



Activism Remixed: Downhill Battle's role in the copyfight

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In the past decade, the expansion of restrictive copyright laws in the face of new technological systems for information distribution, in particular peer-to-peer file-sharing, has given rise to a growing body of opposition comprised of software developers and programmers, librarians, academics and more traditional media activists, as well as ordinary citizens (Lessig, 2004; Vaidhyanathan, 2004a and b). Part of the membership of the growing copyfight/Free Culture movement includes a new type of online political activist and activism, one based on rights of access to, and the sharing of, knowledge and cultural products. One such group is the "music activism organisation" Downhill Battle, which has made a name for itself with a series of imaginative and provocative projects around copyright issues. These include the Grey Tuesday "day of online civil disobedience" around the mash-up Grey Album, among others. More recently, the group has worked on developing Open Source technological tools for media distribution and sharing, including a "visual podcasting" application called DTV. This paper outlines and analyses both the projects and the tools developed by Downhill Battle as emergent forms of activism, and concludes with thoughts on the politics of a "participatory culture".

Keywords: Copyright, intellectual property, activism, music, participatory culture

Introduction

The copyright/free culture activism movement, advanced by "copyfight" advocacy groups and fuelled by the millions of users of peer-to-peer (p2p) file-sharing systems on digital networks, has emerged on the political scene in the past decade. Intellectual property (IP) and copyright have long been subjects too arcane and complex to engender much in the way of a public recognition of their inherent political importance - after all, they define many of the last remaining restrictions on the free flow of information and digitised cultural products. Today the copyright balance has tilted so far in favour of established IP accumulators that it has produced a growing body of opposition, comprised of software

developers and programmers, librarians, academics and more traditional media activists, as well as ordinary citizens (Lessig, 2004; Vaidhyanathan, 2004a and b).

In some cases activist organisations, such as the Electronic Frontier Foundation, Public Knowledge, or the Future of Music Coalition, take a "public interest" approach and focus their attention on established venues of debate: the courts, legislatures, newspapers and other media outlets. They operate within the confines of the law and acceptable establishment discourse. Lawrence Lessig's Creative Commons initiative is an effort along similar lines: an alternative to overly restrictive copyright regimes that seeks to broaden the range of public domain and other works released with "some rights reserved".

However, as in any large and growing activist movement, there are radical fringe elements that operate under the assumption that resistance according to the terms laid down by the establishment is analogous to playing in a fixed game. Fahimian (2004) explores what she calls the efforts of "IP guerrillas" such as RTMark, Adbusters and Negativland to push back against the legal threats and over-reach of corporate IP owners. She chooses not to offer a solution to the conflict, concluding that while "some might argue that the 'bullying back' victories of [the above] groups are few and far between, occasional heroic (and folkloric) battles won by the Davids of the online world," they might equally be viewed as the "sort of collective action by 'virtual communities' as the only force that is effectively pushing back against the chilling effects of those who seek overbroad intellectual property rights".

A similar outfit joined the fray in 2003: "music activism" group Downhill Battle (hence DB), which bills itself as "a non-profit organisation working to support participatory culture and build a fairer music industry". DB advances a strategy of raising the copyright/IP issue by targeting the uses and users of copyrighted material, which almost by definition includes everyone in society. Based on the simple premise of the "right to read," such an activism seeks to bring to people's attention the fact that their old uses of copyrighted works, for example making a mix CD, are now either under threat or perhaps already illegal. This is the second of two rhetorical strategies outlined by Vaidhyanathan (2004a) that he claims might shift the copyright debate away from the "property-talk trap" that has thus far framed it in favour of the content industries. The other, which is also part of DB's mandate, is to borrow a page from the environment movement of 40 years ago and to start to engage in "commons talk" that over time could build a level of public concern about how information is used, transferred and owned in society (see also Boyle, 1997). It is the activities of this group, and crucially its ongoing evolution into an Open Source software lab, that is the focus of this paper.

