

The War on Piracy: Analyzing the Discursive Battles of Corporate and Government-Sponsored Anti-Piracy Media Campaigns

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In the wake of increasingly globalized trade initiatives and the proliferation of digital technologies, the issue of copyright infringement has become a subject of keen media attention and a topic of enthusiastic public debate. Through a variety of corporate- and government-sponsored anti-piracy campaigns, copyright infringement is conceptually framed as a “piracy” that is in need of urgent combat. This study analyzes how anti-piracy media campaigns are as responsible for the propagation of “piracy” as those partaking in copyright infringement. With the dominant discourse of the “war on terror” playing out in the background, the anti-piracy discourse is being sounded through an increasingly militarized language that relies on metaphors of war to inspire fear among audiences and to criminalize even the most casual of informational exchanges. Current anti-piracy campaigns discursively frame copyright infringement as a dangerous crime by connecting it to the word “piracy” and to its cut-throat predecessor, open-sea piracy, to hold back the tide of wide-spread proliferation.

Keywords: Piracy; Copyright infringement; Anti-piracy campaigns; Discourse analysis; War on terror

Introduction

The anti-piracy discourse exercised by corporate- and government-sponsored public relations and media campaigns is being sounded through increasingly aggressive language to dissuade the public from partaking in increasingly widespread copyright infringement. In keeping with the archetypal discourse models of Lakoff and Johnson

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(1980) and the metaphors of war embedded in argumentation, this study shows how the current “war on piracy” discourse is saturated in linguistic aggression through the strategic use of military metaphors “in an attempt to gain dominance” (p. 84) over all aspects of “intellectual property” production, distribution, and consumption. Phrases such as the “fight against piracy” (Microsoft, 2008a), “fighting piracy” (Recording Industry Association of America, n.d.b), and “fighting movie piracy” (Movie Picture Association of America [MPAA], 2008), are commonly used in rights holders’ anti-piracy articulations to convey the urgency of the current “war on piracy” (Brand Protection Council, 2007c).

In order to examine how the use of conceptual metaphors is instrumental in the creation of the “piracy” discourse, and how they infiltrate and inform other areas of social infrastructure such as law, history, and culture, it is necessary to incorporate the thoughts of scholars such as Fairclough (1992, 1995, 2001, 2003), Laclau and Mouffe (1985), Lakoff (2004), Wodak (2001a), and van Dijk (1986, 1993, 1998, 2006), who focus “on the role of discourse in the (re)production and challenge of dominance” (van Dijk, 1993, p. 249) and the manner in which discourses are able to “‘word’ or ‘lexicalize’ the world in particular ways” (Fairclough, 2003, p. 129). In the current anti-piracy discourse, the world and its cultural composition are “worded” by rights holder industries as being endangered by callous pirates and in need of increased copyright control and legal restrictions. As such, there are a variety of engagements with cultural materials that are also being blanket criminalized as a result of this anti-piracy discourse and the complexities involved in their collaborative creation are being reduced to their criminal elements. Fairly routine engagements with cultural and educational materials that should normally belong to the flexible category of “fair use” are being articulated as “piracy.”

Such criminalization is currently taking place through technological limitations as well as through legal restrictions and the administration of fines and punishments. Digital rights management (DRM) technologies disallow any and all forms of copying, whether acceptable by fair use standards or not, thereby dictating that all forms of copying are criminal acts even before any judgment has taken place. Indeed, these technologies reduce all forms of copying to criminal acts, even if the user’s intentions were honorable and within the scope of the law.

The criminalization of copyright infringement is apparent in the highly publicized lawsuits and convictions of copyright infringers. Currently, the U.S. Federal Bureau of Investigation (FBI) is criminalizing all forms of infringement, whether for profit or for social and educational enrichment, and declares that any copyright infringement, “including infringement without monetary gain, is investigated by the FBI and is punishable by up to 5 years in federal prison and a fine of \$250,000” (2008). Such increasingly libelous copyright laws are rendering criminal many engagements with copyright material such as non-profit acts that only a few years ago were considered perfectly legal. As such, there are many current uses of copyright material that could fall into the fair use category if current copyright laws admitted a degree of flexibility.

To address these issues, I conduct a critical discourse analysis of the anti-piracy discourse to show that it is central to “the construction of social subjects”

(Fairclough, 1992, p. 44) as either “pirates” or “victims” of infringement, with very few excusable uses of cultural material in between. As such, this is a critical discourse analysis that “starts from prevailing social problems” (van Dijk, 1986, p. 4) and addresses the relations of power at work in the attempt to curtail social practices of infringement.

The concept of “piracy” is as much a discursive creation on the part of corporate- and government-sponsored media campaigns as it is an activity undertaken by copyright infringers. In order to demonstrate this, I address the multipronged ways in which “copyright infringement” is framed as “piracy” and as an organized and dangerous crime. First, I attempt to destabilize the term “piracy” by placing it within legal and historical contexts to show that it is a term borrowed precisely for the weight of its historical baggage and its power as a provocative latent discourse. Second, I show that in order for the “anti-piracy” discourse to have any currency and effect on a largely unconcerned and unconvinced public, corporate- and government-sponsored media campaigns frame it within the boundaries of the current “war on terror” (White House, 2006a) in order to narrate it as a dangerous crime. Third, I argue that “the war on piracy” is being fought by rights holder institutions who portray themselves as a disciplining and policing force by evoking military metaphors and symbols of war in their public annunciations and actions. I conclude by outlining the prospective damage that is created by the progression of strict copyright laws and emphasize the need for a “re-framing” (Lakoff, 2004, p. xv) of our relationship to cultural texts in the age of digital reproduction. Never has there been such a rich cultural cache made so potentially redundant by being rendered inaccessible to the public.

