technology, dating back to Dundes (1965) and Beatty (1976). Smith's (1991) study of jokes circulating on early computer networks is notable for its prescient thoughts about the digital conflation of producers and consumer and his suggestion that, "the reality of the 1980s is that tradition-bearers and computer users are often one in the same" (Smith 1991, 258). Although Blank's edited collections (2009; 2012) substantively contribute to the

literature, of which Peck and Blank (2020) is the most recent, there has been no cohesive "theory and methods" handbook; many works are concerned with folklore or fieldsites that are *on* the Internet but not necessarily *about* the Internet. This is discussed further in Chapter 2, which describes the discipline's engagement with the Internet in greater depth.

Similarly, Chapter 3 describes the history of copyright law, but I think it is useful to first locate the relationship between folklore and copyright. Insofar as folklorists have approached law, the focus has predominantly been on folk law (Renteln and Dundes 1994). This is likely due to the officiality of codified, statutory law. The study of folk law can reveal through opposition sociocultural incongruities not addressed by official legal systems. Although folk law has undoubtedly been influenced by official law, it hints at a common heritage between folkloristics and legal studies. Common law, which developed from what lawyers call "customary law," is ultimately related to historical folk custom. Brunvand suggested a subgenre of contemporary legend, called "law legends" (2012, 364). Though the name implies "legends about the law," the subgenre seems to be concerned with legends about lawyers, courts, and the legal system (Galanter 1998). Bolton listed a series of a what he called "traditional misconceptions of the law," which appeared to be folk beliefs or rumours about things that were or were not legal in various jurisdictions (Bolton 1901). Although Bolton's approach to his collection, and "the folk" more broadly, was typical of early 20th century folkloristics, if the genre of "traditional misconceptions" of statutes could be rehabilitated and developed, it may offer a compelling lens through which to interpret folklore about the law.

In the context of copyright law, what little has been said by folklorists has largely been within a paradigm of preservation versus exploitation. The 1960s saw a debate over folksong collecting and whether copyright was a necessary tool for preserving traditional music in a

modern capitalist economy (Karpeles 1963; Meade 1971), including whether copyrighting informants' songs was an inherently exploitative practice (Legman 1962; Seeger 1962). The debate presented a legal and ethical dilemma and highlighted friction between the fundamental processes of folklore—tradition and variation—and copyright, itself a product of liberal capitalism, particularly the romanticized classical liberal concepts of "original works" and "individual genius." As discussed above, copyright is a philosophical-*cum*-legal compromise between the rights of the creators and publishers and those of the public, specifically the public good done when a creation is added to the public domain. Such an act is considered to enrich our common culture. Restricting this process ultimately balances the benefit to creators against the public good, but such restriction has been deemed necessary in order to create incentive for further creation. That is, copyright recognizes that culture without creators cannot exist but neither can nor should their complete power over their creations be eternal and unending. So, copyright confers a temporary economic monopoly over making copies.

The debate has, to some extent, been revived in recent decades in relation to UNESCO and WIPO initiatives regarding folklore and "intellectual property" (Springer 2007). Through the 1980s and into the 2000s, folklore and copyright were at the forefront of the emerging awareness of, and political will towards, preserving intangible cultural heritage (ICH), which culminated in the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage and the 2004 WIPO Geneva Declaration on the Future of the World Intellectual Property Organization (Gavrilov 1984; Honko 2001). As the Legman debate shows, folklorists have long used legal and bureaucratic systems, such as copyright, as tools for protection of expressive culture. However, this ad-hoc approach changed beginning in the 1980s with increased UNESCO interest in cultural heritage policies. The 1989 UNESCO Recommendation on the Safeguarding of

Traditional Culture and Folklore rendered folklore in an official capacity, literally defining it, although it was not necessarily aligned with folkloristics. The 2003 Convention for the Safeguarding of the Intangible Cultural Heritage broadened the focus on folklore to "intangible culture." Since this "ICH Turn," the law seems to have been considered positively as a tool for protecting folk and indigenous expressive culture, although not all folklorists have agreed (Hafstein 2004; 2014; Rikoon 2004; Sherman 2008).

Within the framework of ICH, copyright has a protective role: it provides a legal injunctive remedy against unauthorized exploitation. Folklorists and anthropologists have leveraged copyright to protect, for example, indigenous traditional designs against commercial exploitation (e.g., Seeger 1992; Brown 2003; Berman 2004; 2012). However, copyright is also a fundamentally commodifying force. Viewed from a different perspective, copyright restricts use and access and can be distorted to benefit only rightsholders instead of creators or the public. It is essentially trying to solve the problem of enclosure with more enclosure; building fences to preserve your land from being enclosed by someone else's fences. Within an intellectual property paradigm, this is a reasonable and beneficial strategy. But instead of pulling down fences, we are left with more of them.

Given the discipline's focus on creativity and vernacular reproduction and transmission, it is surprising that folklorists have not had more to say about copyright, the public domain, and enclosing the commons. Folklore's ambiguous relationship with copyright stems from the latter's Enlightenment-era criteria of originality, authenticity, and individual authorship. Haase made the case for "individual ownership" of folk narratives, but although he discussed Disney and copyright, his idea of ownership was something more akin to empowerment (Haase 1993). Hafstein found that folklore has always been excluded from copyright regimes, which has meant

that "traditional expressions and knowledge remain unprotected in a commons that is under siege and giving way to the constant expansion of the private ownership of culture" (Hafstein 2004, 308). McCann showed a similar concern about the commodification of "traditional" Irish tunes:

> If the continued commodification of Irish traditional music is allowed to go unchecked, or is even allowed the force of law through the imposition of intellectual property and neighboring rights upon amateur and inherently non-commodified musicking contexts, then a very precious, and ultimately humanizing domain of gift will be diminished (McCann 2001, 97).

Both McCann and Hafstein speak to a paradox where on the one hand copyright can be used to protect folklore, and on the other, to exploit it. Hafstein argued that folklore is historically and conceptually intertwined with copyright, with the public domain, and goes so far as to claim that folklore—at least the modern(ist) conception of it—was created through the formation of authorship and copyright (Hafstein 2014, 22). The politics of those origins have bounded historical interpretations of folklore and continue to do so in the present. He suggested that,

> In an age of file sharing and peer-to-peer networking, of social software and web 2.0, of mash-ups and remixes, we need a new language to speak of creative agency […] We need an alternative grammar of creativity and a renewed understanding of how cultural expressions circulate (Hafstein 2014, 36).

Thompson's work on mashups (2011) and fan fiction (2020) locates vernacular creative expression in the interstices of copyright in the digital age. With the blurring of lines between production and consumption, users' impulses toward creative copying run afoul of copyright laws. Thompson says that "the newly emerging forms on the Internet, often branded illegal and "outlaw art," are new forms of folklore for the twenty-first century" (Thompson 2011, 187). These newly emerged forms, e.g., fan fiction, "invert the process of authorial control, instituting a vernacular authority that shapes guidelines for creative copying and further storytelling. It is in many ways a genre for our times: blurring the legal, political configurations of modernity and postmodernity" (Thompson 2020, 175).

As Thompson noted, much vernacular digital culture is illegal. Or at least illicit. Although copyright laws are increasingly becoming standardized, they are, for now, a patchwork. What is illegal in one country might only be illicit in another. There is not a substantial folkloristic literature on either copyright or illegality (Bodner 2019) but folklorists will be increasingly confronted with these issues as more and more folklore is produced and shared using digital technologies. As detailed in the following chapter summaries, this dissertation begins to address these knowledge gaps.

1.4 Chapter Summaries

Chapter 2 offers an ethnographic description of Kickass Torrents and details the methodological considerations that shaped my virtual fieldwork experiences. This dissertation was not supposed to be about KAT at all; instead, the present work is the result of improvisation as planned fieldsites were shut down by law enforcement agencies and promising participant networks went underground. Shutdowns and suspicion of outsiders are part of every pirate's lived experience. When I arrived, KAT was a flourishing community—and, I argue, a folk group—with an active and growing dedicated userbase whose daily social interaction produced vernacular expressive culture and an on-going discursive assemblage of identity, all under the shadow of and firmly rooted in illegality. More than the sum of its parts, KAT was more than just the torrents. Being a Katian was a step beyond identifying as a pirate, it meant to be part of—to belong to—something meaningful. At least for a time anyway. Like most pirate sites, KAT was forcibly shut down, which happened during my fieldwork and led to more methodological questions of preservation and representation.

Seeking to understand the pirate identities I found at KAT, Chapter 3 examines the origins and politics of the term "piracy," tracing its use from ancient maritime robbery to its entanglement with the history of printing and copyright law. Pirates and piracy have always been a political Other. They are invariably the enemies of the dominant group, defined in opposition. Pirates find a voice through counter-hegemonic transgression. When maritime pirates offered an alternative to emerging nation-states and capitalism, they were branded *hostis humani generis* ("enemies of the human race"). The hyperbole fit well with the rhetoric of a nascent publishing industry in the late 17th century in a debate over the nature of intellectual "property" that culminated in the first copyright law, the Statue of Anne (1710). Drawing on a corpus of copyright historians and lawyers, I show how early modern values and ideologies were baked into the foundation of copyright and their legacy shapes piracy discourse today.

The ideas of early modern "romantic liberalism" woven into the fabric of copyright stem from deep sociocultural anxieties of about mass production and what it means for concepts of authenticity and originality (Rose 1988). Chapter 4 traces these anxieties to discourses about industrialization and enclosure, focusing on histories of folk and popular resistance. Connecting these movements to piracy via outlaw folk hero theory, I theorize piracy as a vernacular tradition of resistance via folk appropriation and the (re)production of "pirated versions" as a kind of folk variant of commercial media. Whether intentional or not, these pirated versions are creating a virtual "pirate commons" that offers access to all, albeit illegally. This new commons is an ad hoc work of *bricolage* in which pirates act as *bricoleurs* by appropriating found commodities and subverting and transforming their meanings and use within their own symbolic ensemble (Hebdige 2002[1979], 104). Pirates, much like outlaw folk heroes before them, have developed their own vernacular ethics and moralities. Although this project has engaged with a variety of

disciplines and theory, folkloristics with its ethnographic methodology and theoretical emphasis on vernacular expressive culture offers the ideal toolkit with which to interpret piracy and pirate cultures.

Returning to KAT, Chapter 5 explores the social and folkloric fallout from the site's shutdown as Katians tried to pick up the pieces. KAT was shut down in a joint operation by the U.S. DHS and IRS following a multi-year undercover investigation. As of the time of writing, the alleged owner has jumped bail and is currently an international fugitive. It was a unique experience to be able to document the end of a fieldsite. I detail how Katians reacted to the shutdown through discourse and tradition, focusing on the "legendization" of the owner-turned-fugitive as a kind of outlaw folk hero, and the expressions of vernacular memorialization—and potential rebuilding—of the place they once called home.

Chapter 6 draws together the seemingly disparate threads of this dissertation's broad scope and winnows them into a summation of my arguments and thoughts about the future of piracy and copyright law. Pirates, whether maritime or digital, have never existed in a vacuum. Although the practice is quite heterogenous (and ethnography of it necessarily particularist), there are nevertheless some politics and themes that can be interpreted. Far from "enemies of the human race," pirates are not an alien Other; they are fundamentally interpretable. Piracy, and the need or motivation for it, changes with time and technology. Piracy speaks to the dangers of centralization, enclosure, and control of information, art, and culture; though transgression, it insists upon open and equal access. It is a reminder that some things should not be commodified or walled-off, that not everything should be property (Salemink and Eriksen 2023). Infringers, tortfeasors, and sometimes criminals, pirates are perhaps not the ideal virtuous spokespeople for the creation of a virtual commons, but it is nevertheless what they have built through a folk

tradition of appropriation. Like most legislation, copyright is at its best when it is a compromise, balancing the competing rights of parties acting in good faith. Those who would stop piracy need re-examine the politics baked into copyright history. A fair and balanced system is possible.

2. Kickass Torrents (KAT)

I approached my fieldsite with trepidation. This was to be my first contact with my informants: my introduction to their community. I felt it critical that it go flawlessly. There was too much riding on it. I tried not to think about what would happen if they rejected me. I would be back to square one—again. My previous fieldsite, Demonoid, the community I had planned for and written proposals about, had collapsed suddenly overnight. I tried to follow the pirates as they scattered, tracking rumour and gossip from site to site, as they made their ways to new, greener, and allegedly safer pastures. I was looking at one of those pastures now. I could not decide whether it looked like a forest—Sherwood Forest, to be exact—or a so-called "hive of scum and villainy."[9] I had heard it described as both. On the Internet, a techno-utopia and a cyber-nightmare are often two sides of the same coin. It is a matter of perspective and I was interested to know the perspectives of the denizens of Kickass Torrents.

I finally worked up the nerve to press the "send" button on the introductory email I had been sitting on for the last few days. In it, I had tried to come across as professional, but not *too* professional; friendly, but not so friendly that it could be interpreted as an FBI trap. Though the notion seemed far-fetched, the FBI had been recently busy shutting down file-sharing and media-streaming websites, and so-called digital "pirates" were never quite ready to banish the mildly-paranoid fear of infiltration by law enforcement agencies. In fact, such an incident had recently come to light in the high-profile Hector "Sabu" Monsegur case, in which FBI agents had "flipped" Monsegur in order to takedown LulzSec, a branch of the "hacktivist" collective

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[9] A line of dialogue uttered by Alec Guinness' character, Obi-Wan Kenobi, in *Star Wars* (1977) describing the infamous fictional city of Mos Eisley.

Anonymous (Coleman 2014).[10] Hoping to avoid such suspicion, my email was one of full-disclosure. I offered not only a description of my research project, but my real name and contact info. While this is standard fare in keeping with the Canadian Tri-Council's research ethics policy, I was also desperately hoping that my intended informants would not simply turn around and dox[11] me. This was the Internet, after all. Giving away private, personal information has never been the best idea. I justified the risk by figuring I was not really either noteworthy or offensive enough to be targeted. Besides, who ever heard of a folklorist asking permission to study online file-sharers? It was one of those things that was just too weird not to be true. So, I pressed "send" and waited for a reply.

One never came.

2.1 Becoming a Katian

As days turned into weeks I waited in vain for a reply from the administrators ("admins") of Kickass Torrents. I had assumed that, at worst, they might respond negatively with an email telling me to stay away from the website. The complete lack of acknowledgement was initially depressing and took me by surprise, though in retrospect perhaps it should not have; as I later realized, I had been confusing the admins with the community. I had approached the admins first because preliminary observation had revealed that they were active in the community and held positions of power. Kickass Torrents (KAT) had a hierarchical social structure. Registered KAT users were classed into an internal ranking system, complete with titles, such as "Super User"

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[10] The mild paranoia ultimately proved well-founded. Kickass Torrents was shut down on July 20, 2016 by DHS and it was revealed that undercover Homeland Security agents had indeed been slowly building a criminal complaint against the website and its owner.
[11] "Doxing" is a form of online attack in which a target's private information is made publicly available and often acted upon, with behaviour ranging from unsolicited pizzas and prank phone calls to death threats.

and "Elite Uploader." The titles served a practical function, such as being able trust uploads from a "Verified Uploader," as well as indicating prestige, experience, and social capital. Since the admins were incorporated into the ranking system, I initially thought it appropriate to see about gaining acceptance from them. While ethnographers are not necessarily bound to first approach community members "at the top," I had hoped that the admins might be interested enough in my project to support it. At the very least I felt they should be aware of my presence as a researcher in the community.

Taking the lack of response as indifference, I created an account as a registered user. I chose the username "TheFolklorist" because it seemed apt—and also because it was available—but I had gotten the idea from a user with the name "TheArchivist." Like many forum-based groups, KAT accounts came with the ubiquitous online "profile": information fields for users to fill out, such as username, birthday, country, sex, date of account creation, post count, etc., as well as the option to upload a small picture, or "avatar" to represent the user. On the surface, profile pictures may appear superficial, but in a text-only world they can serve important identity functions as users choose different kinds of pictures to express themselves in different ways. Indeed, the word "avatar" entered English as a Hindi loanword, ultimately from Sanskrit, meaning roughly an incarnation of a deity on Earth. In an online context, your avatar is the constructed persona you use to interact with others. In online text forums it is not uncommon for regular users to recognize each other based solely on their profile pictures, or avatars.[12] The avatar that I chose was a black-and-white digital reproduction of a 1724 woodcut by Benjamin Cole depicting Captain Blackbeard (Edward Teach), which appeared in Captain Charles

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[12] It should be noted that the term has slightly different meanings in different online contexts. In online games, for example, "avatar" often refers to your in-game character and not necessarily an extra-game profile picture.

Johnsons' *A General History of the Robberies and Murders of the most notorious Pyrates* (Johnson 1724). While KAT users have all manner of images as avatars, I noticed a number of them used images of historical or stereotypical sea pirates. As the potential connection between file-sharing and sea piracy was one of my research questions, I decided an historical image might in some small way help cultivate or express my status as a researcher. Similarly, I considered that the depiction of Blackbeard—a notorious pirate well-known both historically and in popular culture—might subtly ingratiate me with my potential informants or at least express that my research approach was not antagonistic: that I was not necessarily there to judge file-sharers or *a priori* assume them to be criminals.

KAT was at once both a file-sharing site and a community. These two functions were innately related but not inextricable. As a file-sharing website, KAT hosted a searchable index of torrent files uploaded by members. A torrent acts as a kind of map that coordinates multiple users each downloading and uploading different pieces of a file (or set of files). As such, torrents are not the same as the content to which they point. In this way, KAT does not host actual copyrighted content (e.g., books, films, games). Instead, the site *facilitates* file-sharing by hosting an index of torrents. Beyond the legal and the moral arguments, file-sharing is an inherently social phenomenon. To function, the BitTorrent protocol literally requires multiple users. As users come together to communally download the latest television series, for example, each of their devices both uses and maintains a technological infrastructure of exchange. The website facilitates this framework, but it is the active participation of users that makes it a social exchange. Social interaction is the basis for relationships and the creation of folk groups, which in turn produce expressive culture.

Like historical "railway towns," a kind of technological transportation infrastructure laid the foundation of KAT's second function: community. During the 19th century, the technological innovation and spread of the railroad affected the economic and social development of many Euro-American towns and cities. Railroads brought gatherings of people and railway towns developed as communities along rail lines (Wallace and Thomson 1993). Torrent trackers and websites that host torrent indices exist as trade hubs within a digital transportation network of content delivery. A pattern I later noticed in users' personal experience narratives suggests that many came for the files, but stayed for the community. 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, April 3, 2015). Philidor was not alone. Fanvergent echoed this sentiment when he said, "I joined because I wanted to thank the uploaders and maybe upload something myself. Then, I saw how friendly and amazing community the site had and decided to stay here" (Fenvergent, comment, KAT, April 3, 2015). While the origins of the KAT community cannot *easily* be separated from its torrenting function, the community has nevertheless grown beyond its roots as a means to an end and become an end in itself. As Olidah described,

> I was a Usenet junkie before this and I stumbled on KAT. The overwhelming kindness of the users made me stay. Not the kindness for me (nobody knows me!) but the kindness for each other. Now I know why the world is fucked up: all the good people are here, get out and share your kindness with the world! (Olidah, comment, KAT, April 3, 2015).

The relationships and collective sense of identity that developed in the community suggest that KAT not only supported *technological* infrastructure but also *social* infrastructure. To a casual observer, KAT may not have appeared to be more than one of many ubiquitous torrent sites. From an emic perspective, however, KAT was an entire world unto itself. For those who spent

time interacting with the community, there were many levels of what might be called "social depth." Almost bewilderingly so, as suggested by Nodar's introductory post:

> Hey guys, I am new and I am kind of lost on KAT. Have been using KAT to download stuff but just found out that KAT is more than just a torrent site. hope I can learn a lot from you all. Cheers from Angola (Nodar, post, November 30, 2015).

Introductory posts like Nodar's were hardly rare; in fact, KAT had an entire forum specifically dedicated to introductions. The Introduction Forum was one of the busiest at KAT. Every day new members wrote messages about themselves and why they chose KAT as an adopted home. To be sure, like any virtual community KAT had many "lurkers": those individuals who silently participate by reading and downloading alone, preferring to stay anonymous. The introductory post is a tradition by no means limited to KAT. In any forum-based virtual community the introductory post is the first step in joining the community. It is the symbolic handshake greeting: offering a bit of information, a bit of trust, and a bit of vulnerability. At KAT, the response was typically immediate and overwhelmingly positive.

I went through the same rite-of-passage as Nodar. Within the first twenty-hour hours after I created it, my introductory post had garnered 154 views, 30 replies, 2 private messages, and 5 "wall" posts on my new profile. Given the reaction of the admins, I did not have high expectations for the introduction. As with the email to the admins, I had struggled with the wording of the post, trying to balance ethical full-disclosure with not terrifying prospective participants. Not an easy task when acquiring informed consent meant notifying participants that, should they talk to me, there was a very small but nonetheless real chance that our conversation would be intercepted by the FBI, NSA, CSE or some other shadowy three-letter agency. Relationships are based on trust and I knew what I was offering was less than inspiring. My experience, however, ultimately belied my concerns. The community response to my

introduction was warm and positive. While many of the replies were stock "cut-and-paste"

responses (there was a contingent of users who greet every single new member and so keep a

standard greeting on hand), some were personal and remarked on my research project:

> I can guarantee you that many community members will be happy to tell you their views on p2p, so many in fact that you gonna regret you ever asked ;~) (zi69y, reply, February 25, 2015).

While zi69y's prediction did not exactly come to pass (it turns out file-sharers are reticent about

interviews—more on this later), the welcome messages allayed some of my evidently unfounded

fears and made me feel at home. *At home*: a seemingly odd concept when talking about a

website, and one that would become more much more important when KAT was shut down,

leaving many users feeling "homeless." Even in an era dominated by screens, how can *home* be

intangible? Yet I had, essentially, knocked on the door and been welcomed into the home built

and inhabited by KAT users.

2.1 Virtual Communities

Stepping back for a moment, I will locate KAT within the broader context of Internet-

based communities, or, *virtual communities*. A virtual community is an Internet-mediated space

in which people from differing backgrounds and geographic areas regularly interact and build

interpersonal relationships. Virtual communities often (although not exclusively) develop from

interest groups, such as sports fandom, gaming, politics, and so on. Whatever your interests, you

will be able to find a group of people online who share that interest, from sports fandom (Mason

2007) to Anime collecting (Ellis 2012). Virtual communities can take many forms, although the

most common is the text-based forum. Contemporary forums have an almost ubiquitous

organizational structure, facilitating navigation. A forum is a website-based message board

divided into a series of topics within which users can create new "threads." Threads can then be answered by other users through "comments" or "replies," which are all collectively yet loosely referred to as "posts." On KAT, clicking on the "Community" tab at the top of the homepage took you to the forums, each divided into topical sections. Today's forums developed from BBSs popular in the 1980s, which allowed users to leave messages for each other and exchange files.

Scholarship on virtual communities emerged in the early 1990s with the widespread adoption of personal computers and modems. Although modern computer and Internet technology emerged in the 1960s, early adopters remained a subcultural interest group until hardware performance and cost had developed to the point it could be mass-marketed to the general public by the late 1980s (Levy 2010). Today, we have seen the integration of computer and Internet technologies into the everyday experience of many people-*cum*-users around the world.[13] From wireless Internet access on public transit, to smartphones and smart-houses, to online banking, everyone from institutions and companies to individuals lives a technologically-mediated life.

Although Internet communication is increasingly taken for granted as a part of "normal" life, the concept and reality of virtual communities was a controversial topic for decades within academia. Hine argued that scholarship on virtual communities can be divided into two phases (Hine 2005, 7). The first phase was dominated by psychological approaches using quantitative and/or experimental methodologies. The earliest works were concerned with online behaviour and the concept of anonymity (Bartle 1996; Willson 1997; Donath 1999; Light 1999) as well as

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[13] This is an intentionally provocative sentence. On one hand, access to computer technology has always been a marker of privilege and socio-economic status. Viewed thusly, claiming the existence of worldwide access can be interpreted as ethnocentric ignorance. On the other hand, access today is far more global than in the 1990s. By restricting our observations to North American European (or "Western") societies, we may well be ignoring access and usage in other parts of the world. See Coleman (2016) for a critique of hacker stereotypes.

the effect of emerging electronic networks in the office (Sproull and Kiesler 1991; Korac-Boisvert and Kouzmin 1994; Romm, Plisken and Clarke 1997). Hine's second phase saw a shift toward qualitative methods and, in particular, ethnography (Hine 2005, 7; Boellstorff 2008, 53). While I have noted the increasing number of qualitative studies in recent years, I do not see any indication that psychological or quantitative methods are in decline (e.g., Herings, Peeters, and Yang 2018; Lee, Jeong, and Paek 2019). I attribute the influx of qualitative work to recent interest from disciplines slow to turn their attention to online sociality, including anthropology and folkloristics.

As hinted at in the literature review in Chapter 1, the early scholarly discourse on virtual communities was taken by up sociologists, criminologists, and media studies scholars and concerned a debate about whether such things could exist and, if so, whether they could be accurately termed "communities" in any conventional sense (Foster 1997; Willson 1997; Donath 1998; Light 1999; Wellman and Gulia 1999; Rheingold 2003). Foster, for example, argued that users could interact online but that the interaction was too shallow and fleeting to form the basis of a true community; such interpersonal relationships were, at best, a façade (Foster 1997, 29). Calhoun similarly argued against the idea of a virtual community. He drew a distinction between direct and indirect relationships, arguing that only direct face-to-face relationships were "dense" enough to form community bonds. Indirect, mediated relationships, were linked solely by mutual interest and existed only as a function of identity construction (Calhoun 1991, 108). Willson framed online interaction as one-dimensional and argued that the ephemerality of virtual space detached users from reality and, thus, from social and political obligations. A virtual community could only exist to the detriment of "real" life (Willson 1997). Light suggested that virtual communities could not be extricated from their material connections in the actual world and

ultimately served the capitalist power structure as forms of Marxist false consciousness (Light 1999, 122).

Ultimately, the issue lay in the definition of "community." Wellman and Gulia (1999) suggested amending the definition so as to relieve it of its connection to geographic reality and flesh-and-blood neighbours (or, "meatspace" and "meatbags" in hacker vernacular (Levy 2010)). Wellman and Gulia saw communities—both virtual and actual—as social networks not necessarily tied to space but to social relations (Wellman and Gulia 1999, 177). Studying Internet-enabled social relations has largely been an interdisciplinary endeavor. Particularly in the early years, each discipline brought its own terminology and methodology to the table, or, really, separate tables, to extend the metaphor. Foster and Wellman and Gulia were using sociological definitions of "community," but that concept has been interpreted and used differently by scholars in different fields. In *Imagined Communities*, Anderson described community as the shared imagining of mutually unknown members separated by geography but connected through news media (Anderson 1983). Though Anderson is properly read in the context of nationalism, the concept of the imagined community has been applied outside of history and political science. Internet forums would seem to both support and belie his ideas. Internet communication functions similarly to Anderson's print media in connecting individuals and helping them collectively imagine a greater whole, yet the interactive means of communication also allows otherwise geographically disparate users to "meet" each other online. The scare quotes highlight the underlying thread of early Internet research: the question of authenticity. Can people really "meet" each other online? How *real* is an online relationship?

In *Signifying Identities*, Cohen asks, "Are some identities more authentic than others? What are the conditions of authenticity?" (Cohen 2000, 3). While Cohen was writing in reference

to Barth's work on ethnicity (Barth 1969), the question has significant implications for virtual communities. We can ask: are some relationships more authentic—more *real*—than others? Rheingold was one of the earliest scholars to tackle this question. He is credited with coining the term "virtual community" in 1987 (Turner 2006, 159), but it was in his 1993 book *Virtual Communities* that he began to unpack the nuances of online sociality. Rheingold argued that virtual social relationships were different than their actual-world counterparts but that did not necessarily make them inferior. In fact, he suggested, while such "weak" ties did not have the "depth" of actual-world relations, they could potentially be "stronger," or better, for certain kinds of problems. For example, participation in virtual communities could be good for the user's emotional and psychological health because the user was able to discuss certain kinds of topics with "strangers" online that could not be communicated as effectively through actual-world relationships. Similarly, some individuals could experience social acceptance and belonging online that they were unable to find in the actual world (see Bromberg 1996). Dismissing online relationships as "shallow" ignores their complexity and nuance (Rheingold 2006, 51). The key point here is that virtual social relations are not so much shallow or inferior, but only different: they are not any less *real*.

Boellstorff picked up this question of authenticity in his ethnography, *Coming of Age in Second Life* (2008), which investigated the real/virtual epistemological binary and argued that terminology both reflects and influences cultural understandings of online sociality. The problem with using "real" to mean "not-online" implies that virtual space is ephemeral and disconnected at the same time as bounding our experience of reality within arbitrary limits. Similarly, the term "virtual" has connotations of "almost real" or "not quite real." Instead, Boellstorff suggested the use of "actual" and "virtual" to distinguish between worlds yet affirm that both are "real"

(Boellstorff 2008, 19). When we talk about "the real world" in opposition to "the virtual world,"
we are constructing a false dichotomy of epistemological and phenomenological authenticity:
one world is authentic while the other is artifice.

Culturally, Euro-American countries placed strong emphasis on direct social interaction.
Commonly repeated proverbs, such as "seeing is believing," suggest that directly and personally
received sensory information, especially visual, ought to be highly valued (Dundes 1972). Once
something is mediated, we get suspicious—particularly when we have uncertain control over the
mediator. Virtual communities exist upon a framework of technological mediation: the
technologies that enable users to communicate via the Internet. Technologically-mediated
communication has a history of provoking sociocultural anxiety, such as early 20th century fears
of the telephone accelerating the pace of life and causing societal decay (Fischer 1992, 247).

As products of technology, virtual worlds and communities are human artifice, but, like
the printing press and telephone, that does not lessen their experiential authenticity. Instead, it
questions the concept and boundaries of technology. Ontologically, the categorization of what is
and what is not technology is politically and culturally influenced and seemingly tied to temporal
perception (McNeill 2009, 83). A computer might be considered technology while a book is not.
In this sense, humans have always been cyborgs. Perceiving a real/virtual binary aligned with the
nature/culture dichotomy obscures the essentialism of those constructions. As cybernetic hybrids,
humans use technologies in ways that blur boundaries (Haraway 1991). Rather than Internet-
mediated communication being not-real, the ability to reach across the world, even with only
text, is a hybridized augmentation of our bodily communications apparatus; an extension of the
self. This is especially true when viewed through the lens of actor-network theory, which treats

human and non-human actors equally as networks comprised of the interrelating performances of smaller actors (Latour 2005).

In line with Rheingold, Baym showed that Internet-mediated communication[14] allowed for a wider variety of relationships and that a sense of community should be defined by the meanings created and derived by group members (Baym 1998). This anticipated Boellstorff's argument that virtual worlds constitute discrete and particular cultures which draw on the lived experience of actors in the actual world but are not reducible to them. Virtual cultures, then, need to be studied in context and "on their own terms" (Boellstorff 2008, 18). The idea that virtual culture is not wholly reducible to the actual world was expressed by Ito in one of the first ethnographies of an online game world:

> So instead of focusing on how textual artifacts created on the Net circulate through "real" social contexts at large, I would like to examine the inter- and intratextuality of the Net as itself a social and political context where history, politics, and discourse are being constituted. By insisting on the reality of the virtual I do not intend to reduce social practice to language games, but rather to foreground the inseparability of semiotic and material technologies (Ito 1997, 93).

In describing her participant observation in a MUD,[15] Ito applies Turkle's (1994) "partialities" to the emic tension between the frames of "real life" and "just a game," arguing that each are partial realities and not necessarily in opposition" (Ito 1997, 94). Ito's frames are reminiscent of Huizinga's "magic circle," which temporarily delineated a game space in which the rules of "real life" were suspended (Huizinga 1950). It is important to note that the magic circle is contingent and not a permanent fixture, nor are its boundaries impermeable; they are porous. In her

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[14] I use "Internet-mediated communication" to also include the literature on "computer-mediated communication" (CMC). I avoid the latter term because of the collapse of the category of what is considered a computer. Desktop machines, laptops, tablets, and smartphones, and even washing machines and refrigerators all use computer technology that blurs previously distinct boundaries.

[15] MUD is an acronym for Multi-User Dungeon (or Multi-User Dimension), which were online text-based role-playing communities popular in the 1980s and 1990s. MUDs are essentially chat rooms designed for *Dungeons & Dragons*-style role-playing.

ethnography of the MMORPG *Everquest*, Taylor deconstructs the essentialist obscurantism of

the so-called "real/virtual" binary, arguing that:

> It is instead the case that we have phenomena that are unique to both spheres and
> also occupy spaces of overlap. What happens in virtual worlds is often just as real,
> just as meaningful, to participants. A friend can be a friend online, even if you never
> meet them face to face. It is, of course, much simpler when we bound off both
> spaces and try to come up with tidy categories for each, but what I find in my work
> (and see in many others') is that people live much more in the gaps between the
> two and negotiate that experience in fascinating ways (Taylor 2006, 19).

The negotiation of these gaps through lived experience is what makes us cybernetic hybrids,

which allows us access to worlds analog and digital but also leaves us "betwixt and between." It

is in within these spaces of ambiguity and "friction" (Tsing 2004) that culture—and folklore—is

created.

Although the community-based ethnography has long been a hallmark of folkloristic

inquiry (e.g., Pocius 1991), folklorists have been slow to turn their attention to virtual

communities. Despite a series of a calls to action, (Dorst 1990; Kirshenblatt-Gimblett 1996)

early interest in computer technology was hesitant to move beyond seeking digital variants of

oral genres (Dundes 1965; Rosenberg and Smith 1974; Beatty 1976; Fox 1983; Jennings 1990;

Smith 1991; Preston 1994; Mason 1998; Brunvand 2001). However, by identifying the

circulation of digitized folklore, these studies established the framework for locating Internet-

based folk groups and emergent vernacular culture unique to online experience. The shift from

"motif spotting" and viewing Internet technologies as mere media "conduits" (Dorst 1990; Dégh

1994) to interpreting virtual vernacular cultures "on their own terms" (Boellstorff 2008) began in

the 1990s (Baym 1993; Mason 1996; 1998; Howard 1997) but has flourished from the late 2000s

to present (Mason 2007; Howard 2008; 2011; Blank 2009; 2012; Learning 2009; Staple 2010;

Miller 2012; Cocq 2013; Ellis 2015; Howard and Cocq 2017; Peck and Blank 2020). Blank's

series of edited collections have offered a series of case studies detailing different ways that folklorists have approached the virtual vernacular (Blank 2009; 2012; Blank and Howard 2013). Blank has argued that "there is an inborn "folk" presence in cyberspace by virtue of the fact that people are behind nearly every symbolic interaction that takes place online and through new media technology" (Blank 2012, 3).

Blank's inclusive focus attempts to a correct a history of troubled theoretical relations between folklorists and technology. Owing to the discipline's roots in antiquarianism and romantic nationalism (Dorson 1951; Wilson 1973; Abrahams 1993), the dominance of orality and the oral genres only began to ebb with the rise of material culture studies, performance studies, and, most notably, copylore. Bausinger argued that new technology did not destroy folk culture but that instead folk groups adapted and created folklore about the technology (Bausinger 1990). In their seminal work, *Work Hard and You Shall Be Rewarded: Urban Folklore from the Paperwork Empire*, Dundes and Pagter demonstrated that folklore and folk groups could exist in the context of the modern office and make use of mass reproductive technologies such as the photocopier (Dundes and Pagter 1975). While there remains opposition to the validity of virtual folk groups and scope of the "vernacular web" (Oring 2012; cf. Howard 2008), theory supporting the study of virtual folklore has been established (Mason 2007; Howard 2008; Blank 2009; Ellis 2012) and the literature on virtual communities continues to grow exponentially. I expand upon this review and go into more detail concerning folklore and technology in Chapter 4. For now, we turn back to KAT as a virtual community and folk group.

