

Education and development on the high seas of copyright infringement

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When is a pirate not a pirate? When he's trying to get an education. Alan Story, Colin Darch and Debora Halbert track the course of the criminalisation of copyright infringement from western bedrooms to the university campuses of the developing world.

"If it is a sin for the poor to steal from the rich, it must be a much bigger sin for the rich to steal from the poor. Don't rich countries pirate poor countries' best scientists, engineers, doctors, nurses and programmers? When global corporations come to operate in the Philippines, don't they pirate the best people from local firms? If it is bad for poor countries like ours to pirate the intellectual property of rich countries, isn't it a lot worse for rich countries like the US to pirate our intellectuals? In fact, we are benign enough to take only a copy, leaving the original behind; rich countries are so greedy that they take away the originals, leaving nothing behind."

– Roberto Verzola, *Pegging the World's Biggest*

The word 'piracy' is at the top of the agenda of many Western governments. In June 2005, for example, the European Communities circulated a "Communication on the Enforcement of Intellectual Property Rights" that emphasised "the worrying evolution of counterfeiting and piracy worldwide." A March 2006 follow-up document fretted that enforcement measures provided under the terms of the Agreement on Trade-Related Intellectual Property (TRIPS) were not having the desired results and needed to be improved through increased surveillance efforts by

Interpol, customs authorities, and other agencies. Curbing "piracy" is rising up the agenda of some non-Western countries as well; in the latter case, their concerns are focusing on the "piracy" of the work of Western stars and sometimes the "piracy" is of the work of popular local artists. What are we to make of the so-called "pirating" of copyrighted products?

Before we get into the question, one initial matter needs to be cleared up. Is "piracy" the correct word to use to define this phenomenon? If not, why are the words "piracy" and "pirates" being used so widely by Western governments, large media corporations, the media itself, and others?

To answer the second question first, we would do well to remember the words of noted African-American author Toni Morrison: "...definitions belong ... to the definers - not the defined." Calling people who use copyrighted works without the permission of their owners "pirates" is a crude, but often effective, rhetorical device to cast such people as simply the contemporary version of the robbers and thieves who raided ships at sea in the days of sail and made off with chests of gold and other booty. Indeed, today's digital pirates are now often mentioned in the same breath as those other contemporary bad guys: terrorists. One

media sociologist has shown how, in the pre- and post-9/11 era, the activities of the terrorists, counterfeiters, and intellectual property "pirates" were (and are) regularly linked together in police statements. Sociologist Nitin Govil gives numerous examples of such unproven claims, including New York City's Joint Terrorism Taskforce claiming "that profits from counterfeit T-shirt sales – sold in the very shadows of the twin towers – helped fund the 1993 bombing of the World Trade Centre", British detectives claiming that "Pakistani DVDs account for 40% of anti-piracy confiscations in the UK and that profits from pirated versions of *Love, Actually*, and *Master and Commander* funnel back to the coffers of Pakistan-based Al Qaeda operatives." Using the very language of piracy conjures images of sea-faring, blood-thirsty brigands, who terrorise the innocent and are devoid of moral scruples ... and links them to their supposed cousins who shoot down civilian airliners today."

As for the answer to the first question, any serious student of copyright law knows copyright "piracy" does not involve theft or any type of stealing. It is, at worst, unauthorised borrowing, because the owner gets to keep the original work. In other words, "pirating" a CD has far different consequences than stealing a car.

Copying as crime

The criminalisation of copying and the war on "piracy" will be familiar to many people in Western countries. Breaches of copyright were once matters largely handled by specialists and lawyers, and of little interest to us in the wider public. However, in recent years we've seen a relentless shift in which copying has been demonised, and become targeted with ever tougher criminal penalties. Well known instances include the pursuit of those who use peer-to-peer (P2P) online file sharing networks such as Gnutella.