What becomes apparent throughout this analysis is that what are in dispute are the basic assumptions of copyright, such as whether authored works should be considered property or seen as the product of labor, among other theoretical and practical contentions. Viewing cultural texts as “property” necessitates talking in terms of “theft” and “protection,” as this type of discourse will dictate that these issues encompass the predominant concerns. Siva Vaidhyanathan argues that “courts, periodicals, and public rhetoric seem to have engaged almost exclusively in “property talk” when discussing copyright” (2001, p. 11) and so represent the predominant discourse. To this effect, Lawrence Lessig spells out the polarizing and divisive nature of the current copyright argument by noting that it “has been framed as a battle about the rule of law and respect for property. To know which side to take in this war, most think that we need only decide whether we’re for property or against it” (2004, p. 10). This is however, an illusionary binary opposition as both the dominant and popular discourses do not share the same basic assumptions regarding copyright. Currently, the question of copyright has been framed around the narrow debate about “whether ‘piracy’ will be permitted, and whether ‘property’ will be protected” (Lessig, 2004), rather than addressing the nuanced and multi-faceted aspects of cultural creation.

A critique of today’s increasingly stringent copyright laws is about asking “what happens when all questions of authorship, originality, use, and access to ideas and

expressions become framed in the terms of “‘property rights?’” (Vaidhyathan, 2001, p. 12) and the answer is that “the discussion ends” (Vaidhyathan, 2001, p. 12). In order to facilitate any perceptual change, “we must change the terms of the debate” (Vaidhyathan, 2001, p. 12) by arguing that cultural creativity and production should not be centered on notions of “property,” which only serves to commodify cultural expression as an element of “ownership,” but should take into account the public participation instrumental to the very notion of culture.

Destabilizing the Term “Piracy”

Because discourses can be “pejorative, imaginaries, [...] tied in to projects to change the world in particular directions” (Fairclough, 2003, p. 124), it is important to see how “the relation between power and knowledge” (Torfing, 1999, p. 1) can shape ideologies that are able to alter public perceptions and, thus, public policies. The strong relationships forged between contemporary capitalist industries and governments mean that these institutions have “preferential access to the mass media and public discourse” (van Dijk, 2006, p. 362). This gives rights holders the power to construct a particular type of self-serving social reality where “infringers” are labeled “pirates,” and in some cases “terrorists,” in order to Other them through discourse.

In the current anti-piracy discourse, as articulated by law enforcement agencies and rights holder organizations, all copyright infringements are “commonly known as piracy” (RIAA, n.d.a) and it is the preferred word used by these institutions to describe acts of infringement. The RIAA goes so far as to declare that piracy “is a too benign term that doesn’t even begin to adequately describe the toll that music theft takes” (RIAA, n.d.a). The “piracy” discourse has been adopted by rights holders as a grey-area to describe a whole host of illegal activities, including terrorist funding, and so acts as a repository for the rebellious.

Largely because of the dense legal and social ambiguities of copyright issues, there has been a variety of terms used to describe copyright infringements, ranging from bootlegging, to counterfeiting, to knock-offs, to theft. But, overall, “piracy” has, in the contemporary vernacular, become rights holders’ and governments’ preferred term to umbrella all these individual types of infringements because it evokes a discourse far more disturbing than these other terms could muster. The origins of the term “piracy” to describe copyright infringement are somewhat ambiguous, but, needless to say, centered on the obvious component of theft as well as the less obvious and more sinister elements of treason and deception.¹

Currently, the term “piracy” goes relatively unquestioned by those who use it and by those who are accused of it. The concepts of open-sea piracy and copyright infringement have been collapsed into each other by a “syntactic parallelism that rhetorically juxtaposes the two actors [and] reinforces the conceptual link between them” (Hodges, 2007, p. 74).

When discourses emanate from people in positions of power, such as influential corporations and governments, they are instrumental in producing a particular view of the world. Since the term “piracy” is becoming so casually embedded in

contemporary media broadcasts, it may come as a surprise to learn that the words “piracy” and “pirate” do not appear in the wording of the most “important legislative statements” (Davies, 2002, p. 4) and seminal laws that have governed copyright issues since the eighteenth century. The words “piracy” and “pirate” are conspicuously absent from the 1709 Statute of Anne, the Paris text of the 1886 Berne Convention for the Protection of Literary and Artistic Works,² and the current United States copyright law under Title 17 of the U.S. Code, nor do they feature in the current U.K. Copyright, Designs and Patents Act 1988.

The absence of the words “piracy” and “pirate” from these texts of international copyright law can only mean that the semantic association of the word “piracy” with “copyright infringement” is a discourse formation that has occurred largely outside of official copyright law. For example, the word “piracy” appears in the title of a 1982 amendment to the United States Code as an addendum and not part of the actual text of the law. “Piracy” as a synonym for “copyright infringement” has thus been mainly forged by parties who have a vested interest in cementing the mental association of equivalence (Laclau & Mouffe, 1985) between the two terms. Through anti-piracy campaigns and media-amplified articulations, these institutions begin to influence the legal discourses that govern copyright and thus will also affect ensuing policies.