2.2 Virtual Methodology

It has been over two decades since Hine published her seminal handbook, *Virtual Ethnography* (2000), and much has changed. It remains an indispensable part of the ethnographer's toolbox but must increasingly be applied in new and unforeseen ways (e.g., Hine was writing methodology at a time before the existence of social media networks, such as Facebook). Although she has since updated her work (Hine 2005; 2008; 2015), two of her early approaches have not diminished in utility and, arguably, have only become *more* important. Using Evans-Pritchard (1937) as a model, Hine argued the value of focusing on cultural beliefs about the Internet:

> Beliefs about the Internet may have important consequences for the ways in which we relate to the technology and one another through it. Ethnography can therefore be used to develop an enriched sense of the meanings of the technology and the cultures which enable it and are enabled by it (Hine 2000, 8).

Unlike Evans-Pritchard's study, however, the beliefs of Internet users do not necessarily form a religious system.[16] Rather, as vernacular expressions, such beliefs evoke a virtual landscape of popular and folkloric meanings. I approach this virtual landscape from two perspectives. First, it is imagined. While not necessarily a community itself, notions of the Internet as a place (Mason 2007) are collectively imagined into being (Anderson 1983). Second, as the connective medium driving neoliberal globalization, the Internet reflects Appadurai's global flows, whose intersections and disjunctures weave the fabric of the virtual landscape (Appadurai 1990). The Internet-as-landscape is imagined into being through discourse, enabled by hardware and software, and patterned by global flows that run like rivers across the "land," transporting people, ideas, money, technology and media but also intersecting each other. These intersections

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[16] This is not to say that religious belief does not intersect with Internet technologies. Quite the contrary. See Howard 1997; 2008; 2011.

ensure each user enters the same virtual public space but experiences it differently. Kickass Torrents existed at a confluence of rivers—a virtual crossroads—where issues of access and power intersected. Kickass users logged on from myriad countries and lived experiences. It was a place where flows of technology and media mix and were re-mixed as they were appropriated and pirated in response to various "financescapes" and "ideoscapes."

Hine's second approach was the research question she set for herself: "What are the implications of the Internet for authenticity and authority? How are identities performed and experienced, and how is authenticity judged" (Hine 2000, 118)? Hine was concerned with the academic debate over the nature—and "authenticity"—of computer-mediated communication (CMC), particularly in linking participants' statements with their "real" identities and evaluating their trustworthiness. Internet anonymity presents a methodological problem in claiming ethnographic authority. Critiques of such authority notwithstanding (Clifford 1983), it is not an easy thing to claim "I was there" in a virtual fieldsite engaging with anonymous participants.

Hine references Johns' (1998) history of the British book trade to show how the association of faithful, identical reproduction with books was a cultural achievement and not some quality inherent in the medium (Hine 2000, 120). Her point here is to proffer historical analogy for current problems in determining online identity. However, what Hine considers a cultural achievement was the result of economic lobbying for a national copyright regime followed by centuries of litigation. As Johns describes, all of those "inauthentic" pirated books had a significant impact on the shaping of the public sphere and even the spread of the Enlightenment ideas (Johns 2009, 48). Rather than being a thing to be glossed over, 18th and 19th century Anglo-American reprinting culture has useful lessons for 21st century digital file-sharing. Kickass Torrents was a culture of illegality trading in the inauthentic.

In applying Hine's methodology to KAT, I found it useful to unpack and parse her questions: (1) "How are identities performed and experienced" and (2) "how is authenticity judged?" (Hine 2000, 8). Folklorists engage with individuals but ultimately study groups. Concern over linking participants' "real" and "virtual" identities is inherently a psychological approach reminiscent of early Internet studies and does not necessarily map on to folkloristic group studies. This is not to argue participants' actual-world identities are not at all important but rather to orient the focus of inquiry on group dynamics. Members of virtual communities are not always aware of each other's actual-world lives, and this is rarely seen as a problem: social dynamics in virtual communities are based on the performed identities of users, which may or may not reflect the actual-world. Individually, the identities users choose to perform may in some way be tied to their actual-world lived experiences but, as Boellstorff argues, studying a virtual culture *on its own terms* means experiencing dynamics as a native member and exploring a sociality of performed identities (Boellstorff 2008, 18). To insist on valuing the actual-world identities over the virtually-performed is to trivialize the representations chosen by participants.

In lieu of face-to-face communication, identities at KAT were performed and experienced through discourse and practice. KAT users expressed themselves through text comments and replies (and sometimes images and GIFs) on discussion forums and supported their personas by creating profiles with avatar and signature images. Everything you did on KAT was recorded: threads created, comments posted, torrents uploaded and downloaded and gamified achievements ("cheevos") unlocked. This information was semi-publicly searchable, leaving not only a rich history for delighted ethnographers but also revealing the asynchronous nature of online identities. KAT users came to know each other asynchronously as textual discussions were experienced over periods of days and months, or, in some cases, years. Although there was a

weak social sanction against resurrecting "zombie" threads, and old threads are usually locked by forum moderators, it was not uncommon for months-old discussion threads (as opposed to question threads[17]) to reappear at the top of the forum when someone posted a reply as if no time has passed.

This dynamic leads into Hine's second question. Only registered KAT users were able to participate in forum discussions. There was a second, potentially larger, group of users who used the site and downloaded torrents but stayed hidden. "Lurkers" are Internet users who choose to remain anonymous, living on the fringes of virtual communities. By maintaining a higher standard of anonymity, lurkers cut themselves off from direct participation in the community but retain reading access. Many KAT users were former lurkers who followed the forums until eventually deciding to formally join the community. This otherwise subtle negotiation of anonymity had significant social implications at KAT. Registered members were often frustrated by the actions of anonymous lurkers. Though lurkers could not post in the forums, they could leave anonymous comments on the webpages of torrents. Torrent comments are an important section of any torrent site and also where KAT demonstrated its uniqueness. Every uploaded torrent got its own subpage, which provided space for technical details (e.g., name, release group, format, quality) and invited user ratings and comments. Torrent comment sections were the public frontlines of the community, where registered users interacted with the anonymous public. It was a space for questions and help but was frequently used for flaming[18] and abuse.

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[17] Threads were handled differently depending on their content and scope. Question threads were closed quickly, often within hours of being answered. Discussion threads were less regulated and with moderator support could be "stickied" (marked as permanent or semi-permanent). Stickied threads could span years and hundreds of pages. KAT had an 800-page cut-off policy and when a thread reached that point it was archived and a new thread created marked "v2" (version 2) and numbered so forth until the community finally retired the discussion.
[18] An older term in Internet argot referring to intentionally hostile, abusive language. Flaming another user can quickly escalate into a "flame war" of insults and *ad hominem* attacks.

The quality of helpful comments, including replies from the uploader, reflected the nature of the community, its norms and values. Non-registered users sometimes violated community standards, engendering threads of frustration from registered members. As thepenman remarked in a post,

> I get it, you didn't like the movie. It was not as good as the original, but to down vote a great quality torrent that an uploader worked on is pure BS. Not all but most anonymous posters are chicken $#!+, they hide behind a veil because it is easier to be rude and nasty. How about showing some appreciation for the uploaders because without them there is no Kat, by the way IT IS FREE, PEOPLE! Better yet, how about coming out from lurking in the shadows and making your real presence known (thepenman, post, KAT, March 24, 2016).

Threads such as thepenman's were a recurring sight, typical of how anonymous users were viewed by registered members. It was the difference between a lurker and a Katian. The profiles of most KAT users were sparse; although they were adorned with quotes and GIFs, they rarely offered a connection to the actual world. In this sense, Katians simultaneously valued and disliked anonymity. While actual world identities do not factor heavily into social relations, virtual identities based in the community were central to KAT. The "authentic" Katian is one who made his/her/their "real presence known" by registering an account and participating in the community.

Judging authenticity at KAT is contextual, contingent, and subjective. Beyond the (in)authenticity of users, there remains the elephant in the room: as products of copyright infringement and hacking, torrents are by their very nature "inauthentic." If a pirated film is an exact copy of a Blu-ray disc, is it an authentic copy? Microsoft is clear when they claim unauthorized copies of the Windows operating system are "non-genuine," yet a pirate-made activation tool called "Microsoft Toolkit" can essentially trick your computer and spoof the Microsoft servers into authenticating a pirated Windows installation, rendering it "genuine" and

granting access to updates (fig. 2.1). Etic perspectives such as Microsoft's take copyright law as a proxy for authenticity. Within KAT, however, emic perspectives were not concerned with unauthorized copying but functionality and release group credentials. An "authentic" release must work (install and play for games and software; open without trouble for books and films) and be an original upload from a trusted source. In an effort to reduce duplicates and fakes, uploaders were instructed to only upload their own "original"[19] torrents and not "retag" (re-upload torrents acquired from another website and changing filenames and release group names). A retagged torrent was deleted and the uploader censured.

Any virtual methodology of KAT must negotiate its heterotopic quality. As the Internet is both "real" in its computer hardware and "not-real" in its virtuality, KAT—and the file-sharing scene in general—was both "here" and "everywhere," simultaneously local and global. As the Internet compresses time and space (Harvey 1990) and allows dynamic identity presentation and anonymity, KAT, like Foucault's mirror, offered users a representation both real and unreal and access to an Othered and contested "place" (Foucault 1986). Different countries, cultures, and beliefs were juxtaposed in the user base, leaving KAT politically and socially contested, but also highlighting flaws, cracks, and inequalities in institutions and laws. Additionally, KAT was always moving across geographic space even as it compressed and distorted it. KAT was often described by its users as a ship (a pirate ship, of course) sailing the seas of the world as it moved from port to port. The metaphor references and evokes imagery of historical sea piracy but it also describes the website's regular domain changes. As a security policy, KAT routinely changed its

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[19] "Original" here refers to an uploader creating a torrent file and not necessarily pirating the content in the first place, e.g., a film might be pirated by release group ETRG and downloaded by a KAT user from an unaffiliated site and then re-uploaded to KAT. This would still count as an "original" upload, although the ideal would be the uploader ripping or downloading the film directly from a legal source copy.

Internet domain suffix as it transferred its server data from one country to another, evading national jurisdictions to avoid seizure of its servers. So, methodologically, we have a fieldsite that both exists and does not exist, moves and does not "move," in which anonymous members interact with and trade materials that are legal, illegal, authentic, and inauthentic.

This fluidity and these apparent contradictions made KAT a rich but unconventional fieldsite. But it was not my first fieldsite. I had not heard of KAT when I wrote my first research proposal for this project. In order to make sense of current method and methodology, it is necessary to describe the early, frustrated history of this dissertation. When I tell colleagues about the methodological obstacles faced during my fieldwork, the usual response is "you should write about that!" So, I am. In keeping with the tenets of honest and reflexive ethnography, I will show how a series of misfortunes led to a reorientation of my focus and scope and, ultimately, a more useful approach.

2.2.1 Demonoid and the Warez Scene

I initially intended to study the Warez Scene. As previously described, "The Scene" is a loose network of cracking groups who are locked into an eternal competition to be the first to "release" copyrighted media with the goal of attaining social capital. The plan was two-fold: locate and gain access to one or more Scene groups and then track pirated media as they made their way from cracking group to the open wilds of torrent sites. Specifically, I had targeted Demonoid.com, which later became Demonoid.me, then .ph, then .me again. I had been aware of the challenges to the feasibility of the project, particularly with respect to making initial contact with cracking groups. In addition to wanting to examine piracy-as-process, I wanted to focus on cracking groups because there was (and remains) scarce literature on them. The literature on

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piracy in general is substantial but primarily concerned with macro-level dynamics, with the exception of a handful of studies that do look at the Warez Scene (e.g., Décary-Hétu, Morselli, and Leman-Langlois 2012) but even these do not include ethnographic methods.[20] In short, very few academics have actually talked to pirates.

I identified two of the oldest, most established cracking groups as potential contacts. Razor1911 and FairLight were both founded in the late 1980s and, through adapting to new computer technology (e.g., diskettes to CD-ROMs to ISOs), are still active today. Given the highly-secretive nature of the Scene, most groups do not openly advertise contact information. In the past, when it was safer, some groups maintained websites, but most left no trace. Up until recently, Razor1911 maintained a website (razor1911.com) that contained a history of the group but was mostly devoted to its demo division.[21] FairLight's website, The World of FairLight (fairlight.to), is more expansive, containing member profiles, downloadable tools and guides, but does not host any copyrighted content. Scene websites function more as monuments to previous glories than active points of interaction, which I described in my fieldnotes:

> There's so much scattered information about The Scene, hiding just outside the mainstream Internet, on the periphery of the average user. Despite the fact that these groups continue to release new cracks, they seem to look to the past. To the Old Internet, the one prior to widespread, mainstream high-bandwidth popular culture. It is the world of Commodore 64 cracks, legendary groups proudly tracing their lineage back to the Amiga. There's a whole hidden history of the Internet here. Older Scene groups act like historians of the web (August 2, 2013).

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[20] A notable and very recent exception is Sivak's excellent PhD dissertation (2023), which was completed about the same time I submitted my draft manuscript. Although not concerned with Scene piracy, it involves comparatively extensive digital ethnographic fieldwork with the users and admins of a Ukrainian pirate streaming site.

[21] The emergence of competition between early cracking groups led to the creation of group tags and "cracktros," computer-generated visual art spliced into pirated games to serve as introductions and credits. As these introductions increased in sophistication and quality, they branched off from the Warez Scene and developed into an art subculture on their own, called the Demoscene. Razor1911's website has been offline since 2017.

I spent that summer sending endless emails and private messages to any and every potential

Scener I could find. Most were ignored. The responses I did receive were mostly cryptic and

monosyllabic. My use of "folklorist" as a frequent handle in IRC channels did draw attention,

but mainly resulted in a surprising number of requests for storytelling (e.g., a typical response

from EFnet[22] users: "Tell us a fairy tale!"). Unfortunately, honouring the requests usually failed

to elicit further responses.

My first contact with a Scene group was an interview with "Bacchus," a retired leader of

FairLight. He had led FairLight for ten years and was open to discussing his experiences.

Bacchus was invited to join the group in 1988 in a bid to strengthen the team's Commodore 64

division. He likened running a cracking group to managing a multinational corporation; he

coordinated the efforts of team members from all over the world and scouted the opposition for

recruitment. He was quick to dispel stereotypes and draw distinctions between labels. The Scene

is about achieving glory with a quality brand through technical competition and without the

contamination of profit. As Bacchus described:

> I've seen in the press that the Scene has been seen as some kind of terror
> organization, like Al-Qaeda or something, that we are all connected and you have,
> well, rituals where you are a member of a scene like a member of a club or
> something. It's not like that. It's like the rock'n'roll scene, just pick up a guitar
> and you can become a member of the rock'n'roll scene. You don't have to do
> anything. It's a mental position that I act and interact with this community, which
> makes me part of that community, so that's the Scene and so we're all "Sceners"
> and my actual role on the Scene was being an organizer for the C64 section of
> FairLight and also a cracker but we did have coders and we did have musicians
> and artists and, well, if somebody would like to call that piracy, yeah by all
> means. I don't really say that myself. I don't say that we are pirates because it has
> the flavor of burning money on it (Bacchus, interview, 2013).

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[22] EFnet is one of the oldest IRC networks and reportedly used by some Scene groups. Internet Relay Chat (IRC) is a protocol that facilitated text-based group discussions. Its popularity has been in decline since the early 2000s with the rise of social media.

"Authentic" Scene groups do not sell copies of software they crack; they make no profit. In his entire FairLight career, Bacchus did not make a cent. In his eyes, cracking is art. The Scene is competitive art and subscribes to the early modern belief that desire for profit was what separated art from craft. The heart of the Scene is social capital acquired through vernacular expressive culture:

> It's suburban art. It's expressing yourself, bragging in front of people who appreciate what you do and being called obnoxious by others. I mean, like graffiti artists, they tag their things and like any artist you tag your thing. I did this and I managed to do it so, here's me: I'm good (Bacchus, interview, 2013).

I include the above quotes at the risk of tangential digression. Ethnographic methods must, to some extent, reflect native logic systems and cultural context. Studies analyzing file-sharing from a strictly economic perspective ignore the anti-profit ethos of the Scene. A methodology that ignores context is an etic imposition that reveals more about the researcher than the subject. My interview with Bacchus convinced me that a folkloristic approach, that is, a focus on the vernacular using ethnographic methods, was uniquely suited to interpret file-sharing culture. That interview was one of the most richly detailed and enlightening ones I conducted. It was also one of my last.

A year prior to meeting Bacchus, I had been planning how to approach the administrators at Demonoid and encountered my first fieldwork obstacle. In August 2012, Demonoid disappeared. Torrent sites have a tendency to disappear only to reappear days or even months later. Demonoid had recently suffered downtime due to a series of DDoS (distributed denial of service) attacks. In 2012, Demonoid was at the peak of its popularity and membership invites

were treated as a valuable commodity.[23] Early news reports suggested Demonoid administrators had been arrested in Mexico at the same time as Ukrainian police raided the company that was hosting Demonoid's content on Ukrainian servers (Enigmax 2012a; 2012b). Demonoid staff denied its admins had been arrested (no court case ever surfaced). It later came out that while there had been no police raid, the hosting company, ColoCall, had terminated their relationship with Demonoid under pressure from INTERPOL, who were investigating at the behest of the International Federation of the Phonographic Industry (IFPI) (IFPI 2012). Demonoid eventually reappeared online years later but never managed to rebuild its userbase.

In the meantime, with Demonoid gone, I focused solely on the Scene. Although Demonoid would have been easier to document and participate in, examining the social dynamics of cracking groups offered a potential look into a little-known digital folk culture. But after spending much of 2012-2013 balancing searching for Scene contacts with teaching at the university, I encountered my second obstacle. Just as I gained access to Scene, my budding contact network collapsed. Only months prior to my interview with Bacchus, Edward Snowden, then a security contractor with the U.S. National Security Agency (NSA), had leaked a significant cache of classified NSA documents to journalists. The leaked material detailed the infrastructure and various operations of a widespread digital surveillance apparatus. Beyond capturing the attention of the corporate news media, the Snowden leaks were worrying for file-sharers. While Scene and other P2P communities were already concerned with privacy, the scope of the NSA's (and FiveEyes') mass data gathering systems came as a revelation that caused

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[23] As a semi-private tracker, users had to register with Demonoid in order to access many of it features. Registration was free but rarely open. Each member had a set number of invite codes they could gift friends and these became a sought-after commodity for a few years.

many cracking groups to further tighten their OPSEC (operational security). I was told by one of

my potential informants that he would not talk to me because he was "going underground."

Left without any informants and only a handful of interviews, I was back to square one. It

forced me to reconsider the feasibility of the project. I became depressed and came close to

quitting more than once. I was reminded of Cerwonka and Malkki's ethnography, *Improvising*

Theory: Process and Temporality in Ethnographic Fieldwork (2007). As Cerwonka and Malkki

stress, everyday life is unpredictable and contingent. To account for this, ethnographic theory

and method must be improvisatory and flexible. Rather than imposing theory, ethnographers

seek cultural patterns that emerge through the experience of fieldwork. File-sharing was still

occurring, I just needed to find a different way in. Unable to regain access to the Scene, I turned

from trying to look for pirates in the dark corners of the Internet to the open public space of the

clearnet.[24]

Contrary to the secrecy of Scene production and distribution, the majority of alleged

pirates search for and discover content through highly visible and accessible torrent websites. I

had initially settled on Demonoid as a fieldsite because of its community, but also its place as the

last link the chain of distribution. Scene groups produced high-quality material that was then

leaked to torrent sites like Demonoid.[25] This chain of distribution is significant for understanding

Scene culture but is not necessarily relevant in the everyday experiences of ordinary end-users.

Re-orienting the focus of the project to end-users, the ones downloading from sites like

Demonoid and The Pirate Bay, emphasized the role of piracy as a vernacular tradition in

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[24] A general term referring to publicly visible websites, such as Facebook. The term exists in opposition with "darknet": websites accessible only through specific privacy-minded software and generally unknown to the broader public.

[25] This is an oversimplification of the P2P scene. Not all pirated content comes from the Warez Scene; P2P cracking groups producing high-quality releases do exist but historically P2P production has been haphazard and less organized than its Scene counterparts.

everyday life. Demonoid was one of many similar torrent sites and, in its absence, many more

emerged. Kickass Torrents was one such site. KAT was launched in 2008 but reached the peak

of its popularity in 2016.

2.2.2 Documenting Kickass Torrents

I had come across KAT years before but had naïvely assumed it was one of many

ubiquitous upstart torrent sites. After being cut off from Demonoid and the Scene, I intended to

focus on piracy-at-large: interview downloaders from all over rather than focusing on one site.

This approach never sat well with me but appeared the most practical. In early January 2015, a

link from a news website took me to Kickass Torrents. Browsing the site as a guest, a series of

forum threads immediately caught my attention. The first was titled, "How/when did you

become a pirate? Who are your pirating mentors/sheroes?" I had been researching historical

maritime piracy, with the aim of finding parallels between the two "piracies." The thread had

been started in 2012 and garnered a substantial number of replies, many of which, to my

excitement, listed users' favourite Golden Age pirate captains. After I registered and was more or

less accepted—or at least tolerated—I began exploring the site in earnest. In the following

weeks, I documented hundreds of threads. Each thread was explicit and reflexive; this

community was highly conscious and aware of the moral and legal issues surrounding file-

sharing. When I started participating in forum discussions, I realized that the community went

beyond torrents. The existence and popularity of interest groups, emotional support groups,

memorials to deceased members, and annual poetry contests indicated that these community

members were actively involved in each other's daily lives and struggles. KAT was frequently

described by members using the terms "family" and "home." Regular interaction and collective

emotional labour created a conscientious and loving culture amidst a sea of illegality, dangerous lawsuits, and hidden agents plotting its doom. For me, KAT ended up being a rock, an anchor for my research that, with sharpened clarity, grounded it in community studies.

Rooted back in a community, I then had to contend with the issue of documentation and storage. The mounting number of threads, their context, and temporality, led to a methodological dilemma of how to best document them. Webpages can be highly unreliable, fleeting, almost ephemeral things. This is especially true for chat forums and a particularly dire issue at KAT. In KAT's zeal to maintain order, staff frequently "pruned" the community threads, moving and closing many. For example, a user could create a new thread to post a question and within minutes that question would be answered and the thread moved to the community's "Solved" forum—or even outright deleted. I initially tried basic browser bookmarking, but this did nothing to mitigate the issue of pages disappearing and I was quickly overwhelmed by the number of bookmarks I was accumulating. Then I tried saving screenshots using a series of increasingly desperate browser add-ons and plug-ins. The native Windows printscreen function saves an image of whatever is currently on-screen, but nothing more. It was useful for saving individual comments or part of a thread, but not an entire thread, making it impossible to save its context. I then tried a number of third-party screenshot apps without success.

Next, I turned to printing and saving options. Windows and PDF editors, such as Adobe Acrobat, can "print" webpages as PDFs. This reliably captures the text of a page and sometimes images, but strips away context (e.g., formatting, frames, or advertisements). I worried about what kind of contextual information I might lose when the software stripped the "non-content" elements from the page. Every browser has a native "Save as" function that saves elements comprising a webpage. This is useful for technical, web-building purposes as it allows you to

save the actual code used to make the page. It was not ideal for me, however, because of all of the loose files. Saving an entire webpage is probably the safest route in terms of completeness and compatibility but it presents a nightmare for archiving in volume. On the advice of colleagues, I tried a series of clipping tools, such as EverNote. On the whole, they tended to be useful for saving occasional webpages but quickly became bogged down with hundreds of pages of thread comments. I was also concerned about the ethical and security implications of storing fieldwork data "in the cloud" (i.e., on a company's servers).

Frustrated at being unable to find a decent tool, I resigned myself to using a combination of whatever means I could to accurately save content. Then I stumbled across the Mozilla Archive Format, the MAFF extension. It was an add-on for Firefox[26] that enabled saving webpages into a single file (MAFF extension) but still accessible through the browser. This was a major breakthrough as it allowed me to save webpages *exactly* as I viewed them, ads and all, regardless of the "length" of the page, in one easily archivable file. With this add-on, I was able to accurately capture and save everything I saw with complete context. Inevitably, it too eventually disappeared when Mozilla ended support for the extension. Cue my panic at the realization I was now sitting on 16GB of unreadable field data. Not only are digital data ephemeral, but so too are the tools to read them. Thankfully, I was not alone as a MAFF user and several open-source readers appeared to quell the panic, but their bare-bones functionality remains a workaround. I later investigated web scraping, which is increasingly favoured by academics, but it did not scale well with the needs of my project and its benefits come at the expense of ethnographic authority (Clifford 1983).

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[26] Firefox is a web browser developed by Mozilla, an off-shoot of Netscape. Firefox is known for its security, privacy, and customizability.

Forum threads from KAT became my primary source of data. Such threads were publicly visible and accessible even to non-members, and, as such, constituted virtual public space. However, adhering to principles of informed consent, I attempted to contact users whose comments I wanted to include in this dissertation. The few who replied granted permission; most never responded. The issue of how informed consent maps on to online forums has been extensively debated (e.g., Hine 2000; Mason 2007; Coleman 2015). It would be impossible to track down the thousands of users who posted thousands of comments to KAT threads and many have disappeared in the years since they left the reply. Further, in the wake of the KAT shutdown, the point is largely moot. Threads, forums, users—they are all gone and possibly exist now only on my hard drive.

Forum discussions formed the bulk of my data but I also continued seeking interviews. The "gold standard" for folkloristic ethnography, interviews allow participants to speak in their own voices and allow ethnographers deeper insight into cultural meaning. While KAT forum threads were valuable in their self-conscious vernacular reflexivity, they did not always ask the same questions I would and they offered little opportunity for follow-up questions. Replying to recent threads may or may not result in responses and that probability declined with the age of the thread. Aside from a handful of interviews conducted in-person in Toronto and St. John's, interviews were primarily conducted using Skype and recorded using the third-party Skype plugin, Pamela. The mediated nature of the video interview misses some of the gestures and body language of face-to-face interaction, but, unlike phone or text interviews, preserves visual facial cues. The openness and performativity of interviewees is impacted in part by that person's comfortability with video chat. A poor connection or older hardware at either end can negatively impact the video quality, reception, and flow of the interview.

Interviews turned out to be my third obstacle. As mentioned earlier, I found file-sharers reluctant to agree to interviews. When I registered at KAT, I began creating threads describing my research and soliciting interviews. They were not terribly well received. My early attempts were generally ignored, although I noted that the threads accumulated views: users were indeed reading but not responding. The only response I initially managed to elicit was a private message from a user: "lol are you FBI?" Explaining that I was not had no effect. Traditional file-sharers are likely to be tech-savvy, aware of privacy issues, and take steps to protect themselves, using services such as VPNs. These users are more likely to be cautious of with whom they interact and what information they provide. These are useful considerations for basic web surfing but critically important for interacting with torrent sites and pirated material.

Anti-piracy campaigns by industry groups have a centuries-long history of shaping public option (Patry 2009, 43) but online infringement entered the public spotlight following *A&M Records v. Napster (2001)*. Although not the first involving file-sharing, it was the most high-profile case to date. It reified the legal dangers of swapping digital music as well as demonstrating that those transfers could be tracked. This is doubly true for BitTorrent, which readily displays the list of IP addresses downloading a particular torrent. Rights holders can hire enforcement firms to track illegal downloading, which is a largely automated process. Non-human actors (e.g., bots) are routinely deployed to harvest IP addresses associated with torrents. For end-users, the spectre of distant and powerful organizations suing users and using robots to hunt them down looms large. File-sharers, then, are highly motivated to protect their privacy. People I have interviewed in the past have often admitted going into it feeling anxious and nervous, worrying that it might be overly formal and that a single mistake on their part could end up recorded and archived for all time. Ethnographic interviews can be very personal and open-

ended questions tend to elicit a kind of reciprocal openness from interviewees (Jackson 1987). This intimacy is necessary for ethnographers but can be off-putting for interviewees—especially, I suspect, file-sharers engaged in illegal activities. So, I did not get many interviews, but at the same time I could not rely solely on the forum threads, since interpreting them always carries a heightened risk of misunderstanding and inference. And I did not want to merely observe culture. Just as I re-oriented the project's focus, I had to adapt to circumstances and improvise new methods.

I needed a way to ask questions of participants in which they would feel comfortable and in control. To this end, I designed an ethnographic survey using the same open-ended questions I would ask in an interview. The survey was web-based, anonymous, and did not track or collect IP addresses. It used a secure, encrypted connection and did not require participants to submit any identifiable information. While anonymity poses the risk of false submissions (i.e., being "trolled"), it is a risk inherent in any ethnographic endeavor (e.g., Freeman 1983). Even if participants do not accurately report their experiences, what they do say and add to the discourse is nevertheless of interest itself (Coleman 2014; Boellstorff 2008). The survey content consists of a project description and informed consent page followed by five pages of questions. Answer fields were designed to scale with volume of text, meaning participants could write as much as they desired. And many did; the survey was generally well-received and many of the respondents chose to write lengthy answers. Feedback was positive and often initiated further dialogue as participants would subsequently add me as a "friend" on KAT[27] and send me private messages.

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[27] KAT used a "friend" system similar to Facebook. Adding a friend allowed the user to see when the friend is online.

The survey was not designed to be statistically significant; instead, it elicited thoughtful answers rooted in personal meaning for participants. The weakness of the survey was its lack of real-time interactivity between researcher and participant yet this was also a strength; evidently, it was that precise engagement (or perception and fears thereof) that caused users to avoid interviews. While I sacrificed the back-and-forth conversation, the survey resulted in a significantly higher participation rate. This was further enhanced, albeit unintentionally, by the "snowball technique" when, after completing the survey and unbeknownst to me, two participants created threads on their own to aid recruitment. Through improvising method in the field, I was able to turn what appeared to be a methodological dead-end into a viable and contextually-sensitive and reflective research tool that I rely on throughout this dissertation.

A recurring theme throughout this dissertation, anonymity was at once both deeply inscribed into Katians' everyday lives and also seemingly casually abandoned whenever the mood struck. Some Katians used VPNs and throwaway accounts while others posted photos of themselves along with their home addresses. As an ethnographer, I tried to balance protecting my informants by anonymizing them and giving them voice to express themselves.

I struggled over how to best represent participants. Piracy carries the potential for legal risk and my ethical responsibility is to protect my participants. As per the guidelines of my university's ethics board, I tried to avoid collecting or storing any information that could be used to identify participants' actual-world lives. They did not always make it easy. Some Katians could be aggressively trusting, such as the popular "post your face" threads in which they shared photos of themselves (or claimed to anyway, at least in the cases that were not obvious jokes). Internet anonymity leaves a lingering uncertainty. It falls short of the classical ethnographic ideal rapport between ethnographer and participant, but, ethically and methodologically, it adds a layer

of protection. The participants I interviewed gave informed consent to use their real names, but I ended up anonymizing them or using their screen names. Then there were the many more I did not interview but interacted with through participant observation in forum discussions, for whom I only have screen names. I practised full disclosure, actively participated in the community, and made posts about my research project. However, by 2016, KAT was one of the largest torrent sites in the world, serving millions of unique users every day and it is unlikely that all of them would have seen my disclosure statements, despite my best efforts. That said, it is to some extent moot, since most of this group were not registered users and did not participate in the forum, and consequently were not captured in data collection.

I explored different options for anonymizing participants, including the use of invented names. It can improve ethnographic poetics and it is far more humanizing than "Research Participant #5," as well as potentially protecting identities while retaining a sense of the kinds of names being used. Yet, names have power. The act of naming is a projection of power. Arbitrarily renaming people did not sit well with me, especially the participants who wished me to use the names they gave me. I ultimately opted to present a mix of real screen names for those that provided them while anonymizing others who wished it. Again, I did not collect identifying information beyond the names given to me (which in most cases were screen names, and even if I had wanted to, I had no way of verifying them anyway). Screen names without any associated metadata already provide a layer of anonymity on their own; however, it is possible that a profile could be constructed by using "big data" analysis methods, although that would require scraping or mining data from many external unrelated sources. The shutdown of KAT also mitigates the risk, to an extent. It is still not clear what happened to the original servers, but standard law enforcement procedure is to clone the hard drives and wipe the servers. Although unlikely, there

is a possibility that the server data is still in the possession of the U.S. Department of Homeland Security. There have also been a series of fake KAT website scams that have appeared in recent years, meaning that the servers had evidently been scraped at some point, although it is unclear whether these include anything beyond the torrent index, i.e., most fake KATs I have investigated do not appear to have copies of the forum posts (or functional torrent links, for that matter). The Wayback Machine at the Internet Archive has archived copies of some of the discussion threads, but only a collection of incomplete snapshots.

In addition to participants' identities, I also considered how to best represent what they said. To that end, quotes from participants have been lightly edited while being presented as accurately and ethically as possible. No words have been added or removed, but sentences have been edited for spelling and grammar in order to mitigate any negative associations with register, dialect, or second-language. Beyond ethnographic considerations, historical quotations have been left in their original style, including spelling and grammar, except for instances of excessive archaic English orthography, such as "æ," "þ" and "ſ," which have been rendered in Modern English for readability.

3. Histories of Piracy

The first time it happened I did not think much of it. All of the features I would come to know so well were there: the slight furrowing of the brow, the subsequent question, followed by the premature flash of understanding. I was at a departmental function, standing in a professor's living room, describing my recently approved research project to a new graduate student. I have developed my "elevator pitch" over the years but am still inevitably met with the same mixture of interest and confusion. When I tell someone that I study digital media piracy, "pirate" gets interpreted as either "hacker" or "counterfeiter." The confusion lies in the multiple and contradictory histories of the term "piracy." In my experience, this polysemous word evokes a series of equally misunderstood concepts ranging from bloodthirsty sea villains to basement-dwelling code-savvy teenagers. Whether we are talking about 18th century privateers or 21st century Katians, the strange folk etymology of "piracy" obscures more than it describes. Why does "piracy" mean copyright infringement? When did that usage appear? If infringers can be called pirates, what exactly is a pirate? How historically accurate are the representations of sea pirates in popular culture? This chapter examines the histories and interactions of these different forms of piracy.

3.1 From Sea to Print to Cyberspace

"These are men, Mr. Fogg, not monsters. If we behave rationally and civilly, so will they."

- Black Sails (2015), Season 2, Episode 1.

The second season of *Black Sails* (2015) opens with a captured ship whose captain is admonishing his first mate, Mr. Fogg, not to fear the supposed brutality of pirates. A minute later the pirates massacre the captain and crew, seemingly in response to the captain's lack of fear, just to show that they are, in fact, monsters. The television program *Black Sails* is a recent popular culture portrayal of pirates in a tradition that stretches back centuries. While *Black Sails* asks whether pirates are men or monsters, other popular media narratives, such as Disney's *Pirates of the Caribbean* (2003), casts pirates as charming rogues: good-hearted but misunderstood, encouraging audiences to identify with the outlaws. But in 2009, away from the big screen, a very different kind of pirate was being sentenced to jail. The four founders of the website The Pirate Bay were found guilty by a Swedish district court of accessory to crime against copyright law, sentenced to one year in jail and 30 million Swedish kronor (approx. CAD 4.5 million) in damages. Are these digital pirates monsters or are they misunderstood rogues? Are they even "pirates" at all? The answers to these questions lie in the histories of piracy and copyright, and how both have been appropriated and subverted by online file-sharing communities.

The Pirate Bay logo (fig. 1.7) depicts a wooden sailing ship at full sail, defiantly flying an altered Jolly Roger from the 1980s antipiracy campaign, "Home Taping Is Killing Music"[28] (fig. 1.5). The logo is a symbol connecting different eras and types of piracy, blurring high seas swashbucklers with illegal music recording and, in the case of The Pirate Bay, keyboard-wielding Internet downloaders. These are very different kinds of piracy in both nature and scope.

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[28] "Home Taping Is Killing Music - And It's Illegal" was a slogan created by the British Phonographic Industry (BPI) lobby group in 1981 as part of an anti-piracy initiative aimed at curbing radio and cassette-tape music piracy. The slogan was paired with an image of a stereotypical Jolly Roger (a pirate flag; usually a skull and crossbones set against a black field) with the skull replaced with a cassette-tape. The Pirate Bay logo is a recent (c. 2003) addition to a long tradition of parody of BPI's campaign.