We have been treated to the sight of corporate legal machines and police raiding parties let loose upon teenagers who choose to share their favourite music or video games with their like-minded peers and friends. This criminalisation process has been helped along by a slew of legislative measures against copyright violation introduced by national governments and through international treaties and agreements, such as TRIPS and the Council of Europe Convention on Cybercrime.

This criminalisation process has also taken shape through the appearance of a bewildering array of private bodies and interest groups, created by copyright-holding corporations, who have taken it upon themselves to act as both self-appointed police and moral educators. They have unleashed a rhetorical onslaught aimed at curtailing copying by instilling fear and guilt: parents are told that their children need to be watched, in case they turn into hardened criminals in the privacy of their bedrooms; copiers are dubbed "thieves", and consumers of copied material are accused of helping fund terrorism and organised crime.

Copyright holding corporations and their apologists would probably respond that the kinds of criminalisation noted above are an unfortunate necessity, and will merely restrict consumers' access to leisure and entertainment if they are unwilling and unable to pay for it. From this viewpoint, limiting access to *Grand Theft Auto* video games or the latest *Coldplay* album hardly impinges upon individuals' fundamental rights or entitlements. The position around copying and criminalisation in the global south, however, is often very different.

The ramifications for the global south

Consider one area in which the criminalisation process has gathered pace over the past few years, that of academic and educational publishing. Organisations such as the American Association of Publishers (AAP), proudly advertise their successes in staging armed raids against copy shops in developing countries where textbooks and other materials are reproduced. Such raids have occurred in countries such as India, Malaysia, Pakistan, the Philippines, Taiwan and Brazil.

For example, they report with satisfaction that "the owner of Chamunda Photocopy Center was arrested on the 5 April, 2004 in Mumbai, and authorities seized 500 copies of medical books from the establishment". The AAP also recently wrote en masse to the Presidents of hundreds of South Korean and Malaysian universities, urging them to stop on-campus copying of textbooks and other educational materials, and including in their missive the reminder that "commercial" copyright violations can result in prison sentences of up to five years.

Such custodial sentences have also become increasingly commonplace as legal institutions in

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developing countries are exposed to massive political pressures and their governments are threatened with trade sanctions and other penalties if they fail to uphold the copyrights of Western businesses. Things are obviously not moving fast or hard enough for the AAP, who lament that "even in cases of conviction, the fines are too low and prison sentences are almost nonexistent".

The onslaught of criminalisation is justified by claims that copying is "irreparably damaging the development and preservation of our literary talents and heritage." Setting aside the question of who, precisely, is meant by "our", that which is either repressed or denied by those who promote these antipiracy measures should be noted. According to the AAP's figures, the top ten countries for monetary losses to book piracy include Pakistan, India, the Philippines, Mexico, Indonesia and Thailand.

This should come as no surprise, since one important thing shared in common is, quite simply, that all these countries are poor and struggling to attain economic and social development. They do so under conditions of gross inequality in trade relations with the advanced industrial world.

The struggle for development and the lifting of large populations out of poverty has to be driven by investment in education and training. Lack of access to educational materials places a block on such countries' ability to educate and train their populations, with the consequence of blighting the life chances of millions. Without medical texts it is impossible to train doctors and nurses who can provide health care in parts of the world where disease and ill-health often reach epidemic proportions; without access to scientific journals and books, they cannot train a generation of engineers who could design and build networks of clean water, sanitation, safe housing, affordable and sustainable transportation, and so on.

In short, what is lost to individuals and nations through the criminalisation of copying is nothing less than access to the means for living a safe, healthy and dignified life. It is worth remembering that the right to education is upheld by Article 26 of the UN's Universal Declaration on Human Rights. To deny access to the means of education through the criminalisation of copying is tantamount to denying this right, and the rights and benefits that flow from it, to all peoples of the global South.

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The Copy South Research Group was established in December 2004. It is a loosely-affiliated group of researchers based in a number of countries across the south and the north who seek to research the inner workings of the global copyright system and its largely negative effects on the global south.

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