Concurrent to this new social movement (and, I would argue, essential to it), the Internet and digital networks have given rise to a range of new strategic opportunities, communication systems and organisational tools that have been developed, deployed and exploited by activists. The emergence of the Internet as

a tool for political activism is a subject explored by contributors to an anthology on “cyberactivism” (McCaughey and Ayers, 2003). It is obvious that the Internet is a valuable tool for organising and information exchange (for example at anti-WTO protests since Seattle in 1999), and until fairly recently it was used almost exclusively to facilitate meetings, events and engagements in the real world. Today there are several for-profit application service providers, such as Capitol Advantage, GetActive and Groundspring, which sell products with management features for webpages, email lists and member databases. These services often include regularly updated contact information for U.S. state or national officials, and allow users to input their zip code to identify and contact elected officials. There are also many “free” (in both senses of the word: no cost to the user and free to modify) applications and services, such as Congress.org, Petition Online and MySociety, which offer some similar but often limited functionality compared to their commercial cousins. However, one of the great success stories of online activism, the British website FaxYourMP.org, is run by one man out of a spare bedroom and is credited with helping to kill a national ID card campaign.¹ There are also specific and unique forms of online protest such as those used by “hacktivists” – online sit-ins and Web page spoofing being two examples – that allow the Internet to be conceptualised as a venue for protest activities in and of itself.

This paper is a preliminary stab at exploring a particular crossover of these two trends: the emergence of activist groups campaigning for information freedom, and the deployment of new digital tools for explicitly activist purposes. More specifically, it is an attempt at identifying Downhill Battle, and its founders’ spin-off organisation Participatory Culture Foundation (PCF), as exemplary of this convergence. DB is not merely of interest for its highly imaginative protest projects (outlined below), but also because it is in the process of becoming a software laboratory for Open Source applications that seek to challenge the dominance of the media landscape by large commercial corporate entities and their proprietary distribution systems. As the term itself suggests, “participatory culture” is a conceptual reaction to the power held by a handful of multinational media corporations, and moves hand-in-hand with the related concept of “semiotic democracy”, a term that is gaining new currency and that will be elaborated on in the conclusion.

DB co-founder Nicholas Reville is quoted as saying:

We never imagined that Downhill Battle would become such a long-term project for us. When [DB co-founder] Holmes [Wilson] and I started the site in August 2003, we saw it as a chance to make a timely push-back

¹ See “An Introduction to Activism on the Internet: Advocacy Tools” at http://backspace.com/action/advocacy_tools.php. See also “Top 10 Open Source Tools for eActivism” by Dan Bashaw and Mike Gifford at http://partnerships.typepad.com/civic/2004/01/top_10_open_sou.html

*against a totally one-sided debate about the future of the music industry. Now we’ve been sucked into an even bigger fight for the future of our culture and the role that the Internet can play in reshaping it.*²

This is part of that story - not just of DB itself, but of the technological evolution of the copyfight.

Beginning Battle

The group’s founders went live with the DB website in August, 2003. They were putting into action a desire to engage directly in anti-corporate activism, but with a more targeted twist: the corporations in their sights were record companies.³ According to DB co-founder Holmes Wilson, they were interested in discovering how to help their musician friends find other ways to navigate an industry dominated by major label rules and exploitative contracts. At the time, the RIAA was moving full-steam ahead with lawsuits against users of p2p systems charged with “uploading” copyrighted files. Famously, children were among those sued, and they or their parents were forced to pay upwards of several thousand dollars to settle out of court. Even before the filesharing wars made page one of *The New York Times* on September 19, 2003,⁴ it had often been the legal attacks on digital music services and technologies that was pushing the issue of copyright absolutism into newspapers, evening news segments, and thus ultimately into the lives of the general public. The original Napster so captured the imagination of computer users that its demise at the hands of the recording industry’s lawsuits not only created a “digital Hezbollah” (Barlow, 2000), but also spawned a wave of new p2p systems, many of which were themselves developed as forms of activism on the parts of programmers.

DB’s website contains many familiar elements in common with those of other online activists. It offers collections of informational material, links to other digital cultural activist group and technology developers, resources for finding and sharing new music, and interviews with pro-sampling musicians. Also common is an application to make sending letters to local newspapers trivially simple, and a blog. The site sells T-shirts with such slogans as “Home taping is killing the music industry (and it’s fun)”; flyers proclaiming, “Think paying for CDs helps artists? Think again!”; bumper stickers stating, “I’m a musician and I support file-sharing”; and stickers designed specifically to be placed on CD cases in stores that read, “Buying this CD funds lawsuits against children and families”. It also offers mp3 files of Public Service Announcements that can be played over the radio (or streamed from a website).

