

ESF Exploratory Workshop on  
**Consuming the Illegal: Situating Digital  
Piracy in Everyday Experience**

Leuven (Belgium), 17<sup>th</sup>-19<sup>th</sup> April 2011

Convened by:  
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and Rob Jewitt<sup>3</sup>**

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## **SCIENTIFIC REPORT**

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## 1. Executive summary

The Exploratory Workshop, 'Consuming the Illegal: Situating Digital Piracy in Everyday Experience' took place in the School for Mass Communication Research at The Catholic University of Leuven. With participants meeting on Sunday 17<sup>th</sup> April the main part of the event took place on Monday 18<sup>th</sup> and Tuesday 19<sup>th</sup> April 2011. The workshop involved 19 participants from nine countries including participants from postdoctoral through to professorial level.

The workshop was predicated on the tendency in academic work on piracy to view piracy as a product of existing contexts (e.g. legislative, criminal, behavioural, business and so forth) rather than **focusing on piracy as a practice and adopting a bottom up approach**.

Little work has yet approached piracy from an ethically neutral perspective and explored it through established literatures on routine consumption, everyday practice, and consumer engagement with cultural media. Instead it has adopted *a priori* assumptions that consumers of pirated goods are 'deviant', 'unethical' or demonstrate consumer 'misbehaviour'. Such approaches symbolically link counterfeiting and deviance with the trio of assumptions:

- That consumption of pirated material is always and essentially wrong;
- That consumers who engage with pirated goods are a predisposed minority;
- That extracting a singular practice from its situated context is scientifically warranted.

Quantitative research on piracy has demonstrated that demand for cultural goods - such as music, videogames and films - parallels that of consumption of legal versions of those goods. Moreover, research has shown that consumers of illicit downloads are *also* the very same people who purchase legitimate digital goods in significant quantities. In other words, **piracy is profoundly linked to the 'doing' and 'experiencing' of other forms of (legitimate) consumption**, rather than standing apart from it.

Given this, the workshop looked to **develop innovative theoretical and methodological frameworks which explore piracy through work on the socio-economics of consumption, media research and cultural policy** in a manner thus far underexplored in broadening our understanding of piracy whether from an empirical, theoretical or policy relevant perspective. By bringing developed approaches from a range of social science disciplines, assumptions and country specific contexts benefits were explored to further highlight potential for further research avenues for investigating consumption, users and piracy.

Staying together in a central Leuven hotel, participants met for informal introductions and a brief tour of the historical central of Leuven before dinner. The workshop began on Monday morning with a welcome and introduction by the head of the School for Mass Communication Research, Prof. Keith Roe who offered a context to the hosting institution and information on his own previous work of music and analogue piracy. This was followed by a presentation by Prof. Marco Tadic from the University of Zagreb on the organization and brief of the ESF and its current state of reorganisation.

Spread over two days, the body of the workshop was split into four thematic sessions under which papers engaging with different aspects of online piracy and intellectual property were gathered.

By focusing the workshop sessions on specific themes and methods the connections between disciplinary approaches and literatures can be explored in a productive fashion in order to enable discussions that can work across the disciplinary differences and highlight key areas for collaboration and translation of findings. Further, the **use of a rapporteur after each group of presentations** (who will have access to draft papers prior to the workshop) will act as an effective method for synthesising interdisciplinary aspects of the session and providing a solid foundation for discussion among participants.

The **structuring themes** identified for the workshop were:

- **Counterfeiting Cultures:** Investigating tensions in the control and consumption of knowledge, social- and cultural-capital embodied in pirated texts to look at ways in which user access is limited through the use of copyright to generate revenue.
- **Criminalising the Consumer:** Looking at discourses of deviance in academic research as well as media representations and trade campaigns questioning their use and implications for researchers.
- **Communities of Fans/Collections of Pirates:** Exploring the research on enthusiasts - especially for cultural goods such as music, film and games - considering how fan identity and communities of practice integrate consumption practices.
- **Policy and Practice:** Considering the impacts state policy has had upon internet use, mapping the unintended consequences of legislative changes such as the emergence of services offering identity protection to filesharers.

## 2. Scientific content of the event

Drawing on the ambiguity of the Exploratory Workshop's title, **Fiona Macmillan** considered the three closely intertwined questions: (1) how does law shape culture or cultures?; (2) what is the relationship between law and counterfeiting?; and (3) how might counterfeiting produce culture/cultures? She explored how these ambiguities are multiplied as legislation concerning counterfeiting is a cultural product but in turn legislation effect the development of culture and practice through, for example, the codification of knowledge through the patent system and the valorisation of certain cultural forms over others through systems of copyright. She argued that the cultures of copyright have in some part contributed the to creation and recognition of a culture of transgression linked to those who challenge copyright systems either through piracy or, more creatively, through the reuse and reimagining of copyrighted texts.