The word “piracy” is most used and publicized by corporate- and government-sponsored public relations strategies determined to criminalize all forms of infringement through the use of metaphors of war and negative word associations, such as terrorist funding. To this effect, Mathew Dames argues that:

through the implementation of a public relations campaign that for nearly two decades has been alternately artful, efficient, and dogged, the entertainment industries’ lobbying groups (which include the Motion Picture Association of America and the Recording Industry Association of America) have manipulated the meaning of “piracy” so that “the term is also applied” as a synonym for copyright infringement. (2007)

Through constant media reiteration and habitual repetition, terms such as “piracy” acquire a sense of naturalness in the public sphere as:

a dominant discourse is subject to a process of naturalization, in which it appears to lose its connection with particular ideologies and interests and become the common sense practice of the institutions. Thus when ideology becomes common sense, it apparently ceases to be ideology; this is itself an ideological effect, for ideology is truly effective only when it is disguised. (Fairclough, 2001, p. 89)

Because these discourses are backed by powerful institutions such as corporations, governments, the media, and law enforcement agencies, their messages are more likely to be aired without any need to question motives and ideologies. This is because “what counts as knowledge in any period or community is determined by who has the definitional or other truth-determining power in society” (van Dijk, 1998, p. 115), and in this case, corporate and government accounts of copyright

infringement as a dangerous crime are being authorized by unchallenged narration through the mainstream media. In this sense, “the news media can be regarded as covertly transmitting the voices of social power-holders” (Fairclough, 1995, p. 63).

As more vociferous media campaigns are engendered to “combat piracy” (de Freitas, 1995, p. 5), the term “piracy” becomes more common-place in its usage as “people in power get to impose their metaphors” (Lakoff & Johnson, 1980, p. 157) upon the public. Rights holder institutions use the term “pirate” and the metaphor of a “war on piracy” in order to name and shame copyright infringers and place them within an ideological framework of serious and dangerous crime. Since “metaphors create realities for us, especially social realities” (Lakoff & Johnson, 1980, p. 156), the “war on piracy” is used as moral and judicious leverage and immediately becomes implicated within a web of power relations where strict legal and penal actions must be taken against infringers in order to emphasize and maintain the gravity of the crime.

Framing debates through the strategic use of language shows how certain discourses can propose and coerce a particular perspective and thus help to normalize the terms of an argument, such as labeling people “pirates.” Vaidhyanathan emphasizes the importance of language-use in framing a debate and argues that “to enrich democratic speech and foster fertile creativity, we should avoid the rhetorical traps that spring up when we regard copyright as a ‘property’ instead of a policy” (2001, p. 15).

Lakoffs studies of metaphors provide a useful theoretical approach to language-use and the construction of social reality, but it must be stated that the unbridled nature of a metaphor will always offer complications to any discourse analysis. Because metaphors reflect the polysemy of language, piracy as a negative concept cannot be fully enforced and will always carry its other within itself by simultaneously having other meanings and thus having a certain appeal to other populaces. The enduring image of the romantic pirate has, for centuries, sat comfortably alongside that of the marauding and murdering scoundrel. Historian David Cordingly (1995) devotes much of his book, *Life among the pirates: The romance and the reality*, to documenting the variations in the pirate image, both favorable and damnable. He admits that “the picture which most of us have turns out to be a blend of historical facts overlaid with three centuries of ballads, melodrama, epic poems, romantic novels, adventure stories, comic strips and films” (p. 2).

Discursive reconstructions, and re-framing through language, are able to constitute and reconstitute identities and social realities such that open-sea piracy was once seen to be “an ‘honourable crime’” (Earle, 2004, p. 135), as it threatened enemy ships and disrupted their trade. Barbara Fuchs concurs that “the English experience of piracy has usually been glorified as the proleptic wanderings of a future imperial power—piracy as the vanguard of the Empire” (2000, p. 45) meaning that piracy was used as a means of expansion of both trade and colonial routes, thereby confusing the supposed differences between pirates, explorers, and colonizers. Later, however, as piracy flourished, it was articulated as the antithesis of commerce and framed as a treacherous activity. Earle argues that the identity of the dangerous pirate was “a nice

turnaround from the position only a little earlier in English history when piracy had been condoned as a promoter of the expansion of trade” (2004, p. 147). Thus, the “pirate” label was, and is, a politically motivated strategy that can be assigned to numerous threats in order to overcome them through the strategic use of discourse.

Conceptual metaphors are not final in their rhetorical fixity, but are fluid and multiple and thus an important opportunity for both discursive constructions and challenges. The officially backed equating of copyright infringement and piracy, although thoroughly opposed by some, still manages to carve out a well-functioning discursive niche that has its own logic and creates its own particular social reality.

Everybody is a Pirate: Technology and Increases in Infringement

Currently, despite the hyperbole regarding the connection between piracy, terrorism, and organized crime, a large proportion of these so-called “pirates” are in fact, ordinary people (Bryce & Rutter, 2005), ranging from educators to teenagers who are the most active in the reproduction, circulation, and distribution of cultural texts. Although not exclusive to the realm of formal education,

almost every act of teaching relies on the substantial replication and revision of others’ copyrighted works. Lectures, group projects, and assignments all rely on copying, distribution, and performance of copyrighted works. Teachers necessarily and consciously induce such copying. Many of the basic tools of teaching such as distributing photocopies, performing copyrighted works in class, and viewing film and video in class, would usually constitute copyright infringements. (*Amici Curaie*, 2005, p. 7)

Further, the RIAA reports that, in the United States, “the piracy habits of college students remain especially and disproportionately problematic” (n.d.c) and “according to some recent surveys, more than half of the nation’s college students frequently download music and movies illegally from unlicensed P2P networks” (RIAA, n.d.c). It is no surprise that the university environment and academia are where information is most prone to being shared and circulated and, thus, most prone to being rendered criminal by rights holders.