Maritime piracy is theft and armed robbery. Media piracy is unauthorized copying; it does not deprive owners of physical material but instead produces and circulates copies of that material. If you are charged for downloading copyrighted material, you are charged with infringement, not piracy. As previously mentioned, *Dowling v. United States (1985)* established that infringement is not piracy and does not equate to theft. Legally, piracy and infringement have never been synonymous, yet the two are constantly—and consistently—conflated in both popular and academic discourse. This conflation is no accident; rather, it reveals the political history of the copyright industry as well as locating emerging technologies as sites of contested identity.

On land, "piracy" came to mean copyright infringement, but even within media piracy there are different types of "pirates" and it is important to understand the rhetorical distinctions between them. The word "pirate" originated in reference to sea robbers but was adopted by the 17th century English book trade to mean "printer of unauthorized copies" (Johns 2009, 23). Media pirates were printers, reprinters, or booksellers (later merging to become publishers), people who *produced* and sold unauthorized copies. Historically, the term was never applied to *consumers* of pirated works until the rise of radio piracy (unauthorized broadcasting and, in the U.K., unlicensed listening) in the 1920s (Johns 2009, 358). Today, "digital pirates," can be anyone involved in any way with infringement.

In digital piracy, you have uploaders and downloaders: producers and consumers. Uploaders tend to have some programming skill (which can overlap with hacking), while downloaders simply have to know computer basics. The ability to create, edit, and control software code is an expression of both vernacular creativity and power in an increasingly digital world (Coleman 2013). Determining who is and who is not a pirate is a polarizing debate even within the file-sharing world. While it may appear at first glance as equivocation, the issue is one

of power and representation. The metaphorical use of piracy to describe infringement has a long history of use as a discursive tactic to sway public opinion (Patry 2009, 43), but while some file-sharers avoid the term, others embrace and appropriate it, rallying around pirate iconography as a symbol of a tradition of resistance. For example, Razor1911, a Scene cracking group, used the tag line "Pirates of the 777 Seas." The groups Pompey Pirates and Pirates with Attitude used the term in their own names. However, other groups, like FairLight, maintain that file-sharing should not be conflated with piracy. Founded in 1987, FairLight is one of the oldest and most respected Scene groups still in existence. Their stance on the term is that "pirates sell copies of games in order to make a profit, and harm the legal business while doing so" (Bacchus 2013). In fact, FairLight's website notes that "Selling is piracy and pirates are losers" (FairLight.to)! With this rhetoric, FairLight draws a subtle yet important distinction between file-sharing and pirates-as-counterfeiters.

Even if they do not agree on the use of the term "pirate," Scene groups (and their P2P counterparts) do agree on the distinction between groups who release pirated media for free and groups who sell them for profit. This is an emic distinction, rarely acknowledged by corporate news media, the global entertainment industry, or even academic literature. Scene groups do not sell what they infringe and do not generate income. During our interview, Bacchus told me that in his twenty-year FairLight career he made zero dollars—because money was not the point. These semantic politics are significant in that they reveal the contested nature of the phenomenon. At its heart, the debate over piracy is about access and control: access to information and control of the discourse and the politics of representation. Are modern copyright infringers better represented as 18th century sea robbers or current-day Robin Hoods?

Sea piracy, both historical and contemporary, inherently involves forcible theft of physical property, usually for the robber's financial gain. It is thus inextricably bound with violence and illegality. In contrast, software piracy involves the use of technical computer skill to produce functional copies of digital media. Television programs are "ripped" from digital video streams and reencoded; leaked or pre-release films find their way to digital "file lockers"; lossless copies of musicians' entire discographies are uploaded and shared; the code of computer games is hacked to bypass security features. These rough and ready examples are treated legally as copyright infringement and not armed robbery at sea. The connection between maritime and media piracy has its roots in the development of copyright laws in Europe, and later North America, beginning in the early 18th century, which coincided with the "Golden Age" of maritime Atlantic piracy. As Dawdy notes,

> The rhetorical expansion of the term [piracy] 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).

In order to understand the polyvalent symbolism of pirate imagery I first trace the histories of piracy discourse as it developed around sea pirates and then describe how it became intertwined with the history of copyright.

3.2 Historical Maritime Piracy

The Prisoner at the Bar stands Articled against for, and charged with several Piracies, Robberies, and Murder committed by himself and Company upon the High Sea, the worst and most intolerable of Crimes that can be committed by Men. A Pyrate was therefore justly called by the Romans, Hostis Humani Generis: And the Civil Law saith of them, that neither Faith nor Oath is to be kept with them [...] for Pirates are not Entitled to Law.

- Paul Dudley, Attorney General and Her Majesty's Advocate for the Court of Admiralty, at the trial of Capt. John Quelch at Boston, 1704 (Quelch 1705).

Piracy is an old word and an ancient practice. Its earliest English definition as "sea robbery" or "sea banditry" dates to the 14th century, with similar meanings in Latin and Greek before that (Johns 2009, 35). The classical Romans used the term *pīrāta*, from Greek *πειρᾱτής* (*peirātḗs*), to refer to maritime raiders, although the usage lacked the later connotation of outlawry and instead signified external enemies of the state (which was the pseudo-origin of *Hostis humani generis* discussed later on). Like the Greek usage, *pīrāta* was used variously to describe seaborne enemies or "others," but not necessarily "criminals"; as de Souza notes, roving bands of armed seafarers were not uncommon in the Classical Mediterranean and the morality of the practice was not initially distinguished as something categorically different (i.e., illegitimate, criminal) than legitimate warfare (de Souza 2008, 73). In fact, de Souza argues, it was Roman politicians who transformed the term into a pejorative label, as a means of framing political actions, arguing that the Romans "justified their conquest and colonization of coastal areas in central Italy in a similar fashion, by claiming that such actions were prompted by the need to suppress pirates or to establish protection from piratical attacks" (de Souza 2008, 77).

3.2.1 Ancient and Medieval Piracy

Piracy played a significant role in the formation of the Roman Republic as a foil for, or political "Other" to, the nascent empire. Prior to his later exploits, a young Julius Caesar was allegedly captured by pirates, c. 80 BCE and, after being ransomed, exacted revenge by having the pirates crucified (Ward 1975). The Roman biographer Plutarch wrote that in 67 BCE the Senate granted extraordinary powers to General Pompey to lead a massive military campaign

against the Cilician pirates, whose "piratic power having got the dominion and control of all the

Mediterranean, there was left no place for navigation or commerce." He went on to explain:

> Nor was it merely their being thus formidable that excited indignation; they were
> even more odious for their ostentation than they were feared for their force. Their
> ships had gilded masts at their stems; the sails woven of purple, and the oars plated
> with silver, as if their delight were to glory in their iniquity (Plutarch and Clough
> 1860, 376).

During the Republic's early expansion, many of Rome's enemies conveniently became "pirates"

while Roman invasions and occupations became "piracy suppression." A by-product of this

political framing was the suppression not only of the alleged pirates but also the erasure of their

actual identities:

> In many cases the leaders of these enemies were chieftains or local ruling dynasts.
> Few of their names have survived into our narrative sources, apart from powerful
> kings like Mithridates or long-term rebels like Sertorius and Viriathus. This is, in
> part, a consequence of the pirate label, which encourages writers to subsume all
> pirate-leaders under term, severing them from their more legitimate titles or local
> identities (de Souza 2008, 80).

de Souza laments the loss of leaders' names because they are key to identifying the various

groups of so-called pirates in the historical record. If even leaders' names are subsumed by the

power of the pirate label, it makes it unlikely that records of ordinary "pirates" survived. The

"pirate" threat diminished as Roman republicanism was replaced with imperialism and the

Empire achieved naval supremacy in the Mediterranean and focused on expansionism in land-

locked regions of northern Europe. However, the Roman propagandistic use of the pirate label

laid the foundation for future political machinations. Although the western half of the empire

collapsed c. 476, its history and traditions were initially maintained by Byzantium, successor to

the eastern empire, until the fall of Constantinople in 1453, and re-discovered by European states

during the European Renaissance. It should then come as little surprise that "pirate" entered

English in the 14th century, which corresponds with the beginning of the European Renaissance, c. 1350, during which emerging European nation-states "re-discovered" the Classical world.

It is fascinating to the see the parallels between the Roman Senate's politicization of piracy and the current political use of the term by entertainment and copyright industry lobby groups in courtrooms and public campaigns. Even today, the pirate label subsumes the identities of alleged infringers, from cracking groups, to the founders of The Pirate Bay, to ordinary downloaders. First, the label erases the individual and local identities of the accused, replacing them with the simplistic "pirate" umbrella (read: criminal). This is similar to Coleman and Golub's argument that the term "hacker" obfuscates and collapses important finer emic distinctions (Coleman and Golub 2008). This has the effect of constructing a monolithic view of an otherwise diverse folk group. Second, this erasure presents an opportunity for political redefinition. Beyond applying a homogenizing gloss, the power of the pirate label is such that it reconfigures the fundamental ontological category of infringers. Woodworth draws on Foucault's theory of "perverse implantation" to argue that infringers' identities are re-assigned on the basis of a single behaviour indexical of deviance:

> Where Napster users could be thought of as otherwise law-abiding people who occasionally engage in minor acts of copyright infringement, in the rhetoric of R.I.A.A. president Hilary Rosen and Judge Marilyn Patel of the Ninth District Court, they have been assigned a morally degenerate identity such as "pirate," "thief," or "hacker" (Woodworth 2004, 175-176).

As Patry has observed, this rhetorical use of the pirate label for political ends has been a stable and predictable strategy of the copyright industry for almost six hundred years (Patry 2009, 80).[29]

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[29] While the use of similar rhetorical strategies can be clearly seen as far back in case law as *Millar v. Taylor (1769)*, Patry is referring to a 1421 "printing privilege" (a precursor to copyright and patent laws) in Florence. Although the document does not use the label "pirate," it is based in a shared rhetorical heritage of political metaphor.

Heebøll-Holm picks up this thread of politicization in his work on medieval European piracy. In his survey of piracy literature, he uses two interpretive approaches to analyze primary sources as well as historiography: the "Ciceronean paradigm" and the "Augustinian paradigm" (Heebøll-Holm 2013, 3-4). Heebøll-Holm's "Ciceronean paradigm," named for Cicero's rhetorical use of piracy to demonize his opponents, is a politically-motivated dichotomy that supported state aims and objectified pirates as inherently criminal. In contrast, the "Augustinian paradigm," named for St. Augustine's parable of Alexander the Great and the pirate,[30] is a critical perspective that emphasizes the subjectivity of the pirate label.

Heebøll-Holm applies the two paradigms in a dualistic way (i.e., either/or), since one or the other held sway over the groups and time periods he references; however, I think that they also work as two conceptual "poles" of a continuum of piracy discourse. A continuum better describes the ambiguity inherent in the discourse. In this case, the "discourse" referenced is expressed through quasi-scholarly medieval chronicles, such as Roger of Wendover's *Flores Historiarum*, c. 1235. If usage of the pirate label during the Middles Ages in Europe reflects the moral relativism of the Augustinian paradigm, the Ciceronean paradigm rises to dominance in the early modern period, during which the pirate label gains its modern connotation(s). As Heebøll-Holm states,

> Not until the sixteenth century was piracy a legal term, and not until the end of the seventeenth century was the Ciceronean paradigm wholly integrated into the discourse on pirates, who accordingly were considered to be an evil to be eradicated (Heebøll-Holm 2013, 13).

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[30] In *City of God, Book IV,* a pirate captured by Alexander the Great critiques the Alexandrian Empire as petty robbery writ large: "Indeed, that was an apt and true reply which was given to Alexander the Great by a pirate who had been seized. For when that king had asked the man what he meant by keeping hostile possession of the sea, he answered with bold pride, 'What do you mean by seizing the whole earth; because I do it with a petty ship, I am called a robber, while you who does it with a great fleet are styled emperor'" (Augustine and Dods 1871, 140).

3.2.2 Atlantic Golden Age Piracy

Although piracy occurred anywhere there was maritime trade, today the term conjures an image of a particular time and place: late 17th to early 18th century shipping lanes, from the Caribbean up the Atlantic seaboard of North America and across the ocean to Europe. It is this era of sea piracy that has been immortalized—both celebrated and condemned—in European and North American popular culture through print, stage, and screen. It was the Golden Age of Atlantic sea piracy that gave us the notorious captains, Henry Avery, Edward "Blackbeard" Teach, and Bartholomew "Black Bart" Roberts. Although popular culture depictions of piracy have always been rife with romanticization and caricature, historically the Golden Age is set apart from Classical and medieval piracy by the intersections of broad economic and cultural processes, particularly liberalism, colonialism, and the emergence of overseas capitalism (Johns 2009, 154).

The Golden Age has been various defined as beginning anywhere between 1650-1690 and ending between 1722-1740. The ambiguity comes from the term itself, which was coined much later in 1894, as well as historians' general wariness of compartmentalizing history. Rediker defines three "generations" of Atlantic pirates: the buccaneering period of English pirates attacking Spanish shipping from 1650-1680; the William Kidd and Henry Avery period, characterized by pirate action in the Indian Ocean against the British East India Company, 1690-1715; and the intensification of Caribbean and North American piracy led by Edward Teach and Bartholomew Roberts, 1716-1726. It is this last period that Rediker argues was the most lucrative, disruptive, and romanticized in popular culture (Rediker 2004, 12).

Atlantic piracy entered its Golden Age with the institutionalization of privateering and the development of European colonialism in the Americas. A privateer was a private and autonomous captain who, along with ship and crew, had been authorized by a nation-state to attack its enemies during wartime. Privateers were granted letters of marque and reprisal, which codified their authorization and legally distinguished them from pirates. The distinction was often arbitrary, however, as privateers engaged in the same raiding and plundering as pirates. In fact, many of the most infamous pirate captains began their careers as privateers. Captain William Kidd, for example, was rewarded for capturing French vessels and defending British interests during the 1690s but was ultimately hanged in 1701 on charges of piracy. Kidd was at least partly a victim of London politics since his trial was a calculated move by the Tories to embarrass and discredit the Whigs (Benton 2005, 707; Dawdy 2011, 372). The dynamic political nature of deciding when privateering was piracy was characteristic of the Golden Age. In 1717, Major Stede Bonnet left a comfortable life to go a-pirating aboard his ship, *Revenge*. After being pardoned by the governor of North Carolina and commissioned as a privateer, he was ultimately hanged as a pirate by South Carolina the following year (Bonnet 1719).

Histories of piracy, whether academic or fiction, are almost invariably histories of privateers (e.g., Johnson 1724; Hayward 1735; Fernandez and Bayer 1830; Jameson 1923; Gosse 1924; Williams 1987; Hume 2002; Benton 2005; Boot 2009; Burgess 2009; Gaynor 2012). Many academic studies use language such as "the pirates" to refer collectively to pirates (e.g., Hooper 2011). This homogenization is due to a dearth of primary sources expressing the voices of the "ordinary" pirate, but its result further obscures their diversity and lifeways. Rediker was one of the first scholars to focus on reconstructing the experiences of the common pirate (Rediker 1981;

1987; 2004; 2014). Although his Marxist leanings have been critiqued (Dawdy and Bonni 2012, 685), Rediker remains one of the dominant figures in pirate social history literature.

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, combat endangered not only the lives of the pirate crew but also their ability to operate the ship. Indeed, one of the recurring themes I noted in the literature was the frequent charge of stealing medicine chests, as well as kidnapping doctors themselves (Johnson 1724, 73, 301-309; Elosesser 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.

The distinction between pirate and privateer rested on the letters of marque and reprisal, which held good as far as sovereign power and jurisdiction were acknowledged. The issue of nation-states' jurisdiction across international waters, however, was both contested by other nation-states and flouted by pirates. By the 1720s the line between pirate and privateer—the difference between legitimate and illegitimate violence—had become blurred. While privateers had been a way for states to control or at least profit from piracy, they eventually became more of an impediment than a benefit to international trade. Privateering was eventually abolished by the Paris Declaration Respecting Maritime Law in 1856, but its downfall was entwined with the end of the Golden Age. Some historians point to Captain Kidd's 1701 trial and execution as the "beginning of the end" (e.g., Rediker 2004), while others suggest it was the trial of Black Bart's

crew in 1722 (Parker 2009, 181). Either way, the Golden Age ended with privateers being hanged alongside pirates.

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 functioned 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). At the trial of 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 (Bonnet 1719, 3).

It was an alliance between emerging nation-states and mercantile capitalism during the 18th century that hastened the demise of Golden Age pirates. Pirates and privateers had become uncontrollable economic variables that threatened trading companies and, symbolically, the state itself: "The authority of the state was difficult to respect when it licensed out its monopoly on violence to uncontrollable private agents" (Dawdy 2011, 373). Pirates revealed the cracks and gaps in sovereign power and reach. If the state had a monopoly on legitimate violence, upon which its authority rested, licensing out that violence was perhaps useful but ultimately weakened the authority of the state. The issue was a matter of jurisdiction.

> The problem is, because pirates are international criminals, the logical extension of the state of exception in this case would be toward an international rule of law, which from a modern state's perspective means the capitulation of national sovereignty (Dawdy 2011, 374).

The early modern European answer to this was the legal concept *Hostis humani generis*, which translates from Latin roughly as, "enemy of the human race." The phrase is ubiquitous in pirate scholarship but has been somewhat misattributed to Cicero (Goodwin 2006, 989; Heebøll-Holm 2013, 2). Cicero used a similar phrase in his political rhetoric but, as de Souza points out, it was a passing reference and a different conceptualization of pirates (de Souza 2008, 88). In *De Officiis*, Cicero wrote: "*nam pirata non est ex perduellium numero definitus, sed communis hostis omnium*"/ "A pirate is not included in the number of lawful enemies, but is the common foe of all the world" (Cicero and Miller 1913, 384). As previously discussed, the Classical Roman use of *pirata* does not easily equate with later early modern and modern meanings. However, it is fair to attribute to Cicero the tradition of using piracy as political machination. Although Cicero's *communis hostis omnium* reflected politics rather than law, it inspired early modern British Admiralty law. As Goodwin has argued, *Hostis humani generis* was first used by English judge Lord Edward Coke in 1638 to describe piracy as a form of treason against the English crown (Goodwin 2006, 989). Goodwin suggests that the legal usage of the term expanded from national jurisdiction (i.e., jurisdiction over English subjects charged with piracy) to encompass *piracy jure gentium*, that is, a universal jurisdiction; in *Rex v. Dawson (1696)*, Sir Charles Hedges, Judge of the High Court of Admiralty, declared that the Admiralty had the authority to prosecute alleged pirates anywhere the Admiralty had jurisdiction, which, given England's growing imperial ambitions, included *all* of the seas and "the most remote part of the world" (Goodwin 2006, 991-992). As Rediker notes, *Hostis* was firmly established in law by 1718 when it was invoked by Vice Admiralty Judge Nicholas Trott at the trial of Stede Bonnet, who added that "no further Good or Benefit can be expected from you [pirates] but by the Example of your Deaths" (Rediker 2014, 77; Bonnet 1719, 34).

Hostis allowed extreme and unrestrained action against suspected pirates whenever and wherever they might be encountered. Pirates had always been a threat to maritime trade but in the age of nation-states they also symbolized the anti-nationalist, anti-colonialist, stateless Other. By declaring pirates to be enemies of all humanity, nation-states not only created a perpetual state of war to secure commerce but they also declared war against the Other. Dawdy argues that piracy revealed the inherent contradictions in liberal capitalism and thus represented a grave threat to the system (Dawdy 2011, 363). Similarly, Rediker locates apoplectic opposition to piracy within the framework of emerging overseas capitalism. Pirates, he says, 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 (Rediker 2014, 60). Rediker writes,

> 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." […] 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, Rediker found

that pirates have been "mythologized" over time into villains or romanticized as anti-heroes

(Rediker 2004, 10).

3.3 Pirates in Folklore and Popular Culture

> *Now this is the Course I intend for to steer;*
> *My false-hearted Nation, to you I declare,*
> *I have done thee no wrong, thou must me forgive,*
> *The Sword shall maintain me as long as I live.*
>
> *- A Copy of Verses, Composed by Captain Henry Every, Lately Gone to Sea to seek his Fortune*
> *(Broadside printed for Theophilus Lewis, London, 1694).*

In the 1726 trial of Captain William Fly, Judge Cotton Mather exasperatedly wondered

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'" (Rediker 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.

The maritime pirate entered popular culture and public imagination in the early 18th

century, by which time they had "already become semi-mythical figures, playing both

inspirational and cautionary roles in a variety of contexts" (Parker 2009, 171). Daniel Defoe's

Robinson Crusoe, published in 1719, is often cited as one of the earliest, if not the first, novels

about piracy. *Crusoe* was followed in 1724 by Captain Charles Johnson's semi-historical *A*

General History of the Robberies and Murders of the most notorious Pyrates.[31] Both books went through many editions and their wide circulation had a significant impact on the image of the pirate in popular culture. Beyond print, the appearance of pirates in popular literature developed in parallel with theatrical stage plays, beginning with Charles Johnson's *The Successful Pyrate*[32] in 1712, which was a tragicomedy about the pirate captain Henry Avery. By the mid-20th century, the pirate had become a trope and stock character in literature, stage drama, and film (Schweikart and Burg 1984, 220; Burgess 2009, 888; Parker 2009, 173).

Popular depictions of pirates since the 18th century have always engendered controversy through moral ambiguity. One of the earliest recorded pirate ballads, *Bold Captain Avery*, sympathetically recounts the exploits of Avery, who in 1693 imperiled English trade with India by kidnapping the daughter (or granddaughter, depending on the variant) of a Mughal lord. Baer dates the oldest printed variant of the broadside ballad, titled *A Copy of Verses, Composed by Captain Henry Every, Lately Gone to Sea to seek his Fortune*, to 1694 but argues that it previously existed in oral transmission (Baer 1995, 8). The broadside portrays Avery in a positive light yet it was also used as evidence to convict him and the allegedly mutinous crew of the *Fancy* in a case put before the Privy Council and the Committee of Trade and Plantations in 1694 (Baer 1995, 9). The ballad praises Avery's mutiny as a reaction to social conditions of inequality in 17th century England, calling the country a "false-hearted nation" and promising to "breach the moral and political confines of established society [and] liberate his men from base servitude" (Baer 1995, 16). Baer notes that

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[31] "Captain Charles Johnson" is widely considered a pseudonym. Daniel Defoe has been suggested to be the author; however, this is disputed. See Moore 1939 cf. Furbank and Owens 1988.

[32] Charles Johnson (1679-1748), the English playwright; not to be confused with the previously cited Capt. Charles Johnson, pseudonymous author of *A General History*.

> Such a rousing and uncritical celebration of crime as we find in "Every's Verses" represents a break with communal standards that, while not unprecedented, was rare in seventeenth-century street balladry and largely limited to the "matter" of Robin Hood (Baer 1995, 13).

He is not alone in noticing the parallels between Avery and Robin Hood. Rediker goes so far to call Avery "the maritime Robin Hood" (Rediker 2004, 39). He even suggests that pirates can be classed as social bandits:

> Robin Hood was, of course, the legendary figure who in late medieval England "robbed from the rich and gave to the poor." He was the preeminent social bandit, the man who was, to the upper classes of his day, a criminal, but at the same time a hero to the lower orders. Historian Eric Hobsbawm has described social banditry as a "universal and virtually unchanging phenomenon," an "endemic peasant protest against oppression and poverty: a cry for vengeance on the rich and the oppressors." Its goal is "a traditional world in which men are justly dealt with, not a new and perfect world" (Rediker 2004, 85).

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). Jones identifies a process of what might be termed "legendization" through which historical individuals are decontextualized and transformed into folk narrative heroes (Jones 1971; cf. "mythologization" in Rediker 2004, 10; Burgess 2009, 896).

Robin Hood is a textbook example of an outlaw folk hero. Outlaw folk heroes share in common a series of characteristics, including charisma, bravery, and cleverness and folk hero narratives usually involve oppressive contexts, special or extraordinary law enforcement powers, and a minor incident that acts as a catalyst for the hero (Seal 2009, 74). These narratives tend to involve deeds or elements of the hero's personality that run contrary to the dominant social order. These expressions of agency can make the narrative attractive to those who are marginalized or without power, and folk heroes can come to symbolize social or cultural

movements. Regardless of whether they are based on historical persons, folk heroes exist as narratives and these narratives share a common "script."

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 appear among groups who are denied adequate political representation or who feels they are oppressed socially, politically, or economically; the hero stays outside the laws but inside the moral code of the group that sympathizes with him […] 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).

One of the most dominant and compelling aspects of the outlaw hero is their moral ambiguity. Outlaw hero narratives are inherently concerned with conflict. The question of socially justified transgression is central to these narratives; on one hand, outlaw heroes are initially outlawed for a legal transgression—violating the law in some way—which brings them into conflict with law enforcement, but, on the other hand, they tend to arise in contexts of perceived oppression or incongruous power relations against which their legal trespasses might be socially or culturally justified. This leaves the hero's morality obscured, leaving it vulnerable to exploitation by both supporters and detractors. Is it morally justified to use violence to break laws if you deem those laws to be oppressive? In robbing monks and killing the Sheriff's men,

Robin Hood was reacting to the social inequity of the medieval English feudal and manorial systems as well as ecclesiastical corruption.[33] Henry Avery fled mercantile hypocrisy and betrayal by a "false hearted nation," using fear and violence to disrupt British trade. Contrary to Hollywood depictions of bloodthirsty and villainous criminals, most pirates were seamen who sought freedom by escaping the oppressive material conditions on merchant ships (Rediker 2014, 65). At his trial in 1726, the condemned pirate William Fly used his last breath to speak out about the conditions at sea: "Our Captain and his Mate used us Barbarously. We poor Men can't have Justice done us. There is nothing said to our Commanders, let them never so much abuse us, and use us like Dogs" (Rediker 2004, 9). It is this pairing of noble intent with questionable tactics that leads to the identification of outlaw heroes as trickster figures. As Parker suggests, "the pirate becomes a character in the popular imagination, a 'trickster' figure on the side of the people, and against authority" (Parker 2009, 169).

These themes continue to be associated with piracy today. Discussing 21st century Somalian sea piracy, Dawdy starkly contrasts insider and outsider perceptions: to the international community Somali "pirates" are responsible for hundreds of illegal actions against commercial vessels each year, yet, to Somali locals, the alleged "pirates" are essentially criminalized fishermen and the only ones defending their communities from illegal international fishing (Dawdy 2011, 367). According to one pirate:

> We don't consider ourselves sea bandits. We consider sea bandits those who illegally fish in our seas and dump waste in our seas and carry weapons in our seas. We are simply patrolling our seas (Dawdy 2011, 368).

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[33] Robin Hood and the Monk (Child 119), c. 1450, is one of the earliest surviving Robin Hood ballads and portrays a nuanced view of Robin as pious, to the point of risking capture in order to attend mass, yet also happy to rob and kill clergy. For a discussion of popular medieval English concerns of church corruption in this ballad, see Knight and Ohlgren (1997).

Although moral ambiguity is necessarily contextual and nuanced, asymmetrical power relations in the politics of representation reduce what should be a moral continuum to a binary: through the construction of a good/bad dichotomy, pirates' nature becomes perceived as merely dualistic. Dawdy argues that this apparent divide is ideological and "comes down to a fundamental disagreement about legitimacy of international forms of sovereignty and costs/benefits of neoliberal capitalism" (Dawdy 2011, 367). Connecting contemporary sea piracy to digital media piracy, she suggests that the parallel reemergence of sea piracy and the rise of media piracy is not a coincidence: locating the origins of sea piracy in a set of arguably oppressive social and economic circumstances, she warns that we should not trivialize digital piracy and reminds us that the Golden Age of Atlantic sea piracy ushered in the Age of Revolutions (Dawdy 2011, 363).

Agreeing with Dawdy, Coleman and Golub similarly decry the existence of a false dichotomy of perception in regard to computer hackers (Coleman and Golub 2008, 264). Hackers, it seems, have much in common with pirates (and outlaw folk heroes) when it comes to politics of representation. Coleman and Golub argue that we need to

> […] move beyond the dichotomous view and argue that in order to understand the ethical diversity as well as the cultural significance of hacking, we must examine how hacker morality in fact exists as multiple, overlapping genres that converge with broader prevailing political and cultural processes, such as those of liberalism (Coleman and Golub 2008, 256).

They suggest that hacking—including breaking the law—can be a form of expressive critique but that hacker motivations and intentions are varied and the hacker community heterogeneous, contrasting lived experience with reified homogeneity in popular perception and academic literature (Coleman and Golub 2008, 258). To move beyond the obscurantism promoted by the

false dichotomy, studies must interpret the social and cultural significance of the practices of hacking and piracy by locating them in the context of everyday lives.

As mentioned earlier, Scene pirates are a loose network of groups, not a monolithic entity, with some groups embracing the term "piracy" along with all of his historical and cultural baggage and other groups avoiding it. For those groups who embrace it, embedded in popular pirate discourse is an outlaw hero "script," a model for the performance of expressive critique – or a template for resistance. While groups like FairLight reject any association with piracy and emphasize different motivations, they nevertheless create cultural meaning through a structural practice of legal transgression. As digital pirates, when caught, are convicted of copyright infringement, not armed robbery, it is worth examining the history of copyright law, which itself is a contested space of ambiguous morality with its own traditions of cultural resistance.

3.4 The Origin of Copyright

"For the term of fourteen years […] and no longer."

- Statute of Anne (8 Anne, c. 19, 1710).

Sixty years after those words were written the scope and power of the Statute of Anne, the first copyright law, was being determined in a British court (*Donaldson v. Becket (1774)*). Thomas Becket, a London bookseller, had sought an injunction against Scottish printer Donaldson's reprinting of *The Seasons*, a collection of poems by James Thomson. Thomson was dead and the statutory copyright had expired. Donaldson appealed and the case ended up before the House of Lords in February 1774. The peers found in favour of Donaldson. *Donaldson v. Becket (1774)* is considered a landmark case in copyright history (Patterson 1968; Rose 1993;

Deazley 2008). At issue was not only an early case of copyright infringement but rather the nature of copyright itself.

Donaldson was not the first copyright court case but it remains one of the most-referenced, its opinions revisited by centuries of lawyers and judges (Gómez-Arostegui 2014, 4). Although interpretation of the case is still contested (Abrams 1983; Deazley 2003; cf. Gómez-Arostegui 2014), the values and principles debated at the time laid the foundation for the copyright debates of today (Patry 2009). Should copyright primarily protect authors or the public? Should copyright terms be extended? What should constitute fair dealing?[34] These are fundamental questions to answer as copyright laws continue to be revised and updated.[35] Although there have been frequent calls for reform (Legman 1962; Johns 2009; Patry 2009; Dawdy 2011; Piper 2014; Tenen and Foxman 2014), copyright discourse still centres on the ideals and opinions debated in Donaldson.

Early debates over copyright concerned the relationship between law, property, and the public good. The literature has seen scholars argue the nature and focus of copyright: the author-centered approach, which suggests copyright was first and foremost designed to protect creators (Patterson 1968) and the public-centered approach, which foregrounds education and public good as the foundational principle of copyright law (Deazley 2003). Variants of this debate appear as early as landmark case Millar v. Taylor (1769) and can be seen thriving in court rooms today (Patry 2009). However, beyond debating the nature of property, Millar and Donaldson reveal the ways in which new technology was perceived and negotiated.

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[34] Fair dealing is a set of exceptions to copyright in Commonwealth states, such as Canada and the United Kingdom. It is the counterpart of, though not exactly equivalent to, fair use in the United States. For an in-depth discussion of the differences, see D'Agostino 2008.
[35] The Copyright Act of Canada was passed in 1921 and has been continuously amended since, most substantively in 2012 and most recently in 2023. The United States' Copyright Act of 1790 was amended in 1831; 1909; 1976; 1988; 1992; 1994; and 1998.

3.4.1 Printing Technology and the Development of Copyright

The intersection of technology and ideology laid the foundation for the development of copyright. The invention of the printing press essentially created a new form of media that revolutionized Europe. The art and trade of printing, including moveable type, existed for centuries prior to the 15th century.[36] In its earliest form, printing existed in ancient Mesopotamia, c. 3500 BCE, while woodblock printing and moveable type emerged in China by the 3rd and 11th centuries, respectively, and spread to Europe by the 14th century. Similarly, the screw-press was being used by the Romans for wine-making by the 1st century (Poe 2011, 103-104). Generally credited to Johannes Gutenberg, c. 1439,[37] the Gutenberg-style printing press combined metal moveable type with the screw-press, which, along with Gutenberg's new oil-based ink, mechanized print production. Although printing presses required substantial effort and manual labour, they were the first machines of mass-production and the texts they produced became the first mass-media (Eisenstein 1980).

The printing press emerged toward the end of the European Renaissance, during the transition from the late Middle Ages to the early modern period when European kingdoms were re-discovering Classical works of art and philosophy and developing into nation-states. Johns has argued that the printing press (and, in fact, infringement) spread Classical works, such as those of Plato and Aristotle, as well as scientific knowledge that led to the European Scientific Revolution and philosophical treatises that were crucial to the European Enlightenment (Johns

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[36] An exhaustive history of printing is beyond the scope of this dissertation. For a discussion of the development of printing, see Poe 2011.

[37] The date is disputed and has been argued to range anywhere from 1439 to 1450. Gutenberg's role has also been disputed; it is unclear to what extent Gutenberg was innovative rather than popular. See Megs 1998; Poe 2011.

2009, 50-57). The development of kingdoms into nation-states and, in some cases, empires, came

with logistical requirements, such the expansion of bureaucracies and communications media.

Coupled with the emergence of the public sphere in Europe, due in part to printing, and an

increasingly literate public, the demand for print created new markets, which mercantile

capitalists were ready to exploit (Johns 2009, 30). According to Poe,

> The simultaneous rise of mercantile capitalism, the bureaucratic state, and reading religion in early modern Europe provided the historical context within which Print Culture could evolve, for each of these new developments stimulated the learning of letters and the adoption of print (Poe 2011, 109).

That the Statute of Anne coincided with the emergence of a nascent reading public was no

coincidence. On one hand, copyright was a response to the new technology of the printing press.

In this sense, *Anne* attempted to regulate this new industry. On the other hand, *Anne* was a

product of its particular time and place; specifically, it was influenced by the political philosophy

of classical liberalism and was deeply entwined with the emerging concept of authorial identity

(Rose 1988; 1993).

The printing press ushered in an age of printing, binding, and selling. The earliest mass-

printed publications were religious texts, such as the Bible and psalms, along with the recently

re-discovered Classical works. According to Kostylo,

> The early presses often focused on the production of the same popular titles. For example, Cicero's *De officiis* were printed in Venice between 1465-82 seven times, while in Rome three times, Milan five times, Naples two times, and in Brescia Parma and Turin once, not to mention numerous editions of Paris, Cologne, and Mainz. By 1476 17 editions, and by 1482 28 editions, had come on the market (Kostylo 2010, 27, footnote).

Many states did not initially grasp the revolutionary power of printed books, but through fits and

starts began to develop regulatory policies for this new industry. In 1469, the earliest surviving

printing "privilege" was granted to a German printer, Johannes of Speyer[38] by the Republic of Venice. Prior to copyright and patent laws, printing privileges were an early form of state licensing and regulation. The privilege granted to Johannes of Speyer was a five-year economic monopoly over printing in the city-state (Kostylo 2008). In effect, the privilege created him as Venice's sole authorized printer in a literal sense: the privilege specified that he was the only artisan allowed to operate a printing press. Printing privileges were concerned with licensing the technology of the press and the act of printing, not the number of copies or the market they would form. In this way, privileges shared a common heritage with the parallel emerging patent system. Although a regional example, it is worth noting that Venice, like Mainz and later Paris and London, was a major centre of print production. However, despite having claim to the earliest printing privilege, Venice subsequently became the first experimental market for an unregulated book trade when it revoked Johannes of Speyer's privilege in 1470. According to Kostylo (2008), the results were disastrous: the industry expanded too rapidly, flooding the small market with competing versions of Classical texts until running out of source material, which drove prices down and, despite an attempted anti-competitive oligopoly, the oversaturated market collapsed within a decade.

