Piracy in the Age of Information: The contributions of the Social Sciences

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Introduction

Recent research on the Social Sciences' field looked at conflicts between market-based and the so-called "piracy" approaches on digital information. The question is pertinent because these studies focus on conjectural meanings about the impacts of these social practices. They call into attention new modes of production, circulation and distribution of goods and services. These hypotheses, which are based on interest, rationality and utility, can be divided into, at least, three perspectives: 1. Those that understand that "piracy" as responsible to affect economic growth; 2. Those that question the impossibility of commodification of information; and 3. Those that justify the benefits of a free culture of "informational goods" as an essential factor to empowering people and to creating a new business model.

Despite a theoretical and an empirical divergences, those studies accept that the information has become synonymous of power. But, what is the reason for the changing of its status? Some researchers, as Breton (1992), Heims (1991) and Mattelart (1996), has argued that their social valuation has fitted into an ideological project carried out in a period after World War II. The discourse of the first cybernetics has marked this process. It revolutionized the epistemology of the information and contributed to its digitalization. The purpose was to rebuild and to refocus the role of Science and Technology after unsuccessful experiences in the field of social emancipation. The project resulted up. With the invention of the computer, the entire material base of society was remodeled from its digitalization.

In Economics theory the issue of information grown up from its framing as an object of labour. But, information is an immaterial thing. So, how to put a value in a scientific apriorism

which has no characteristics of the classical concept of commodity? This finding was not an incentive to future investors, unless it was subjected by laws of copyright and patents. Nevertheless, as pointed by Arrow (1984), the question would be doomed to constant constraints and various risks, considering two essential aspects: the impossibility of guaranteeing property of something, empirically, intangible, and an acquisition of a monopoly that contradicts the very principle of exclusivity.

Studies by Arrow and by others who have dedicated themselves to the question of the intangible information and the abstract labour, as Gorz (2003), Schiller (2000; 2007), and Bates (1998), did not prevent the market to turn their theoretical impossibilities in technical profits. One of the ways to get money with this was to establish costs in the process of distribution considering a dependence of a material support to be shared.

The transformation of the various symbols of human language into binary codes helped the market to found a technical basis to develop itself. This has reduced epistemological barriers and has restructured the question of the dead labour, establishing crucial changes in many fields. Oldest occupations were extinct and new were created. New monopolies were born and ancient, strengthened. But, above all, this process allowed the people to participate into the game of sharing thanks to the facility of digital information and the technology development (Boyle, 2008).

This scenario oblige Social Sciences to rethink some of their assumptions taking into account a broader context. Thus, a question that emerges from this discussion is how to create a balance among the humanist discourse of autonomy, the self-satisfaction and freedom of speech and severity of laws and regulations based on the concept of intellectual property?

In order to amplify this debate, I use the sociological concepts of property rights and the experience of the Pirate Party (Portugal, Brazil, Germany and Sweden). There is no intention to establish a difference between legal and illegal practices about information sharing, but to understand how Social Sciences have contributed to this debate.

To speak a little about the progress of my work, I have organized this communication in three parts. At first, I present the Movement, in general. In the second part, I present some contributions of the Social Sciences about the Intellectual Property. At last, I look how the proposal of the Pirate Politics try to redefine its logical framework.

The Source

The first Pirate Party was founded in 2006 in Sweden. Probably everyone here knows about it. Initially, it was formed to reform laws regarding copyright and patents, having been encouraged by social conflicts among the interests of the market, of the law enforcement and of the social

practices so-called "digital piracy". In their political agenda, the Party includes support for the individual's rights to privacy (off and on-line) and the transparency of state administration. Originally, the Party stayed neutral on others matters, but in 2012 it extended their objectives into other political areas.

From Sweden to Europe and the World

Today there are around sixty Pirate Parties (including official parties and collectives in process of domestic registration) in over 40 countries, inspired by the Swedish. In the structural point of view, all Pirate Parties are independent and autonomous. In other words, they have not to respond to any hierarchical organization. However, all Parties are marked by a common political tendency that revolves around the problematization started by the Swedes. They have a non-governmental organization, called Pirate Party International, and at the moment there is an ongoing creation of European Pirate Party to run in the 2014 elections. Besides the different cultural context, this is the common flag of all Pirate Parties. In the political parliamentary field, the Pirate Parties penetration has been gradual and quiet, as we can check in this next general framework.

Information as a political question

In Sweden, the main target of the Pirate Parties was set the copyright in a political debate. They made it. The Pirate Bay judgment over the violation of existing copyright law had political consequences, not only in the form of a new political party, which is now represented in the European Parliament, but also in the form of a possible reconfiguration of political space.