Within such a discursive arena, many of the farcical elements of stringent copyright laws begin to show. By taking the notion of copyright to its logical conclusion, there is the potential to render criminal even the most casual of informational exchanges. For example, the Software & Information Industry Association (SIIA) notes that “any e-mail you receive from another person is their copyrighted work, so forwarding it to someone else or printing it without the author’s permission technically violates the author’s exclusive rights” (2007).

The sheer senselessness of such stringent copyright laws and their practical unenforceability in the digital age has made infringement a largely socially acceptable practice. The results of a survey project by Bryce and Rutter (2005) entitled “Fake nation? A study into an everyday crime” demonstrate that the consumption of counterfeit, pirated and other fake goods is a common, widespread and normalized

practice to those who purchase them” (Bryce & Rutter, p. 4). Copyright infringement that is an everyday occurrence also means that it is viewed by many people as an innocuous occurrence. Indeed, “it is common for the public to think of intellectual property piracy as a victimless crime, a minor economic offense that only affects wealthy corporations and does no real harm to society or to individuals” (Lantos, 2003, p. 6). Thus, the two opposing views of how copyright material can be used—the official and the popular—are incommensurable.

Increasingly, copyright infringing acts are being performed by “folks who don’t fit the usual criminal profile. For example, in March, three women in suburban Detroit were arrested for selling fake Vuitton, Gucci and Burberry bags at posh purse parties” (Betts, Crumley, Graff, Gibson, Gough, & Israely, 2004). These housewives, students, and teenagers hardly fit the stereotype of the hardened and dangerous pirate who is the bane of legitimate trade, and so “piracy” must be constructed, through the media, as being a dangerous organized crime.

One main reason why the issue of piracy has become so imperative to contemporary public debate is because of the increase in information and digital technologies and their availability as mechanisms for the personal reproduction of cultural materials. The increase in acts defined as “piracy” is centered on the advancement and development of digital reproduction and communication technologies (National Intellectual Property Law Enforcement Coordination Council, 2008). Naomi Klein notes that “it wasn’t until scanners, cheap photocopiers, digital editing machines and computer programs like Photoshop appeared on the market as fairly inexpensive consumer goods that copyright and trademark law became a concern for independent culture-makers” (2000, p. 179). This means that the discourse of “piracy” is re-articulated as a serious problem only when the general public is afforded the ability to become “independent culture-makers.”

The fear-inspiring “Piracy is a crime” (The Industry Trust, 2006) narrative as offered by anti-piracy public relations and media campaigns is one that is imposed upon the public. Corporations try to lobby against favorable public attitudes towards infringement by introducing their own frightening anti-piracy discourses which frame copyright infringement as a serious crime.

Framing “copyright infringers” as “pirates” allows for greater use of aggressive language that would not be possible if the culprit was simply called a “copyright infringer” or a “technology-literate teenager.” Because ordinary people have the potential to become habitual copyright infringers, an extraordinary set of discourses relating to terror and organized crime have been implemented to deter them from the alleged dangers of engaging in “piracy.” For this strategy to be effective, anti-piracy discourses terrorize the public into needing “protection” (Brand Protection Council, 2007a) from dangerous pirates, who are, ironically, this very public.

The War on Piracy Mirroring the War on Terror

In order for the “criminalization” of all copyright infringement issues to become commonplace, there must be a toughening, so to speak, in the language used and in

the way copyright infringement is represented by various partisan institutions. Since the language used to articulate “piracy” is being consolidated during a climate dominated by the United States-led “war on terror” discourse, it is conveniently colored by combative rhetoric and metaphors of war. Fairclough argues that “metaphor is one resource available for producing distinct representations of the world” (2003, pp. 131–132) and in this case, the world is represented as being terrorized by an array of dangerous criminals, both “pirates” and “terrorists.” The term piracy, like terrorism, can be viewed as “a non-existent substance, an empty name. But this void is precious because it can be filled. And first of all, as always, it is filled [...] by that which is supposed to be opposed to it” (Badiou, 2005, p. 110).

The “war on terror” discourse that began to formulate after the attacks in the United States on September 11, 2001 provided an alarmist lens through which many ensuing laws could be “refracted, bent and one might even say distorted” (Hodges & Nilep, 2007, p. 3) by skewed dominant articulations. In 2003, the Chairman of the United States Committee on International Relations, Henry J. Hyde, argued that:

traditionally, intellectual property crimes and terrorism have been considered separately, much as drug trafficking and terrorism were considered until recently. Law enforcement and the intelligence community have been telling us that a growing concern is the convergence of different types of illicit activities in order to further the gains of clandestine activities and operation. (p. 2)

Post September 11, 2001, there was a clear setting of discursive agendas shared by the White House and the entertainment industry in the United States. This discursive solidarity between supposedly disparate institutions, such as media entertainment and government, works to equate their respective enemies—piracy and terrorism—and “to position the two entities in a category that is morally and politically equivalent” (Hodges, 2007, p. 71).