The idea of fans drawing on copyrighted material in order to produce new creative texts was built upon by **Saara Taalas** who looked at the development of virtual, online organisations producing feature length films. Also taking a structural view, she argued that 'cultural practices are replaced partly with the functions of the copyright regimes'. Looking at user innovation and the organisation of these productive fan communities she detailed how site such as wreckamovie.com operate outside usual creative industry systems and for the most part outside the normal monetary transactions associated with paid creative labour. Pulling together working in organisational innovation and cultural studies she argued that such examples of peer production produced 'hybrid economies' in which labour is gifted as part of a community and the notion of author and owner of a text becomes problematic. This, she

argued, calls into question the role of copyright as a system intended to capture and reward creative innovation.

The, at times tense, relationship between users and copyright owners was explored by **Domen Bajde** as he reported on his extensive online ethnography of users of YouTube. The research explores the impact of enhanced "copyright protection" tools on YouTube's users and the users' subsequent coping practices. It looked at how changes in how copyright was enforced on the platform responded to the financial recompense that copyright owner, Warner Group Music in particular in the case study, demanded. Bajde explored the 'web storm' of protest from users who had not only their infringing videos deleted from the platform but their entire accounts. For him, the conflict between financial aspects of copyright and user engagement with those copyrighted goods mean that the paradox arises that while platforms like YouTube empower users and bring them together, copyright policies can also be highly ambiguous and disenfranchising to its user creators.

**Mathias Klang** brought the difficulties of copyright and user videos, especially mashups, back to the cultural-legal framework that began the session. He explored how transtextual reference, parody are significant cultural genres both within and outside user-produced content. However, using the example of parodies using 'the bunker scene' from *Downfall* – a film from Constantin Films about the last days of Hitler – he demonstrated the vulnerability of the parody authors, and their dependency on third party platforms. He argued that copyright law in relation to mashups has become so confusing that it is impossible to objectively see which mashups will be accepted or tolerated. This creates a level of fear and uncertainty that even prevents people from making & sharing creative works. Like the previous presentation, Klang argued that platforms' own automated control mechanisms have significantly complicated this.

Having had the discussion rooted in the difficulties in regarding the legal framework of copyright as a system separate from cultural practice – and increasingly technological intervention the second half of the first day focused more strongly on the cultural aspects of this duality.

The session began with **Jason Rutter** asking whether a discourse of ethics was a useful or justifiable frame for looking at copyright and the infringement of copyright. He illustrated the way in which a range of discourse including political, commercial and academic had linked copyright regulation to morality and piracy to deviance. He looked at the manner in which the morality of copyright is presented in a way that places the benefit to the copyright owner and copyright industry before that of the user of cultural goods. He suggested that this normative approach worked to disguise the complexities of copyright systems as well as hide the benefits received from them by industrial owners of copyright as the way they can act to abstracting cultural knowledge and benefit from authors and consumers.

Users reactions to political and economic asymmetries were the focus of **Peter Zackariasson's** presentation as he looked at creative practices that called into question users relationship to commerce. He argued that – as in a similar way in which the street has become a site for advertising and commerce – the internet is a contested public space where corporate and private actors compete for ownership of meaning. He described how authors are using new media in order to develop forms of 'cultural jamming' – the reuse and recontextualisation of commercial goods to challenge 'the question of ownership and symbolic representation'.

Whereas the previous paper was lightly optimistic about the role that user-generated content can have in focusing political discussion, **Majid Yar** looked at the meanings around copyright and piracy as part of an on-going struggle. He re-examined accounts of Internet piracy that utilise moral panic theory to explain moves to criminalise online file-sharing practices. He argued that what is most conspicuous about Internet piracy is that it appears to have failed in generating a widespread moral panic. That is attempts to engineer public reaction and concern about file-sharing has systematically failed. He argued that despite decades of discourse aimed at users piracy has failed to be an effective focus for anxieties about crime, deviance and social (dis)order because it lacked an identified 'other', a fringe character associated with the crime; the economic risks to industry associated with it are too abstract; while conversely, the benefits of piracy to individual users are very apparent; and finally, the growth of internet piracy has coincided with much more compelling internet-focused moral panic such as paedophilia and cyber-terrorism.