² Rustad, 2004.

³ Telephone conversation between Holmes Wilson and author, August 11, 2005.

⁴ “Despite Suits, Music File Sharers Shrug Off Guilt and Keep Sharing” by Amy Harmon with John Schwartz. *The New York Times*, secA; col. 1; p. 1. September 19, 2003.

However, the group has captured the attention of the copyfighters and others for its highly imaginative projects, including the **Grey Tuesday** online protests over the legal action against the mash-up *Grey Album* by DJ Danger Mouse (Howard-Spink, 2004); the **3 Notes and Runnin'** project in reaction to a highly restrictive California sampling law; and the **Eyes on the Screen** campaign to encourage the downloading and public screening of an important civil rights documentary that could not be shown because of copyright restrictions. Each of these actions deserves a somewhat closer examination, as do their successes in application.

The Projects

Grey Tuesday,⁵ February 24, 2004, was the event that put DB on the map, garnering coverage in the *New York Times* and the BBC, as well as large swathes of the Internet. The post to its website announcing the “day of online civil disobedience” - launched in retaliation against EMI Music Group’s legal efforts to prevent the distribution of DJ Danger Mouse’s *Grey Album*, a ingenious remix record of the Beatles’ *White Album* (to which EMI holds the copyright on the sound recordings) and hip-hop star Jay-Z’s *Black Album* - outlined some specific reasons for such a move that place it firmly in an activist tradition of informing and mobilising (see Vegh, 2003; in McCaughey and Ayers). With regard to the former, DB claimed the cease & desist letters from EMI are “a clear, simple, downloadable example of how the major record labels stifle creativity and try to manipulate the public’s access to music, and it’s the perfect way to explain to non-experts why the copyright system needs to be reformed”. DB also offered an explicit endorsement of filesharing: “As a case study, the *Grey Album* proves that filesharing networks are a necessary and legitimate means of defence (for sample-based musicians, music reviewers, and everyone else who likes music) against a music industry that consistently attacks the public interest.” Finally, the organisers called for a mobilisation that would garner mainstream attention: “The *Grey Album* story needs to get out there. It’s been on slashdot.org, it got *New Yorker*-ed, but we need to get it in regular newspapers everywhere.” When DB received its own C&D on 23 February, the organisers reiterated that they had “a fair-use right to post this music under current copyright law” and that “our posting of the *Grey Album* on Downhill Battle is a political act with no commercial interest and fits well within fair use rights”.

According to DB, about 170 websites hosted full copies of the *Grey Album*, despite many of them receiving C&D letters from EMI’s lawyers (none of these sites were ever prosecuted by those same lawyers for defying the order). Over 100,000 copies of the recording were downloaded on the day itself, making it an unofficial Gold record and shifting more “units” than major sellers Norah Jones and Kanye West. No appreciable harm to the Beatles has ever been identified in association

⁵ For a comprehensive examination of the Grey Tuesday event and the cultural significance of the mash-up genre, see “Grey Tuesday, online cultural activism and the mash-up of music and politics” (Howard-Spink, 2004).

with the use of samples from the *White Album* (indeed anecdotal evidence suggests some young listeners were moved to discover more about the band from their exposure to the samples used). Jay-Z went on to create a specific mash-up album with alternative rock outfit Linkin’ Park. DJ Danger Mouse was tapped to produce the second album by acclaimed British hip-hop/electronica act Gorillaz, which will likely be one of the top-selling albums in Britain in the year 2005.

While the sheer technical and aesthetic quality of the *Grey Album*, as well as the critical acclaim it garnered, resulted in new creative (and in some cases highly lucrative) collaborations for all concerned, the album’s status as a *cause celebre* of the copyright movement, and the subsequent media attention that it drew, surely accounts for some degree of its dissemination both online and on burned CDs. It is probably not a coincidence that mainstream press accounts of the emergence of the “mash-up” genre invariably cite the *Grey Album* as ground zero, much to the chagrin of those who pioneered and followed the mash-up scene for at least three years before the album’s release.