It has been argued that this politicization denotes a transition from a tactical resistance to the establishment of more permanent political strategies. The spreading of the Parties all over the world, has showed also how the information sharing became a political question.

Pirates Parties put in question the origins and the forms of legitimacy used by the private sector to monopolize the digital products and to restrict the civil autonomy to use, such as, the peer-to-peer network in a non-commercial reproduction into a private sphere.

The Pirates's Ideology started to emphasize the review of the crucial concepts that was based in the organization of the copyright law, as such the idea of author and intellectual property. They question this things under the context of the technological development and under the affirmation of moral principles based in pos-materialists values (Cf. Miegel & Olsson, 2008). They do not defend an illegal practice. Neither, they do not incentive to break the Law. They believe that is mandatory to reorganize that traditional structure in order to reconcile the interests between

originators and the public, removing the monopolies by the giants of entertainment.

They believe that the most part of the problem involving the piracy is a social condition prescribed by the power of the property's idea. So, for the Pirates, is mandatory not only to question the role of Law as a social agent, but also to promote substantial changing in their juridical interpretation. For the founder of the first Pirate Party, Rick Falkvinge, the Pirates do not want to change the social values. As he said: "we want to change the laws to reflect the social values, especially those in the connected lifestyle. The sharing of culture and knowledge has proven impressively resilient to legislative attempts to curtail it".[1]

Intellectual Property as a socialized question

One of the roots of the piracy's conflict is the conceptualization of the ownership as a right. The Social Sciences and the Philosophy has contributed to maintain this debate unfinished. The Pirate Parties was created to put more fire in. Property is ubiquitous. The idea of private property is tightly present in classic liberal thought. We can find it in a different areas.

Ownership involves socially recognized economic rights. Property is that over which such rights are obtained, and owners are those who posses the rights. So, property concerns the relationship between people and things. Property involves a bundle of rights, including the rights of usufruct, exclusivity, and alienability. It vary overtime and and between countries. In the literature, we can find the debate since Aristotle until today. It has created a different perspectives about it. But, in resume, property rights confer power.

These perspectives can be divide in, at least, two ways to thing about property: Which one that understand it in a modern conception and another that think in terms of an utilitarian protest. The first one, following Kant and Hegel writings, aims the property as universal right to ensure freedom and individual autonomy. The second one, is concerned to aggregating people's preferences, regardless these preferences are.

Although these perspectives, there is a tendency to harmonize it. Property is not a natural right, but a social product established by the social values. All rules and legal structures contained in the property's institution give rise to relationships between people and presume relationships between people and things, as I said before. This idea is, at the same time, necessary but dangerous. We need this concept to protect our things, but, in other hand, we can use the same idea to exclude the others and protect our ownership condition. The property's idea resume that we can only use our property right correctly if we have a plenitude under a thing as the only owners.

This idea was created to protect the owner's freedom to do whatever with such thing to

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1 Interview by e-mail, 11.03.2012.

legally it belongs to. In a modern thought, property is a universal right, belonging to the whole community. In other words, all people have the right to become owners. All tradition of Law about property right was created considering it. We now about to steal a bag or to steal a car. We are very well socialized about it. The fixation of the property's idea as a human right is successful. However, this right, as a mere creation of law, do not exist as the majority of the fundamental rights, as the concept of person, religion or consciousness, that do not depend of the law to exist.

So, the socialization's power help us to understand the property as a no natural right, but, in sense, it is a naturalized concept. This has been made by the domination, in history, involved power, social stratification and inequality. And their potentiation is affirmed by alienation of our ability to question it. Is important to emphasize that, apparently, the debate about the property as preeminent sociological theme has been neglected by the Social Sciences, being restricted by economists and lawyers. That was central in so important thinkers, as I said before, and to understand the problem of piracy, is mandatory to recognize the level of the property's socialization in our moral lives.

Today we are more sensible to talk about rights property considering the context of the digitalization and commodification process of information. This sensibility helped to create a kind of thought extension so-called Intellectual Property. As Carruthers and Ariovich (2004) said: "Intellectual property rights have existed since the first patent laws (Venice passed one in 1474), but recent developments in biotechnology, computer software, and information processing have subverted older rules"

One problem that emerges in the digital context, is the use of the socialized meaning of the property into the immaterial field. Use the Carruther and Ariovich (2004) words, Law developed for tangible property had to be adapted to accommodate new forms of intangible property. The crime of trespass originally concerned unauthorized entry onto someone's physical property, but it was extended to cover unauthorized access onto a computer system. It is correct to think that the law is able to create a balance between opposite opinions and enough to help to establish ethical and moral values about anything. Following this argument, a physical impossibility does not prevent an immaterial thing to become a private property if we admit it.