The day finished with further discussion concerning the political framing of individual users as criminals and pirates depending on their online practices which suggested a significant problem in correlating practice with identity in this area – especially when considering terms associated with deviance and the struggle over symbolic meaning and representation.

This provided a solid framework for the second day of presentations and discussion which started off with a session devoted to user practice amongst individual and groups who self-identified as being part of a piracy culture – the first two associated with the production of subtitles for pirated films.

**Simon Lindgren** looked at the cultural and social protocols that shape the online subtitler scene by looking at the linguistic interactions that enabled the network. Drawing on over 17,500 online community posts he argued that the subtitling scene revolved around several forms of knowledge and hierarchies of membership – from expert to novice- we constructed around the exchange of skills and knowledge. He suggests that while a majority of posting were about requests for help, an utopian view of online communities is somewhat difficult of empirical sustain given the strict rules for behaviour and inclusion – and even a culture for 'instilling fear'. This presentation drew a lot of attention not only or its subject matter but the methodology involved. The use of web crawlers and computer-assisted qualitative analysis were seen as a very innovative way of gaining an overview of very large sets of user data.

Such real world style frictions amongst virtual communities were also explored by **Eva Hemmungs Wirtén** when she detailed her work looking at Swedish subtitlers on the site DivXSweden. She reinforced Lindgren's observation as she examined the hierarchy that had developed in the community and struggle for ownership of recognition. Her starting point is unusual within the field as it looks at a potential 'strike' amongst enthusiasts who gave their labour for free. It is clear that the organisation of such elements of the piracy community while operating outside normal economic frameworks do reproduce many of the structure and behaviours of other formal industries.

In contrast to this, **Magnus Eriksson** presented a think piece that looked for a 'lost internet' in which the values of early punks resided in anti-capitalist and anti-art practices. He suggested that accelerationist tendencies within punk culture towards constantly faster, more idiosyncratic and more abstract forms was similar to internet forms of mash-up, sampling and remixing. However, like the commercialisation of punk the internet was being saved from ultimate self-destruction (and reinvention) by the development of commercial and technical infrastructures.

The final session of the workshop took a more policy-orientated approach that while still engaging with the developing theme of struggle between copyright enforcement and unfettered end user engagement, focused more specifically on the ramifications of this.

The way in which the interpretation and application of copyright legislation to an international online environment was still undergoing change was highlighted by **Leonhard Dobusch** and **Sigrid Quack**. Like Fiona MacMillan, they questioned the meaning of the workshop title highlighting uncertainties between what activities were legal and which illegal (or even which legislation may apply) and highlighted that not all consumption is active or involves production by a 'prosumer' class. Legislative uncertainty and 'regulatory drift' are for these presenters' key elements of the practice of copyright as the claims that one is acting on behalf of the law becomes more important policy processes than the development of legislation and policy. (This links back to the discussion of automated systems used on YouTube for identifying copyright infringement.)

This difficulty in pinning down meaning and developing corresponding policy was further addressed by **David Wall** whose overview of intellectual property across several product types (including music, celebrity and fashion) explored the different type of 'offending' associated with copyright infringement when compared with other forms of crime. He suggested a policy approach that differentiated between safety-critical counterfeits and the counterfeiting of cultural goods. Challenging what he presented as the orthodox/Lockean justifications for intellectual property rights he suggested a policy approach which considered allowing free circulation and adoption of IP goods arguing that this can actually increase the cultural (and financial) value of the Intellectual property. He argued that there was little to be gained (economically or culturally) from any policy development that used the public purse to finance policing and prosecuting the market for counterfeit goods.

**Lucky Belder** also explored the relationship of copyright to supporting the public good and promoting access to knowledge as well cultural artefacts. Rather than the leisure goods focused on by Wall, Belder examined the digitisation of cultural heritage collections such as the development of digital catalogues, documents, books and image banks which can contribute to the dissemination of a wide variety of cultural information. For her the cost associated with the digitisation of cultural heritage are, in the main, those associated with remuneration related to copyrights. The key questions she raised was how today's practices online are in line with the expectations citizens have regarding the regulation of copyrights, and their expectations regarding access to, and participation in, contemporary cultural exchanges. She argued that in the context of such a question it is important to understand how the exploitation of copyrights reflects on the work of cultural heritage institutions and their business models.

The policy implications of negotiating an evidence-informed policy that balances commercial concerns and user benefits was dealt with in a practical manner by the workshops last presentation from **Rob Jewitt**. Looking at the development of the Digital Economy Act in the UK, Jewitt demonstrated how different agencies including the Open Right Group and industry lobbyists engaged with the assumption that 'stronger protection and enforcement of IP equals greater innovation and growth in all cases.'