In November of 2001, Karl Rove and “top movie industry players including chairman of the Motion Picture Association of America, Jack Valenti, met to discuss ways in which the movie industry could assist in the War Against Terror” (Stockwell, 2005). In a Statement given before the House Subcommittee on Courts, the Internet, and Intellectual Property, Valenti quoted from Kathleen Millar’s 2002 article entitled “Financing terror: Profits from counterfeit goods pay for attacks.” He recited that “September 11 changed the way Americans look at the world. It also changed the way American law enforcement looks at Intellectual Property crimes” (Valenti, 2003, p. 56). In her article, Millar admits that:

before 9/11, law enforcement defined both [terrorism and piracy] as strategic threats but tended to approach each problem separately, constructing one set of responses to criminal activities-like money laundering, IPR violations, and drug trafficking-and devising other tactics to combat terrorism. (2002)

Now however, there are active attempts to establish synchronicity between the government and the entertainment industry in the United States regarding the piracy

and terrorism threats. In a 2002 *New York Times* interview with Amy Harmon, president of the MPAA, Jack Valenti, declared that “We’re fighting our own terrorist war.”

Through such symbiotic relationships and powerful lobbying power, rights holder organizations such as the MPAA have become *de facto* law enforcement agencies and, as Gordon Hull argues, “copyright industries are themselves trying to assume some of the power of the state apparatus” (2003). Assuming the role of an ideological state apparatus (Althusser, 2004) has given these industries particular privileges and powers to conveniently locate issues of copyright infringement under the rubric of the “war on terror.”

It is not surprising that the rhetoric of war is used to articulate copyright infringement, as the same institutions—the Department of Homeland Security and the Department of Justice—are deployed to stave off both copyright infringement and terrorism, and, in many cases, have framed both as one and the same problem. This intertextual solidarity, or what van der Veer calls “the military-industrial-media-entertainment” (2004, p. 20) complex, presents a meta-frame to represent the world as a dangerous place populated by a network of threats that should be combated with a unified message across the board. This, as Ferrari argues, is “a crucial ideological basis for enacting a pro-war argumentation strategy” (2007, p. 615).

The Research and Development Corporation (RAND) report entitled “Piracy, organized crime, and terrorism,” stipulates that:

governments worldwide should commit resources and establish high-level accountability for intellectual property protections, adding organized crime and piracy to the agenda of influential global gatherings such as the G-8 and the Davos Economic Summit, conducting periodic legislative hearings and public awareness campaigns, and sharing intelligence with industry-led antipiracy efforts. (Treverton, Matthies, Cunningham, Goulka, Ridgeway, and Wong, 2009, p. xiv)

Further, the Center for Arts and Culture emphasizes that the cultural industries of the United States must collaborate with the government to fight terrorism through cultural means because “the decline in positive attitudes towards the United States and Americans is both palpable and contrary to national security” (2004, p. 1).

The Bush Administration used the same type of discursive strategies in its “war on piracy” initiative, Strategy Targeting Organized Piracy (STOP!), that it used in its “war on terror” initiative. STOP! is described as “the most comprehensive initiative ever advanced to fight global piracy” (United States Department of Commerce, 2007, p. 1) and one of its strategies is to “aggressively engage our trading partners to join our efforts” (United States Department of Commerce, 2007, p.1).

In order to further associate “the war on piracy” with the “war on terror,” “INTERPOL Secretary General Ronald K. Noble has warned governments and law enforcement agencies that there is growing evidence of a link between intellectual property crime and terrorist financing” (Noble, 2003). In a press release, he reports that “the link between organized crime groups and counterfeit goods is well established. But INTERPOL is sounding the alarm that intellectual property crime is

becoming the preferred method of funding for a number of terrorist groups” (Nobel, 2003).

In the hearing on “Intellectual property crimes: Are proceeds from counterfeited goods funding terrorism?” Henry J. Hyde emphatically answers the title question in the affirmative, saying that:

buyers should really beware, not only because the quality of the item being purchased may not be up to par, but because the counterfeit item you purchase from a street vendor or on the internet may be helping to finance terrorism. (2003, p. 1)

Similarly, the former Secretary of Homeland Security, Michael Chertoff, reports that “illicit profits from counterfeit or pirated goods are one way for criminal networks to finance their heinous activities” (United States Department of Commerce, 2007, p. 2).

Further, in 2003, the Chairman of the Committee on Homeland Security and Governmental Affairs, Susan Collins, admitted a general desire to establish a link between everyday forms of copyright infringement and the crimes committed through terrorism. In a hearing on “Counterfeit goods: Easy cash for criminals and terrorists,” she explains that:

the purpose of this hearing is to focus much-needed attention on what appears to be a fertile and growing source of financing for terrorists. It is my hope that this attention will lead consumers to reject these low-cost street corner bargains because, in fact, they carry a terrible price. (p. 3)

Even a non-governmental corporate entity such as Microsoft is able, through the popular anti-piracy rhetoric, to make claims that “pirated software is an illegal and worldwide industry, and the profits are often used to fund organised crime” (2008b) without providing solid evidence.

Regardless of the many stated ideological connections between “piracy” and terrorist financing, many of these connections are thinly constructed and do not stand up to scrutiny. Secretary General of Interpol, Ronald K. Noble, admits that:

terrorist financing is difficult to investigate due to the complex flows of money often in cash form and often laundered. This is facilitated by complicated associations of individuals through which the money transits before becoming available to the relevant terrorist group.

All of the above complicates establishing links between IPC and terrorist financing. Furthermore, much of the financing is of an indirect nature and it is difficult to attribute direct links between an individual involved in IPC and funds remitted to a terrorist organization. (2003)

But what is more telling about trying to establish this link is that rights holders have, in the process, reduced all forms of copyright infringement to profiteering and to engendering some kind of illegal capital, which, as this study points out in relation to peer to peer networking and education, is not always the case. There is a wide

variety of ways in which people choose to engage with cultural materials and all of these cannot be singularly reduced to profit-oriented piracy. Educational uses of copyrighted material in particular suffer as a result of the copyright restrictions encouraged and enforced by the alarmist anti-piracy discourse.

