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Informal Distribution: Discs and Downloads

It is [...] salutary to remember that piracy, far from being something new and unique to the internet age, is a historical feature of most media markets. Early print culture was rife with unauthorised copying. Entire nations became literate on the back of intellectual property ‘theft’ (the United States did not respect foreign copyrights until 1891). History tells us that legal and pirate trade are coconstitutive and entangled rather than ontologically separate.

(Lobato, 2012, p. 88)

The above quote reminds us that piracy is not a modern phenomenon and, furthermore, that its networks of distribution have always coexisted and often been interconnected with the official circulation of goods. However, as recent technological changes have increased the ease of media copying, they have also expanded the opportunities for media piracy. As the avenues for informal distribution have developed exponentially, scholarship in this area has seen a concomitant rise. Nevertheless, as this chapter will make clear, much of the academic work in this area that developed around the growth of the Internet has been polarised between two camps: those that ask how best to halt the relentless spread of piracy, and those that question whether the actions of pirates are as damaging to the industry as the anti-piracy rhetoric would suggest. While there are understandably issues with the construction of film piracy as necessarily threatening to the health of industry, the opposing representation that suggests such practices have the potential to challenge Hollywood’s dominance of the film industry (Strangelove, 2005; Wang, 2003) still falls into the trap of considering pirates as either outright thieves or black market activists (Andersson,
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2010; Klinger, 2010). Therefore, this chapter will move away from such debates to examine the social and cultural contexts of piracy rather than its potential economic consequences.

Before investigating the academic literature on piracy, it is first prudent to briefly mention that, despite its ubiquitous use, reaching a consensus on the definition of this term is not as easy as one might imagine. Examinations of how piracy has been defined and how this might serve wider political ends have been considered in a number of publications (Crisp, 2014; Denegri-Knott, 2004; Lobato, 2012; Yar, 2005). Indeed, what these examinations tell us is that ‘piracy’ is not a fixed concept. As Ramon Lobato rightly suggests:

Piracy, as the space outside legal distribution, is [...] best viewed as a product of the regulatory systems operative at particular historical moments. As the legal boundaries around media distribution expand and contract so do pirate markets. Over time activities move in and out of the legal zone.

(2012, p. 88)

Thus, it must be recognised that what is defined as an act of piracy has always been subject to the ebbs and flows of national and international laws, regulations and agreements on intellectual property. If we look beyond media piracy and to the historical context of maritime piracy, it is clear that the distinction between the pirate and the privateer has long been ambivalent. As Gary Hall (forthcoming) points out, who is defined as a ‘pirate’ and who a ‘privateer’ has always depended upon the whims of those in power. In this respect it is important to highlight that any definition of piracy is necessarily as fluid as the regulatory systems that define its boundaries. Such observations echo those of Majid Yar (2005) who, in suggesting that piracy is a social construction, has sought to argue that it is the regular movement of regulatory and legal goalposts that plays a major part in defining the scope of acts of piracy before further dictating how figures relating to its reach and damage to the creative industries are calculated.

Discs: Markets and streetsellers

The continuing development of the academic literature on piracy serves to highlight that the whole world has not been revolutionised by online distribution in a consistent manner. In recognising that any distinction between digital and physical piracy is a false binary, this