The Venetian market collapse offered an early example of the dangers of an unregulated industry and the economic need for what later became statutory copyright. Another important point to note is the lack of concern over authorship. Later European printing privileges lacked the scope of Johannes of Speyer's, but nevertheless focused on the exclusivity of titles and not the rights of the author. This was due to two factors. First, as previously noted, the modern concept

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[38] Although conventionally listed as "of Speyer" (or "Spyer"), Johannes was also recorded in Venetian records of being from Mainz, the city in which Gutenberg operated (Kostylo 2008).

of authorial identity did not yet exist. This meant there was no constant supply of material for printers to print and sell. Second, the volume of existing Classical material[39] was finite and, beyond that, the writers were long since dead.

Monarchical governments, such as England, also considered policies of state intervention in printing, but in contrast to republican governments like Venice, privileges were grounded in royal decree. However, both cases were subject to the whims of the government-of-the-day,[40] leading to inconsistent policy. In the case of England, printing had been introduced in 1476 by William Caxton (Patterson 1968, 4). Unlike the laissez-faire approach in Venice, the English maintained a measure of control over trades through devolving administration to trade guilds via royal charter. The English Crown recognized the power of printing but approached it with suspicion. In 1557, Queen Mary I granted a royal charter to the Worshipful Company of Stationers with the intention of empowering it to enforce Crown censorship, but ultimately giving it licensing and regulatory powers over all printing in England (Patterson 1968, 4-5; Johns 2009, 27-31). The earliest surviving English proto-copyright case dates to this era. *Wolfe v. Payne (1563)* resulted in an injunction against printer Richard Payne for violating royal prerogative by printing a Latin grammar book (Alexander and Gómez-Arostegui 2016, 197). A similar case was heard a century later, in *Stationers v. Seymour (1677)*, during which Serjeant Francis Pemberton, representing the Company, expounded on the power and dangers of printing:

> The press 'tis true is an excellent invencion but the licenciousness thereof in every ones using it is of dangerous Consequence. No art can be more prejudiciall to the State; & so 'tis fit to be under the inspection of the Magistrate, & it is of a politique Consideracion[.] And so in England ever since printing came in it hath bene always

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[39] Although religious texts were some of the first texts printed using a Gutenberg-style press, their printing tended to be restricted by state governments, unlike works by Classical writers.
[40] For discussions of fluctuating and inconsistent English and Venetian privilege policies, see Patterson (1968), Johns (2009), and Kostylo (2010) for England; Kostylo (2008) for Venice.

under the Controul of the governement (Pemberton, quoted in Gómez-Arostegui 2017, 23).

Exercising their royal prerogative, the Stationers in 1671 had raided, seized, and destroyed all copies of an almanac John Seymour had printed, even going so far as to destroy his presses and type. Seymour brought suit but the Court of Common Pleas ultimately sided with the Company (Gómez-Arostegui 2017, 17). Regarding *Seymour*, Abrams has argued that:

> It [*Seymour*] demonstrates that although the royal patents were indeed a source of authority for an exclusive right to print, they embodied no notion of copyright as an author's right arising from the act of creation (Abrams 1983, 1148).

The Stationers' Company operated on a register system, which offered perpetual exclusivity for the first guild member to pay the requisite fee and enter a title in the Company Register (Patterson 1968, 52).[41] Under the aegis of the Company, there were two related proto-copyrights: the "Printer's Right" to mechanically print copies, and the "Stationers' Copyright" for booksellers to secure and publish titles (Patterson 1968, 49). This historical distinction is interesting for what it reveals about the shifting socio-economic organization of the book trade as it adapted to new technology. It is also worth noting here that the Stationers originated the term "copyright," although it referred to the guild's "Stationer's Copyright" and not the later statutory right. As Patterson explains:

> The term "copy right," however, was not used in the Stationers' Company records until 1701, and then only twice. In the early days of printing, the term "copy" was used by the stationers to mean what today is called "copyright," and it was also used as signifying the manuscript in much the same way the term "copy" is used today (Patterson 1968, 4).

The fortunes of the Stationers' Company waned with the English Civil War (1642-1651) and rise of Parliamentary power. Tension had always existed between the Stationers and the Crown

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[41] Both rights disappeared with the expiration of the Licensing of the Press Act in 1695 and are largely beyond the scope of the present work. For an in-depth treatment, see Patterson 1968.

because the devolution of regulatory power meant that that same power was denied to the Crown (Johns 2009, 18). However, due to their royal monopoly, the Stationers were increasingly seen as a creature of royal power by the new House of Commons. Included in the Stationers' enemies was the Bishop of Oxford who, "defending his nascent Oxford University Press against the London trade, reviled the Stationers *en masse* as 'land-pirats'" (Johns 2009, 41). In 1695, the House of Commons refused to renew the 1662 Licensing of the Press Act, which had supported the Stationers' monopoly. The Commons' decision effectively deregulated the industry, which immediately led to a spike in unauthorized copying, provoking a legislative response. It represented a (probably deliberate) shift of power from Crown to Parliament, but also meant the industry was no longer self-regulated. As Johns describes:

> It was in these years of no property—between 1695 and 1710—that piracy really became an everyday concept for London's writers and readers. Suddenly it was being referred to everywhere, in poetry, newspapers, novels, ballads, correspondence, and essays. […] piracy as a cultural category blossomed (Johns 2009, 43).

Although the use of the term "piracy" to refer to unauthorized copying (illegal or not) was in vocational use by printers and booksellers by the mid-1600s (Johns 2009, 23), it entered popular usage beginning around 1695. This was due in part to an explosion of mass media and the subsequent reprinting of those media. According to Deazley, in 1694 there was a single state-approved newspaper, *London Gazette*; by 1709 there were eighteen separate newspapers in London alone (Deazley 2004, 11). Newspapers have been demonstrated as fundamental to the development of a public sphere and the imagined community necessary for nationalism (Anderson 1983). This time period also coincides with the Atlantic Golden Age of maritime piracy and "the countless legends of buccaneering that came to London from the naval campaigns fueled the war of print piracy" (Johns 2009, 43). As discussed earlier, the early 18th

century is also the period in which *Hostis humani generis* was established in English (and, later British) Admiralty Law. Thus, by 1710, the British socio-political landscape was infused with and fueled "images both romantic and horrific" (Dawdy 2011, 377). In the period 1695-1709, the emerging authorial identity seemed to be immediately challenged by rampant piracy. Johns suggests that,

> Authorial property and piracy were thus being forged in contest with each other. Each rested on highly contentious grounds, and neither was intrinsically credible. It was the concept of piracy that sparked the articulation of a principle of literary property, moreover, and not vice versa (Johns 2009, 39).

It was amidst this conflux of forces that the Statute of Anne was conceived, debated, and passed.

3.4.2 The Statute of Anne: Authorship and Property

"An Act for the Encouragement of Learning, by Vesting the Copies of Printed Books in the Authors or Purchasers of such Copies, During the Times therein mention," latterly known as the *Statute of Anne*, received royal assent on April 5, 1710 and came into force five days later, on April 10. It was the result of intense lobbying started in 1695 by various vested groups, including the Stationers, non-Stationer printers and booksellers, universities, and a handful of authors like John Locke and Daniel Defoe (Deazley 2004, 34). *Anne* was intended to bring order to the British publishing industry. Deazley explained that *Anne* "secured the continued production of useful books through the striking of a culturally significant social bargain, a trade-off involving the author, the bookseller and the reading public" (Deazley 2003, 108). Although the statute did not actually use the term "copyright," it nevertheless created a copyright "for the term of fourteen years to commence from the day of the first publishing the same, and no longer," renewable once if the author was still alive, for a total of twenty-eight years (8 Anne, c.19

(1710)). This essentially extended the Stationers' Copyright to the public and ended the guild's monopoly. It also vested copyright in authors and made that right transferable and inheritable. *Anne* went through several significant changes as it was sent between the two houses of parliament, such as the foregrounding of authors, immediately followed by their subsequent backgrounding (Deazley 2004, 38). The statute, and its many amendments, was the product of competing views and influence of lobby groups. The rationale behind it and the interpretation of its clauses has been the subject of debate since it came into force. The fact that none of the groups were particularly pleased with it suggests that it was perhaps a good compromise.

The expiration of the first statutory copyrights in the 1730s saw the launch of a series of legal challenges to *Anne*, which offered the opportunity for debate and (re)interpretation. After failing to get bills passed with the aim of extending copyright terms, London booksellers organized into trade organizations or "congers" and attempted to pursue the issue through litigation (Johns 2009, 112). The subsequent major court cases, beginning with *Midwinter v. Hamilton (1743)*, examined and re-examined questions concerning the origin of copyright, the scope of the statute, and the interpretation of the statute. If legislators would not hear booksellers' arguments, then the courts would decide it. The first landmark case post-Anne was *Millar v. Taylor (1769)*, followed by *Donaldson v. Becket (1774)*. These cases raised issues that are still debated today. First, what was the rationale behind *Anne* and, therefore, behind copyright? The intention of the statute has been vigorously argued, with copyright scholars variously asserting that it was bookseller-centric and concerned with salvaging the Stationers' monopoly (Feather 1988); that it was trade regulation and proto-antitrust legislation against the Stationers (Patterson 1968); that it was author-centric and promoted authors' rights (Rose 1993); and that it was production-centric with the goal of continuing and reinforcing the flow of books

(Deazley 2004). Alexander (2010) and Bracha (2010) have suggested that the statute had multiple functions and, essentially, did a little bit of everything.

Two important issues that emerge from the debate over *Anne* are property and authorship. Prior to *Anne*, an intangible creation (initially limited to books, eventually expanding to any printed work) was occasionally and informally called "literary property" (Hansard 1813). Although the later propagandistic term "intellectual property"[42] attempted to capitalize on and reinforce the notion of "property," the historical legal reality was much more conflicted. Although motivated by profit on all sides, both *Millar* and *Donaldson* nevertheless represent a debate between individual and communal ownership (read: control). Neither case definitively settled the contested nature of intangible creations: were they even property to be owned in the first place? (Deazley 2003 cf. Gomez-Arostegui 2014). Writing the dissenting opinion in *Millar*, Justice Yates worried about the scope of the powers being granted to authors: "[I]t might be dangerous to vest an exclusive property in authors. For, as that would give them the sole right to publish, it would also give them a right to suppress" (*Millar v. Taylor (1769)*, 2392). As the full title of Anne implies, 18th century legislators considered books and the ideas expressed within them to be a public good and so any measure restricting that had to be carefully weighed. As Patry points out, this negotiation is the basis of the "fair use exceptions" in the U.S. (and "fair dealing" in the U.K. and Canada); however, the use of the descriptor "exceptions" implies copyright is natural when the reverse is true, copyright is itself the exception to the public domain (Patry 2009, 125).

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[42] There are a handful of scattered 18th century uses of the term as a synonym for "literary property" (e.g., *The Monthly Review* (Griffiths 1769, 290)) but it was not firmly or popularly established until the 1886 Berne Convention for the Protection of Literary and Artistic Works. The term was intentionally designed as rhetorical device to sway public opinion. See Patry 2009.

In *Donaldson*, Lord Chief Justice De Grey opined that literary property was a "new species of property" created by the Statute of Anne—but also limited by it: "If [the author] has an absolute control over his ideas when published, as before, he may recall them, destroy them, extinguish them, and deprive the world of the use of them ever after" (Hansard 1813, 991). Solicitor General Wedderburn disagreed, citing the Roman legal principle *jus utendi, fruendi, disponendi*: the exclusive right to use, enjoy, and dispose of property—ultimate dominion over chattel. According to Wedderburn, although an idea was incorporeal, if it promised future profit to an inventor then it was property (Hansard 1813, 963).

"Property" has conventionally been considered to be tangible, material things. We think of "property laws" in term of ownership of these things. But declaring an object property does not describe any inherent characteristic of it; ownership does not alter the fundamental nature of a thing. What property and property law actually describes and regulates is *control*. Having "dominion" over objects describes the right to determine and delineate usage: *jus utendi, fruendi, disponendi*. In this way, property has conceptually always been first and foremost about control. Years earlier, in *Millar*, Yates almost seemed to anticipate Wedderburn's argument when he stated, "Mere value does not constitute property" (*Millar v. Taylor (1769)*, 2356). Property doctrine requires more than the capacity to generate value; property requires the ability to exercise exclusive and ultimate dominion, which is not easily applied to the intangible. Yates continued,

> How strange and singular must this extraordinary kind of property be; which cannot be visibly possessed, forfeited, or seized; nor is susceptible of any external injury, nor consequently of any specific, or possible remedy! (*Millar v. Taylor (1769)*, 2385).

In 1899, the U.S. Supreme Court ruled that ideas are "as free as air or sunshine," the implication being that because ideas are inherently intangible, they cannot be controlled (Patry 2009, 59). To

extend the metaphor, neither air nor sunshine can be monopolized and each are a common

benefit and, in fact, necessary to all. However, copyright case law in both the U.K. and U.S.

suggests that this long-standing issue has never been philosophically settled. Modern copyright

laws address this, agreeing that an idea per se is not copyrightable but a fixed expression of that

idea is. Despite the naturalization and normalization of the term "intellectual property,"

copyright is not and has never been a property right.

The issue of property in copyright was debated in parallel with questions over the nature

of authorship. Beyond legal and economic arguments, the ideas of authorship and property

became entangled with the development of liberal, romantic authorial identity. As previously

mentioned, early printers first exhausted Classical texts before turning to modern authors. Under

the Stationers' system, members were free to claim rights to the works of authors, such as Plato

and Cicero, to the exclusion of all others. It was typical for living authors to sell their

manuscripts to printers or booksellers for a lump-sum, and although *Anne* invested rights in the

author the practice continued afterwards but with the additional sale of the copyright (Bracha

2010, 1439). While peers and justices in both *Millar* and *Donaldson* waxed poetic about authors'

relationships to their creations, both cases (and many future ones) exclusively concerned

publishers, printers, and booksellers: not so much the author, but the author's assigns. In fact, the

text in question in both *Millar* and *Donaldson*, *The Seasons*, did not concern its author at all:

Thompson had sold it to Millar, who was suing Taylor for his own benefit, not Thompson's. By

Donaldson in 1774, Thompson was dead and Millar had sold "the rights" to Beckett. Rose notes

that Locke and Defoe were two early proponents of authors' rights over copyright as a kind of

"literary property"; their positions are expressed by a quote from Joseph Addison's *Tatler*

periodical:

> All Mechanick Artizans are allowed to reap the Fruit of their Invention and Ingenuity without Invasion; but he that has separated himself from the rest of Mankind, and studied the Wonders of the Creation, the Government of his Passions, and the Revolutions of the World, and has an Ambition to communicate the Effect of half his Life spent in such noble Enquiries, has no Property in what he is willing to produce, but is exposed to Robbery and Want, with this melancholy and just Reflection, That he is the only Man who is not protected by his Country, at the same Time that he best deserves it (Addison 1709, quoted in Rose 1995).

The proverb variant[43] implied here, "don't reap what you haven't sown," is identified by Patry as one of several copyright "origin myths" that employ emotionally provocative rhetoric and metaphor, but collapse under critical scrutiny; he calls this one the "Agrarian Metaphor" and argues that is a slippery slope that intentionally uses emotion to obscure its own set of assumptions, notably that the author has not "reaped" anything from previous authors (Patry 2009, 78). The Agrarian Metaphor is often found in conjunction with the "Labour origin story," which suggests copyright exists to protect the labour that went into creation and production. However, copyright is based in originality regardless of labour invested (Patry 2009, 65). Patry next identifies the "Natural Rights and Geniuses origin story," which recognizes an intellectual work as the product of the author's "individual genius" (Patry 2009, 65-66). According to Foucault, "The coming into being of 'author' constitutes the privileged moment of individualization in the history of ideas, knowledge, literature, philosophy, and the sciences" (Foucault 1984, 101). As Rose shows, the doctrine of originality and the individual genius comes out of the European Renaissance to influence Enlightenment philosophy and, in the 18th century, blends with the classical liberal concept of property rights (Rose 1993, 6). Johns also locates this same blending, though he attributes it to the revolutionary ideas of "liberty and property" codified in the 1689 Bill of Rights promulgated in the wake of the Glorious Revolution of 1688.

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[43] The common variant is, "You reap what you sow," e.g. John 4:38 and Matthew 25:24.

Similarly, Deazley refers to this ideological ideal as the "romantic author-genius" (Deazley 2003, 111). However, as Patry argues, ideas are rarely, if ever, the product of a single person; they are shared socially and culturally reproduced, suggesting they are part of an intellectual or cultural commons and not created out of thin-air by individuals (Patry 2009, 66). Patry's argument is anticipated by Rose, for whom

> […] copyright is not a transcendent moral idea, but a specifically modern formation produced by printing technology, marketplace economics, and the classical liberal culture of possessive individualism. It is also an institution built on intellectual quicksand: the essentially religious concept of originality, the notion that certain extraordinary beings called authors conjure works out of thin air (Rose 1993, 142).

Developing this vein, Woodworth examines the sociological link between copyright and identity, stating:

> Authorial anxiety is justified by the lingering Romantic tendency to locate artistic value in the unique personality of the artist. In this context, the loss of centralized control over an artist's body of work constitutes a loss of control over their very identities (Woodworth 2004, 161).

For Rose and Woodworth, the romantic liberal conceptualization of authorial identity necessarily views artistic creations as being inherently and inextricably imbued with the person of the creator, thus making the creation a metaphysical extension of the author made manifest in fixed form. This is partly what Patry identified as the "creation-as-birth metaphor," which suggests that because creations are either the metaphorical "children" of a creator, or extensions of a creator themselves, therefore a transgression such as pirating is an assault upon the very personhood of the creator; however, Patry is quick to note that copyright has an economic basis, not a moral one, and, somewhat less seriously, he also suggests that the metaphor collapses once one considers a creator selling their "children" (Patry 2009, 70).

While Patry dwells on the use of metaphor as a means of justifying arguments in favour of ever-stronger copyright, the "origin myths" he collects are rooted in cultural beliefs about the

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socio-religious function of writing itself. For Foucault, writing is inherently entwined with death and sacrifice. Writing offered a means of eluding death and, through narrative, conferring immorality. He writes:

> Our culture has metamorphosed this idea of narrative, or writing, as something designed to ward off death. Writing has become linked to sacrifice, even to the sacrifice of life: it is now a voluntary effacement which does not need to be represented in books, since it is brought about in the writer's very existence (Foucault 1984, 102).

Foucault is writing here about the "death" of the modern author, but his underlying ideas align well with Patry's "origin myths." In this sense, copyright serves as a symbolic layer of armour, protecting the author not from economic assault but from spiritual and metaphysical death. If, as the romantic liberal formulation goes, works of art are extensions of the author's body or person, they symbolically represent pieces of the author's self sent out into the world to maximize immorality via recognition of the author's individual genius. The creation-as-birth metaphor also invokes this attempt at immorality insofar as parents survive in a sense through their children.

The notion, however abstract, of authors imbuing pieces of their geniuses, personalities, or selves into their works to be distributed far and wide in attempt to elude death parallels magical belief and folklore. A fictional parallel can be found in popular culture, in the use of "horcruxes" in Rowling's *Harry Potter* fiction franchise, which are magical containers used by wizards to store pieces of their souls outside of their bodies (Rowling 2005). This is not to imply that authors are akin to wizards, although the "technological author" (Philip 2005) has indeed been referred to thusly, especially in the case of programmers and hackers (Levy 2010[1984]; Hafner and Lyon 1996). Although horcruxes hail from commercial fiction, the essential idea behind them can be found in traditional Slavic folklore featuring Koschei the Deathless. Koschei (Kashchei/Koshey) is a folktale character typically found in taletype ATU 302 ("The Giant

(Ogre) who had no heart in his body"), in which he functions as an immortal villain who has

hidden his soul, or his "death," in an egg (Propp and Forrester 2012, 215; Magyarody 2017,

340). This theme of manifesting an intangible part of oneself outside the body as a physical

object shares a striking conceptual similarity with Frazer's theory of sympathetic magic. Frazer's

"Law of Contagion" posits that "things which have once been in contact with each other

continue to act on each other at a distance after the physical contact has been severed" (Frazer

1917, 52). In this view, author and creation are forever inextricably—and magically—linked

together. While authors who espouse Patry's "origin myths," especially creation-as-birth, may be

speaking metaphorically, I suggest that there is magico-cultural belief underlying the ideological

metaphor. Contagious magic also acts both ways, connecting both producer and consumer.

Narváez has analyzed the producer-consumer relationship in popular culture fandoms using

sympathetic magic theory, arguing that "Fans *act* like practitioners of magic" (Narváez 2007,

336, original emphasis). One of the ways fans do this is through contagious magic. Narváez

describes the consumption of artist-related products, such as CDs, as fans attempting to feel

socially closer to artists:

> The second major strategy involves the spatial perspective of contagious magic,
> which I will refer to here as linkage. Practices of linkage make connections between
> performer and audience through obtaining items that have had direct contact with
> the artist (autographs, auctioned personal items); acquiring simulacra of various
> kinds (photos, calendars, posters, fanzines, CDs, tapes, DVDs) from mainstream
> sources (chain stores, eBay) (Narváez 2007, 337).

Narváez is writing with musical artists in mind and is concerned with the performative

acquisition of fandom, but the simulacra he describes can be expanded to include books. While

authorial fandom may not express itself in quite the same ways, many of the products in

Narváez's examples are copyrightable and function to manipulate the symbolic proximity

between producer and consumer. Like Koschei, in a quest to elude death, creators distribute

symbolic fragments of themselves in the works they create and use copyright shield and control those fragments.

The creation-as-birth metaphor is only one of many justifications commonly wielded in copyright discourse, but it is illustrative of the type of emotive political rhetoric that would make Cicero proud. The portrayal of authors as wizards locked in combat with Death is no more or less fanciful than the idea of the romantic liberal genius conjuring original work out of thin-air. Patry quotes Justice Hugh Laddie on this point,

> The whole of human development is derivative. We stand on the shoulders of the scientists, artists and craftsmen who preceded us. We borrow and develop what they have done; not necessarily as parasites, but simply as the next generation. It is at the heart of what we know as progress (Laddie quoted in Patry 2009, 73).

I will return to this discussion in Chapter 4 with an analysis of the cultural underpinnings of copyright and its relationship to folkloristic theory.

Although copyright's discursive field is "stable" (Snow 2008, 10), owing to its centuries of legal and popular debate, it remains hotly-contested. Commonwealth and U.S. copyright laws also gradually change over time as they are adapted to new technologies. From its earliest days as a printing privilege, the idea of copyright has existed as an attempt to regulate and make sense of emerging means of production and the media they create. As once-separate vocations of printers, binders, and booksellers slowly merged into publishers, copyright laws have been expanded to encompass new industries and new media: music, photography, film, television broadcasts, and computer software. Each reform bill offers an opportunity to renegotiate the law's scope and remedies. Copyright terms have been continually extended from the original twenty-eight years to the author's life plus seventy years in Canada and the U.S.[44] Today, just as

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[44] The U.S. also has a separate category for "works for hire," i.e., works produced by employees under contract, which carries a one hundred and twenty-year copyright term.

in 1557 and 1710, the balance struck between the rights of authors and their assigns and the

common good is delicate and subject to the ebb and flow of political rhetoric and power.

Regardless of one's perspective, copyright is firmly established as a fundamental part of

contemporary law and society. How copyright law is configured and enforced is increasingly

important as it continues to be extended.

> But I can never entertain so disgraceful an opinion of learned men, as to imagine the profits of publication for twenty-eight years will not content them. I will not believe that nothing will induce them to write, but an absolute perpetual monopoly; that they have no benevolence to mankind; no honourable ambition of fame; no incentive to communicate their knowledge to others, but the most avaricious and mercenary motives. From authors so very illiberal, the public could hardly expect to receive much benefit (Justice Yates, dissenting, in *Millar v. Taylor (1769)*, 2392).

3.5 Old Foundations, New Practices

> Meanwhile, as the information economy has grown, so it seems that piracy has metastasized beyond anyone's ability to understand and master it. Some of its species are industries in their own right. In political and economic rhetoric the accusation of piracy has become the indictment of the age, and a ubiquitous element in the framing of national and international trade politics (Johns 2009, 497).

When Artem Vaulin, alleged former owner of Kickass Torrents, was arrested in 2016,

newspapers waxed rhetorical in their coverage. *The Register* ran the headline: "Alleged skipper

of pirate site KickAss Torrents keel-hauled in Poland" (Pauli 2016), yet the criminal complaint

in *United States v. Vaulin (2016)* did not use the words "pirate" or "piracy." KAT's reappearance

the following winter engendered similar headlines: "Kickass Torrents sets sail again, proving

pirates are hard to sink" (Smith 2016). These are only two examples, and, although the headlines

may be received as playfully tongue-and-cheek, they nevertheless contribute to the tradition of

rhetorically associating maritime piracy with media copying.

The relationship between maritime piracy and copyright infringement is old, complex, and dynamic. On one hand, the two are entirely different beasts. Piracy, robbing ships at sea, is an ancient practice that both predates recorded history and continues to exist today. Beyond the threat of maritime force, the impetus and *modi operandi* of piracy have continuously changed over the centuries. The Cilician pirates might find they have little in common with Henry Avery and the crew of the *Fancy*, and less with the uploaders at Kickass Torrents. Although a stereotypical image of 18th century Atlantic piracy has become entrenched in popular culture and public consciousness, the history of various groups called pirates reveals diverse peoples and cultures. As I have noted, when someone is charged for illegal downloading, they are charged with infringement, not piracy. Unlike maritime piracy, infringement is technically not even a crime; with the exception of commercial infringement, copyright is found in civil law, not the criminal code, a violation of which constitutes a tort, not a crime. Although the nature and scope of copyright has changed over time between and within jurisdictions, the beliefs and arguments constituting its discourse have remained remarkably stable. From 1557 to 1710 to present, black letter law has changed considerably while the spirit of the law, or, the spirit of the idea of copyright, has remained such that the opinions of judges in 1769 still find relevance today.

On the other hand, there are striking parallels between the two "piracies." Both maritime pirates and media infringers have been socially constructed as stereotypes. Both have been subjected to unending rhetorical campaigns that seek to obscure, gloss, and demonize those who are deemed subversive. Cilician pirates might find familiar the evocative and apoplectic political labels deployed against Katians. Whether sailing ship, printing press, or keyboard, piracy of all stripes can be broadly understood as a reaction to technology and power. Piracies ask the question, "who has the authority to determine access and control?"

4. Toward a Vernacular Authenticity in Pirated Mass Media

In late 2014, a thread in KAT's Community Forum asked the question, "If you had enough money, would you still pirate?" The thread was not particularly unique or out of the ordinary. In fact, it was mundane—the kind of thing seen everyday at KAT. Yet, the ensuing discussion lasted two years and grew to over one hundred pages of replies. Because of its assumption concerning pirates' motivations, the initial question provoked a range of responses from complete agreement to outright hostility. As usual, the cost of media was the most common and frequently cited rationale for piracy; however, there were several other significant motivations espoused with similar fervor by Katians. I noticed the emergence of a rich vein of emic distinctions. Katians used terms such as "original copy," "legit copy," and "pirated version" when distinguishing between what I identify as types of perceived authenticities within a structural matrix of vernacular valuation.

The very existence of mass media raises cultural, economic, and political questions of authenticity and originality: what does it mean for something to be a "copy" of an "original"? These questions and the ways in which we answer them, using terms such as authentic/inauthentic and legitimate/illegitimate, reveal sociocultural politics and anxieties about the effects of mass production. Copyright represents one response, ideological in content and hegemonic in tone, that brings to bear law and power. Piracy intersects with these concepts in the reproduction not only of copies, but pirated copies—reproductions that have been modified and subsequently reproduced with those modifications. What does it mean for a copy to be changed and then re-copied? A folkloristic approach offers another response, using the principles of tradition and variation to interpret the appropriative and transformative elements of piracy through the lens of vernacular culture.

This chapter will first explore the politico-cultural histories of the concepts of authenticity and originality as they relate to mass (re)production. Next, I will examine the cultural anxieties about technologies of reproduction and their structural symbolism historically and ethnographically. Finally, I show that a folkloristic approach is effective for interpreting digital media piracy through an argument for piracy as a transformative folk process with the goal of producing and disseminating digital variants.

4.1 An Ideology of Mass Production: Beliefs and Anxieties

The effects of technologies of massification cannot be understated. Starting in the 15th century, technologies of mass production, mass replication, and mass communication shaped the development of Euro-American societies. Indeed, massification is a hallmark of modernity. This era saw the shift from late medieval feudal agrarian cottage economies to early modern liberal industrial capitalism, along with the rise of nationalism, romanticism, and colonialism. These phenomena mixed and inter-reacted dynamically, influencing socio-technical anxieties and tensions. Hine captures this dynamism in her description of early Internet adoption:

> The capacities of the technology are not readily apparent and available in advance
> to those who acquire them. Rather, they are worked out in a process of negotiations
> and interpretations, which happen in the specific context in which the technology
> is bought and used (Hine 2000, 28).

These negotiations and interpretations constitute the social shaping of technologies (MacKenzie and Wajcman 1985), the reciprocal mirror of the effects that technologies simultaneously have on social relations. These negotiations have been expressed in a variety of ways, from physical resistance and rebellion to belief and vernacular expressive culture. The interpretations of pirated material at KAT as inauthentic and dangerous, and the shutdown of KAT itself for copyright

violation, have their deepest roots in a process of change begun centuries earlier that intertwined

production, technology, and capital. This section will examine some of these historical

expressions in order to contextualize current piracy discourse. It is not intended as an exhaustive

survey but rather a lineage of sociocultural reactions to mass production.

4.1.1 Early Reactions to Enclosure and Industrialization

> *The law locks up the man or woman*
> *Who steals the goose from off the common*
> *But leaves the greater villain loose*
> *Who steals the common from off the goose.*
>
> *The law demands that we atone*
> *When we take things we do not own*
> *But leaves the lords and ladies fine*
> *Who take things that are yours and mine.*
>
> *The poor and wretched don't escape*
> *If they conspire the law to break;*
> *This must be so but they endure*
> *Those who conspire to make the law.*
>
> *The law locks up the man or woman*
> *Who steals the goose from off the common*
> *And geese will still a common lack*
> *Till they go and steal it back.*
>
> *- Anonymous[45]*

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[45] Quoted in Boyle (2003, 33). Versions of this poem have been reproduced since the 18th century, attributed to "anonymous" and dated either 1821 or 1765. The 1821 date comes from Boyle's discovery of a version in the February 1821 issue of *The Tickler Magazine.* Morris (2018) found earlier reproductions of the same version in the February 1818 issue of *La Belle Assemblée* and 1819 issue of *The Gentleman's Mathematical Companion* (Birch 1818). I traced it to poet William Hutton, who claimed to have written it April 13, 1797 (1804, 316). The 1765 date comes from the claim in Hoyt and Roberts (1922) that it reflects the enclosing of "a strip of land in front of Camden House" by Charles Pratt, 1st Earl Camden, in 1764. Although Pratt was not then a peer, he did own "Camden Place" in Chislehurst and enclosed the Red Wood common between 1760-1794 (Chislehurst 2018). However, the most substantive work is Bartolovich (2018), who found the earliest recognizable version in a prose narrative in Sanderson's *Compleat History* (1656) and an animal tale proto-version in Breton's *The Good and the Badde* (1616).

The definitions of terms such as "authenticity" and "originality" are political expressions deeply entwined with particular histories of production and control. From the early modern and into the modern period in Europe, enclosure and industrialization were twin processes that, on one hand, enclosed and privatized resources previously held in common, and, on the other, supported private wealth creation through mechanical mass production of goods that were previously handmade. Enclosure consisted of the literal enclosing of common land with fences in favour of local landlords and to the exclusion of all others. Linebaugh describes the restructuring of labour with the shift to a capitalist system:

> The enclosure of handicraft started with the domestic system of the merchants putting out raw materials to the craftsman and the craftswoman working at home where the round of tasks in garden, field, and loom were industriously mixed. Then, manufactures or the separate workshop, brought all the workers together. The factory added machines and power. Enclosure depends on the separation of industry from agriculture, the factory from the land. The two processes were carried forward together. Enclosure destroyed both (Linebaugh 2012, 12).

Enclosure fed industrialization through the repurposing of land and displacement of people, which supported urbanization and helped create a workforce for industrial labour. Enclosure and industrialization both provoked resistance from those affected by them, including Kett's Rebellion in 1549, the True Levellers in the 1640s and the Luddites in the 1810s.

Kett's Rebellion was one of the earliest reactions to enclosure. Centered in Norfolk and taking its name from one of the local leaders, Robert Kett, the rebellion was part of a broader coordinated movement stretching across East Anglia (MacCulloch 1979, 40). In the summer of 1549, tens of thousands of commoners, displaced or dispossessed by enclosure, formed a series of armed camps that pulled down enclosure fences and imprisoned landowners (MacCulloch 1979, 41). Seeking negotiation, the rebels printed articles laying out their demands. In response, local gentry mobilized against the rebels and the threat of force combined with gold and pardons

pacified most of the camps, except for Kett's at Mousehold Heath, which ended in battle and

Kett's hanging. According to Wood,

> [The rebels'] programme amounts not to the reassertion of the society of orders, but to a radical reconstruction of society from the bottom up. As such, it implies that the commons were capable of articulating an entirely different vision than that of their rulers of the distribution of wealth and power (Wood 2007, 4).

As Wood suggests, the surviving Mousehold Heath documents reveal that the rebels perceived

enclosure as part of a larger system of power and control and, had their demands been successful,

would have reconfigured that system.

A century later, the True Levellers, or "Diggers," a socialist religious group active in the

late 1640s, attempted to create alternative communities. Led by writer and activist Gerrard

Winstanley, the Diggers followed a radical biblical interpretation which eschewed private

property and led them to occupy enclosed land and establish a series of agrarian communes and

print numerous pamphlets explaining their cause (Hill 2006). In the post-Revolution socio-

political milieu, and at the beginning of the shift towards industrialization, Winstanley's

pamphlets promoted a socialist populism that has been variously identified as anarchist,

libertarian, and proto-Marxist (Hill 2006, Gurney 2012). As Hill explains,

> Their intention […] was to cultivate the waste lands as a communal group: they would "meddle only with what was common and untilled." Any rights in the commons claimed by lords of manors, Winstanley later explained, had been "cut off with the King's head." They hoped that before long the poor everywhere would follow their example, and that property-owners would voluntarily surrender their estates and join in communal production (Hill 2006, 27).

Local landowners did not surrender their estates. Instead, the Diggers were threatened, harassed,

arrested, beaten and their communities were raided and crops and buildings burned (Hill 2006,

28). The Digger movement reached its zenith in 1650, after which it began to dwindle as

landowners mobilized state power, law, and violence. The Digger communities were eventually abandoned.

As an anti-enclosure movement, the Diggers' method of resistance was the expansion of the commons through non-violent civil disobedience. Revolutionary in scope and vernacular in membership, both Kett's Rebellion and the Digger movement share parallels with, and offer lessons to, later instances of folk resistance. The anti-enclosure movements largely failed to stop the practice, but the tension between enclosure and commons continues to exist today, albeit in a different form. When the term "piracy" made landfall, and expanded to cover copying media, it signalled a new type of enclosure.

Boyle has argued that the increasing scope and maximalism of copyright and patent laws is part of a "second enclosure," a neo-liberal process of intellectual enclosure:

> We are in the middle of a second enclosure movement. It sounds grandiloquent to call it "the enclosure of the intangible commons of the mind," but in a very real sense that is just what it is. True, the new state-created property rights may be "intellectual" rather than "real," but once again things that were formerly thought of as either common property or uncommodifiable are being covered with new, or newly extended, property rights (Boyle 2003, 36).