Today, the question between piracy and private property has been considered much more in the economic exploration sense than in an ethical or in a sociological way. The case is that with computer's invention, the entire material base of society (such as language, knowledge and culture), was remodeled from its digitalization. It created a new market but also made it much easier to copy and distribute digital products (Carruther; Ariovich, 2004).

To capture profits under it, new products must be brought within intellectual property law and constituted as legitimate objects of property. Producers of informational products seek effective enforcement of their property rights and deterrence of "piracy".

The market collapse happens because it cannot be monopolized. That is impossible, unless the law allows the creation of technical systems to obstruct or prevent the reproduction of creative products creating an artificial scarcity in order to turn immaterial things into a private one for economic purposes. With this technological, the monopoly becomes an excuse to control and monitor users, jeopardize theirs privacy and autonomy rights.

Internet and the impact on our moral lives: the digital dilemma

This scenario creates a so-called digital dilemma. The attempt to put immaterial things in a monopoly in a digital context has obviously failed. The question that emerge in the context of piracy such as theft and as a violation is: What has been failed in the law and in the market, considering the history of the copyright and the social struggle, that the moral of physical property did not stop this social phenomenon? Why the users continue practicing this attitude if it is considered a crime? Is the law weakly in this specifically case? Are the technical systems vulnerable? Or, in this case, is this social understanding different than what the law and the companies think about it?

The answer can be simple. As Floridi and Sanders said: "The Web is changing patterns of moral behavior in many ways, with important repercussions on the development of ethical discourse" (Floridi; Sanders, 2005: 201). In the piracy's case most people who are accused by the market as a modern pirates, clearly, have got an individual ethical relationship with the concept that not considers the practice as a theft or as a crime. So, the piracy question grounds here. To talk about the law, we have to recognize the transformations in our moral and ethical lives in relation of the idea of property, freedom and autonomy. The case of Internet is crucial to understand how the domestic users have to change their own ethical about unauthorized information sharing. It is impossible to steal something etherial or imaginary. But is not impossible to criminalize someone who was accused for violating a law that determines the quality of all the things.

A difficult task presented for the legislature is to understand the property right as a social-political question. So, in this case, it is not enough to remediate the cases of copyright violation to defend the private interested, without first examine the level of the fundamentals civil rights violation, such as the privacy, the autonomy, the freedom of speech, etc. (Dahlberg, 2011).

To escape from this process, one of the forms to avoid that kind of practices (does not matter if it is in a commercial or a non-commercial way) is to invoke the morality of the concept of theft, the consequently social injury, pointing as the guilty only the "pirates".

But, the law and the social traditional norms, at least on their own, are not succeed in changing the behavior in the cyberspace. In this way, the so-called digital piracy seems to be

unstoppable. The various maneuvers (political, legal, ethical and techniques) in order to reduce the practice seems yield negative results.

Identifying new ways: The Pirate Politics

The Pirate Party movement is not yet a successful in elections as we know. But they appears to reinforce and to reorganize this debate, following some scholarly argumentation who have emerged to oppose strong the Intellectual Property Rights. The movement want to establish a new definition to the concept of the ownership and to change the ontological concept of intellectual property in the digital realm.

The interviews that I did with members of various Pirate Parties and the reading of their official documents made it clear. All members rejected the present legal framework about Intellectual Property Rights. They believe that application's law since it is based on an outdated concept of so-called Intellectual Property, limits the potential of the current development and opposes the goal of a knowledge and information society. As some scholars who worry about the innovation discourse risk (Lessig, 2004; Garcia, 2011, Eisenberg & Nelson, 2002 and Vaidhyanathan, 2001), the Movement believes, supported by the idea of free expression as a one of the foundations of a liberal society, that in the rush to extend private property rights into new realms, the balance has tipped too much toward private interests and now discourages innovation and creativity.

For Christian Engstrom, Member in the European Parliament, elected in 2009 by the Pirate Party of Sweden:

> Most of the problems with today's copyright legislation comes from the fact that copyright has expanded to cover non-commercial activities by ordinary citizens, and not just commercial activities by companies. (…) but in any case, it is not the values or the behavior that are the problem. The fact that people want to share culture and knowledge is a positive thing. The problem is only that the legislation does not yet recognize this. The right solution is to change the legislation so that it comes into sync with reality.[2]

According a portuguese member of the movement, the piracy is an antidote for social damages created by strong property rights privileges owners:

> We defend the freedom, the access of culture, the ideas, the information, as a really good thing for the our age. Unlike the material things, in our view, it is impossible to put property (exclusive right of usufruct) under these principles. (…) We defend a "Intellectual Property" reevaluation. Only in this way, more people in a shorter period could have access to information to bring a real social development of the communities (…) [3]

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2 Interview by e-mail, 02.03.2012.
3 Interview by e-mail, January, 2013.