In order for anti-piracy campaigns to have any effect on the public and to criminalize all forms of copyright infringement, anti-piracy messages must increase the possibility of danger by discursively associating copyright infringement and fair use violations with organized crime, terrorism, and with the original meaning of the word “piracy” as maritime theft and violence.

Avast Ye Pyrates! Framing Copyright Infringement within the Discourse of Open-Sea Piracy

Through a discourse that is partial to the rhetoric of war, corporate- and government-sponsored media campaigns frame copyright “piracy” within the boundaries of its older, more violence-oriented, namesake: open-sea piracy. The constant discursive association of the words “piracy” and “copyright infringement” allows current anti-piracy campaigns to frame issues of copyright infringement within a pre-existing pejorative discourse that was previously used to label open-sea pirates as “enemies of mankind” (Earle, 2004, p. 10).

The STOP! initiative linguistically conflates “copyright piracy” and “open-sea piracy” by mixing metaphors warning that nations should not provide “safe harbor” (United States Department of Commerce, 2007, p. 10) to copyright infringers. United States Trade Representative Rob Portman also makes the connection between open-sea piracy and copyright “piracy” by claiming that “today’s pirates are more clever and steal more than the bandits of the high seas from an earlier time. It is tougher to track them down and shut them down but we must succeed” (United States Patent and Trademark Office, 2006). Further, framing copyright infringement as piracy is consolidated through anti-piracy initiatives such as the United States Department of Justice (n.d.) campaign entitled “Operation Buccaneer.” A UNESCO copyright bulletin, drafted by Denis de Freitas, makes the connection for an international audience. He writes:

to some persons the term “piracy” may have a slightly romantic connotation conjuring up visions of swashbuckling Caribbean buccaneers; but there is nothing romantic nor swashbuckling about the pirates of intellectual property; they are criminals, usually operating on a large and organized scale. (1995, p. 2)

Lakoff argues that “the frame of the ‘War on Terror’ presupposes that the populace should be terrified” (2004, p. 42) and as in the “war on terror,” the “war on piracy” has its “victims” that need to be “protected”. The STOP! initiative uses words such as “combating” (United States Department of Commerce, 2007, p. 8), “securing” (p. 2), “protecting” (p. 2), and “enforcing” (p. 2). Shielding phrases such as “protect yourself from piracy” (Microsoft, 2008a) and “safer computing” (Microsoft, 2008a), are also commonly used to portray the threat of “piracy” and the need for

institutionalized protection. The public is represented, through lexical reiterations, as being made up of vulnerable people. If people are terrorized by “specific dangers and threats” (Wodak, 2001a, p. 75) then “one should do something against them” (Wodak, 2001a, p.75), thereby soliciting institutional retribution.

By asking questions such as “are you a victim of piracy?” (Microsoft, 2008a) and “are you protected?” (Microsoft, 2008a), Microsoft frames copyright infringement as a violation of the psychology and physiology of the public. Similarly, STOP! claims corporations are being “victimized” (United States Department of Commerce, 2007, p. 7) and “harmed” (United States Department of Commerce, 2007, p. 7) by infringement. In the current anti-piracy discourse, the “victims” of piracy range from the micro of the individual, to the macro of the economy, “as pirated software hurts everyone—from software developers to retail store owners, and ultimately to all software users. Furthermore, the illegal duplication and distribution of software has a significant impact on the economy” (Microsoft, 2008a). This is with reference to the home economy, as piracy is often framed as a foreign threat. Thus, enemies are constructed in the form of dangerous and aggressive Others.

The United States government’s anti-piracy initiatives try to frame “piracy” as something that only “others” do by articulating it as a foreign threat. Phrases such as “stop those who defraud American consumers” (White House, 2006b) and “stop fake and counterfeit goods at Americas borders” (United States Department of Commerce, 2007, p. 2) help in Othering piracy as an outside threat and scares the audience into a defensive mode even though, in many cases, it is this very target audience who are the most active copyright infringers.

Fighting Piracy through Military Metaphors and Symbols of War

Anti-piracy campaigns employ hard-line linguistic articulations to define the parameters of “piracy” within the discourse of the “war on terror.” In “Counterfeit goods: Easy cash for criminals and terrorists,” Senator Joseph Lieberman urges the government “to look at counterfeit goods from a different perspective, from a national security perspective, which adds, of course, a new and critical dimension to the urgency of curtailing this illicit activity” (2005, p. 3). As such, anti-piracy campaigns are increasingly reliant on metaphors of war to situate “piracy” as the deserving target of this linguistic barrage.

“At the end of 2006, tired of pirates crippling their sales, a group of major international brands struck back under the banner of the ‘Quality Brand Protection Committee’” (Walpole British Luxury, 2008). These organizations have literally “joined forces” (Walpole British Luxury, 2008) to fight piracy and are “deploying detectives around the globe in greater force than ever” (Balfour, 2005).

Another anti-piracy campaign entitled “Fakes cost more” employs the crime-fighting figure of Jackie Chan as its mascot. “The actor took part in a campaign-boosting martial arts display alongside Frederick Mostert. Jackie played a piracy-fighting hero, while Frederick was a counterfeit-goods villain dressed head-to-toe in fake clothes and accessories” (Walpole British Luxury group, 2008).