Where the first enclosure movement was largely premised on efficiency and maximizing production (Hill 2006, 21), the second enclosure movement features guaranteeing incentives, growth, and investment (Boyle 2003, 37). In both cases, resources that were publicly held are privatized and commodified. "It may sound paradoxical, but in a very real sense protection of the commons was one of the fundamental goals of intellectual property law. In the new vision of intellectual property, however, property should be extended everywhere—more is better" (Boyle 2003, 40). One of the reactions to this second enclosure is media piracy. Although separated by centuries, there is a lineage of resistance that connects the enclosure movements and those who resist it. Like the Diggers, pirates create their own communities based on alternative ideas

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considered illegal and threatening to the state, property owners, and copyright holders. When faced with enclosure, the Diggers' solution was to create a new commons. Although pirates are not necessarily unified in intent, the end result of the practice of piracy is the creation of a de facto pirate commons that is virtual in nature and *bricolage* in design (Hebdige 1979).

4.1.2 Resistance to Mechanical Labour

Enclosure is one part of the emergence of a pirate commons, another is mass (re)production technologies, which have their roots in industrialization. Although the printing press and spinning jenny seem far removed from Internet file-sharing, many of the same beliefs and politics of the Industrial Revolution are baked into discursive rhetoric and contemporary vernacular understandings of media piracy. The idea of a pirate commons will be returned to in the last section of this chapter. In the meantime, I will shift from discussing enclosure to examine Luddism as another reaction and resistance to industrialization and the rise of mass production.

In the Luddite Rebellion of 1811-1816, British textile labourers engaged in organized action to pressure capitalist employers and owners by smashing industrial weaving machines and burning mills out of frustration at the collapse of wages and exploitative labour conditions (Bailey 1998; Linebaugh 2012). By 1811, the Napoleonic Wars had led to an economic recession in the U.K., which threw into sharp relief the existing socioeconomic inequities. Despite make-work projects and government bailouts for industries, wages fell and prices rose. This exacerbated the on-going labour tensions wrought by industrialization, which saw the downsizing of workforces through automation, and led to the passage of the Combination Acts of 1799 and 1800, which outlawed unions and collective bargaining out of fears of working-class radicalism in the wake of the French Revolution (Peel 1880; Bailey 1998).

The Luddites were not the first machine-breakers. In 1675, London weavers rioted for three days and burned weaving machines to protest mechanization (Bailey 1998, 11). By the 18th century, industrial labour militancy was widespread and well-organized. Like Kett's rebels and the Diggers, the machine-breakers sought to radically restructure socio-economic and political orders by creating alternative bottom-up systems. Successive generations of British workers developed a moral economy, which guided collective action (Horn 2005, 147). The Luddite Rebellion was part of this broader tradition, but was particularly well "organized and maintained a sustained campaign of industrial sabotage" for five years (Bailey 1998, 11).

The Luddite movement consisted of a series of riots and break-ins, starting in Nottingham in 1811 and spreading to neighbouring counties. Crowds of workers broke into workshops and disabled or destroyed machinery, initially targeting stocking-frames used by the textile industry. Typically, each riot was dispersed by law enforcement, but not before causing significant damage and yielding no convictions due to public support for the rioters (Bailey 1998, 16). By 1816, the rebellion finally ended after Luddite cells were suppressed militarily by the British Army.

In addition to the organized and sustained sabotage, the Luddite rebellion is also significant for its writings. From the start of the movement, anonymous Luddites wrote letters to all levels of government, posted public manifestos, and sent threatening notes to employers, signed "Edward ("Ned") Ludd," sometimes from his "Office in Sherwood Forest" (Binsfield 2004, 90).

> Luddite declarations, proclamations, and posted notices provide good examples of the Luddites' appropriation of official discourse, repeated in the course of transforming the moral economy into a moral-economic polity capable of taking action on behalf of a community and a trade against manufacturers who were supported by the government (Binsfield 2004, 70).

Beyond the materiality of machine-breaking, the anonymous letters and notices created a media discourse and, through this practice, the Luddites discursively constructed the identity of their movement. The development of a moral economy, and the grounding of the Luddite identity in the legendary landscape of Robin Hood's Sherwood Forest, summoned a tradition of pre-industrial resistance.

> The machine-breakers themselves, according to the popular tale, adopted the name of a backward youth, Ned Ludd, or Ludlam, of Anstey in Leicestershire. The lad, legend has it, smashed the needles of a stocking-frame he was working at, in or around 1779, in bad-tempered retaliation for a punishment he had received; and thus unwittingly wrote his name in the pages of history. This myth, discovered, apparently, by the *Nottingham Review*, has been repeated endlessly by generations of social and industrial historians. […] It may be that the story has a basis of truth – Ludham is still a relatively common surname in Leicester (and Derbyshire). The implication, of course, is that Ludd's spontaneous recently reaction was imprinted in the minds of fellow-workers, perhaps as a powerful symbol of injustice and workers' solidarity, and that the story spread throughout the hosiery industry by word of mouth until the moment came when a growing movement, needing an identity, remembered Ned Ludd, and took his name as its figurehead – a sort of industrial Robin Hood (Bailey 1998, *x*).

An "industrial Robin Hood" calls upon pre-modern legendry to respond to modern industrial relations. Like King Arthur's promise to return when England needs him, allusions to folklore conjure a legendary moral past to meet the needs of the present. While this kind of work has often gone the way of romantic nationalism (Abrahams 1993; Bendix 1997), the use of folk narrative to construct an anonymous outlaw folk hero—in this case, Ned Ludd[46]—represents smaller-scale, more localized expressive culture. Although Ned Ludd does not map neatly on to the Robin Hood tradition, he reflects the need for a larger-than-life spokesperson for the movement: a voice for the voiceless. In this way, Ludd personifies the movement. Folkloric

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[46] Ned Ludd is by no means an anomaly. He is perhaps better understood as typifying a tradition of fictitious outlaw folk hero leaders, e.g., one of Ludd's contemporaries was Captain Swing, the anonymous leader of a series of agricultural revolts in the 1830s, see Hobsbawm and Rudé 1969.

personification may well have been considered an antidote for the perceived dehumanization of

modernity. As Linebaugh notes,

> The division of labor in the arts and crafts enabled them to become part of the system of enclosure as the factory replaced the workshop. The resulting dehumanization was anticipated in Adam Smith's Wealth of Nations: "In the progress of the division of labor, the employment…of the great body of the people, comes to be confined to a few very simple operations, frequently to one or two. The man whose whole life is spent in performing a few simple operations…generally becomes as stupid and ignorant as it is possible for a human creature to become" (Linebaugh 2012, 11).

Although the word "luddite" eventually became a pejorative term implying a general dislike of

technology, the Luddites' problems lay with shifting relations of production, not the machines

themselves. Machine-breaking was form of violent collective action predicated upon economic

relations. However, rebellion and revolution represent only part of a spectrum of sociocultural

responses to massification.

Bausinger argued that the process of integrating new technologies into daily life provokes

sociocultural reactions—from demonic railroad legends to senses of embourgeoisement—but it

is also deeply nuanced and contextual, and, ultimately, that "technology in the everyday can only

ever be grasped conjuncturally" (Bausinger 1984, 346). These kinds of local and vernacular

negotiations are more in line with Hine than Marx, but Bausinger blends the two scopes when he

describes industrialization:

> In *Capital*, Marx makes the dividing line, the decisive, qualitative difference between cottage (or artisan) manufacturing and factory production and machinery. The development from craft to large-scale manufacturing is for Marx a significant regression: from skill to semi-skill. The all-round skill of the craftsperson gets divided, reduced, but is not quite destroyed yet. But then comes for Marx the decisive point, "The lifelong speciality of handling the same tool now becomes the lifelong speciality of serving the same machine." An active relationship thus becomes a passive one (Bausinger 1984, 345).

This perception of passivity echoes Adam Smith's quote in Linebaugh (2012, 11). Industrialization—and modernity—posed risks beyond upending social relations and endangering workers' livelihood. What was at stake was one's identity and sense of self. This malaise stretched from the individual to encompass society as a whole, and, according to Sapir, called into question cultural authenticity:

> The great cultural fallacy of industrialism, as developed up to the present time, is that in harnessing machines to our uses it has not known how to avoid the harnessing of the majority of mankind to its machines. The telephone girl who lends her capacities, during the greater part of the living day, to the manipulation of a technical routine that has an eventually high efficiency value but that answers to no spiritual needs of her own is an appalling sacrifice to civilization (Sapir 1924, 411).

Marx himself perhaps put it best: "In handicrafts and manufacture, the worker makes use of a tool; in the factory, the machine makes use of him" (Marx 1982[1867], 584).[47]

The Luddite letters referencing Robin Hood suggested that the Luddites saw themselves as acting within that outlaw folk hero tradition. The creation and use of a collective outlaw folk hero identity is a means of personifying the movement.[48] In the above passage from Linebaugh, he offers a quote from Adam Smith which reveals Smith's concern with the detrimental effects of mechanized industrial labour. Smith is not alone in this; it was famously satirized centuries later in Charlie Chaplin's *Modern Times (1936)*. Linebaugh describes it as dehumanization and it is therefore telling that the some of the earliest reactions to industrialization (and through it, modernity), were the machine-breakers' creation of a collective identity in order to personify their struggle and, ultimately, humanize themselves.

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[47] A history of the interplay between Marxism, folklore, and industrialization is beyond the scope of this dissertation (see Limón 1983 and Gencarella 2010 for treatments of folkloristics and Marxism).

[48] These warning letters and the use of a fictitious collective outlaw identity also bear some similarity to the 21st century "hacktivist" collective, Anonymous, and their video speeches.

4.1.3 Authenticity and Mass Production

[Authenticity] is a word of ominous import. As we use it in reference to human existence, its provenance is the museum, where persons expert in such matters test whether objects of art are what they appear to be or are claimed to be, and therefore worth the price that is asked for them—or, if this has already been paid, worth the admiration they are being given. That the word has become part of the moral slang of our day points to the peculiar nature of our fallen condition, our anxiety over the credibility of existence and of individual existences. An eighteenth-century aesthetician states our concern succinctly—"Born Originals," Edward Young said, "how comes it to pass that we die Copies?"

- Lionel Trilling (1972, 93).

The themes of existential anxiety and epistemological credibility that Trilling highlights are central concerns of modernism, as people grappled with the sweeping societal changes wrought by the Industrial Revolution and the Enlightenment. Behind the grand narratives of modernism—capitalism, colonialism, and scientific hegemony—lurked a sense of loss, an ambiguous uncertainty about identity and culture.

> The quest for authenticity is a peculiar longing, at once modern and antimodern. It is oriented toward the recovery of an essence whose loss has been realized only through modernity, and whose recovery is feasible only through methods and sentiments created in modernity (Bendix 1997, 8).

While the machine-breaker rebellions were primarily socioeconomic in nature, the development of an "Industrial Robin Hood" reveals a cultural tradition of outlaw resistance to the effects of industrialization. The Industrial Revolution, along with the Enlightenment, provoked a number of cultural and philosophical movements, including Romanticism, Existentialism, and Marxism. These reactions, coupled with earlier rebellions, formed an emerging discourse on industrialization. In particular, the sociocultural effects of massification were theorized and critiqued by scholars, such as the Frankfurt School. At the root of such critique was a perceived loss of fundamental concepts, such as creativity, originality, and authenticity.

As Bendix (1997) has shown, a proper treatment of the concept of authenticity is a book unto itself. Entwined with the origins of the discipline, authenticity is implicated in hegemonic politics and power. To this end, Kodish remarked, "Authenticity has been a discredited notion in the field of folklore for some time now" (Kodish 2016, 34), yet she goes on to argue that the term, rightly critiqued, can still have heuristic and experiential uses. The ways in which authenticity is perceived and enforced as it intersects mass production lies at the heart of piracy discourse and it is this particular point I will focus on.

Authenticity is problematic. Broadly assumed yet narrowly elusive, the concept has been interpreted and used variously, as an essentialized quality (Benjamin 1935), a truthful selfhood (Trilling 1972), a legal fiction (Rose 1988), a tourist fetish (MacCannell 1976), an ideological jargon (Adorno 1973), and a political legitimizer (Bendix 1997), among other uses. Walter Benjamin's *The Work of Art in the Age of Mechanical Reproduction* (1935) is a useful jumping-off point due to its significance in the literature as well as Benjamin's focus on technological reproduction.

For Benjamin, authenticity was predicated upon an object's uniqueness in time and space; that is, its "tradition" and its "aura." To Benjamin, the object's tradition was its singular history of context, or rather a contextualization or historiography of all of the events that happened to it and around it, temporally and geographically.[49] An object's aura was its distance (symbolic, physical, and spiritual) from its audience. Benjamin uses a romantic description of aura:

> If, while resting on a summer afternoon, you follow with your eyes a mountain range on the horizon or a branch which casts its shadow over you, you experience the aura of those mountains, of that branch (Benjamin 1999[1935], 222).

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[49] Benjamin's use of "tradition" was unique and differs from folkloristic definitions.

He meant to highlight the relationship between distance and experience. The sight of the

mountains is evocative and that feeling is tied to their distance from the observer at that place

and time; were they closer or farther, they would be experienced differently. Aura is also

an expression of tradition, the symbolic inapproachable "distance" between the audience and the

sublime. Bendix best described it as an "inaccessible remoteness brought into material

proximity" (Bendix 1997, 6).

According to Benjamin, neither tradition nor aura were replicable. Mechanical

replication, with its high fidelity and volume capacity, "shattered" tradition and caused auras to

"decay" (Benjamin 1999[1935], 221-222). Since a reproduction cannot have the same life history

as its original, the process of replication creates a copy lacking history. In other words, it is

decontextualized and thus severed from the original's tradition. Reproduction essentially

mobilized the object through proliferation of copies, which could be consumed in the audience's

own home. Rather than having to go see an object, you could bring a copy of that object to you.

In Benjamin's words,

> The authenticity of a thing is the essence of all that is transmissible from its
> beginning, ranging from its substantive duration to its testimony to the history
> which it has experienced. Since the historical testimony rests on the authenticity,
> the former, too, is jeopardized by reproduction when substantive duration ceases to
> matter […] One might generalize by saying: the technique of reproduction detaches
> the reproduced object from the domain of tradition. By making many reproductions
> it substitutes a plurality of copies for a unique existence (Benjamin 1999[1935],
> 221).

The cost of mechanical reproduction was the diminishing of the aura; that is, decontextualizing it

by ripping it from its history, time, and place, thereby diluting its meaning. Benjamin's concerns

reflect the tension between modernism and postmodernism. With the advent of film, the "most

powerful agent" of the shattering of tradition, he perceived the waning of modernism and a

coming revolution of new media, politics, and war (Benjamin 1999[1935], 221). According to

Zipes, Benjamin recognized the danger and revolutionary potential of mechanical reproduction:

> Benjamin analyzed how the revolutionary technological nature of the film could either bring about an aestheticization of politics leading to the violation of the masses through fascism, or a politicization of aesthetics that provides the necessary critical detachment for the masses to take charge of their own destiny (Zipes 1994, 79).

Reflected in Benjamin are a series of sociocultural anxieties about media and copies that have

their roots in the broader concerns manifested by the Levellers and Luddites about the effects of

industrialization.

I argue that these tensions coalesced into twin anxieties related to the mass (re)production

of copies:

1. *Loss of the original*: the fear that if the reproduction is too faithful, it will erase the ability

   to tell the difference between original and copy.

2. *Defective variation*: the fear that if the reproduction is not faithful enough, the resulting

   copy will be different or ambiguous.

These anxieties reflect the ambiguity of what I am identifying as an *ideology of mass production*.

Loss of the original is a concern about homogenization through standardization. It is the fear that

replicative power will erase qualitative difference and authenticity (Adorno and Horkheimer

2002[1947]). It is the inability to "separate the wheat from the chaff" (Grimm and Grimm 1819,

quoted in Bendix 1997, 9), the genuine from the spurious (Dorson 1950; 1976; Moser 1962;

Handler and Linnekin 1984), or the real from the simulacra (Baudrillard 1994).

Concerns about technological reproduction are as old as the technology itself. Johns

suggests that printing created a social need for determining provenance and, ultimately, the

construction of authenticity:

> There is ample evidence that laypeople's experience of printing included, alongside wonder at its virtues, exasperation at the proliferation of spurious claims to authorship, authenticity, and authority to which it gave rise. The realm of print was one in which the bogus could easily crowd out the genuine, and in which credibility vied with credulousness. Telling the authorized and authentic from the unauthorized and spurious was only one necessary art for thriving in the world of print, but necessary it was (Johns 2009, 9).

According to Benjamin, "the presence of the original is the prerequisite to the concept of authenticity" (Benjamin 1999, 220) and Rose reminds us that both originality and authenticity may appear ancient and universal but are relatively recent (early) modern constructs (Rose 1988, 56). In this way, mass production laid the foundation for, and imbued anxiety into, the emergence of mass culture (Storey 2003), the public sphere (Habermas 1991), and imagined communities (Anderson 1983).

Defective variation is a concern about the risks of consumption, such as defects produced through error or a breakdown in production standards. Materially, this might look like a misprinted trading card, a defective smartphone, or a "buggy" video game. Symbolically, defects and errors represent a breach of trust between producer and consumer, an intrusion of the inauthentic into the guaranteed genuineness of the ideology of mass production. Legally, warranties are designed to protect consumers against the risk of defect, addressing the ideological anxiety of unexpected variation. In this paradigm, consumers are not interested in the uniqueness of an original, but rather the comforting expectation of homogeneity offered by a copy. Standardization can be beneficial; standards of quality and safety regulated by law and policy serve the public good. Yet, after centuries of living with mass production, the violation of standardization has taken on an ideological tone. Defects, errors, glitches—unexpected things that are not supposed to happen—introduce slivers of difference into the expected quality of copies, and have done so since the earliest days of printing errors.

In a massification-saturated society, a defect can represent a violation of the sacral—

sometimes quite literally, as in the case of the infamous "Wicked Bible" (also called the

"Adulterous Bible"). In 1631, the English royal printer, Robert Barker, was fined £200 for a run

of misprinted bibles due to an egregious omission of the word "not" in the Seventh

Commandment that had outraged George Abbott, Archbishop of Canterbury (Gardiner 1886,

296). According to Gardiner's *Reports of Cases in the Courts of the Star Chamber*,

> There is a cause begunne against him [Barker] for false printeing of the Bible in divers places of it, in the Edition of 1631, vizt., in the 20 of Exodus, "**Thou shalt commit adultery**"; and in the fifth of Deuteronomy, "**The Lord hath shewed us his glory, and his great asse**"; and for divers other faults; and that they had printed it in very bad paper (Gardiner 1886, 296, my emphasis).

This episode is illustrative of defective variation in the reaction of the Crown and ecclesiastical

authorities, but also in the way the error took on a life of its own. Although the Crown attempted

to have the bibles destroyed, print had allowed them to be mass-produced and mass-circulated

(Eisenstein 2005, 56; Forsyth 2015, 209).

The Wicked Bible is also an example of how a mundane printing error can become a

source of folklore. The particulars of its creation and alleged destruction have spawned long-

lived rumours about sabotage and doubts of any of the one-thousand copies surviving the

destruction order. The minutes of the June 21, 1855, meeting of the Society of Antiquaries of

London records that a copy of the Wicked Bible was exhibited by Henry Stevens, Esq., noting

that,

> Although the book has been diligently sought for the last hundred years, no copy has hitherto been known to have been discovered; and, though many writers have told the story for the last two hundred years, no one identified the edition, or indicated the year in which it was printed. This present volume settles the question (Society of Antiquaries of London 1856, 213).

Part of that story was a conspiracy theory that the errors were the result of sabotage by rival printers, either to claim Barker's coveted royal printing privilege or as revenge for previous lawsuits. Campbell suggests that "one [printing] mistake may be an improbable accident, but two points to sabotage," although noting that surviving copies have the alleged "great asse" misprint blotted out with a conveniently-placed blob of ink (Campbell 2010, 109). Generally, a defect is unintended, an uncontrolled reproductive accident, but errors can be fixed, and defective products can be returned and replaced. But what happens when a defect is intentionally introduced? Media piracy represents willful unauthorized modification and reproduction.

Conceptually, media piracy as unauthorized copying presupposes mechanical mass reproduction. The printing press was the first technology of mechanical mass reproduction and produced the first mass media. Although the copying of texts predates the printing press, it was the press' mechanized ease and production capacity that provoked the charge of "piracy." Manual reproduction of manuscripts, i.e., by hand, was a socially acceptable, albeit expensive and time-intensive, practice. With small markets, limited literacy, and lacking modern authorial identity, manuscripts and codices were understood under a different paradigm. The productive capacity of the printing press, though limited by today's standards, represented a revolutionary change—and eventually the need for regulation. Early modern Europeans recognized printing as a craft and organized it as a trade guild, with regional and local hierarchies of masters initiating apprentices into the mysteries of the art and creating codes of practice (Johns 2009, 8).

Through automation, technological reproduction separates both the creator and the product from the labour, or the effort otherwise required for manual reproduction. In some cases, mass production also reduces the difficulty or skill of production. This, the decline or replacement of skilled work(ers), was a central concern of critics of industrialization (Marx

1867; Bailey 1998). As discussed in Chapter 3, copyright was established within and, to varying extents, continues to be influenced by a Romantic liberal ideological paradigm, central to which is Locke's labour theory of value. In a Lockean view, value and property are created through labour so removing or modifying that labour through technological means will necessarily affect the value of the creation. Although the Frankfurt School can hardly be considered Lockean, their critiques of mass production nevertheless singled out a loss of value, albeit cultural or metaphysical. For Adorno and Horkheimer, it was a loss of difference and replacement with a conformative homogeneity; for Benjamin it was a loss of aura.

The 15th century Benedictine abbot Johannes Trithemius warned readers that "Writing books by hand must not be stopped because of printing!" (Brann 1981, 156). He urged that both practices be seen as complementary, viewing printing as a divine gift from God that spread His word, and manual production as a skilled traditional art. However, in the context of scribal manuscript illustration, printing removed the close relationship between copyist and text, an effortful engagement perceived by Trithemius as both edifying and deeply devotional: "He who ceases from zeal for writing because of printing is no true lover of the Scriptures" (Brann 1981, 158).

The lack of reproductive labour, or the automation of it, supposedly affects the creative value of the product; as per Trilling, being a copy is understood to be somehow, in some way, *less than* the original. Relying on mass reproduction technologies, conceptually and in practice, media piracy inherits the stigma of this labour critique but goes one step further. If mass reproduction impinges upon the sacrosanct labour of production, the unauthorized mode of piracy shifts it ideologically from anxiety to transgression.

4.2 Piracy as Symbol, Metaphor, and Magic in the Ideology of Mass Production

Pirates are "dirt," at least symbolically. Starting in the 1960s, anthropologist Mary Douglas created a structural framework for interpretating cultural symbols (1966; 1970). Although Douglas was initially concerned with interpreting religious symbolism, her work offers significant insight when applied to piracy discourse. Douglas' concept of "pollution" (1966) reveals the structural binaries underlying rhetoric associating piracy with risk, danger, and infection. Piracy represents a disruption of the pre-existing social order and, like outlaw folk heroes, pirates' moral ambiguity marks them as anomalous—a material and symbolic threat to the system.

Both pirates and anti-pirates[50] use pollution symbolism "in a dialogue of claims and counter-claims" (Douglas 2003[1966], 4). Anti-pirates deploy metaphor and symbolism through anti-piracy campaigns. Piracy is risky and dangerous due to digital "pollution," i.e., malware. If you transgress, you will be contaminated—legally, morally/ethically, materially, and symbolically. Yet, pirates respond with their own pollution symbolism: commercial products are desirable but polluted by greed and DRM, a kind of contamination that needs to be excised in order to "clean" media. In this light, piracy can be read as a transformative ritual that liberates media by cleansing them.

Piracy is steeped in moralistic rhetoric. It exists in a discursive contest between different moralities; those of the copyright industry who claim to speak for authors and law and order, and the vernacular moralities of pirates. The hegemonic ideology of mass production creates a social order based on authenticity, supported materially by the culture industries (Adorno and

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[50] Groups actively opposing to piracy, consisting of the "copyright industry" at large (Patry 2009), copyright holders, trade associations, lobby groups, enforcement companies, and security companies, among others.

Horkheimer 1947), enforced legally through industry trade associations and infringement lawsuits, and inculcated socioculturally and semiotically.

> Order implies restriction; from all possible materials, a limited selection has been made and from all possible relations a limited set has been used. So disorder by implication is unlimited, no pattern has been realised in it, but its potential for patterning is indefinite. This is why, though we seek to create order, we do not simply condemn disorder. We recognise that it is destructive to existing patterns; also that it has potentiality. It symbolises both danger and power (Douglas 2003[1966], 117).

As a regulatory scheme, copyright's inherent function is to impose order on an industry. Resting on governmental legal authority, it legitimizes a limited set of practices and relations while outlawing others. The existence of piracy, as symbolic structural disorder, troubles order by questioning the assumptions and hidden beliefs underlying its authority. This counterhegemonic practice is enacted through vernacular tradition and discourse.

When confronted with ambiguity, a cultural system settles for one interpretation in order to reduce ambiguity and restore categories, making appropriate action clear (Douglas 2003[1966], 48). The association of digital media infringement with maritime pirates, symbolic pollution (via the ideology of mass production), and the reality and symbolism of malware and its biological pathogenic metaphor all represent layers of symbolism at play in piracy discourse. By labelling infringers "pirates" through metaphor and symbol, the legal ambiguity of tort vs. crime (and even the ambiguity inherent in the nature of "intellectual property" itself) is reduced as minor tortfeasors come to be perceived as hardened violent criminals. By labelling pirated media as dangerous malware, the ambiguity of digital reproduction (the twin anxieties of the ideology of mass production) is reduced. In this way, infringers become people who became sick through contagion. Pirates' deviance is explained as sickness. "Attributing danger," explains

Douglas, "is one way of putting a subject above dispute. It also helps to enforce conformity" (Douglas 2003[1966], 49).

As previously mentioned, Patry has argued that these metaphors are a centuries-old strategy on the part of what he calls the "copyright lobby" to influence discourse and effect legal change towards copyright maximalism (Patry 2009, 61). Yet, as Rose (1988) shows, the symbolism used in metaphor and rhetoric is not only a cynical campaign but has been baked into cultural values and social understandings of so-called intellectual property. Although these values are political, they also constitute deeply-held beliefs. Thus, the rhetorical, arguably semi-mythical, origins of copyright function to sacralize it. This sacralization is codified in law as the "moral rights" of the creator, suggesting any violation is, by definition, *immoral*.

As hegemonic agents, copyright and the ideology of mass production not only order social relations, but also the relations of production; specifically, who is allowed to produce—or reproduce. Piracy is inherently an act, or process, of reproduction. As previously described, at the heart of the ideology of mass production is a politics of reproduction and its attendant anxieties (e.g., Benjamin 1935). Cracking, then—producing a variant or "pirated version"—is an act of radical reproduction. Given the extreme anxieties, reactions, and penalties levied against pirates, this radical act may be considered a sort of secular taboo.

The vernacular emic significance of "pirated versions" will be addressed in the next section; for now, I will focus on the etic symbolism of such reproductions. Piracy and the transmission and distribution of "pirated versions" is legally and morally transgressive and symbolically dangerous to the dominant social order and relations of production. Pirated versions engage the twin anxieties of the ideology of mass production. Although there is usually little to no technical difference between a "legitimate copy" and an "pirated version," users—including

many pirates—nevertheless believe otherwise. The invasiveness of a crack depends upon the

nature of the DRM security in use, but in most cases the content integrity remains whole; that is,

unless they possess *a priori* knowledge otherwise, an average user or reasonable person would

not perceive any differences. Yet, even if a pirated version had perfect fidelity (which is possible,

depending on the kind of media), it follows that it *must* nevertheless be problematic in some way,

e.g., "defective," "dangerous," "unclean," because otherwise it would mean users could not tell

the difference between what is authentic and inauthentic, creating an inescapable ontological

ambiguity and collapsing modernist distinctions (cf. Benjamin 1935; Baudrillard 1994).

4.2.1 Digital Pathology and the Biological Metaphor

The use of biological metaphors in the interpretation and description of digital machines

goes back to at least the 1940s (von Neuman and Burks (1966)[1949]). This conceptual

association has existed in popular culture since the 1970s, highlighted in science fiction works,

such as Gregory Benford's *The Scarred Man* (1970) and Michael Crichton's *Westworld* (1973),

both of which included early uses of the term "virus" to refer to computer malware. The first

actual virus-like program was Creeper (a worm, technically[51]), released on ARPANET in 1971,

but it was Cohen (1986) who introduced the term "computer virus" into academic literature and

expanded the analogy with descriptions of "viral load," "evolution," "mutation," and "infection"

(Cohen 1986; 1987). The early history of malware was also entangled with piracy.

One of the first viruses written to target personal home computers was originally

designed as an anti-piracy measure. "Brain" was a boot sector virus transmitted through infected

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[51] A worm is a type of malware that spreads through self-replication. The term was coined by science fiction author John Brunner in *The Shockwave Rider (1975)* and adopted into academic literature by Shoch and Hupp (1982).

floppy disks that slowed down floppy disk drives. Released in 1987 by teenage Pakistani

programmers Basit and Amjad Farooq Avli (unfortunately leading to the problematic nickname,

"The Pakistani Flu"), Brain was supposed to serve copyright notices to users who had pirated

their software and offer them "vaccination," but the scale of the outbreak in the U.S. led to a

proliferation of different versions (Elmer-Dewitt 1988a; Highland 1997). It is noteworthy that

some of the earliest viruses were designed with a punitive or retributive motive, aligning in

interesting symbolic ways with Kitta's description of beliefs about biological viruses as a

publishment for transgression (Kitta 2019). Boot sector viruses were common throughout the late

1980s and early 1990s, which was also when the Warez Scene was beginning to form. As

Bacchus told me, many groups like FairLight traced their origins to that era and the practice of

physical file-sharing by trading floppy disks (Bacchus 2013).

Brain was quickly followed by what *Time* described as an "epidemic" of "electronic

diseases" spread through disk trading:

> [T]he infection can be spread from computer to computer by unsuspecting users
> who either swap disks or send programs to one another over telephone lines. In
> today's computer culture, in which everybody from video gamesters to
> businessmen trades computer disks like baseball cards, the potential for widespread
> contagion is enormous (Elmer-Dewitt 1988a, 2).

Blaming tabloids and the then-developing computer security industry, *Time*, along with

publications like *Scientific American*, ran continuing coverage of a public "hysteria" and moral

panic that saw the rise of anti-virus products, such as "Flu Shot+," "Vaccinate," "Data

Physician," and "Antidote" (Elmer-Dewitt 1988b; Dewdney 1984; 1985; 1989). The panic

culminated in the passing of the Computer Fraud and Abuse Act in the U.S. in 1986 along with

the first criminal convictions, notably Donald Burleson in 1989 for unleashing a worm that ate

his former company's payroll records, and Robert Morris in 1991 for the release of the computer-crashing Morris Worm (Marion 1989).

Boot sector viruses began to dwindle with the end the era of the infected floppy in the mid-1990s as the increasing consumer adoption of the commercial Internet enabled new and terrible types of malware that exploited growing connectivity. Yet the connections between piracy, malware, and the biological metaphor remained constant. As described in Chapter 2, file-sharing practice adapted to the Internet by changing from a physical activity to a wholly digital one. This is reflected in the appearance of digital peer-to-peer (P2P) file-sharing networks, such as Napster, KaZaa, LimeWire, etc., as well as pirate *sites*. As spaces and places, private Scene FTP servers and later public torrent trackers became hubs of pirate reproduction, transmission, and consumption.

Just as maritime piracy was described in terms of "infestation" (e.g., Beek 2015, 278), digital pirate sites are perceived as places of malware and infection (Holt and Copes 2010, 639). The Internet is "teeming" with these kinds of sites that offer "virus-ridden cracks" (Perekalin 2019). As Knight reminds us, this discursive portrayal is nothing new:

> [C]onspiracy-minded anxieties about viral infiltration are not especially new occurrences. Since the middle of the nineteenth century, and especially in America, fears about invasive enemies - both real and imagined, both internal and external - have been framed in a conspiracy-infused language drawn from immunology and epidemiology (Knight 2000, 17).

Although the adoption of the biological metaphor was initially driven by science fiction and computer scientists, it has not gone unnoticed by other academics, including biologists. Writing in *Emerging Infectious Diseases*, Wassenaar and Martin Blaser note that studying the striking parallels between biological and computer pathogens could help us better understand both (Wassenaar and Blaser 2002).

The conceptual and discursive relationship between malware and sexually transmitted infections (STIs) has been noted since the first computer virus "epidemic" in the 1980s (e.g., Elmer-Dewitt 1988b). It also coincided with and became inextricably tied to the HIV/AIDS epidemic and ensuing moral panic. According to Ross:

> In fact, media commentary on the virus scare has run not so much tongue-in-cheek as hand-in-glove with the rhetoric of AIDS hysteria--the common use of terms like killer virus and epidemic; the focus on hi-risk personal contact (virus infection, for the most part, is spread on personal computers, not mainframes); the obsession with defense, security, and immunity; and the climate of suspicion generated around communitarian acts of sharing. The underlying moral imperative being this: You can't trust your best friend's software any more than you can trust his or her bodily fluids--safe software or no software at all! Or, as Dennis Miller put it on Saturday Night Live, "Remember, when you connect with another computer, you're connecting to every computer that computer has ever connected to" (Ross 1990, 3).

The relationship between malware and AIDs was similarly described by Weinstock, who argued that the connection emerged out of a "virus culture" and, that the connection was reciprocal:

> The rhetoric employed in the discussion of computer viruses is intimately bound up with the rhetoric of sexually transmitted disease, and the preeminent sexually transmitted disease of the late twentieth century is AIDS. The AIDS-computer-virus link serves to reinforce the omnipresence of AIDS and triggers infection paranoia. Computer virus paranoia is, at least in part, displaced AIDS anxiety. And, as more and more people utilize computer technology, I suggest that the association also functions in reverse (Weinstock 1997, 93).

Epidemics and moral panics have always been potent generative sources of folklore. AIDS and epidemic narratives have been studied in-depth by folklorists (Dundes 1987: Fine 1987; Goldstein 2004; Kitta 2019). It is then no surprise that malware panics generated their own folklore. First appearing in 1994, the Good Times "virus," was an email hoax that attracted popular attention due to how quickly it spread and how it played on the then-novel anxiety of opening infected attachments (Weinstock 1997, 83; Brunvand 2012, 270). The hacker collective Cult of the Dead Cow later claimed responsibility for the hoax, saying it was intended as a

critique of the security industry and societal tendency toward moral panics (Cult of the Dead Cow 1997).

Similarly, folklore about malware risk and infection is created and shared between pirates themselves. Although the typical pirate is perhaps slightly more tech savvy than an ordinary Internet user, they still contribute to and are acted upon by discourse. Anxieties and fears about malware are negotiated differently in pirate communities because they are part of a pirate's everyday lived reality, and even part of a communal nostalgia (figs. 4.1 and 4.2).

Like most etic discourse concerning piracy, malware claims tend towards the hyperbolic and polemical while obscuring a kernel of truth. Getting infected with some kind of terrible malware was at one time akin to a rite of passage for pirates, especially in the days of LimeWire and other P2P clients. As a youth, I once battled a worm for three days as it slowly ate the system files of my family computer. Learning how to identify malware and avoid infection is part of a vernacular knowledge set shared between pirates at places like KAT. Katian B4n15h13d's reply to a forum thread asking about malware typifies pirates' consciousness of the risks involved: "If one is downloading games and apps, it's inevitable that you're going to run into a virus, false positive or not. In our pirate circle, the risk comes with the territory" (B4n15h13d, comment, KAT, May 13, 2015).

Malware was a daily topic of discussion at KAT and the community had made a series of guides, called "Tips to Practice Safe Browsing On KAT,"[52] to help mitigate risk. Similarly, wrgower2508, an Uploader at KAT, suggested users report any malware to KAT's team of "cleaners," a group of moderators tasked with maintaining the site.

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[52] I had intended to document the guides, but they were created shortly before the site's sudden shutdown and I missed the opportunity. Somewhat ironically, the URL now redirects to a DHS seizure notice, throwing the question of safety into sharp relief.