The Pirates of Germany acknowledge originators' personal rights to their products to the fullest extent, as we can read on their Manifesto. But, they recognize also that the "management of exploitation rights is not adequate for creating a fair balance between justified economic interests of originators and the public interest in access to knowledge and culture". (Manifesto, 2012, PP Germany). Their proposal is reintroduce the creative products into the public domain as an essential way to ensure the sustainability of human creativity. To do this, they identify that reintroduction must be created. "This means, in particular, a drastic reduction of copyright periods, far below the periods specified in the TRIPS agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights) " (ibidem).

Conclusion

To end, I must to know that the undifferentiated application of the law in relation of the digital piracy puts in doubt and disqualify the utilitarianism of property. That kind of use, seems not to be a preservation of knowledge, but an excuse to create a monopoly under it.

The failure of Intellectual Property Rights proves for itself that the social change occurred in the ethics and morals of the users that joining with the digital information condition, oblige the Social Science, the Law and the Politics to do a deep reorganization in the very ontological structure of the property. The Pirate Parties cyberethics (to borrow an expression from Floridi and Sanders, 2005) contribute not only to improve new movements interested in changing the law to decriminalize the sharing information on the Internet, but to change all of our moral about property.

References

Arrow, K. J. (1984). *The Economics of Information.* Vl.4. Cambridge, Massachusetts: Harvard University Press

Bates, B. J. (1988). "Information as an Economic Good: Sources of Individual and Social Value". In Mosco, Vincent; Wasko, Janet. *The Political Economy of Information*. London: The University of Wisconsin Press.

Breton, P. (1991). *L'utopie de la communication.* Paris : La Découverte.

Boyle, J. (2008). *The Public Domain.* New Haven: Yale University Press.

Carruthers, B.; Ariovich, L. (2004) The Sociology of Property Rights, in: *Annual Review of Sociology,* 30: 23-46.

Dahlberg, L. (2011) Pirates, Partisans, and Politico-Juridical Space, in: *Law and Literature,* 23(2), pp. 262–281.

Eisenberg, R.S.; Nelson, R.R. (2002). "Public vs. Proprietary Science: A Fruitful Tension?", in: *Daedalus* 131, no. 2, 89-101.

Floridi, L.; Sanders, J.W. (2005). "Internet Ethics: the Constructionist Values of Homo Poieticus", in: Cavalier, R (Ed.), *The Impact of the Internet on Our Moral Lives*, Albany, NY: SUNY Press.

Garcia, J. L: (2011). Tecnologia, mercado e bem-estar humano: para um questionamento do discurso da inovação, in: Neves, J. P.; Costa, M.S. (orgs.), *Tecnologia e Configurações do Humano na Era Digital.* Porto: Edições Ecopy: 65-90.

Gorz, A. (2003). *L'immatériel. Connaissance, valeur et capital*. Paris: Editions Galilée.

Heims, S. J. (1991). *The Cybernetics Group, 1946-1953. Constructing a Social Science for Postwar America*. Cambridge, Massachusetts: The Mit Press.

Lessig, L. (2004). *Free Culture: The Nature and Future of Creativity.* Penguin Press: New York.

Manifesto of the Pirate Party of Germany (2012). English Version. Available in http://wiki.piratenpartei.de/Parteiprogramm/en.

Mattelart, A. (1996) *The Invention of Communication*. University fo Minnesota Press.

Miegel, F.; Olsson, T. (2008) From Pirates to Politician: The Story of the Swedish File Sharers who became a Political Party. In: Carpentier N.; Pruulmann-Vengerfeldt, P. et al, (eds.), *Democracy, Journalism and Technology: New Developments in an Enlarged Europe*. Tartu, Tartu Publisher Press, pp. 203–217. Disponível em http://www.researchingcommunication.eu/reco_book4.pdf, [consultado em 05 de Janeiro de 2013].

Schiller, D. (2007). *How to Think About Information*. University of Illinois Press.

_____(2000). *Digital capitalism: Networking the global market system.* Massachusetts; London: The Mit Press.

Vaidhyanathan, S. (2001). *Copyrights and Copywrongs: The Rise of Intellectual Property and How It Threatens Creativity*, NYU Press.