Frederick Mostert is President of the International Trademark Association (INTA) and Intellectual Property Counsel (World Intellectual Property Organization, n.d.) and Jackie Chan is a martial arts expert and actor whose presence in the campaign is used to strengthen the association between the anti-piracy campaign and notions of “combat.” Chan highlights the supposed risk and peril associated with piracy by “raising awareness [of] the danger this poses to all societies” (United States Department of State, 2006). In the campaign, he uses the words “threat” and “terrifying” to reiterate this by saying that piracy causes “a threat to our safety” (United States Department of State, 2006) and that it is “really quite terrifying to think about it!” (United States Department of State, 2006).

In another anti-piracy campaign entitled “Holiday Blitz,” the MPAA and RIAA use the word “blitz” to indicate the discursive connection between World War II destructive bombardments and taking drastic action against copyright infringement. In this campaign, rights holders warn that they will take “aggressive action” (MPAA and RIAA, 2006) against pirates and will “increase security in movie theaters” (MPAA and RIAA, 2006) in order to “protect” (MPAA and RIAA, 2006) audiences.

Not only is the metaphor of war utilized in fighting “piracy,” but the symbolism of war is also prominent. In keeping with the war motif, an anti-piracy measure in the “Family Entertainment and Copyright Act” (Library of Congress, 2005) gives cinema administrations the right to “detain” audience members “suspected” of illegally recording a film. The Act warns that the licensor of an exhibition facility:

(1) may detain, in a reasonable manner and for a reasonable time, any person suspected of a violation of this section with respect to that motion picture or audiovisual work for the purpose of questioning or summoning a law enforcement officer.

By elevating theater owners to the level of a repressive state apparatus, the law puts the power to police and detain squarely in their hands.

It is very appropriate then, that NATO should be in the forefront of this battle. Here, NATO does not stand for what is commonly known as the North Atlantic Treaty Organization but rather, stands for the “National Association of Theater Owners” (MPAA, 2005). This acronym shows the convenient discursive solidarity and ideological association with the military values that the National Association of Theater Owners wishes to emulate in its fight on piracy, to say nothing of the ironic pirating of the NATO brand name.

The militaristic and ideological connections between the two NATOs is further enhanced through the fact that cinema chains in the U.K. and the U.S. have attempted to foil “piracy” by training armies of ushers to use night-vision eyewear to be able to see the audience more clearly in the dark of movie theaters. Wainwright reports that in 2004 “military-style night-sights have been sent to every outlet in the country showing the new Harry Potter film, ‘The Prisoner of Azkaban.’” The MPAA also reports that theatrical camcorder piracy can be suppressed “by spending substantial amounts of money to upgrade movie print security across the country

and have retained security companies to conduct routine bag examinations and handheld metal detector inspections at pre-theatrical screenings” (2005).

The “anti-piracy arsenal” (MPAA, 2006) also includes actually soliciting military advice and expertise to fight movie “piracy.” For example:

in 2004, the MPAA undertook a limited feasibility study to determine whether dogs could be trained to detect polycarbonate and other chemicals used in optical discs. A trainer in Northern Ireland known for training dogs to sniff bombs and other kinds of devices trained Lucky and Flo to find optical discs in large and small containers, the types usually found in shipments in ports and airports around the world. (MPAA, 2006)

Thus, the use of military symbols such as bomb-detecting sniffing dogs, and “military-strength encryption technology” (Brand Protection Council, 2007b) to prevent digital reproduction, and the installation of metal detectors at movie theaters, are all central to framing “copyright infringement” as a dangerous “piracy.”

Conclusion

In this study I have argued that the anti-piracy discourse espoused by corporate and government-sponsored media campaigns is as responsible for the creation of the discourse of “piracy” as the acts of illegally reproducing, distributing, and consuming cultural texts. This is a fear-inspiring discourse that is utilized by industries fighting to hold back the tide of already widespread, socially accepted, and normalized activities of everyday infringement. As such, the discourse analyses conducted in this study disrupt the perceived dominance of anti-piracy media campaigns and show that although they are powerful articulations, they are in a constant scramble for control of language and public opinion.

“Since the possibility of resistance is open, as is the production of new identity discourses” (Grad & Rojo, 2008, p. 22), the analyses that this paper engages with indicate that there is a need for discursive resistance to viewing culture as property and show that although dominant discourses are powerful in shaping particular views of the world, they are articulations that can be questioned, challenged, and dethroned through critique. To this effect, Lakoff argues that “because language activates frames, new language is required for new frames. Thinking differently requires speaking differently” (2004, p. xv). There are different ways of overcoming injustices within any particular discourse, one of which is to engage critically with the language and to reinvest the anti-piracy discourse with alternative arguments because “reframing *is* social change” (Lakoff, 2004, p. xv). In this study I have tried to point out the ideological framing of copyright infringement as piracy and how much damage this articulation can do. The “war on piracy” metaphor is “not merely a way of viewing reality; it constitute[s] a license for policy change and political and economic action” (Lakoff & Johnson, 1980, p. 156). Othering all acts of copyright infringement through the media will have serious consequences on questions of

copyright and access to cultural texts, starting with increased legal and technological restrictions.

Lazar and Lazar argue that alienation takes place through “the enunciation of the aberrant ‘Other’ or ‘threat’” (2007, pp. 45–46). “Symbolic violence starts with naming—a speech act imposed upon us by others” (Dedaic, 2003, p. 3), the word “piracy” is thus used to inflict maximum damage and discredit upon that which is labeled as such. If “definitions belong to the definers—not the defined” (Morrison, 1988, p. 190), those defined as pirates can either do nothing by accepting these labels or challenge and subvert them through discursive struggles for identity.