When I download via KAT I rarely find malware. The majority of the time that my malware scanners report malware, it is a FALSE POSITIVE. This can be attributed to CRACKED files in games mostly. It's so sad to see commenters tell ppl that there is MALWARE in someone's cracked game when it's NOT malware. I wish I could physically transport myself to that commenter's location and explain to them that the poster went to a lot of trouble to crack that game, upload it, and then seed it endlessly--then some idiot tells all that it has malware in it. ARGHHHH! Please, if you think you find Malware…report it! Do NOT start posting that malware was found just because you are ignorant of how the software you have chosen to install responds to CRACKED files on games (wrgower2508, comment, KAT, May 14, 2015).

The "false positive" wrgower2508 mentions is a type of result from an antivirus scan that indicates a file erroneously flagged malicious. The process of cracking involves the use of hacking tools and the end product is necessarily a modified file, which often gets flagged as a virus or Trojan Horse when, in fact, it is merely the crack functioning as intended. As automated arbiters of malware, antivirus scanners are suspicious of any vernacular or unauthorized modification. This had the effect of situating trust as a form of pirate social capital. KAT's system of vetting uploaders essentially manufactured trust. As Super Moderator lostmyticket cautioned a user asking about malware, "Best to download from *trusted uploaders* and if it is a new user, they might have a movie or program in an exe or zip file—just do not trust" (lostmyticket, comment, KAT, April 20, 2015, my emphasis). Although pirates can learn to interpret scan results and make better informed decisions about whether to run invariably sketchy executables, there is always a measure of trust and vulnerability in exposing oneself to risk of infection.

4.2.2 Magic, Ritual, and Symbolism

Using Douglas's framework of symbolic purity and danger, devices become "bodies," or extensions of our cyborg selves (Haraway 1991; Weinstock 1997; Blank 2013) that can become

"polluted" or "contaminated" by infection of digital pathogens that spread from host to host

through risky and dangerous acts of taboo consumption and reproduction.

> It is not difficult to see how pollution beliefs can be used in a dialogue of claims and counter-claims to status. But as we examine pollution beliefs we find that the kind of contacts which are thought dangerous also carry a symbolic load […] I suggest that many ideas about sexual dangers are better interpreted as symbols of the relation between parts of society, as mirroring designs of hierarchy or symmetry which apply in the larger social system (Douglas 2003[1966], 4).

This symbolic pollution and corresponding risk of contagion is produced by pirate reproduction.

Cracking software represents a symbolic transformation, a "defilement" through the introduction

of ambiguity into the otherwise controlled and regulated process of reproduction. The "copy"

produced is functionally and aesthetically identical to the "original," yet also inherently and

ontologically different. Folk appropriation blends the vernacular danger of infection with the

ideological "purity" of a "legitimate" commercial consumer artifact of mass culture. This

vernacular hybrid violates the secular sanctity of Romantic liberal labour theory and creative

values. Its ambiguity challenges the hegemonic ideology of mass production, invoking the

anxieties of being at once both too similar and too different.

In a social order based on purity, "hybrids are to be abominated" (Douglas 2003[1966],

66). Due to the vernacular and often marginal contexts of hybridization, there is substantial

folkloristic literature on it (Kapchan 1993, Dorst 1999; Kapchan and Strong 1999), including in

relation to the Internet (Howard 2008, Blank 2013, Kitta 2019). As Kitta observes,

> The hybrid is simultaneously old and new. That amalgamation gives it a certain power because it is liminal and able to move in spaces and access different authorities not available to the nonhybrid. The hybrid's power and movement are crucial for understanding why the hybrid is often seen as contagious: hybrids can move between groups where movement is normally discouraged, leaving it to infect and contaminate, literally and figuratively (Kitta 2019, 13).

The power to move between spaces, to transgress boundaries, has long been attributed to pirates of all stripes. Maritime pirates sailed the "High Seas," crossing boundaries both nautical and symbolic. Oceans have been imagined as wild, unreal spaces and voids between real places that can be traversed but never inhabited (Rediker 2014, 3), and metaphorically and legally lawless spaces used by non-state actors and nationless rebels (Dawdy 2011, 373). Liminal fringe spaces are places of moral and spatial ambiguity, symbolically "between known space (purity) and unknown space (danger) where one might experience the benign or the malignant" (Narváez 1987, 17). For maritime pirates, the ocean represented escape and freedom, but also danger. By sailing on top of the water, pirates existed on the boundary between freedom and death.

The Internet has been variously conceptualized as a highway (Dobler 2009, 177; Bronner 2012, 135), as a frontier (Blank 2009), and as an ocean upon which a user could "surf" (Gascoigne 1995). Digital media pirates playfully embrace nautical themes though visual aesthetics, textual poetics, and social performance. Although they do not face the same harsh realities as their historical counterparts, they nevertheless engage in risky reproductive and consumptive activities in morally and spatially ambiguous spaces. The power of the pirate hybrid is the ability to cross virtual, legal, and moral boundaries in order to access an almost unlimited amount of information, art, and culture, pulling it from the infinite ether of the digital ocean.

Symbolically, the Internet is a wild, chaotic, un-ordered, lawless, liminal, and ambiguous space. This stands in contrast to the social order imposed by copyright law, the ideological "purity" of standardized mass production, the cultural safety of the "civilization" of corporate Internet walled-gardens, and the moral "purity" of legal, legitimate, official copies of art and consumer products. Pirates are symbolically polluted by the act of pirating, i.e., (re)producing contaminated copies, and then transmitting that contamination along what is essentially a folk

model of digital transmission (Howard 2017). The contagion is intentionally spread through virtual contact by opening up the "ports" on one's device/body. Downloaders who access or further copy the pirated/defiled material then also become contaminated through contact and proximity—and, if not already, also become pirates.

So far, this chapter has discussed an industrial anxiety about similarity between copies and a risk of contagion based on proximity and contact. It is worth turning to Frazer's theory of magic to further interpret the symbolic relations of piracy. In analysing magic systems, Frazer argued that they operated on a sympathetic causal relationship with two laws or principles, similarity and proximity (or contagion) (Frazer 1917[1890], 52). The law of similarity relies on imitation, either of the target or what the individual is trying to achieve, whereas the law of proximity suggests that objects that were in contact with each other retain a link over time and space that can be exploited. Benjamin feared that the production of copies would lead to the decay of the aura of the original, and in this way suggested that an imitative copy could affect its original, albeit indirectly (Benjamin 1999, 223). Digital reproduction results in identical copies, causing the fear of "loss of the original" as described above. When pirates produce a "pirated version," they first acquire or produce an identical (if unauthorized) copy and then act upon it, transforming it. Under copyright law, an unauthorized copy is considered to "injure" the original creator, potentially devalues the original work, and changing or otherwise "mutilating" a copy violates the creator's "moral rights" for which they can seek redress for "damages" in order to "be made whole" again. Copyright is one expression, in legal and economic terms, of a cultural system for maintaining boundaries and social order, perhaps partly out of a rationalized fear of sympathetic magic.

Drawing together Frazer and Douglas[53] and considering Kitta's nuanced discussion of terminology (Kitta 2019, 11), pirated materials can be materially and symbolically infectious, contagious, and contaminated. The implication, however, is that while a "pirated version" *may* contain (or be) malware, it is largely beside the point for the purposes of symbolic discourse. The very creation and existence of pirate hybridization is a symbolic transgression without the referential need for any actual material risk.

This system is a hegemonic symbolic order, or matrix, which acts upon pirates and in which pirates locate themselves. Although partly outlaw outsiders on the criminal fringe, pirates are not immune to hegemonic forces and much of the emic discourse I encountered at KAT concerned philosophizing piracy and identity. Just as piracy can be read with an etic hegemonic system of order and symbols, it can also be interpreted from an emic vernacular perspective. Katians, and pirates more broadly, respond to fears of infection through instrumental, cultural, and symbolic means. As described above, KAT maintained a group of moderators whose job was to identify and remove malware. This was aided by a robust comment culture that saw Katians regularly rate and leave feedback on uploaded torrents (although the mod team was often at pains to remind users that the system existed for technical feedback and malware reports, and not whether user liked the content). KAT also had an unusually strict uploader policy that included a screening and probationary period for prospective uploaders, in order to avoid drive-by "dumping" (when a new or anonymous user uploads a large number of torrents at one time and is never heard from again). Together these regulatory systems, along with tech support in the

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[53] Much to Douglas' dismay, I imagine. My apologies to Douglas; however, her accurate criticism of Frazer's "baneful influence" focuses on his flawed paradigmatic foundations and not his magic model per se (Douglas 1966, 34). If we accept Douglas' reservations (echoed by Goldstein 2004, 44), we can still find some qualified utility in Frazer for reading symbolic discourse.

forums, fostered safety and trust in the community. Other safety tactics include learning how to identify suspicious files, false positive results, and the use of security and privacy software such as anti-virus applications and VPNs. While these instrumental measures help to mitigate material and legal risk, the broader piracy ecosystem also functions not only as a digital network but a symbolic one.

In the spring of 2016, a few months before KAT was shut down, there were, in retrospect warning signs. Major divisive policy changes had come down from on high; enforced by the admin team, and, in a confusing attempt to avoid legal trouble, KAT began honouring DMCA takedown requests, which meant torrents began disappearing. This proved controversial with users (and led to a folklorically-rich series of discussions concerning vernacular beliefs about the law), but it also affected the ecosystem on a symbolic level. On one of the many ensuing threads, Uploader Gabbernaut declared, "I don't pirate. I share" (Gabbernaut, comment, KAT, March 13, 2016). Two months later, in a similar thread, SL1DE reminded others of the media pirate motto, "Sharing is caring. Steal from the rich and greedy, give to poor" (SL1DE, KAT, comment, 2016). Sharing—or, etically, illegal contaminated reproduction—is the necessary driving force behind piracy. Uploading (sharing) to a 1:1 ratio of what you downloaded is considered proper etiquette, the violation of which is taboo in some private torrent trackers and can lead to ostracization.

Sharing new pirated releases and re-sharing (and spreading) existing ones keeps the economy going. Some times analyzed as a gift economy, a pirate economy runs on social capital (McCandless 1997; Décary-Hétu, Morselli, and Leman-Langois 2012; cf. Mauss 1925; McCann 2001). However, symbolically, sharing isn't *just* caring; sharing in a gift economy can be a

method of symbolic cleansing (Scott 1985, 10). In this case, sharing pirated goods can be read as way of ritually purifying those goods.

The broader piracy ecosystem is awash with myriad and diverse pirated versions. Any given film might see upwards of fifteen separate variants released by the same group, each offering different resolutions or configured for specific multimedia setups. Different variants offer different formats and quality ranges for different setups, from watching a video optimized for your smartphone to one with audio codecs designed for surround sound home theatres. Access to the same content is available in multiple packages for different hardware. And, in addition to removing security features, pirated versions also often sport quality-of-life enhancements, such as the removal of superfluous content like commercials during television shows or the addition of support like multi-language subtitles. Far from fears of infection and inauthenticity, Katians found pirated versions meaningful and authentic in their own ways:

> As a pirate I can sit at home, pick what I desire, download it in what ever quality I prefer, transfer it between my devices and avoid all the unwanted "extras" such as trailers, anti-P2P messages, game launchers etc. I can effortlessly add things such as subtitles, addons/mods and most applications/games have all their unwanted restrictions removed, which often makes them superior to the legit version (Richmon, comment, KAT, July 24, 2014).

> Pirated software is modified and tweaked, it makes it work smoother and safer (privacy issues and some un-needed features are dealt with) than the official software (Vossiro, comment, KAT, August 6, 2014)

> Piracy nowadays is on a whole different level, you not only find what you are looking for but 100 versions to choose from, whichever suits your needs and it's not just copy and pasting original content. Most of the stuff is handcrafted versions of the original content, improved/edited to better suit our needs, and mainly it gives us access to all the international stuff we can't normally get in our country even through import! (AkshatSingh, comment, KAT, April 25, 2016).

> I turned to torrenting by accident was because there are and still are lack of subtitles at main video streaming sites and so there are some fantastic subtitles sites that I can get subtitles which means I can follow the whole dialogue because of my total deafness. I refuse to pay for something that I cannot follow unless they improve or

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

Pirated versions can be, according to Johns, "verbatim reproductions of their originals—and occasionally more than verbatim" (Johns 2009, 155). Johns was talking about the Dublin reprint book trade at birth of media piracy in the 18th century, but it is noteworthy that the same holds true today, whether in a case of history repeating itself or a continuity of tradition.

Piracy, seen from without, is an act and (re)reproduction of contamination; a dialectic of piracy might be a politics of purity. From an emic perspective, however, the appropriative act is a transformative reproduction; but piracy is a process. The act of piracy begins a process of purification as etic values are stripped, e.g., price, advertisements, DRM, media form, and culminates in sharing and dissemination, a second act with opposing but complementary structural symmetry. Whereas the initial act, appropriation, centres on *taking*, this last act is about *giving*. This last act absolves the pirate of the former. Rather than spreading contagion and contamination, pirates manage and mitigate it, but on their own cultural terms and within their own symbolic frames.

4.3 The Age of Tradition and Its Discontents

"That wouldn't have had happened if I had my hands on the pirated version of both games. Next time, I'll just download and play the pirated version first. If I like it enough to support the game developer, THEN I'll buy the original" (JCrossley, comment, KAT, December 11, 2014).

The epigraph captures part of a personal experience narrative told by JCrossley, an Uploader at KAT, in his reply to a discussion prompted by a post that asked, "If you had enough money, would you still pirate?" JCrossley had legally purchased two video games for his aging

Xbox 360 console. The games were recent, but were marketed as backward compatible for his older machine. Ultimately, neither worked because of glitches that had been patched for the newer system edition, but for not his older one. Unable to get a refund, he was out money because the legally purchased "original[s]"—that is, the "authentic" and "legitimate" products— did not work. Still wanting to play the games, he ended up buying a second copy of each for his non-gaming laptop, essentially paying twice for the same media and a poor experience with them. Vowing to in the future test out "pirated version[s]" first, the moral of JCrossley's narrative is a warning to "try before you buy." *Caveat emptor*.

JCrossley's short narrative is interesting for two reasons. First, he draws a distinction between an "original" and a "pirated version" of a game, the implication being that once something is pirated it is changed, its ontological status transformed; the reproduction is no longer "original." This also implicates the usage of "original" itself; the "original" games purchased were themselves copies. Considering the decentralized and continually backed-up nature of modern video game production, it is not clear if there ever was a singular, unique "original" in the sense someone like Walter Benjamin would understand it. This has led to the rise of oxymoronic descriptors, such as "original copy." I have selected the following two examples from the same KAT discussion thread:

> I still would [pirate], so that I can conserve the money I have for more important/better things. Of course I'd buy *original copies* of my most favorite TV series/movies/music if it's available on retail (or if I can't find a torrent of it anywhere), but otherwise, I'd continue searching on this site (aaronshepard, comment, KAT, October 14, 2014; my emphasis).

> Torrents should build enthusiasm to purchase *authentic copies* of the downloaded material (Filmz008, comment, KAT, January 3, 2014; my emphasis).

The examples associate legally purchased media with the terms "original" and "authentic," suggesting an unadulterated version through binary opposition to pirated versions. The

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implication here is that media can be obtained in different versions or editions (or variants, but more on that later) and that pirated copies of media are considered inauthentic. Either the term "copy" has lost its modernist stigma as something "less than," or an "original copy" is a new stratum of classification between "original" and "pirated."

The second point of interest in JCrossley's narrative is the way in which the (inauthentic) pirated copies can be used in addition or parallel to, rather than instead of, an "original" (copy). "Try before you buy" was popular at KAT as a rationale for piracy. Discursively, "try before you buy" allows the performer to claim a moral justification for piracy without having to occupy ideological or revolutionary positions and at the same time distances them from the illegality of it by implying the later legal purchase mitigates the earlier infringement. Since the discussion was essentially self-reporting, it is unclear how many Katians actually practice this; however, I am more interested in the emic distinctions being made, real or imagined. As JCrossley's warning attests, legally obtaining the authentic and the original comes with risk. Pirated copies can be used to demo or test media "safely" prior to purchase, thereby mitigating the economic risk. A copy can be used to test an original. Symbolically, the inauthentic can be used to mitigate the risk of the authentic. Here an economic risk is exchanged for a legal risk.

These examples point to new ways in which copying and copies are being vernacularly understood. These perspectives and uses are products of the 21st century entanglement of neoliberal service-based licensing schemes and the mutability of digital media forms. Within the digital piracy folk culture, the distinction between original and copy has eroded while the concepts of authenticity and legality have merged, and the new category of "pirated version" has emerged. Within communities such as KAT, pirated media have a variety of functions in addition to those described above. In order to understand these functions, this newly emerged

category must be located within the historical context of the relationships between authenticity,

originality, mass production, and mass media.

4.3.1 Variation in the Age of Tradition

"If the notion of tradition is rooted in the replication of past ideas, behaviors, and expressions, then the Internet allows for the faithful reproduction of the form and substance of a message. The modern era, in fact, has produced all the great replicative technologies: printing, machine manufacturing, photography, broadcasting, analog and digital audio and video recording. It is a wonder, then, that modernity has not been designated the Age of Tradition" (Oring 2012, 101).

What happens to the variability of folklore in an age of faithful, instant replication? Often

taken to be one of the defining characteristics of oral transmission, variability has been perceived

as the "proof of life" of folklore: "when you fix a text, you kill it" (Gunther 2006). Indeed, 19th

and early 20th century folklorists dedicated their careers to collecting and cataloging variants of

folk narratives (e.g., Krohn 1971[1926]). Variants reveal the creativity of performers as narrative

texts and performances are modified as they travel across space and time. They are part of what

gives folklore meaning as it is continually remixed in new contexts. In 1975, Dundes and

Pagter's study of copylore showed not only that folklore could flourish in urban offices but also

that it was not inextricably tied to orality (Dundes and Pagter 1975). There were historical

antecedents for this. Folklorists from the Grimms to the Krohns collected extant textual variants

of folktales in addition to orally-transmitted variants and it had long been known that orality and

the written (or printed) word exist in a reciprocal relationship (Dégh 1994, 21). What made

Dundes and Pagter's copylore different was the medium. Unlike even the printing press before it,

whose production fidelity was limited by type set, the electronic photocopier could make an

unlimited number of instant and faithful copies. Dundes and Pagter nevertheless found copylore does vary, just not in a scope similar to oral performance. With the emergence and subsequent widespread adoption of computer and Internet technologies, some genres of folklore have moved online while the new technological environment has also enabled the development of new types. Even more so than the photocopier, digital Internet-enabled communication promises instantaneous transmission and exact reproduction of texts.

Variation is an integral concept in folkloristics, although the implications and values associated with it have changed over time. Arguably, awareness of variation was one of the key elements that inspired early folklorists, such as the Grimms, to begin collecting folklore (Grimm and Grimm 2014, 4). Set within historical paradigms, whether evolutionary or devolutionary (Dundes 1969; Wilson 1976), versions and variants became embedded in inventorial and classificatory projects, such as the Historic-Geographic Method. From Krohn's Laws of Transformations (1971[1926]) to Toelken's Twin Laws of Conservatism and Dynamism (1979), folklorists have long recognized the centrality of variation to the folk process. Dundes argued that "all variants must by definition be versions, but not all versions are necessarily variants" (1980, 290, note 6). He illustrated it by saying, "if one had ten texts of a particular proverb one would have ten versions of that proverb. Versions which depart to a lesser or a greater degree from the more typical forms can be labelled variants" (1980, 290, note 6). Dundes' distinction between version and variant had antecedents in the Historic-Geographic Method's terms *redaction* and *subredaction* (Virtanen 2010, 665).

In defining and identifying folklore and vernacular processes, tradition and variability go hand-in-hand. This reciprocal relationship has been conceived of as two poles: one conservative (tradition) and one creative (variability) (Toelken 1979). Genres of vernacular expressive culture

fall in different positions between these two poles. "The Internet" as a medium is not itself a genre but it enables and supports various expressive forms, each of which finds its own place along the continuum. Email forwarded joke lists, for example, tack toward the conservative, traditional, and faithful end of the spectrum, yet they nevertheless vary and at least some of that variability is due to the impact of the online context (Oring 2012, 104). Similarly, if we read the performance of McNeill's flash mobs and alternate reality games as texts, it suggests these hybrid performances might lean closer to the creative, variable pole (McNeill 2012). The impact, then, of the technologies of the "Age of Tradition" is not to necessarily erase or negate Toelken's continuum but instead force us to find new frames, new ways of perceiving folkloric form and performance online.

4.3.2 Piracy as Folklore and Pirated Media as Folk Variants

Digital media piracy is a form of vernacular appropriation that produces folk variants. It is both process and product, performance and text. Defined in this way, piracy is vernacular, creative, traditional, and transformative. Piracy-as-process is perhaps best understood as a supply chain leading from commercial popular culture to an underground pirate economy. The pirate supply chain begins with the production of consumer goods by culture industries (Adorno and Horkheimer 2002[1947]; Peterson and Anand 2004), which are subsequently "pirated" by folk groups, in this case Scene or P2P groups, i.e., pirate folk groups. This initial piracy is an appropriative, transformative, and performative act that consists of appropriative acquisition and creative modification. The acquisition of a commercial product by a pirate group and their subsequent creative modification of it is a form of folk appropriation. Due to their flexibility of form, digital media can be acquired in a variety of ways. For example, Blu-ray films and

computer games are typically acquired through legal purchase or insider leaks, while streaming

television programs are downloaded through official channels and decrypted, and theatre "cam"

films are recorded from in-person screenings. The individual who acquires material for a group

is known as a "supplier." The supplier may have their own sources or maybe be a source

themselves, e.g., an employee of a film or game company who leaks new releases.

Once supplied, the group modifies the material in some way. I find myself forced to

speak in generalities in order to capture the range of pirate modification; just as there are many

ways to acquire digital media, there are myriad ways pirates make those media their own.

Different media types require different modifications in order to overcome different security

features (e.g., Eschenfelder, Howard, and Desai 2005). For example, the ripping scene, which

includes film and television releases, largely uses automated tools to decrypt the encryption

protected streaming media, such as the Widevine L3 Decrypter available on GitHub (e.g., tbod

2020). Creating a crack for computer games, in contrast, often requires manually reverse

engineering the software, especially for recent DRM software such as Denuvo (e.g., Maxwell

2016). In general, pirate modification consists of three steps or roles: cracking (adding or editing

code to disable or bypass security, i.e., a "crack", or writing a serial key generator program to

produce fake credentials), encoding (reformatting multimedia to Scene technical standards and

balancing quality, size, and performance), and packaging (compression of the release and

creation of the accompanying NFO file). Each of these modifications represent different

strategies created and used by pirate groups, which have changed over time in step with

technology. Although Scene groups often have distinct roles for crackers, encoders, and

packagers, in each instance the supplied commercial material is undergoing transformation by

vernacular hands. For clarity and, to emphasize the notion of folk appropriation, I refer to these steps collectively as "cracking."

Cracking is a tradition. Cracks are cultural expressions of vernacular creativity created and transmitted by pirate folk groups in repeated and socially expected ways. Cracking is an expressive and performative act within a tradition of technical practice. In pirate culture, cracks are customary; they are regular and repeated expressive performances that are anticipated and expected by their audience. While the programming skill involved in cracking may be a function of computer science, the application of it in service of piracy is a traditional act and the final product, the "pirated version," is formatted according to traditional structure and aesthetic: a pirate poetics. For example, regardless of which Scene group released it, a pirated computer game will always come formatted as an ISO file and packaged with an NFO file, which contains its own traditional structure along with ASCII folk art (fig. 4.3).

This is partly a result of the Scene Rules described in Chapter 2, the vernacularly-created technical standards agreed upon by all group leaders representing "best practice" (Scenerules.org).[54] It is also a result of custom. As a performance, the impetus for cracking, along with the creation of the crack itself, and its anticipated release by the audience along expected channels and with expected poetics has a renewal function, claiming continuity with the past through reassuring audience expectation that the old ways still exist, and reaffirming that they will continue into the future.

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[54] This is increasingly less true with the slow decline of the Warez Scene and the rise of the P2P Scene. The change is particularly noticeable in PC gaming, where games are being "repacked" (where a third-party takes an existing pirated release, further compresses it, and creates their own custom installer, e.g., FitGirl Repacks) or "preinstalled" (a crude upload of the loose game files, e.g., Steam Unlocked).

Each pirate modification is an expression of vernacular creativity and ingenuity. Code can be beautiful and each of these "genres" of pirate expression blends aesthetic and utility. A crack literally changes the material; it alters it enough to produce difference but not so much that it is unrecognizable. In this way, it is not so different from the localization of a legend or a folksinger's creative individual additions to an oral performance of a ballad. As Harwood reminds us, "Creativity, after all, is not synonymous with originality. Rather, it lies in modifying and developing what has gone before, and in finding new associations" (Harwood 2008, 22).

These creative changes produce difference; that is, they produce variation. In the oral model of folk transmission, variation is located in the performance of transmission whereas pirate variation, like copylore, is located earlier in the process, in the appropriative act prior to transmission. Unlike copylore, however, the content—the popular commercial product to be pirated—is not itself inherently a traditional folk expression, but it becomes traditionalized when acted upon by folk appropriation. This represents one facet of a process of traditionalization (Ben-Amos 1984, 116). Piracy transforms a consumer product of popular culture through folk appropriation into a folk variant, or in the typical pirate parlance, a "pirated version." As described earlier in the chapter, pirates have created their own distinct "versions" of popular consumer goods, but the lexicon has a confusing relationship with mass (re)production. This discursive ambiguity has allowed the copyright lobby to establish a hegemonic gloss that obfuscates legal and sociocultural realities by reducing pirate reproduction to simplistic false dichotomies and evoking moral panics. Stemming from a (early-)modernist Romantic liberal ideology of authenticity, originality, and authorship, this hegemonic gloss is naturalized within piracy discourse. Under this discursive gaze (Foucault 1975), and with the shadow of illegality hanging over it, piracy is reduced from a complex ecosystem of multiple meanings to a moral

binary (cf. Coleman and Golub 2008) and inflected with historico-cultural anxieties about the dangers of copies (Benjamin 1935; Adorno and Horkheimer 1947) and symbolic contamination (Douglas 1966).

Once a pirated version is created, it is uploaded to a topsite (a private FTP server). Groups like FairLight will upload new releases to topsites for competition, storage, and trade. Rival groups race to be the first to upload new content to topsites, which gains them social capital and potentially also download credit at the topsite. Topsites are sometimes owned by release groups, but otherwise operate independently. They are the heart of the Scene, where releases are sent and where competition happens. Like Scene groups themselves, topsites are also highly secretive and the target of law enforcement operations (e.g., ICE Operation Buccaneer 2001, FBI Operation Fastlink 2004; FBI Operation Site Down 2005). Although there is an interesting hierarchy and social dynamics surrounding Scene topsites, the typical pirate never interacts with them and at best is only dimly aware of their existence. As previously mentioned, Scene production has never been intended for public consumption yet their releases nevertheless end up in public access points, such as KAT.

Despite their secrecy, topsites have historically been notoriously porous when it comes to leaking content. One way that content leaks to public-facing pirate websites is "couriers" (sometimes called "racers"). Historically, couriers were individuals or groups that traded content between topsites. Prior to digital streaming, couriers used to physically transport material, such as floppy disks or CDs, from suppliers to a Scene group. Couriers were not members of Scene cracking groups but had access to the releases stored on topsites. Today, many of the courier's functions have been replaced with automated bots and scripts.

The end of the pirate supply chain are public pirate sites, configured for different types of access, including torrents (e.g., KAT, The Pirate Bay), DDL (direct download), or streaming. The race between Scene and P2P groups to be the first to release new content results in a proliferation of variants. Additionally, many groups release multiple formats of the same content, e.g., both a BluRay rip and WEBrip of the same film, but captured or encoded differently. Taken together, this plethora of variants offer users a wide range of access and choice. Essentially, there are multiple variants of the same "pirated version" in circulation at any given time. Once pirated media appear on pirate networks, such as KAT, they are rendered public and available for mass consumption and retransmission. Transformed through the process of piratical folk appropriation, these "pirated versions" take on new meanings as pirate commodities.

4.4 Vernacular Authenticity

Years ago, long before my fieldwork (and well beyond the timeframes of any statutorily-defined limitations periods), I pirated a software program for an engineer. He had a legal copy, but his license had expired. So, he asked me for help. I searched for a crack, found a keygen, met him for a beer, and ran the keygen on his laptop. I was able to reactivate the program for him at the cost of a pint and maybe fifteen minutes of my time. Incredulous, he asked, "Do you know how much that would have cost me?!" I shrugged. I had not actually looked up the price of the software. It would have cost him over $1500 to renew the license. For him, an outsider, the price was inextricable from the commodity.

For Scene and P2P groups, cracking that software was run-of-the-mill and its original cost did not produce any extra or special value for them. Pirating something that costs $1000 is no different something that costs $1. In fact, it is not uncommon to see even freeware pirated just

for the sake of convenience. Price as a monetary expression of exchange value is stripped away during the piracy process. Piracy "flattens" commodities; the initial labour that went into the creation of the original may be recognized insofar as an appreciation that the content exists and can be pirated. To some extent, piracy recognizes the labour of the cracking group, uploader, or repacker. However, the quantity of labour involved is moot; some types of content may be harder to crack than others, and so may involve considerably more labour, e.g., computer games, but although its eventual release garners social capital in recognition of technical skill, the commodity itself retains a 1:1 exchange ratio with other pirated media. The social use-value—its desire by downloaders and the reward of social capital—makes the commodity temporarily socially valuable to pirates, but does not alter its exchange-value. Rather, piracy offers access to content previously restricted by conventional exchange-value.

Stripped of price, ownership, and control, "pirated versions" are re-valued on the basis of access, desire, and ideology. As JCrossley's post suggests, pirates are also aware of and attempt to negotiate the cultural anxieties that stem from unauthorized reproduction. As previously discussed, "pirated versions" exist within an etic discursive matrix of real and symbolic infection and contamination—pirates negotiate these risks through safety and ritual cleansing. At the heart of this system is hegemonic authenticity. Like Kett's rebels envisioning an alternative social order and the Luddites creating a new moral economy, piracy discourse allows the imagining of hybrid paradigms of morality and authenticity.

Although the concept of authenticity has been deconstructed and problematized elsewhere (e.g., Benjamin 1935; Bendix 1997), the term is of particular importance for piracy discourse. Due to their consumption of illegal media, pirates tend to have a heightened awareness of their tension-filled relationships with perceived authenticity. At a basic level, and building on

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Benjamin, piracy is about gaining access to an original work of art and its "aura," and consuming that perceived authenticity (Benjamin 1999, 221). This is reflected in the Scene Rules and piratical demand for high-quality, high-fidelity releases (Scenrules.org). Pirated versions might be viewed as attempts to touch the authentic original. For Benjamin, the unique and contextualized existence of a work of art could be transmitted insofar as it could be experienced but could not be replicated. That ineffable quality, its aura, cannot by definition be copied; to do so is to decontextualize the thing, effectively destroying it. Copies, then, lack the authenticity—and by virtue of that, the authority—of the original.

Yet, born-digital electronic works may not have an original. An author may have a master file, but that may be backed-up or synced in real time between devices. Does this make it possible for an original to be in multiple places at once? Or does it create multiple simultaneous copies? MacCannell reframes the original/copy relationship when he says, "The work becomes 'authentic' only after the first copy of it is produced. The reproductions are the aura, and the ritual, far from being a point of origin, derives from the relationship between the original object and its socially constructed importance" (MacCannell 1976, 48). This flows into Geertz's observation that "it is the copying that originates" (Geertz 1986, 380).

In the case of piracy, copying originates new forms. The "pirated version" represents a new stratum of authenticity, emically distinguished from the authentic and legitimate, and the original and copy. A pirated version is a hybrid copy. This is where folklorists' experience with versions and variants enables a vernacular and equitable interpretation. Like folk narrative variants, one particular variant is not inherently more or less authentic than another. A variant in folkloristics is predicated upon difference, but assumes its own authenticity that is inherently tied to but does not flow from or diminish an "original," if such a thing exists. Variants do not have

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any absolutist or essentialist authenticity beyond what is inscribed upon them within their cultural field. As such, authenticity is imagined and relative.

As texts, pirated versions are malleable and dynamic, they can be easily modified, edited, and remediated. Films can be transcoded into many different forms and filetypes. Games can be repacked, hacked, and emulated on different platforms. A diverse multiplicity of pirated versions ensures a broad range of access and availability. By creating access and accessibility and bypassing restrictions, thereby crossing legal and technical boundaries, pirates subvert control and, whether consciously or not (in the case of KAT, both), resist the hegemonic, the official, and the legitimate. This proliferation of access creates a pirate commons. This ad-hoc assemblage, the haphazard work of a hundred disparate *bricoleurs*, includes all of the vagaries and foibles of the vernacular yet also reflects the desires and values of a digital folk. As a reaction to enclosure, it is a militant expansion of the public domain. It is a decentralized digital commons floating in perpetually liminal cyberspace. Its existence highlights the cracks and disjunctures in the ideology of mass production, revealing the hegemonic relations of production and symbolic social order. Kapchan asks, "If, indeed, the primary 'product' of the marketplace is the production of change, a question for the folklorist 'in the telectronic age' (Dorst 1990), becomes how change is effected discursively and who effects it. This is an inversion of another more basic question for folklore: how is tradition maintained?" (Kapchan 1993, 309). As a "bastard tradition," piracy offers an answer to this question in this telectronic age of tradition.

5. The Shutdown of Kickass Torrents

On the morning of July 21, 2016, I woke up to the buzzing of a push notification on my phone. Bleary-eyed, I read the headline with mounting alarm: "KickassTorrents domains seized after alleged owner is arrested in Poland" (Statt 2016). I had lost another fieldsite. Katians had lost their home. A U.S. Department of Justice (DOJ) press release reported that domains associated with KAT had been seized by the Department of Homeland Security (DHS) and the Internal Revenue Service (IRS) while KAT's alleged owner, Vaulin, had been arrested in Poland and was awaiting extradition to the United States (DOJ 2016).

The total disappearance of a fieldsite is a unique experience. It is true that, as an increasingly notorious pirate site, KAT's days were always numbered; however, there were no indications in the days and weeks leading up to the shutdown that the community was in any serious trouble (that is, beyond the usual). My first impulse was to log into KAT to gauge community response, but, of course, it was not there. Instead, I was met with the DOJ domain seizure message (fig. 1.1)[55]. At the risk of dramatizing ethnography, there is a certain degree of shock associated with the sudden loss of a fieldsite, of a community. There will be no restudy; I will not be able to go back to do follow-up interviews or look for things I missed. Everything is simply *gone*. The community disappeared, its users scattered.

In the wake of the shutdown, it was difficult to locate Katians. Eventually, a new KAT website was launched with the aim of reviving the community, but it remains a shadow of its former self.[56] In the immediate aftermath, former KAT users could be found strewn across

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[55] The domain seizure message can still be viewed at kickass.to as of August 2024 (kickass.to).
[56] A text forum was launched by "Team KAT," former KAT staffers, on July 22, 2016, two days following KAT's shutdown. Initially named "Diet KAT," the forum served as a placeholder until a new website ("New KAT") could be created, as well as a muster point for the community. Over the next year the website was gradually developed into a reasonable facsimile of the former site, with the tagline "We're Family United We Stand."

Internet media platforms, such as Reddit[57], and in the comments sections of many news articles, particularly on the piracy-focused news website, TorrentFreak. It was in these comment sections that I found lost and bewildered Katians. Despite the ever-present sword of Damocles hanging over KAT, the community was wholly unprepared for the site's shutdown.

In this chapter, I first explore Katians' reactions to the shutdown and the ways in which they mourned and memorialized their community. Next, I examine the legal case against Vaulin, through the lens of outlaw folk hero theory. Finally, I apply a Malinowskian model of magical thinking to analyze the strategic function of a community belief about U.S. copyright law.