The 3 Notes and Runnin’ project was cooked up in September 2004, and announced a week after the U.S. Sixth Circuit Court of Appeals ruled that any and all samples used by music producers must be paid for, including snippets of sounds or chords made unidentifiable by heavy distortion (the court ruling this case when it was overturned found that the sample used had been so distorted that no-one could have identified it, and so clearance had not been required). The case, *Bridgeport Music v. Westbound Records*,⁶ revolved around a 1.5 second sample from the George Clinton and Funkadelic song “Get Off Your Ass and Jam” that had been used in the NWA song “100 Miles and Runnin’”, which itself was featured in a 1998 Master P movie produced by No Limit Films. DB called on musicians to create 30-second songs made exclusively from the disputed sample for an online compilation in direct disobedience of the ruling. Within six days DB was hosting 41 songs, and it closed out after receiving a total of 177 unique entries.

Sampling has a contentious history, and has been the basis for some of the most infamous cases of the stifling of creative speech by hip-hop artists and others (Vaidhyanathan, 2001). It is now well understood in the musical community that only those with enough money to pay the often exorbitant costs of the clearance of a sample can make use of them. The appeals court ruling was unprecedented because, in essence, it made the vast majority of sample-based music illegal in one stroke. The various mixes accumulated by the site are a testament to the creative potential that underlies sampling (a practice that has precedents and parallels in all forms of art and media), although as a political protest the 3 Notes and Runnin’ project garnered little of the coverage generated by Grey Tuesday.

The third project of note, Eyes on the Screen, was much more successful as an activist event, and marked the early signs of an evolution that has expanded DB’s

⁶ See <http://laws.lp.findlaw.com/6th/04a0297p.html>.

interests into areas other than music. *Eyes on the Prize* is a documentary series covering the American Civil Rights Movement that aired on U.S. public broadcasting in 1987. It is credited not only with being the best and most comprehensive documentary covering the era, but because it was so widely used in classrooms it has come to be thought of as the first exposure to the subject for many American children, making it part of the cultural memory of a generation. Moreover, its use of primary sources makes it a unique reference and record of the most important social justice movement of the 20th Century.

Eyes on the Prize has been unavailable for the past ten years because of copyright restrictions. Examples include the singing of “Happy Birthday” in the film, a song that is strongly copyright-controlled, and elements of newsreel footage, photographs and music. Many of the original licenses for the use of those copyrights expired in 1995, and the costs of renewal were too high for the production company. The last remaining copies of the film are held on deteriorating VHS copies held in libraries and school classrooms.

DB’s *Eyes on the Screen* project, set up in collaboration with civil rights activist Lance Guyot, tackled the issue from several fronts. It set up and hosted a BitTorrent file (a file-sharing application especially useful for large files such as television programmes and films) for the first episode of the series. It also called for and aided in the planning of public screenings of the film in all states as part of Black History Month. This move was hailed, among others, by the Bay Area Veterans of the Civil Rights Movement, who wrote:

*...in the spirit of the Southern Freedom Movement, we who once defied the laws and customs that denied people of color their human rights and dignity, we whose faces are seen in *Eyes on the Prize*, we who helped produce it, tonight defy the media giants who have buried our story in their vaults by publicly sharing episodes of this forbidden knowledge with all who wish to see it.⁷*

However, DB’s actions were not without controversy. The family of the documentary’s producer, Henry Hampton, objected that the copyright reform movement had appropriated a film about the civil rights movement for its own purposes, adding that it would be harder to fund a public release if illegal copies were widely distributed. DB responded by removing their BitTorrent links and issuing a statement calling for all illegal copies to be destroyed so that those efforts to return the series to the public could continue. However, DB continued to promote public screenings of the film, of which there were at least 45 in 32 states. The clash between the rights owners of the film, and the desire of socially conscious protestors to make this important document widely available using new technologies, goes some way to shining a light on the moral difficulties of the IP

⁷ See “*Bay Area Veterans of the Civil Rights Movement Statement: Eyes on the Prize*” at <http://www.crmvet.org/anc/0502eot1.htm>. See also http://en.wikipedia.org/wiki/Eyes_on_the_prize

debate. On the other hand, the publicity garnered by the *Eyes on the Screen* event may lead to the very funding the producers are seeking to make the documentary commercially available.