There are always conflicts between values and perceptions and so there are “conflicts among the metaphors associated with them” (Lakoff & Johnson, 1980, p. 23). The “pirate” metaphor and the concomitant increases in restrictive copyright laws are going through a somewhat tumultuous reception among the public because of the friction between these alternate and incommensurable values. Many people have protested the increasing stranglehold imposed by restrictive copyright laws and the ways in which the “piracy” discourse has been fashioned through the mainstream media. Advocate groups such as the Creative Commons, the Electronic Frontier Foundation, and the Free Software Foundation, and scholars such as Richard Stallman and Lawrence Lessig have been vociferous in their challenges to dominant commercial intellectual property philosophies. Lessig argues that current discourses regarding copyright have the “power to disable critical thought” (2004, p. 12) because:

there has never been a time in our history when more of our “culture” was as “owned” as it is now. And yet there has never been a time when the concentration of power to control the *uses* of culture has been as unquestioningly accepted as it is now. (p. 12)

Remonstrations regarding access to cultural materials are valid and urgent arguments. No matter how radical the campaigning for alternative views of “piracy” might seem, they still need to be discussed critically within academia and the media. In order to tackle all abuses of copyrights, many rights holder institutions are increasingly criminalizing other fairly innocuous uses of copyright material such as those activities undertaken in the interest of art, education, and the free flow of information. Increasingly, derivative works such as parody and collage are being placed, without qualification, under the rubric of “piracy.”

By claiming culture to be a privately owned property, copyright laws are putting an end to the traditional idea of a common culture and the ability to engage in the participatory collaboration that “guaranteed creators the right to build freely upon their past, and protected creators and innovators from either state or private control” (Lessig, 2004, p. 10). Currently, copyrighted material is often owned by commercial industries and although “permission is, of course, often granted” (Lessig, 2004, p. 10) “it is not often granted to the critical or the independent” (Lessig, 2004, p. 10). This scheme of permission-granting will necessarily create an official/unofficial dichotomy

between that which is permitted access to the material and that which is denied such access. Although someone is free to critique, they are not free to use the copyrighted material upon which the critique is based, producing further dissonance between the critique and its object.

Industries' power to grant or refuse permission to use or access certain materials makes it difficult for the public to engage with these materials outside of their specified uses. Given the increasing reliance on the digital, DRM technologies will be a key site of contestation in this regard. Through DRM technologies, access to cultural texts is limited and so, ironically,

the most valuable information involved in encryption research will most likely involve information on how to "crack" the code. This is precisely the type of information that is most useful to a researcher in this field. Essentially *any* publication or discussion of the weaknesses of a particular encryption tool could "*facilitate* infringement." (Ku, 2004–2005, p. 478)

Through such physical and legal limitations, rights holders will discredit and criminalize unauthorized research and commentary and instead surround themselves with enforced and official positive support.

These types of copyright restrictions produce "chilling effects" on research and attempt to "disable critical thought" (Lessig, 2004, p. 12) by restraining intellectual diversity and, thus, in the long-term, the necessary foundations for creating an informed and democratic citizenry that is afforded the capacity to question, deliberate, and disagree. Instead, current copyright law is based on "a theory of property that fails adequately to account for our fundamental, nonmonetizable interests in expressive diversity and informed citizenship" (Netanel, 1996).

These restrictive copyright laws are being implemented without paying full attention to the consequences of these limitations. In the current copyright debate, alternative views of "piracy" are in a disadvantageous position within the power structure, but not an impossible one as "language can be used to challenge power, to subvert it, [and] to alter distributions of power" (Wodak, 2001b, p. 11). "Copyright infringement as piracy" is a discourse in formation and so the discursive battles for copyright control continue to be played out in the public-sphere of the media between the supporters of the anti-piracy discourse and those who oppose it. This is a struggle for hegemonic power where rights holder institutions ask the public to accept, without too much objection, the dominant representation of social reality and their assigned identities. "Social identity, whether economic, political or ideological, is constituted in and by discourse" (Torfing, 1999, p. 32) and so, to challenge the discourse is to challenge the construction of the pirate identity. The "pirate," like all discursively formed identities, is a politically charged concept that is fashioned for specific reasons to combat very specific threats.

In 1935, Walter Benjamin wrote: "that which withers in the age of mechanical reproduction is the aura of the work of art" (p. 1236). In this statement he foreshadowed the degree to which digital technologies would ameliorate the

sovereignty of discourses founded on origin. Digital and internet technologies have allowed for the endless copying and reproduction of material, and, in many cases, without any decrease in quality as “there are no markers intrinsic to a digital copy (unless those are added) which distinguish the first copy from the ten thousandth” (Hull, 2003). This raises important theoretical and philosophical questions with regards to law, commerce, and the circulation of cultural materials, and spells new dynamics of social interaction with cultural texts in the digital age. These deliberations are important in framing and re-framing the issues of copyright and culture through the available media. The discourse of piracy espoused by corporate- and government-sponsored anti-piracy campaigns tries to frame copyright within their own very limited and often commercially centered conception of what culture is and the relationship that societies should have with cultural industries. This steadfast, stubborn, and legally-backed anti-piracy attitude serves in shutting down any possibility of cogitating upon the complexities of copyright in the digital age and regarding such issues from pluralistic critical and theoretical perspectives in order to open up the debate for further inquiry.

Notes

- [1] According to the *Oxford English Dictionary* (2008), the first recorded use of the term piracy to indicate literary theft was used by Sir John Mennes in 1654.
- [2] The word “pirated” appeared in Article 12 of the original 1886 text of the Berne Convention, but was subsequently removed in the revisions (Panethiere, 2005, p. 30).

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