5.1 In Memoriam: User Eulogies

> *I have been a member of KAT since May of 2010. It was the go-to site for any torrent I wanted to find. For 6 years I used this site almost non-stop. It was more than just a torrent site. There was a community of people, people who were nice and would always wish you a happy weekend and what not. There were achievements too. After finding out the site went offline today it felt like a part of me went missing. In memory of KAT and all the fantastic friends I made on the site on the past 6 years. Here's to hoping it finds its way back like TPB did. As of now, I'm just struggling to find another site I can stick to. RIP. Today is a sad day (diablo291, post, KAT subreddit, July 21, 2016).*

Diablo291's post on the KAT subreddit was one of many vernacular virtual memorials. With the DHS in possession of KAT's various domains, there was no single or central space for users to gather and grieve. Instead, threads and posts like diablo291's appeared haphazardly scattered across websites and social media. Although fragmentary, these virtual memorials were public performances of community. As discussed in Chapter 2, KAT was a semi-private torrent site and the community had a conflicted relationship with anonymity. A similar interstitial tension can be

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[57] Specifically, Katians gathered on the KAT Subreddit (/r/kickasstorrents). A "subreddit" is a discussion forum on the Reddit website dedicated to a specific topic or theme.

seen powering these virtual memorials as former community members negotiated private-public

space. User memorials posted to public social media accounts and comment sections were often

quite personal; they expressed the emotions of users but were ultimately intended for public

consumption.

KAT Staff member HellBoy, part of the group of Katians that created the new

provisional KAT forum ("Diet KAT") following the shutdown, inaugurated the newly-recreated

blog section with a memorial:

> As many of you here feel, KAT was more of a community than it was a torrenting
> site, for some, it even became as a second home, a place where you hangout with
> your friends, have fun, make new friends on a daily basis. I've been a KATian for
> well over 5 years, during that time, I've moved through the ranks from a normal
> uploader; getting my VUL on the 5th try! (thanks, LRS) and then becoming an SU
> shortly after for helping around the community, that led to me volunteering my
> services as a translator for the site, I just kept helping as much as I could and
> wherever I could. I became a Forum Moderator after a few months, then promoted
> again to Torrent Helper less than a month later, Torrent Moderator, Super
> Moderator and finally Staff! During my time on KAT, I've seen it all, trust me
> when I say this, ALL! The good, the bad and the ugly...but you know what? KAT
> was my home, KAT was the place where I got support from friends (some that I
> call family now) and that is something that I would never forget, not a chance in
> hell (HellBoy, Diet KAT blog, July 26, 2016).

Like most memorial posts, HellBoy's garnered multiple sympathetic responses from other Katians,

many of whom posted similar memorializing messages. The new KAT, which was initially limited

to a discussion forum and did not include torrents, largely attempted to pick up where the previous

incarnation had left. Despite an otherwise successful attempt to recreate the community webpage

exactly as it looked the day it was shut down, new discussions proved to be anything but ordinary.

Messages such as HellBoy's were a daily occurrence, as more Katians discovered the revived

KAT-lite. Beyond expressing sentimentality, however, these memorials undergirded the

reconstruction effort. They represented an emotive call to action, transforming shared grief into collective work.

Some memorial posts were lengthy, like HellBoy's, while others were succinct. Commenting on a TorrentFreak news article, user jgpmac wrote:

> People often said "The community makes KAT," and I can agree, just the amount of people I talked to about everything and anything, the people who we could rely to make jokes or to be there to cheer you up when all you did was scream "FUUUUUUCK." It was amazing. It's kind of sad because although I have found a few of them here, there are people who I talked to daily and have no way to contact them now. It was a great community that no torrenting website could ever live up to. Idk this might have sounded cheesy but it's the truth (jgpmac, comment, TorrentFreak, July 20, 2016).

In the same comment section, user XpoZ.Torrent remarked: "Fuck. We lost our home" (XpoZ.Torrent, comment, TorrentFreak, July 20, 2016), and User123 summed it up: "I love you KAT, for one last time" (User123, comment, TorrentFreak, July 20, 2016).

Dobler suggests that "[t]he American highway is symbolic of the modern high-speed world of the information superhighway, in which attention is always pushed forward to focus on the next thing" (Dobler 2009, 177). Like virtual roadside memorials along the information superhighway, KAT memorial posts "occupy a space in the *public* landscape" (Everett 2002, 82) creating a kind of shrine accessible to scrollers-by. As diablo291 alluded, the superhighway is lined with similar memorials to a litany of former torrent sites. Although in life many former torrent communities were rivals, torrent sites constituted an ecosystem rather than a set of redundancies. As Everett notes, one of the functions of roadside crosses is to act as warnings (Everett 2002, 11). The shutdown of any given torrent site was often taken not so much as a legal inevitability but rather a kind of bioindicator for the health of the ecosystem. In this sense, posts memorializing KAT's shutdown also serve as warnings to torrent users, Katians and beyond. As

seen in Reddit user Sugreev2001's comment on a KAT memorial post, fallen sites are sometimes

collectively remembered:

> I thought I'd be used to this after BTJunkie died, but I'm really mourning Kat's
> loss. Like everyone has already stated, it was very well organised and it easily had
> the best community out of all torrent sites. It truly had no substitutes (Sugreev2001,
> comment, KAT subreddit, July 21, 2016).

To this end, Forum Moderator tonowando compiled an annotated list of shutdown peer-to-peer

(P2P) websites and clients, entitled "A History of P2P Sites Being Shut Down." Starting with the

MPAA-backed shutdown of Scour Exchange in 2000 and the infamous 2001 shutdown of

Napster by the RIAA, the list chronicles the demise of Soribada (2002); ShareReactor (2004);

Suprnova (2004); LokiTorrent (2005); Oink's Pink Palace (2007); TorrentSpy (2008); Mininova

(2009); Limewire (2010); BTJunkie (2012); Demonoid (2012); ISOHunt (2013); and, finally,

Kickass Torrents (2016) (tonowando, thread, Diet KAT, July 26, 2016). This list is reproduced

here in abridged form to provide scope, revealing the sustained campaign against such websites

but also the persistence of pirates. Tonowando reposted it to the resurrected KAT forum on July

27 as an intentional memorial. It was one of the earliest threads on the new site.

Katians also wove explicit warnings into their memorials. Commenting on the resurrected

"Diet KAT" forum in the days following the shutdown, user Oblivion reminded Katians of the

danger of becoming complacent with security:

> Please let the capture of Artem be a lesson. When you run the most popular pirate
> site on the internet you must maintain superior OPSEC. […] We're pirates. We're
> outlaws. You need to move on the open internet as such. You're essentially running
> a darknet type website on clearnet domains. Authorities will always be knocking
> down your door. Take better care of the information and data you put online. Every
> single PACKET, every single BYTE that leaves your devices can potentially
> destroy you. No member of the KAT community is exempt from repercussions.
> One mistake could result in your extradition to the U.S. and 15+ years in federal
> prison. On behalf of all KAT members, we thank you for the time and effort you've
> contributed to kat.cr and all future KAT domains. KAT is by far the best torrent

site to grace the internet. Thank you (Oblivion, comment, Diet KAT, July 26, 2016).[58]

In addition to negotiating structural issues of anonymity and private/public space, KAT memorial posts, and subsequent discussions, overlapped with legal/illegal categories. Like the previous examples from Reddit, many of these memorial posts were created and performed not only on *public* websites, but "legitimate" ones; whereas KAT's ontological status as a "pirate site" rendered it outlaw space, Katians expressed their post-shutdown feelings on "legal" social media, such as Facebook. Commenting on a KAT Facebook post, Γιάννης Δακουτρός said: "I'm so sad, I loved that site. I had an account and liked to comment on every torrent I was downloading. I will miss you kat" (Γιάννης Δακουτρός, comment, Facebook, July 21, 2016). If KAT was a metaphorical pirate ship, then its sinking saw its crew washed ashore to spread the tale. Quasi-private discussion that normally would have occurred between members behind the KAT login page now adorned the virtual spaces of public social media. As Facebook user Matthijs Prov described, former Katians reached out through multiple websites to find the latest news and to mourn.

> I think it's really sad KAT got shut down. I liked that I could download whatever I needed of course, but I especially liked the community part of KAT. I don't think there's another torrent site that has that as well, and if there is I'd be glad if someone would tell me. Hell, I even just made a Facebook account just so I could talk on this page and hope that KAT will return! (Matthijs Prov, comment, Facebook, July 21, 2016).

By July 30, 2016, "Team Kickass," the group of Kat staff members that created Diet KAT, launched a Facebook group, "KAT Community." The first posts to the group were KAT logos

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[58] For reference: "OPSEC" is an acronym for "operational security"; "darknet" refers to an encrypted network that can only be accessed by specific software and/or protocols, such as TOR; "clearnet" is defined in opposition to darknet: it is the "normal" Internet indexed by search engines such as Google.

(*fig. 5.1*). At its peak, the KAT community held regular logo competitions, which resulted in a diverse range of variants. They now serve as memorials. Although the group sees only a fraction of the traffic from the old KAT, it nevertheless acted as a means of communication with the fragmented community and now functions as a supplement to the resurrected Kickass Torrents.

One of the other ways in which Katians memorialized KAT was through "last" posts: descriptions of the last interactions users had with the community. Unlike funerals or memorials for individuals, there was nothing left of KAT; no belongings to divide between users. As a virtual community, it was always intangible. Unlike the material culture of roadside memorials, there was no particular space to adorn nor any items with which to adorn it. However, "last" posts may serve a similar function: a virtual *memento mori*. On July 21, 2016, the day after KAT shut down, Reddit user DogeHunt started a thread on the KAT subreddit entitled, "What's the last thing you acquired from KAT?" Replies ranged from computer games to videos and included non-copyrighted material. A Facebook user posted a screenshot of the KAT homepage, which displayed new and trending torrents (*fig. 5.2*). "Last" discussions carried on to the new forum and acted as a kind of transition between the two KATs.

I have referred a number of times to "the resurrected site" or "Diet KAT": as previously noted, a new discussion forum, initially titled "Diet KAT," was created by "Team KAT," a group of upper-echelon KAT staff members, shortly after the original KAT's shutdown. Although the website underwent considerable technical improvement since its launch, such as the addition of a torrent index and a more responsive user interface, it never recaptured the popularity of the old KAT. "Diet KAT" or "Kat-lite" were names indicating that the site did not include torrent links—at least not at first. It was a pirate site in name, but not function. This was a source of friction for the growing body of users and although some members wanted it to remain a forum

only, a torrent index was eventually added, becoming "New KAT." It quietly shut down in 2017, probably due to legal pressure but without any fanfare.

While New KAT initially boasted a growing community, it was not the same community I joined when I started fieldwork. Torrent websites are popularly referred to as the multi-headed hydra, from Classical mythology, the idea being that if one head is cut off another will grow to take its place. This was a relatively accurate, albeit simplified, description of the torrent ecosystem in the mid to late 2010s. The Pirate Bay, for example, was shut down multiple times in various jurisdictions but always managed to "resurrect" in a different country with a new domain. When Suprnova was shut down, it spawned the tribute site, Mininova. The same day that Katians were mourning the seizure of their site, there were those (sometimes the same individuals) who were awaiting KAT's phoenix-like return.

> I'd like to see the original KAT and its team back in business again. KAT is not just another torrent site, it is also a community, bringing people together. I am sure myself and other registered users would agree that KAT has 9 lives. It can't die. It shall rise once again, bigger, better and stronger than before. No other community site had a large dedicated team like that (OZFox42, comment, KAT subreddit, July 21, 2016).

The effect of these simultaneous dual narratives created a sense of the traditional proclamation, "The king is dead, long live the king!" In this way, Katians mourned KAT but at the same time looked forward to what many considered its inevitable revival, or successor as the case may be.

But is KAT dead? Certainly, it was shut down, its servers seized. Virtual posts memorializing the community were created by displaced Katians in whatever online public venues they could find. And those posts are still accessible, years later. Diablo291's post, which opened this section, has been archived on the subreddit but is still publicly viewable. Describing MySpace memorials, Dobler emphasizes their static nature, "an eerie stillness," in striking juxtaposition to the "constant motion and fleeting temporality" of the Internet (Dobler 2009,

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183). The memorial posts will remain in the archives of servers, available to those who search for them. However, they do not necessarily mark the death of KAT so much as the end of one version. If digital death is not permanent, then it is at least transformative. The discussion forums of New KAT were comparatively slow moving, but littered with user debates over whether the site was, in fact, "Kickass Torrents" or some other, lesser, variant. The debates, which erupted on Reddit and TorrentFreak the day KAT shutdown, ultimately questioned the nature of the site. What makes a pirate community? Is it function, such as having a wide selection of well-seeded torrents? Or is it sentimental; the sense of friendship and community that emerges from regular interaction? With the new site, it was possible to say that KAT died but is not dead. Conversely, and despite the best efforts of Team KAT, the thing that returned is more a revenant than a phoenix. An echo of its former self, its very existence acts as a memorial to its former life—but one that may yet bloom with new life.

In folk balladry, revenants return to "rectify an emotional imbalance" in a relationship (Buchan and Ives 1986, 146) and seeking either justice or revenge they can represent a social crisis (Avdikos 2013, 315). Pirate sites have a revenant-esque quality in their apparent ability to return after being shut down and their return is marked with danger. A pirate site returning in good faith, such as New KAT, might be seen as an attempt to rectify the emotional imbalance caused to Katians by its loss. Yet, such a revenant site can never quite be trusted. Trust is an important, rare, and dangerous commodity for pirates. A trusted site offers all of the benefits of the pirate commons with minimal risk, but trust can also lull a pirate into a false sense of safety. Is a revenant site an FBI honeypot? Or is it one of countless fake sites, teeming with malware ready to infect your system? The Pirate Bay, for example, has lived many lives and died many times. It always manages to return, but each time with a little less of its former self. And a lot

more malware. New KAT was short-lived; KAT was not, it seems, one of the many heads of the hydra after all. At least Katians do not have to watch their beloved site slowly diminish like The Pirate Bay.

Instead, KAT has become one more headstone in an ever-growing memorial of resistance. When Katians used to share stories about the long line of shutdown pirate sites, they created a collective discourse of the past in order to understand the present. These "narratives" were transmitted piecemeal, through comments and replies in discussion threads. Few featured long or polished prose. Rather, each comment contributed to a discursive assemblage. Although some Katians performed as tradition-bearers on occasion, most Katians probably did not think of themselves as narrative *bricoleurs*, nor were they intentionally engaging storytelling performances. Yet, when taken together over time and space, a discursive assemblage emerges that can be read a kind of community narrative, transmitting useful knowledge through creating a collective history. Pirates remember.

5.2 Artem Vaulin: Outlaw Folk Hero?

While the shutdown cut me off from my informants, it also revealed much about the site and its hitherto hidden operation. As an ethnographer straddling the emic-etic divide, balancing community acceptance with ethics compliance, I existed on the fringe of KAT social life. I did not gain access to the administrators or the VIP sections of the forums where many site decisions were made. Consequently, the DOJ press release was the first time I heard of Artem Vaulin. Based on later participant observation on Reddit, I am not convinced any Katians beyond the admins ever knew who owned the site. Vaulin, it seems, had little interaction with the site but reaped its advertising revenue. The question of ownership had appeared previously, albeit

infrequently. One rumour I documented claimed that KAT was worth over USD 1 billion and was owned by the Russian mob (thePiratePimp, comment, KAT, May 7, 2015). Although pirated goods are typically released for free, there are infrastructural costs associated with operating a website (e.g., domain registration, site design, renting servers). An undercover IRS operation had determined that Vaulin had been selling advertising space on the site and then allegedly laundering those funds in the U.S. (United States v. Vaulin 2016).

Community reaction to Vaulin was mixed. Katians bemoaned the loss of KAT but were mixed in their sympathy for Vaulin with some questioning his motives (i.e., profiting from piracy), while others rallied behind him. The day following the shutdown, "Free Artem Vaulin" petitions appeared on both the U.S. White House petition website and Change.org, attracting almost 100,000 signatures (S.S. 2016; Milosh 2016). Users who signed the petitions used rhetoric similar to what I documented at KAT on a typical day. This perspective could be summed up by one user's comment on the Change.org petition:

> This witch hunt is asinine. With the problems facing this world, the sharing of data is minuscule. These "pirates" are scapegoats and nothing more. Declining sales are a direct reflection of the quality of content. Piracy is not a factor, it is an excuse. They claim they are losing money due to piracy, yet they have millions of dollars to spend fighting this phantom boogeyman. This is sickening to me (Josh Myers, comment, Change.org, July 21, 2016).

Whether or not Vaulin had committed crimes (i.e., criminal infringement and money laundering) was seen as less important than the comparative nature of those crimes. In a world of robberies, murders, and terrorism, the Katians I managed to find post-shutdown felt the charges against Vaulin were unfair. In fact, the action against Vaulin served to reinforce the existing beliefs and ideologies of Katians. Gathering on the KAT subreddit in the aftermath, community members discussed the charges. Redditor libretti asked, "What right do they have? Since when did the U.S. government become the overlords of the internet? They're the fucking criminals, not this

guy" (libretti, comment, KAT subreddit, July 20, 2016). The comment elicited responses placing

the action against KAT in a broader context of U.S. foreign affairs. 1N54N3M0D3 quipped,

"Since when? They've been doing this shit in other countries for years, unfortunately"

(1N54N3M0D3 comment, KAT subreddit, July 20, 2016) while Flyingwheelbarrow succinctly

stated: "USA and their copyright imperialism" (Flyingwheelbarrow comment, KAT subreddit,

July 20, 2016).

Vaulin was quickly incorporated into existing beliefs. The mixed reaction to his arrest

fueled a tense moral ambivalence that surrounded his person—a hallmark of outlaw folk heroes

(Jones 1971). Today, the "Free Artem Vaulin" petitions are long gone and it seems unlikely that

he will endure as a legendary figure in the international piracy scene. However, at the time, he

(or at least the *idea* of him) underwent a process of heroization. Outlaw folk heroes may have

originated as historical persons but it is their existence as legends that ultimately endures and

inspires. Two elements of folk hero formation can be seen at work here: expurgation and

imputation (Jones 1971; Everett 2010). Although I never found a file-sharer who claimed to

know Vaulin, many had strong opinions regarding his arrest. Comments in support of him tended

to downplay the charges against him, especially the non-infringement-related "unlawful

interstate & foreign transactions," or money laundering, an arguably more serious offence than

infringement (United States v. Vaulin 2016). The charges of criminal copyright infringement and

conspiracy to commit criminal copyright infringement were also met with cynical disbelief, in

some cases with commenters opining that Vaulin did not, in fact, break any laws at all. Beyond a

misunderstanding of U.S. copyright law, this expurgation of his crimes served to highlight a kind

of "law-lore" in which beliefs about laws are collectively shared and form the basis of a

vernacular interpretation of the legal system and, ultimately, a system of power based in perceived morality.

Under the U.S. DMCA, websites can apply for "safe harbour" status, under which they cannot be held liable for infringing content uploaded by their users so long as they remove such content when requested by the appropriate rights holders. The text of the DMCA is clear that a website whose primary function is to facilitate infringement cannot qualify for safe harbour if the owner(s) has "knowledge that the material or an activity using the material on the system or network is infringing" (OCILLA of 1998). Although KAT never qualified for safe harbour, the belief that it did led users to view its subsequent shutdown as an oppressive act. In addition to the charges against Vaulin being minimized, an emerging vernacular ideology perceives him as the injured party. For example, Spoetnik commented:

> It is for one…and not the other. Google + KAT? Both do DMCA safe harbor take-downs. Both comply with complaint requests. Little guy is bullied and the big guy is still running his world wide search engine. That *IS* hypocrisy at it's finest. See why you should not comply with their demands people? It makes no difference anyway. The action by the Feds is shameful harassment! (Spoetnik, comment, TorrentFreak, July 20, 2016).

Spoetnik's is one of many comments that perceives a power imbalance in which a corrupt government oppresses a group which they do not like while hypocritically allowing the same practice from large corporations. Ariane Chavasse commented on the Change.org petition, "Just using him as a scapegoat" (Ariane Chavasse, comment, Change.org, July 20, 2016). On the same petition, Joseph Languini posted, "He seems like a nice guy" (Jospeh Languini, comment, Change.org, July 20, 2016), and Michael Banks wrote, "Good job, way to take down the good guy" (Michael Banks, comment, Change.org., July 20, 2016).

While Vaulin was undergoing expurgation across varied comment sections, he (or an emerging idealized legendary figure based on him) also experienced imputation. Not only were

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the charges against him seen as corrupt or wrong, but he immediately became "a good guy" and

"a nice guy." Regardless of who he is as a person, he was transformed into a folk hero—however

briefly. When a user cast doubt on Vaulin's actions, commenters rushed to his defence.

Commenter Argentinean stated, "I love Kat but he's no saint. He knew what he got into."

(Argentinean, comment, TorrentFreak, July 20, 2016). In response, Katian Chombs reified

Vaulin through the influence of KAT:

> He is a saint. He brought a lot of entertainment to a lot of people around the world who could not have afforded it otherwise. He actually contributed to make this world a little more equal, at least in the media/information/freedom of speech/entertainment arena. He saved a lot of people from spending small fortunes on media crap. Basically contributed to redistribute wealth and value, away from the oligarchs of always and into the hands of many.
>
> The real devil is those people who are extremely rich and who bribe authorities, corrupt laws and take out competition by whatever means necessary, just to keep their profit and their power/control over others. Those that expect us to work hours and hours every day in their companies so we can then pay ridiculous high prices for what is mostly zero-cost digital copies of crap. Those are the real evil, those who ask for all your time and then, for all your money! (Chombs, comment, TorrentFreak, July 20, 2016).

The use of terms such as "saved" and "redistribute[d] wealth" in Chombs' description suggest a

Robin Hood-esque figure. Not only a person who has helped the poor and redistributed wealth,

but also a figure transformed into legend. How many of these commenters really knew Artem

Vaulin? And yet, through their comments they form a discourse of expurgation and imputation,

reifying Vaulin as an outlaw folk hero who stood up to an oppressive government and was

treated unjustly.

As per their generic designation, "outlaw" folk heroes are always inherently concerned

with law. To be branded an outlaw means violating one or more laws, however corrupt. The

statute in question is usually codified by a powerful polity and enforced by some type of legally-

appointed authorities. Folk heroes do not become outlaws for violating folk law. The perception

of codified law as "oppressive" or "corrupt" is a function of what I am calling *law-lore*. Outlaw folk hero legendry exists at the interface between vernacular tradition (folk law; custom; cultural beliefs about law) and codified law (top-down imposition of power).

5.3 Law-lore: Traditional Misconceptions about the Law

Law-lore includes vernacular interpretations and misconceptions of codified laws, and the beliefs that drive their (re)transmission. Katians' misunderstanding of the DMCA, for example, led to the widespread and strongly held belief that KAT was in compliance with the law. I distinguish *law-lore* from *folk law* and other similar usages, such as *law legends* (Brunvand 2012, 364). The distinction may be subtle yet important. Beyond literature on copyright law mentioned in Chapter 2, folkloristic scholarship on law and folklore generally tends to focus on descriptions of folk law (Evans-Pritchard 1987; Renteln and Dundes 1994); the use of legal records to analyze legends (Fine 1979; Tangherlini 2010); folklorists as expert witnesses (Samuelson 1982); or "law legends": legends about lawyers and courts as a profession or industry (Andrews 1897; Galanter 1998; 2005; Brunvand 2012). I use "folk law" here to refer to "customary law"; that is, law based in folk custom or oral tradition (Perreau-Saussine and Murphy 2007). For folklorists, folk law consists of traditional, vernacularly-developed laws that are not necessarily reflected in official law codes but are nevertheless customarily enforced (Renteln and Dundes 1994). In contrast, law-lore is folklore *about* (official) law (Staple 2019).

While law-lore overlaps with folk law, it emerges from (mis)interpretations of codified statute rather than vernacularly- or customarily-created traditions. Generically, law-lore may indeed be a subgenre of legend, but it also shares characteristics with rumour and gossip. In defining law-lore, I am building on the genre of folklore Bolton identified as "traditional

misconceptions of law" (Bolton 1901, 115). "Traditional misconception" is accurate insofar as it describes the generative mechanism, but it says little about the subsequent transformation into a traditional belief and its transmission, which gives the collective misconception a folkloric life of its own. Bolton's examples include the "common belie[f] that it was penal to open to a coal-mine near [London]," that "it was and is still supposed to be unlawful to shoot with a wind-gun, or, as we now call it, an air-rifle," and "the use of a lanthorn [lantern] at night is illegal, a belief probably based on the likelihood of being taken from some evil-doer, as such an appurtenance was and is usually part of the stock in trade of any well-appointed member of the burgling profession" (Bolton 1901, 115-116). Bolton's article in *The Journal of American Folklore* is a product of its time: it is more a list of collected misconceptions than an analytical research study. He offers little to no context for how he came by each entry and sums up such traditional misconceptions as "[t]he notions of the vulgar on legal matters" (Bolton 1901, 116).

In defining "traditional misconception," Bolton emphasizes the then-vogue concept in early folkloristics of a rural-urban folk cultural divide, yet he is also backhandedly progressive insofar as he argues folklore is not unique to a rural peasantry. However, he classifies such "vulgar notions" as vernacular belief (though not belief legend per se):

> Common errors of beliefs, especially among a rural population, are largely traditional, and therefore peculiarly tenacious. Country-folk, however, do not maintain a monopoly in this regard, for town-dwellers, especially in the very large cities, usually possess quite as many misconceptions. Perhaps owing to their more strenuous conditions of life, they are given to opinions in matters legal. In no case is this more marked than in London, where some very crude superstitions of the last century still exist as to what is or is not lawful (Bolton 1901, 115).

While he does not cite a history of extensive scholarship nor offer much in the way of analysis, his usage of "traditional misconceptions of the law" is unique. He appears to be the first and last

scholar to use the phrase. I draw on Bolton here because his definition and generic focus align more closely with law-lore than folk-law or law-legend.

5.4 Law-lore and Magical Thinking

Returning briefly to Vaulin-as-folk-hero, TorrentFreak readers Frank Roberts and Aaron Larson illustrated the process of expurgation. Roberts commented, "I don't see how the owner did anything illegal...torrents are not illegal unless the owner of the site uploaded movie and TV shows also otherwise he's not responsible for who uploads illegal stuff and he was taking down files they wanted down" (Frank Roberts, comment, TorrentFreak, 2016). In a similar vein, Larson noted, "I fucking hate our stupid ass government for doing this again. They don't realize that these guys [KAT] delete torrents when they get a DMCA takedown" (Aaron Larson, comment, TorrentFreak, 2016).

While I cannot generalize from these two specific comments, they point to a repeated rhetorical pattern I documented at KAT: the website's outlaw status (and, by extension, Vaulin's) is contested by vernacular beliefs about (1) what is and what is not (currently) illegal; (2) under which jurisdiction(s); and (3) what steps can be taken to avoid or mitigate legal action. Roberts reiterates an argument commonly heard on file-sharing forums that relies on emic nuance: a torrent file itself contains no copyrighted material, it functions more like a map, and since KAT hosted only torrent files and not the actual content to which they pointed, it is therefore not illegal. The argument, seen in both comments, is modified in both cases to include a secondary clause absolving companies of liability for content users shared. It is true that under U.S. copyright law, torrent files *themselves* are not in fact illegal, if only because BitTorrent can

also be used for legal content distribution[59]; however, a torrent file directing the user to copyrighted content is invariably considered to be *facilitating* infringement.

The question of secondary liability (i.e., facilitating infringement) ties in with Larson's comment. The comment refers to KAT's controversial practice of honouring DMCA takedown requests. KAT admins actively engaged in this practice throughout the duration of my fieldwork. It was a divisive stance that generated tense discussion on the forums. KAT's official stance, to comply with copyright takedown complaints, was often promoted by the site's elite (Moderators, Super Users, KAT Elite, and Admins) and frequently quoted in threads, e.g. Super Moderator Prairi3DoG's reply to a discussion thread about DMCA takedowns: "Any torrent that you upload can be removed due to legal issues. We are interested in keeping the site online and filled with content, but we are also obliged to remove content if we are contacted directly by the copyright owner" (Prairi3DoG, comment, KAT, January 23, 2015).

Those supporting the initiative believed that by honouring DMCA takedown requests KAT qualified as a "safe harbour," which would give it immunity from liability (DMCA §512). This belief can be seen in the community debates over the DMCA. Responding to skeptics who argued DMCA compliance was paradoxical for a pirate site, Moderator lostmyticket said, "I would say that complying to DMCA is not shooting ourselves in the foot, but a way of self preservation" (lostmyticket, comment, KAT, January 24, 2015). This interpretation-*cum*-belief that complying with takedown requests meant legal protection for KAT was widely transmitted and reinforced through frequent text forum discussions in the two years leading up to the shutdown.

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[59] A brief set of examples of legal BitTorrent usage include its use by the CBC (CBC 2008); Facebook (Ryan 2012); and Blizzard Entertainment, makers of the game *World of Warcraft* (Blizzard 2017).

> We (as all KAT lovers) have a choice of either bringing down the copyright[ed] material or they (DCMA) bring down KAT. Obviously we all love KAT, so removing copyright material is *our only option* (DarkHorseKing, comment, KAT, January 24, 2015; my emphasis).

By 2015, when Uploader DarkHorseKing typed his comment, KAT was at the peak of its size and popularity: it was "the most visited torrent site on the Internet" (Van der Sar 2015a). Due to its increasing notoriety, Katians rightly feared that KAT was being targeted for shutdown. "Operation: In Our Sites," a joint operation led by the U.S. DOJ and ICE had been actively seizing pirate domains since its launch in 2010 and, by 2015, the once resilient constellation of torrent sites was growing thin (ICE 2014). The Pirate Bay had recently been temporarily shut down (again), leaving Katians to wonder if they would be next.

As noted above, on one hand torrent websites were frequently described as a "many headed hydra," implying that if one "head" (read: website) was shutdown, one or more would rise to immediately take its place (Enigmax 2007; Moyer 2016). In this sense, individual torrent sites are important only insofar as their utility as vehicles for transmission of pirated materials, so that it does not really matter whether you download from, say, The Pirate Bay or KAT. This perspective knits otherwise disparate pirates into one overarching network with built-in redundancies. This view was also strengthened by the introduction of magnet links starting in 2012 (Geere 2012). Previously, the BitTorrent protocol had required users to download a torrent file to their local machine. This left a traceable trail of Internet traffic along with a public IP address. It also required servers, "torrent trackers," to act as mediators. Magnet links bypassed the need to download a torrent file and, in doing so, further decentralized the practice of piracy. Websites, such as both The Pirate Bay and KAT, that had started life as torrent trackers were essentially devalued. This perspective was described in a KAT DMCA forum thread by ovejanegro666 in 2015:

I visit many torrent sites, I kiss up to none. I pledge allegiance to none […] If one torrent site goes down, I just upload my stuff at another location. I naturally am not concerned (ovejanegro666, comment, KAT, February 16, 2015).

On the other hand, as I have demonstrated, KAT was not just any pirate site. It boasted a strong, close-knit community that used the website for more than torrents. It is telling that ovejanegro666's KAT rank was only "User," the lowest rank in KAT's social hierarchy. As an outsider with a "many-headed hydra" view of the torrent scene, ovejanegro666 was likely indeed "naturally not concerned." However, Uploaders, like DarkHorseKing, and Katians with "higher" ranks (e.g., Moderator; Super User; KAT Elite) *were* concerned. For those who called KAT home and had invested time and energy into the community, its potential loss was troubling. No one at KAT liked honouring takedown requests but, aside from being enforced as official policy, any level of perceived compliance with the DMCA was considered, at best, the community's salvation or, at worst, a necessary evil. DarkHorseKing's remark that "removing copyright material is our only option" expresses the cornered feeling shared by many Katians.

The "necessary evil" camp did not believe that honouring takedown requests placed KAT in compliance with the DMCA but they did consider it a strategic move, as described by KAT veteran Super User Pringlescan: "If KAT didn't take down torrents it most likely would have been taken down a while ago when there was a major push to take them [torrent sites] down" (Pringlescan, comment, KAT, January 23, 2015). The idea behind this approach was strategic mitigation: if KAT could not qualify for safe harbour, then accepting takedown requests from rights holders could at least keep those groups relatively mollified and hesitant to launch costly litigation. DMCA takedown requests, and KAT's subsequent honouring of them, was sometimes taken personally by uploaders. Using the mitigation strategy, takedowns were a delaying tactic, staving off legal action, while the same content was subsequently re-uploaded. Eventually,

uploads and takedowns existed in an almost reciprocal dynamic. Copyright and industry lobby groups likened the relationship to the perpetual game of "whack a mole" mentioned previously (RIAA 2017), whereas KAT uploaders often saw themselves in a personal struggle against these powerful groups. An important nuance, however, was that the mitigation strategy came with a glimmer of hope. As Uploader DoGRoBB3R explained, victory was improbable but not impossible: "We are all in a battle with the DMCA, please consider staying and uploading to keep us strong. We need each other, then we can beat the DMCA and possibly eventually wear them down" (DoGRoBB3R, comment, KAT, April 13, 2015). "Wearing them down" was predicated upon the assumption that uploaders could somehow "jam" DMCA notice systems by producing too much paperwork. The strategy was belied by the industry's use of automated scripts and bots.

Although KAT's official stance on the DMCA was divisive, the site admins created a series of calendar customs centred on uploading to promote community unity. Starting in 2011, KAT observed an annual "Torrents Day" on March 30th. As described by site admin Mr. Gooner:

> For the 4th year running there is a day in the torrent world dedicated to this where we celebrate. 30th March every year is Torrents Day! Where everyone from around the world goes on a download frenzy and uses this thread as a reminder. We were the first torrent community to start this but became world wide all over torrent sites and also hit google and torrent news (Mr. Gooner, post, KAT, March 5, 2015).

This holiday was followed up with a series of "Upload Days" throughout the year, during which normal upload restrictions were waived (KAT uploaders normally had to go through a probation period and were subject to strict regulation) and the community was encouraged to upload as much content as possible. These days were also sometimes known as "No DMCA Day" and were directly concerned with replacing content taken down due to DMCA requests. February 1, 2015, for example, was a "No DMCA Day," complete with a FAQ (*fig. 5.3*):

Such calendar customs were central to the "battle" described by DoGRoBB3R and explicitly mark the community's paradoxical commitment to both honouring takedown requests and maintaining the flow of pirated content.

Paradoxes generate tension and ambiguity and, when intersected by a perceived power imbalance, they can become fertile ground for the emergence of magical thinking and outlaw folk heroes. In addition to a strategy of mitigation, KAT's DMCA policy may also have been a symbolic method of attempting to achieve a modicum of control over an otherwise bleak and overwhelmingly helpless situation. According to Malinowski,

We find magic wherever the elements of chance and accident, and the emotional play between hope and fear have a wide and extensive range. We do not find magic wherever the pursuit is certain, reliable, and well under the control of rational methods (Malinowski 1954, 139).

The use of magical thinking, expressed through ritual, can often be read as an attempt to control an otherwise un-controllable situation. Building on Malinowski, Gmelch applied his magical model to baseball, finding magical practice to control luck alive and well in professional sports (Gmelch 1971). Drawing on Frazer's magical theory, Narváez similarly finds popular fandom practices underlined by everyday use of a traditional logic found reflected in Frazer's model of sympathetic magic (Narváez 2007). Magical practice, then, or at least the traditional cultural logic underlying it, is not restricted to particular times or sacred spaces but can be found in contemporary secular use. For Katian uploaders, the belief that honouring takedown requests meant DMCA compliance offered *something to do*; a virtual method of exerting a measure of control. The Upload Days functioned in tandem with the takedown policy as a means of fighting back against overwhelming odds. Taken together, this reciprocal dialectic of upload/takedown ultimately offered hope through magic. I argue that a misinterpretation of the DMCA became traditional when it was shared and variants were repeatedly disseminated by and within the Katian folk group, and subsequently developed into a traditional belief that was used strategically but was ultimately predicated upon magical practice.