To varying degrees, these three examples illustrate a relatively new form of activism. Traditional and even current media reform movements tend to focus their efforts on challenging either corporate centralisation or “obscenity”, and tend to target lawmakers - or, more recently, advertisers - as the powerholders that must be petitioned for redress. These activists have very little leverage when it comes to providing an alternative to the media companies or content that sparked their activism. *Grey Tuesday*, *3 Notes and Runnin’* and *Eyes on the Prize* exploit technological capabilities of both production and distribution that grant them this leverage. Shouting that the *Grey Album* is a worthy cultural product is not at all as effective as providing a means for people to hear and share the music in order to decide its value or validity for themselves. Claiming that a truly minute sample can be so distorted that it should be beyond clearance requirements is an argument that may be thin on paper, but set up a project that produces 177 versions of songs that use that sample in completely different ways and the same argument becomes vivid and appreciable. Stating that a documentary of vital cultural and historical importance should not be hidden from public view because of lapsed licenses is one way of tackling the problem; using the latest and most efficient form of p2p digital distribution to make that film available to the world marks an activism that goes far beyond stating a rhetorical point - it makes it trivially easy for anyone interested in the situation, whether an activist or not, literally to take action and alter the dynamics of that situation. When it comes to media or cultural activism today, copyfighters need not rely exclusively on the beneficence of traditional state and private power brokers; they have the tools to take matters into their own hands.

DB is evolving, and the Participatory Culture Foundation - founded in December 2004 and funded in part by Mitch Kapor’s Open Source Applications Foundation and the Rappaport Family Foundation - is one of its steps forward. This shift is noteworthy for two reasons: first, it marks a movement away from the overt provocation that is characteristic of the groups covered in Fahimian’s article, and even of the early days of DB itself. Second, its focus is on tools that, while not advertised as deliberately confrontational to media corporations, certainly mark a milestone on the road to more open media systems that is a goal of media activists and copyfighters.

The Tools

Downhill Battle Labs is a development group making “free, open-source software for online organising and strategic file-sharing”. Here we see a direct attempt to bridge the aggregation of people through file-sharing with the potential to organise some of those people into groups of activists. This is where the apparent

anarchy of p2p meets the necessity of organised political and civic action that is a hallmark of effective activism.

One of DBLabs' first releases was Blogtorrent, a free and open source application that allows easy publishing, sharing and downloading using the BitTorrent protocol. BitTorrent is especially useful for large files, for example video or movie files, and software programs themselves.⁸ However, the most attractive aspect of BlogTorrent is that there is no need to know how BitTorrent itself works: a person seeking to make a large file available on their site or blog can upload without worrying about how to set up a torrent tracker, and those seeking to download the file just need to click on it and the software does the rest. Also, there are no extravagant bandwidth costs because the distribution of the file is itself distributed (the reason BitTorrent is so useful for large files). On the BlogTorrent site, the developers offer this teaser:

Making it easy to blog large video files means that people can share their home movies the same way they share their photos or writings. It lets people create vast networks of truly peer-to-peer video content - video that was made by individuals and shared with individuals, no big bandwidth budget required. Does this mean that we can do for television what blogs have done for news? Let's find out...

This is more than a rhetorical question. With the formation of the Participatory Culture Foundation and the development of two apps - Broadcast Machine and DTV - the people behind DB have brought the possibility of open source Internet television squarely into the light.

PCF is DBLabs' face on the Internet - while not exactly a mask, PCF provides a socio-political context for the release of a potentially very disruptive (for which we may read, activist) piece of technology: DTV, released in the summer of 2005. Less overtly activist in orientation than DB itself, PCF's DTV - a kind of televisual podcasting - can be conceptualised as a new kind of activist tool for the media reform movement. It is less a tool of confrontation or organisation than an application that makes open source TV a genuine possibility - as Boing Boing blogger and journalist Cory Doctorow has dubbed it, "a TV killer".⁹

DTV combines BitTorrent with RSS (Really Simple Syndication), a tool developed for bloggers and blog readers that tells subscribers to a blog's RSS feed that an update has been posted. RSS feeds are also used for subscribers to podcasts, so that they do not need to remember to download an updated podcast - the update is downloaded automatically. DTV also makes use of Broadcast Machine, an open source video publishing software developed in-house and designed specifically for ease of use. The result is a total system that allows any person or group with video files that they want to distribute to set up a "channel" with regular updates,

⁸ For more details see www.bittorrent.com or www.blogtorrent.com

⁹ See http://www.boingboing.net/2005/08/15/dtv_an_open_source_v.html

which are automatically downloaded to the computers of subscribers to that channel. DTV is already being used by Creative Commons and Current TV, a new cable channel launched by former vice president Al Gore, as well as a variety of independent and home-brewed video- and film-makers.