### **3. Assessment of the results, contribution to the future direction of the field, outcome**

Drawing participation from researchers in disciplines including law, sociology, library sciences, marketing, management and economics a key success of the workshop was enabling a discussion across research expertise. It was clear from the manner in which presentations presented work in a manner not reliant on specialised disciplinary knowledge and the way that facilitate discussion across disciplines represented that there is significant scope for the development of multidisciplinary research in the area of digital piracy.

An agreement has been reached with the editors of the journal *Convergence* to publish a special edition on piracy coming out of this ESF workshop. This will feature papers from the event but will be supplemented by additional pieces submitted following the publication of a general Call for Papers. This call has been drafted and following final agreement from the editors will be published. With editorial responsibility will be taken on by the Exploratory Workshop's coordinators all submissions will be peer reviewed. The special edition of the journal is due for publication in February 2013.

It was seen as important that a network established through the Exploratory Workshop should be broadened in order to engage with researchers whose participation in the event was no possible. This was is the case both to engage with individual already known to workshop participants but also those who research has not thus far engaged with other networks in the area. The latter scenario was seen as particularly important in engaging with early stage researchers. The open call is seen as part of that initiative.

Following encouragement from the ESF Representative during the Next Steps section of the Exploratory Workshop discussion was had concerning the practicality and possibility of developing a proposal for an ESF Conference to be submitted for the September 2011 deadline. The development of this proposal is currently being led by Yar and Jewitt with input from the participants regarding scientific agenda, participants and so forth. Such an initiative would draw upon the transdisciplinary nature of the Exploratory Workshop. This approach had been agreed to add a significant dimension to discussions at the Leuven event and highlight potential for developing work across disciplines that viewed piracy within this developing paradigm of 'everydayness'.

## 4. Final programme

### Sunday 17<sup>th</sup> April 2011

Afternoon	Arrival
19:30	Brief walking tour of Leuven's Historical Centre
20:00	Dinner: Restaurant 't Zwart Schaap - <a href="http://www.tzwardschaap.com/">http://www.tzwardschaap.com/</a> Rountable introductions

### Monday 18<sup>th</sup> April 2011

08.00-08.30	Coffee
08.30-08.45	<b>Welcome by Convenor</b> <b>Jason Rutter</b> (Catholic University of Leuven, Belgium) Welcome by <b>Prof. Keith Roe</b>
08.45-09.00	<b>Presentation of the European Science Foundation (ESF)</b> <b>Marco Tadic</b> , Standing Committee for the Humanities (SCH) / Standing Committee for Social Sciences (SCSS)
09.00-10.00	Roundtable Introductions
<b>10.00-13.00</b>	<b>Counterfeiting Cultures</b>
10.00-10.30	<b>Can culture be counterfeited?</b> <b>Fiona Macmillan</b> (Birkbeck, University of London, UK)
10.30-11.00	<b>Fan organization and consumption in the copyrighted economy</b> <b>Saara Taalas</b> (Turku School of Economics, Finland)
11.00-11.30	<b>Policing user creativity on YouTube</b> <b>Domen Bajde</b> (University of Ljubljana, Slovenia)
11.30-12.00	<b>Internet creativity Vs internet regulation</b> <b>Mathias Klang</b> (University of Göteborg, Sweden)
12.00-13.00	<b>Rapporteur's Response &amp; Discussion</b> <b>Rob Jewitt</b> (University of Sunderland, UK)
13.00-14.00	<i>Lunch</i>
<b>14.00-17.00</b>	<b>Criminalising the Consumer</b>
14.00-14.30	<b>Is ethics a red herring in the study of piracy?</b> <b>Jason Rutter</b> (Catholic University of Leuven, Belgium)
14.30-15.00	<b>Culture jamming in the digital space</b> <b>Peter Zackariasson</b> (Gothenburg Research Institute, Sweden)
15.00-15.30	<b>Internet piracy – Anatomy of a 'failed' moral panic</b> <b>Majid Yar</b> (University of Hull, UK)
15.30-16.00	<i>Coffee / tea break</i>
16.00-17.00	<b>Response &amp; Discussion</b> <b>Eamonn Carrabine</b> (University of Essex, UK)
19.30	Dinner: Faculty Club - <a href="http://www.facultyclub.be/en/">http://www.facultyclub.be/en/</a>