5.5 The Last Christmas at KAT

In December 2016, Katians at the new KAT celebrated their first holiday season. As Forum Moderator sz235711 put it, "It has been a hard year in the history of KAT" (sz235711, post, Diet KAT, December 22, 2016). Part of being a member of a pirate community means living under the constant threat of legal action. It is a precarious existence, knowing that your everyday practices are illegal and the friends you have made, the community you have come to love, can disappear overnight. The power arrayed against you is beyond the ability of any individual to

challenge. Government agencies and industry lobby groups, lawmakers and CEOs, appear as distant, indistinct, faceless behemoths whose interests are written into law and pattern the lives of those trying to survive and avoid being stepped on. Of course, those agencies and corporations are comprised of individuals with families, hopes and dreams, who might say they are trying to protect the hard work and rights of artists. Pirates are not unreflective. Far from the ruthless murderers and pillagers of page and screen, I found KAT to be highly self-conscious and self-reflexive community. Like the "motley crews" of old (Rediker 2014, 95), KAT's membership was diverse in their backgrounds as well as their reasons for file-sharing. Despite the heterogeneity of the community, and the power looming over them, they were brought together by shared traditions: the everyday practice of piracy, but also the celebration of calendar customs critical for maintaining communal structural integrity.

The Christmas 2016 forum thread set a somber tone remembering the loss of old KAT, but encouraged Katians to continue to persevere through maintaining regular customs (*fig 5.4*).

MERRY CHRISTMAS KATTIANS!

> It has been a hard year in the history of KAT, we lost our ship, but the community survived and torrents are back. We would like to thank all of the members for your perseverance and support. You are great people, you are the KAT Community. We wish you a Merry Christmas and we hope that your Holidays are filled with love and joy (sz235711, post, Diet KAT, December 22, 2016).

In addition to holiday messages, the community also consciously created a new tradition of exchanging presents, called the "KAT Christmas Tree" (*fig 5.5*). It is similar to Secret Santa, but with pirated content. Forum Moderator sz235711 launched the event, saying:

> We would like to invite every registered member to join our Christmas celebration and to create a new tradition at KAT, setting up our own Christmas tree. Everyone who posts on this thread will receive a gift from someone else who also posted here. We close the first thread on the 16th December. After that, you will get a message with a name. Then we will open the KAT CHRISTMAS TREE thread, where you can post your surprise gift to the member whose name you've received via PM. So,

everyone will give one present and everyone will get one. The presents can be self-made images, your favorite songs, a lovely poem or heartfelt greetings for Christmas and for the New Year (sz235711, thread, DIET KAT, December 11, 2016).

Based on replies on the thread, it appears some Katians composed short poems, but most linked pirated songs, games, or films to each other. The present exchange served a social function of strengthening community relationships. By creating new shared traditions, KAT staff attempted to move past the shutdown and lay the foundation for a new community. While the new KAT never regained its former popularity, it made an impact on those Katians who gathered there: "I just want to tell you all Merry Christmas and I'm thankful that we're all still here together. Thank you for everyone who made this possible. It feels good to be home" (AlaskanLost, comment, Diet KAT, December 22, 2016).

This chapter opened with news of the shutdown, followed by an exploration of the discussion of Katians' responses to the crisis. Although living with the very real fear of undercover government agents, server seizures, and legal prosecution, Katians were largely unprepared for the shutdown. One reason for this is the way KAT was conceived of as a community first, torrent depot second; rather than yet another redundancy in the ecosystem, as AlaskanLost exemplifies, KAT was *home* to many. The other reason Katians were unprepared was their belief in the legitimacy of their perceived DMCA compliance. Based on a "traditional misunderstanding" (Bolton 1901), the folk belief that KAT qualified for safe harbour led many (though not all) Katians to think their mitigation strategy could, and was, extending KAT's life.

In response to KAT's untimely "death" Katians expressed their grief and anger through posts to various social media. In the midst of this process Vaulin was thrust into the limelight. With their community and all of its content and history gone, Katians found themselves displaced, lost on the figurative ocean of cyberspace. The highly-publicized case against Vaulin

offered an anchor and last link to KAT. Katians expressed mixed feelings about him and the case against him, which led to a polarizing atmosphere of moral ambiguity. His supporters reified him along lines reminiscent of traditional outlaw folk heroes. His alleged crimes were expurgated; a nobility of character was imputed. In this romantic vision, Vaulin became the latest in a long line of Robin Hood-esque outlaws whose questionable tactics were justified as morally righteous in the face of overwhelmingly oppressive power.

Vaulin was indicted by the United States in 2017 and subsequently arrested and released on bail in Poland, where he fought extradition for three years until jumping bail and disappearing in 2020 (United States v. Vaulin 2020). As of 2024, Vaulin remains a fugitive and the case against him sits inactive until he resurfaces. New KAT was born into a fragmented piracy scene but was temporarily able to recapture part of the Katian diaspora. Yet its tenure was brief; it was shut down less than a year after launch. However, the mourning posts left by Katians will remain on myriad mirrors and backup servers as virtual memorials to the community that once thrived.

6. Conclusion

This was not the dissertation I set out to write. Having to pivot and re-focus the project when fieldsites disappeared fundamentally shaped, and re-shaped, the nature of my fieldwork experience. And I think, ultimately, for the better. On one hand, even though I gained access to communities and spent years doing virtual participant observation, I was never able to build the kind of deep abiding rapport with participants in the way it is seemingly presented in ethnographic classics (e.g., Glassie 1995). Similarly, restrictions imposed by the university's ethics board were important in protecting participants (as well as myself) from risk, but also blocked off certain avenues of fieldwork, such as KAT's VIP room. On the other hand, I did get to know some of the "local characters" (Tye 1989) at KAT, and what I perhaps sacrificed in depth was made up for in breadth. Fieldwork at KAT ran 2015-2016 but fieldwork over multiple fieldsites covered 2013-2020. The shutdowns and other methodological obstacles inadvertently transformed the project into a multi-year, multi-sited ethnography. Being able to experience and document the "pirate cycle" of shutdown and adaptation immeasurably affected my interpretation and analysis and inspired me to think about the ephemerality of data and the methods pirates use to negotiate it, ultimately culminating in the ad-hoc pirate commons.

I have shown that the pirate commons is a digital form of cultural or intellectual commons (Boyle 2003) that conceptually draws on historical village commons, the public domain, and early techno-utopian rhetoric of the Internet as an "information superhighway" and an infinite "community memory" (Levy 2010, 151). Although the counter-cultural origins of the Internet have been questioned (Turner 2006), the public media discourse surrounding it in the 1990s promised a great democratic leveller that would offer limitless libraries and unlimited access to content and communication (e.g., Besser 1995; Gomery 1996). The spread of

computing infrastructure along with digitization/digitalization initiatives and a born-digital

generation of media content have resulted in an unprecedented amount of digital information

being created and uploaded online. However, the Web today more closely resembles a series of

walled gardens than a highway. Paywalls, monthly subscriptions, geo-blocking, DRM, product-

as-a-service business models, and licensing are all elements of a broader process of digital

enclosure that maximizes private owner control and minimizes public user access. At the same

time, the speed, ease, and quality of digital reproduction and re-transmission is a threat to

conventional creator's rights. Creators deserve compensation and innovation should be

encouraged. Copyright was intended to strike just that balance. Once the niche regulatory

instrument of the printing industry, copyright now finds itself at the forefront of international

business and government policy as it has come to form the bedrock foundation upon which the

entirety of the current "IP" content economy rests. Yet, centuries of expanding term length along

with the shift from restricting reproduction to controlling access and geo-blocking have instead

inspired resistance in the form of piracy.

Piracy is not monolithic, nor are pirates' individual motivations homogenous; some

Katians espoused anti-capitalist ideologies and called for the abolishment of private property,

while some Sceners hoped game companies would prosper so they would continue producing

games to crack. Piracy is both a "big tent" large enough to house disparate views, and a bitterly

contested discourse. "Piracy discourse" is more accurately a matrix of discourses flowing from

multiple agents whose practices and worldviews sometimes align and sometimes intersect.

Piracy is a contested discourse shaped by emic and etic views and power relations. Pirate

identity, or what it means to be a pirate, is shaped and (re)produced in this discursive space. The

contemporary media pirate is a pastiche, partly assembled through individual and group expression and partly imposed by external ideological actors and broader public perception.

I have sought to contextualize piracy through drawing parallels with historical resistance movements, such as The Diggers, Luddites, and Golden Age maritime pirates. During my time at KAT, some of my participants explicitly framed themselves as maritime pirates and outlaw folk heroes, such as Robin Hood. These historical and folkloric frames reveal how (at least some) pirates see themselves and want to be seen, but they also suggest the moral ambiguity and legal risk inherent in pirates' lived experience. Both maritime pirates and legendary outlaws were hunted and lived under constant threat of legal violence. The historical realities of maritime piracy have largely been suppressed by a discursive mixture of contemporaneous anti-piracy rhetoric and more recent romanticization in popular culture. Defined in hyperbolic terms, pirates were "Robbers, Opposers, and Violators of all Laws Humane and Divine" (Rediker 2004, 7). Once divorced from a maritime frame with the semantic shift to copyright infringement, what was once hyperbole became structural symbolism.

Digital media piracy is a negotiation of risks; some real, others imagined. By exchanging risk for access, pirates gain entry into a virtual commons but must be wary of their harvest lest they find it booby-trapped with malware or lawsuit. To etic eyes looking out from walled gardens, pirates, in addition to being criminals, are symbolic trespassers who violate deeply held sociocultural norms—the romantic liberalism undergirding copyright and the anxieties surrounding the ideology of mass production—thereby opening their technological "bodies" to infection and transmissible contamination. Piracy, already a legal and material menace, becomes a dangerous contagion, a symbolic threat to the social order.

Like many social "contagions" before it, piracy discourse bears the hallmarks of a moral panic. If the practice is marked as an admixture of illegality and inauthenticity, its product is the reproduction of dangerous, fake, and contaminated copies. The view from the pirate commons, however, is decidedly less a panic but not necessarily any less moral. Just as pirate identity at KAT was forged dialogically between emic and etic discourses, so too did Katians discuss and debate morality and ethics. KAT's ethical diversity was expressed through moral genres (Coleman and Golub 2008, 258) and created a matrix of vernacular morality tied to the process of piracy. As a kind of folk appropriation, piracy transforms digital media as they are cracked and reproduced as "pirated versions" and revalued on the basis of the pirate commons. Whether the transformation is a contamination or a cleansing depends on which side of the emic-etic divide the observer is standing. Though illegal, piracy removes barriers to access (or more accurately replaces hard barriers with risk).

These outlawed reproductions, what I am calling "pirated versions," are at the heart of piracy and the pirate commons, and I have argued that they are a type of folk variant, (re)produced through artistic and skillful folk appropriation, by and for a virtual folk group, who then share and re-transmit them along informal networks. As an everyday vernacular custom repeated and informally shared between a networked constellation of identity groups, piracy has become traditional. A folkloristic approach to piracy is useful in revealing the complexity of its social structure, the vernacularity of its scope and performance, and the meaning(s) created through its processes of tradition and variation.

There remains considerable space for further study by folklorists as well as scholars of other disciplines. As a traditional illegal practice situated within a vernacular underground economy, piracy is a rich vein of folklife. As I hopefully demonstrated in the literature review in

Chapter 1, piracy has attracted decades of scholarship—but very little of it is ethnographic. Although I was surprised by the lack of folkloristic work on historical maritime piracy, I quickly discovered that there are considerable methodological barriers to ethnographic fieldwork with digital media pirates; indeed, I am afraid Chapter 2 may stand as a testament to that. Any theory or method has its limitations and although my fieldwork experience was equal parts frustrating and fruitful, I was nevertheless limited by the degree of access gained and with whom. However, I am encouraged by the rapidly expanding digital folkloristics literature. Folkloristics is well placed to make significant contributions in the interpretation of new forms of vernacular sociality and expression online.

Although I grounded this research in fieldwork at KAT, I adopted an interdisciplinary approach, drawing on diverse scholarship ranging from law to history. To paraphrase and repurpose Rediker's passage about a social history of sailors, the interdisciplinary approach proceeds from the belief that the study of piracy can and must be more than a chronicle of lawsuits or an explanation for criminal deviance: it must be made to speak to larger historical and sociocultural problems and processes (Rediker 1987, 7). Part of that is giving a voice to pirates so that they can speak for themselves. I have described piracy as a contested discourse, but a significant portion of that discourse is hidden from the broader public view, partly obscured by anti-piracy campaigns and partly by the fact that, for many pirates, to speak is to incriminate themselves.

With the disappearance of KAT, my project arguably shifted from ethnography to history. A question I am often asked is whether I am worried that my research will become "outdated" given the quick pace of technological change. It is true that many of the sites and applications used by pirates have changed since I started this project, including my own

fieldsites. Yet, I do not think that the social use of a technology changes as quickly as the appearance, or interface, of that technology. Nor do I believe that the experiences and meanings from and cultural expressions created by "outdated" technologies depreciate in value. I think that this is particularly relevant in the case of piracy, because piracy is seemingly always relevant. What I mean by this, is that piracy in its myriad forms has always existed and each manifestation of it has existed on the fringes of societies and called into question the systems of power at the centres. This does not mean that piracy is necessarily moral or ethical—as the vast bulk of anti-piracy literature attests—but rather that it is a phenomenon of analytical and cultural value, and one that is not going away.

The naturalization of Internet technologies and embeddedness in everyday life has begun to change the way people understand and use digital media. This change is at the intersection of broad historical and economic forces, a disjuncture of vernacularity that brings ideas about copyright and property to the forefront of sociocultural politics as it highlights the cracks in the foundation. If the emergent pirate identities I found at KAT are expressions of "imagination as social practice" (Appadurai 1990, 5), studying piracy will only become more important in the future.

Even though KAT is gone, piracy endures. There have been several notable shutdowns since KAT and there will undoubtedly be more to come. Piracy ebbs and flows. The pirate cycle will continue. Each cycle adds more to the growing commons. Maybe one day it will not have to be illegal. One of the oft-repeated poetic statements I heard during my fieldwork was, "Seed the world and see what grows." I cannot help but feel that this ethos inspired and was inspired by the pirate commons. Given access to art, culture, and data, what will grow out of the commons?

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Figures

Figure 1.1 KAT domain seizure notice (screenshot by author, July 22, 2016)

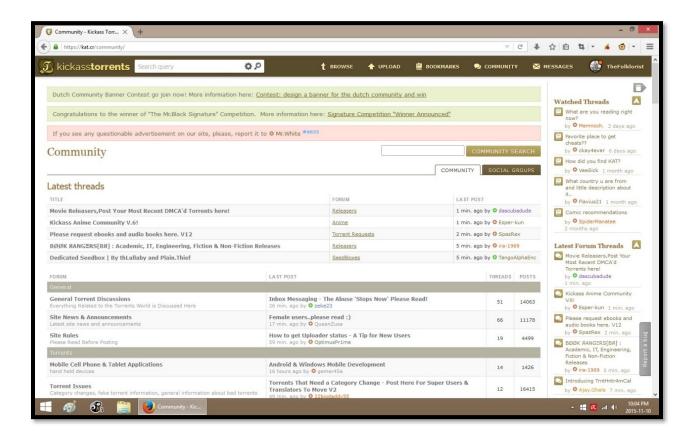*Figure 1.2 KAT community forum banners (screenshot by author, November 10, 2015)*

Figure 1.3 KAT Christmas poetry contest (screenshot by author, March 12, 2015)
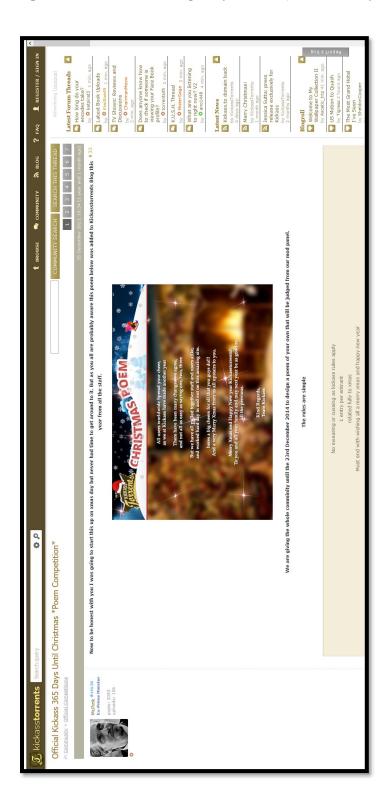
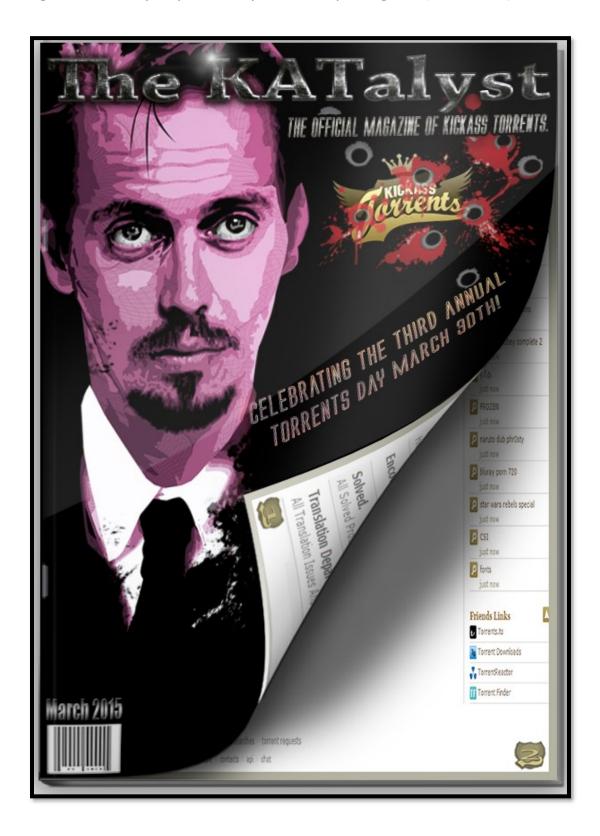*Figure 1.4 Cover of the first issue of* The KATalyst Magazine *(March 2015)*

Figure 1.5 "Home Taping is Killing Music" poster by BPI, 1981 (Wikimedia)

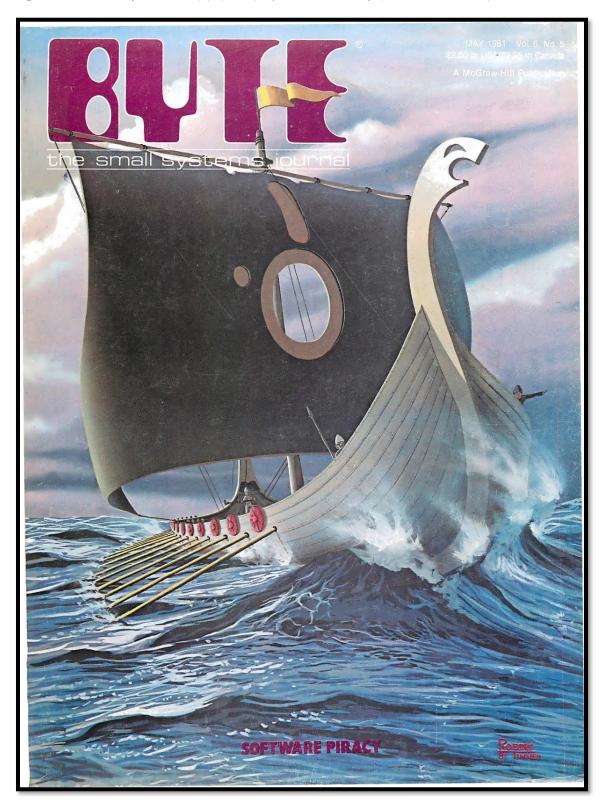*Figure 1.6 Cover of* BYTE *6(5) (1981) by Robert Tinney (Internet Archive)*

The Pirate Bay

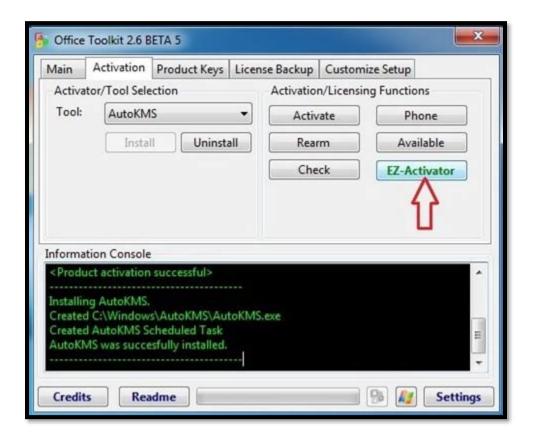*Figure 2.1 MS Office Toolkit with automatic activation feature (mstoolkit.org)*

Figure 4.1 "For the Better Right?" meme featuring LimeWire (Reddit, 2022)

Figure 4.2 LimeWire-AIDS nostalgia meme (KAT, 2015)

Todays kids will never know how it felt to give your computer AIDS just for free music

LimeWire™

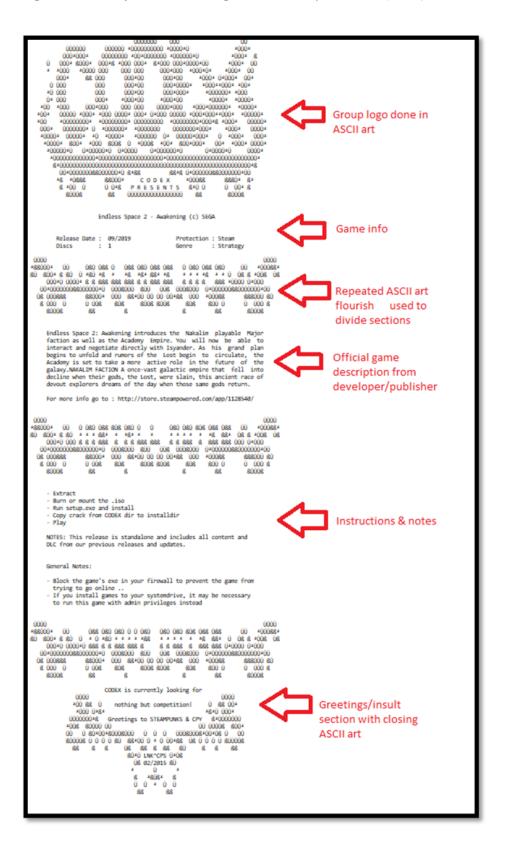*Figure 4.3 NFO from* Endless Space 2 *crack by CODEX (2017)*

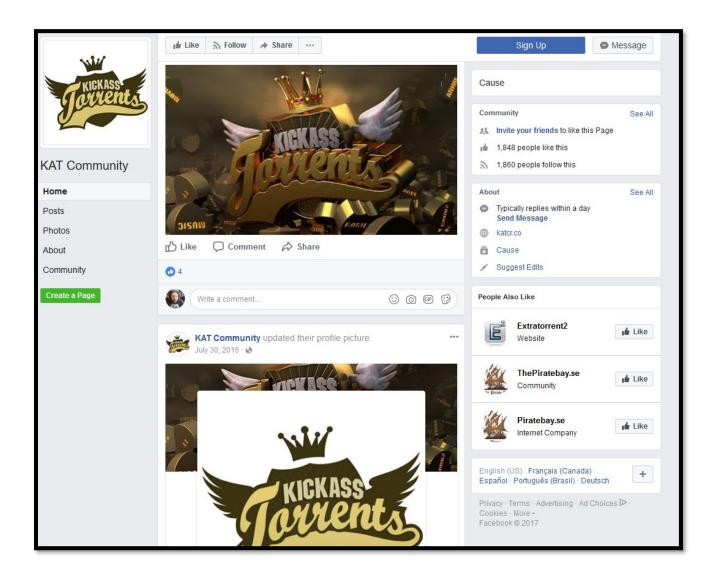*Figure 5.1 KAT Community Facebook Group (screenshot by author, December 2017)*

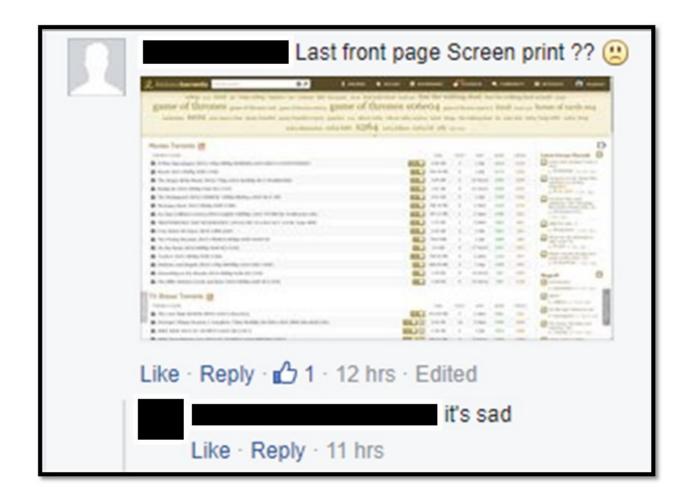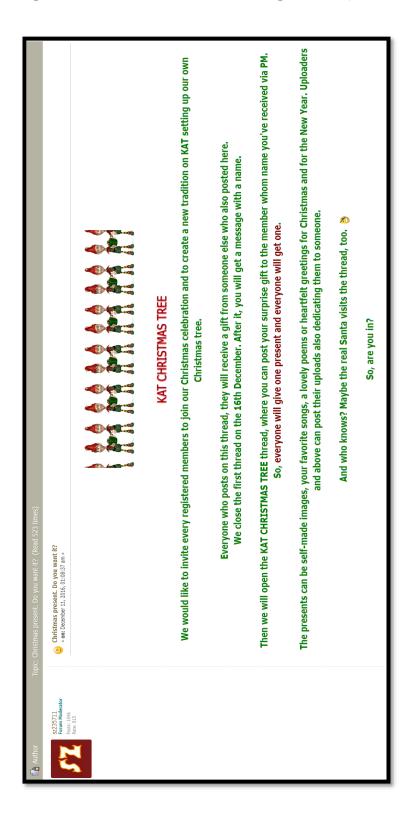*Figure 5.2 A last look at KAT (screenshot by author, Facebook, July 2016)*

Figure 5.4 New-KAT Christmas Thread, December 22, 2016 (screenshot by author)

Figure 5.5 KAT Christmas 2016 Exchange Thread (screenshot by author)

Christmas present. Do you want it?
« on: December 11, 2016, 01:08:37 am »

KAT CHRISTMAS TREE

We would like to invite every registered members to join our Christmas celebration and to create a new tradition on KAT setting up our own Christmas tree.

Everyone who posts on this thread, they will receive a gift from someone else who also posted here.
We close the first thread on the **16th December. After it, you will get a message with a name.**

Then we will open the **KAT CHRISTMAS TREE** thread, where you can post your surprise gift to the member whom name you've received via **PM.**
So, everyone will give one present and everyone will get one.

The presents can be self-made images, your favorite songs, a lovely poems or heartfelt greetings for Christmas and for the New Year. Uploaders and above can post their uploads also dedicating them to someone.

And who knows? Maybe the real Santa visits the thread, too.

So, are you in?

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Glossary

Anonymous: A decentralized "hacktvist" (from "hacker" + "activist") collective known for hacking and DDoS attacks against a series of disparate targets, including the Church of Scientology, the Epilepsy Foundation of America, VISA and Mastercard, the KKK, and the FBI. Established on 4Chan c. 2003, Anonymous activity has decreased since the arrests of the LulzSec hacking group in 2012-2013.

ARPANET (1969-1990): A precursor to the Internet developed through a series of joint projects between the U.S. Department of Defense's research wing, Advanced Research Projects Agency (ARPA) and UCLA. It was the first "network of networks" to use packet-switching and TCP/IP and formed the technical backbone for the commercial Internet launched in 1990.

Bulletin board system (BBS): An early type of online message board hosted on a server to which users could connect, interact with a text-based interface, and post messages. Some BBSs included FTP servers and offered uploading and downloading functions.

BitTorrent (BT): A file transfer protocol that requires specialized software clients and enables users to connect to multiple peers.

Bootleg: [1]An unauthorized recording of a live performance; [2]an unofficial album composition; sometimes conflated with "pirated version."

Clearnet: The totality of the publicly-accessible and navigable Internet websites indexed by search engines.

Client: Software application downloaded and run by user on their device ("client-side"), but which connects to a remote server or peers; e.g., Napster was a P2P client whereas qBittorrent is a BitTorrent client.

Clone: Reverse-engineered or independently-created imitation, not intended to deceive customers.

Counterfeit: Unauthorized independently-created imitation, fake, or forgery, intended to deceive customers.

Crack: A patch or modification that bypasses software protection. Content has been "cracked" when it has had its DRM has been removed or circumvented. Cracks are written by crackers or cracking groups and often designed to be applied by a user post-install, e.g., a typical pirated version of a game will come with an extra folder containing the crack that needs to be copied into the game's install directory.

Cracker: Someone who cracks software protection, often as part of a cracking group.

Cracking group: An organized team that cracks software protection in order to make digital content freely accessible, reproducible, and/or functional. See Release group; Scene, The; P2P.

Darknet: A network isolated from the publicly-accessible Internet. See also: Dark Web.

Dark Web: The totality of websites existing on anonymized and encrypted darknets, which require special software to access and are not indexed or searchable.

Distributed Denial of Service (DDoS): A type of cyber attack that involves flooding a target server with requests in order to overwhelm it force it offline. DDoS attacks are a tactic for suppressing a website but do not compromise system integrity. DDoS was a preferred tool of the hacktivist collective, Anonymous.

Direct download (DDL): A typical FTP or HTTP file transfer directly between a server and a user's device. Pirates contrast DDL as an alternative downloading method to torrenting.

Drive-by downloader: A user who has used BitTorrent to download content but disconnects from the swarm upon acquiring a full copy and does not seed.

Digital rights management (DRM): The management of access to digital media, usually enforced through software locks. The popular meaning of DRM has shifted slightly from a general practice to instead refer to the specific protection software itself, e.g., a crack is designed to remove "DRM" from a pirated version.

File-sharing: The transmission of digital files between users. Broadly defined, it includes most legal and authorized transfer methods. Sometimes used as a synonym for piracy, due to the history of BBS and P2P being used for sharing copyrighted content.

File Transfer Protocol (FTP): An older protocol for transferring files between a sever and a device. Compared to HTTP, FTP is faster for large files but less user-friendly and requires a specialized client software. Historically, the Scene used private FTP servers to host pirated media.

Forum: Part of a website used for text-based discussions. Generally, users post threads, to which others can post replies.

Geo-blocking: A control system that filters a user's IP address based on geographic region to either grant or deny access to a website or online content. Geo-blocking originates from rightsholders sub-licensing or patchwork international licensing agreements, which are based in nationally-bounded copyright laws. Pirates often use a VPN to circumvent geo-blocking.

GIF: An animated image using the .GIF (graphics interchange format) file extension.

Hit-and-run: See Drive-by downloader.

Hypertext Transfer Protocol (HTTP): A communication protocol common to most browsers today that enables file transfer. Compared to FTP, HTTP is better at serving multiple small files and forms the backbone of the Internet.

Index: A website offers a catalogue of content with descriptions and torrent links, popularly known as a "pirate site," e.g., KAT. Indices are often, though not always, associated with a tracker.

Intellectual property (IP): A class of intangible creations whose covered by copyright, patent, and trademark laws. IP's ambiguous legal status as a species of property has been a central theme in copyright debates since the 18th century.

Internet Protocol Address (IP): An identifier assigned to a device connected to a network.

Internet relay chat (IRC): An early instant messaging protocol created in 1988 featuring forum-like discussion spaces called "channels" direct file-sharing. Originally designed for early BBSs, IRC still exists but its userbase has significantly declined in the last two decades though it remains popular with older pirate groups.

ISO: An optical disc image using the ISO file extension; a complete copy of a physical disc, so named for the ISO 9660 file system standard. ISOs are a typical container for pirated versions of games, often with a folder containing a crack and NFO added by a release group.

Internet Service Provider (ISP): A gateway company that provides Internet access to customers. In Canada, ISPs are required by law to forward infringement notices to customers on behalf of rightsholders. In the U.S., some ISPs will suspend or terminate the accounts of customers who accrue too many such notices.

Katian: A registered member of Kickass Torrents.

Leecher: A user who is downloading a piece of media content via BitTorrent but currently only has a partial copy.

Lurker: A user who regularly reads but otherwise does not participate in a forum.

Malware: Malicious software designed to compromise target systems and execute unauthorized code. Types of malware include viruses, worms, trojans, spyware, and ransomware.

NFO: A text file created by a release group and packaged with a release that includes a description of the content, instructions on how to run it, and messages to other groups. NFOs usually contain ASCII art and serve as graffiti-like tags. NFO is file extension supposedly named for its phonetic similarity to the abbreviation "info" and is not natively associated with any application, meaning the average user will not be able to open it (and

being able to open the instructions to a pirated version is a minor gatekeeping test of skill).

Peer-to-Peer (P2P): [1]A type of dyadic file-sharing software enabled online file transfer between two users, e.g., Napster; [2]A file-sharing scene, or group(s) part of that scene, characterized by lack of adherence to Warez Scene rules or acceptance in the Warez Scene.

Peer: Another user connected through file-sharing; peers are the seeders and leechers in a BitTorrent swarm.

Phreaker (also phreak): c. 1960, an early type of hacker or cracker who manipulated the automatic tone signalling used in telephone system switchboards to access secure lines and avoid charges for long-distance calls (toll fraud). See Levy 2010[1984].

Piracy: [1]Armed robbery or hijacking on the High Seas; [2]Since c. 1690, unauthorized reproduction, including copyright infringement. Often conflated with bootlegging, cloning, counterfeiting, file-sharing.

Pirated version: A copy of media that has been pirated, cracked, and released by a release group.

Release: A copy of pirated media made available by a release group. Also see pirated version, crack, warez.

Release group: See cracking group.

Scene, The (also Warez Scene): A loose network of cracking groups adhering to communal rules while competing to upload new content to gain social capital.

Scener: A member of a Warez Scene release group.

Seed: A complete copy of an item (e.g., a film or game) that is being uploaded (seeded, seeding) by a seeder via BitTorrent. A torrent with a good ratio of seeders and leechers is considered "well-seeded."

Seeder: A user who is seeding (uploading) a seed (a complete copy) via BitTorrent for leechers to download.

Swarm: The name for a group of BitTorrent peers file-sharing a particular pierce of content together at any given time.

Transmission Control Program/Internet Protocol (TCP/IP): A technical standards framework for formatted and transmitting data over computer networks. TCP was designed for ARPANET in the 1970s and eventually developed into the IP used by the Internet today.

Thread: A user-created discussion post in an online forum. Threads are composed of user posts and can span hundreds of pages. For the purposes of this dissertation, I have used the term "post" interchangeably.

Torrent: [1]A filetype associated with the BitTorrent protocol that describes media content and, when downloaded, acts like a map in order to piece together said content, e.g., a torrent file for a pirated game is separate from the game itself; [2]torrent is also colloquially used to refer to the content itself, e.g., a pirate might say they are downloading "the torrent" when they mean they are downloading the game via BitTorrent.

Tracker: A server that coordinates peer connections by keeping track of which users have which content. Although trackers are still in use, the increased adoption of decentralized, distributed tracking since the mid-2000s has rendered them redundant. Trackers are often, though not always, associated with an index, which has led to a popular conflation of the terms.

Tracker, Private: A tracker, usually with an associated website, index, and forum, that is invite-only and only accessible to registered users. Private trackers often maintain specialized or high-quality content, but also impose strict sharing rules.

Tracker, Public: A tracker that is publicly accessible, not requiring membership or imposing any rules, e.g., The Pirate Bay.

Upload: [1](v.) To transfer data from a local device to another, especially a remote device or online server; [2](n.) a pirated version that has been shared by a user, e.g. a pirated version can be referred to as "an upload" or "the upload."

Uploader: [1]An individual or group who regularly uploads pirated versions to a torrent site; [2]a temporary peer in a torrent swarm uploading pieces of a torrent.

Virtual private network (VPN): An encrypted connection routed through a central server. Originally designed for secure remote access to corporate intranets, VPNs are used by pirates as glorified proxies. They are favoured for torrenting due to the ability to hide a user's IP address.

Warez: An older term for pirated software.

Warez Scene, The: see Scene, The.