There are other Internet/p2p TV schemes in the works, for example Mark Cuban's HDNet, which recently began experimenting with the release of its content using p2p protocols,¹⁰ and PBS stations are working with a group called Open Media Networks, set up by Apple veteran and Kontiki founder Mike Homer.¹¹ PCF's DTV is more ardently open source and nonprofit than the alternatives in the pipeline, and is therefore closer in spirit to the activist motivation to force change.

Conclusion

In July, 2005, the Supreme Court of the United States ruled against the p2p company Grokster in a case brought against it by the major media corporations.¹² Discussions continue over the extent to which this ruling will impact technological innovation and development, but there is little doubt that it will chill commercial efforts to make use of the advantages of p2p: although the court did not specifically overturn the Betamax doctrine,¹³ it is now possible for a company to be held liable for developing and promoting a technology that might "induce" people to share and distribute copyrighted content. This makes it all the more likely that future steps in this area will either be open source, or birthed in another country. With venture capitalists wary of future legal problems, it may come down to developers with more reform-minded political agendas to find new ways to exploit the Internet's distributive capacity.

The recording and movie industry's draconian legalistic reaction to p2p - which has well-established historical consistencies with the dominant content industry's previous responses to emergent and disruptive (but ultimately beneficial) new technologies - has made the digital distribution of content a political issue in and of itself: the "criminalisation" of millions of people for making innovative use of a new communication tool at their disposal is a political act of power that is mirrored by the political act of resistance made possible by the new digital infrastructure. The participation of amateur remixers, independent filmmakers and p2p users constitutes a newly emergent field of resistance to the dominating, centralised, bureaucratic control that is characteristic of the oligopolistic media

¹⁰ "P2P Aggregator for Indie DTV Launched on Macintosh." Mac News World, August 26, 2005. See <http://www.macnewsworld.com/story/45577.html>

¹¹ *ibid.*

¹² *MGM et al. v. Grokster et al.* For an exhaustive collection of documents on this case, including all amicae briefs and the Justices' written ruling, see the Electronic Frontier Foundation website, specifically http://www.eff.org/IP/P2P/MGM_v_Grokster/

¹³ *Sony Corp. of America v. Universal City Studios*, 464 U.S. 417 (1984), which ruled that a company was "not liable for creating a technology that some customers may use for copyright infringing purposes, so long as the technology is capable of substantial non-infringing uses". See <http://www.eff.org/legal/cases/betamax/>

industry – and, by extension, all monopolisers of cultural and informational goods and the “pay for play” copyright absolutism that is their goal.

The concept of a participatory culture is intimately tied to that of “semiotic democracy”, a term coined by John Fiske (1987) and more recently taken up by Fisher (2004) and others, that speaks to the power of active audiences in their own processes of meaning creation. DB’s various projects suggest that more than “meaning” is being created here; indeed, they epitomise a new form of political engagement. The tools that PCF and other open source developers are creating provide the means to distribute the “meaning creations” of anyone who wishes to make their creations available, even if they fall foul of the strict intellectual property ownership paradigm. Individuals are creating artifacts by recombining elements of our cultural environment and heritage, and producing truly original works of their own. At a collective level, the users of these systems are the producers, distributors and even marketers of those new works. Audiences are not merely active in the sense of creating meanings, as traditional cultural studies approaches might have it; they are active in the evolution of the technological and economic structures of the content circulation system itself, and hence impacting directly on the political economy of communication and what ownership of IP means in the digital age. Either consciously or unwittingly, every person who has downloaded the Grey Album, or seen a screening of *Eyes on the Prize*, or who experiments or tinkers with DTV, has been party to the fostering of an emergent form of political participation.

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