## Tuesday 19<sup>th</sup> April 2011

08.30-09.00	Coffee
<b>09.00-12.00</b>	<b>Communities of Fans/Collections of Pirates</b>
09.00-09.30	<b>Pirates culture and the production of knowledge and expertise: Mapping the dynamics of the online subtitling community</b> <b>Simon Lindgren</b> (Umeå University, Sweden)
09.30-10.00	<b>Swedish subtitling strike called off! Fan-to-fan piracy, translation, and the primacy of authorization</b> <b>Eva Hemmungs Wirtén</b> (University of Uppsala, Sweden)
10.00-10.30	<b>Internauts, Punks and Infrastructure</b> <b>Magnus Eriksson</b> (The Interactive Institute, Sweden)
10.30-11.30	<b>Response &amp; Discussion</b> <b>Jason Rutter</b> (Catholic University of Leuven, Belgium)
<b>11.30-13.30</b>	<b>Policy and Practice</b>
11.30-12.00	<b>Transnational copyright: Misalignments between regulation, business models and user practices</b> <b>Leonhard Dobusch &amp; Sigrid Quack</b> (Max Planck Institute for the Study of Societies, Germany)
12.00-12.30	<b>Counterfeits and the democratisation of intellectual property</b> <b>David Wall</b> (University of Durham, UK)
12.30-13.00	<b>Cultural imperative of copyright law and new models of business</b> <b>Lucky Belder</b> (Utrecht University, Netherlands)
13.00-13.30	<b>Policing piracy: Assessing the impacts of national strategies to combat illegal file-sharing</b> <b>Rob Jewitt</b> (University of Sunderland, UK)
13.30-14.00	<i>Lunch</i>
14.00-15.00	<b>Response &amp; Discussion</b> <b>Majid Yar</b> (University of Hull, UK)
15.00-15.30	Coffee
15.30-16.30	<b>Next Steps</b> <ul style="list-style-type: none"><li>• What do the skills represented contribute to the research area?</li><li>• How can we build connection between existing networks and individuals?</li><li>• What funding opportunities may exist to support this?</li><li>• How can impact of workshop outputs be maximised?</li><li>• What forward-looking actions and champions to take them forward can be identified?</li><li>• Developing the CfP for <i>Convergence</i></li></ul>
17.00	<i>Workshop close</i>
17.00	Meeting of editors regarding publication of the proceedings

## 5. Final list of participants

1. **Jason RUTTER (Convenor)**  
School for Mass Communication Research  
Catholic University of Leuven
2. **Majid YAR (Co-convenor)**  
Department of Social Sciences  
University of Hull
3. **Rob JEWITT (Co-convenor)**  
Department of Media and Cultural Studies  
Faculty of Arts, Design & Media  
University of Sunderland
4. **Marco TADIC (ESF Representative)**  
Faculty of Humanities and Social Sciences  
University of Zagreb
5. **Domen BAJDE**  
Department of Marketing  
University of Ljubljana
6. **Lucky BELDER**  
Centre of Intellectual Property Rights  
Molengraaff Institute for Civil Law  
University of Utrecht
7. **Eamonn CARRABINE**  
Department of Sociology  
University of Essex
8. **Leonhard DOBUSCH**  
Department of Management  
Max Planck Institute for the Study of  
Societies
9. **Magnus ERIKSSON**  
The Interactive Institute
10. **Eva HEMMUNGS-WIRTEN**  
The Department of Archival Science,  
Library and Information Science, and  
Museology  
Uppsala University
11. **Mathias KLANG**  
Department of Applied IT  
University of Göteborg
12. **Simon LINDGREN**  
Department of Sociology  
Umeå University
13. **Fiona MACMILLAN**  
Law Faculty / School of Law  
Roma Tre / Birbeck, University of London
14. **Sigrid QUACK**  
Research Group Institution Building Across  
Borders  
Max Planck Institute for the Study of  
Societies
15. **Saara TAALAS**  
Finland Futures Research Centre  
Media Futures Network  
Turku University
16. **Keith ROE**  
School for Mass Communication Research  
Catholic University of Leuven
17. **Irena VIDA**  
Academic Unit for Marketing  
Faculty of Economics  
University of Ljubljana
18. **David WALL**  
School of Applied Social Sciences  
Durham University
19. **Peter ZACKARIASSON**  
School of Business, Economics and Law  
University of Gothenburg

**6. Statistical information on participants**

Total number of participants (including ESF Representative): 19

COUNTRY		GENDER	
Belgium	2	Male	13
Croatia	1	Female	6
Finland	1		<b>TOTAL</b> <b>19</b>
Germany	2		
Italy	1		
Netherlands	1		
Slovenia	2		
Sweden	5		
UK	4		
<b>TOTAL</b>	<b>19</b>		