

The ZyprexaKills Campaign:

Peer Production and the Frontiers of Radical Pedagogy

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Abstract

In December 2006 the New York Times broke the story of a scandal surrounding Eli Lilly's blockbuster antipsychotic drug Zyprexa. Incriminating internal memos from an ongoing suit against Lilly were leaked to the media and the internet, circumventing the court's seal. This paper tells the story of the netroots campaign to alert the mainstream media and government officials to this public health crisis, and the related legal struggle to keep these documents accessible on the internet.

Following the release of these memos, an ad-hoc community of journalists, psychiatric survivors, and free-culture activists quickly assembled around this issue. They employed a combination of modern collaboration technologies (e.g. wikis, public tagging, Bittorrent, and Tor) to organize their resistance to Lilly's attempts to suppress the evidence. After Lilly's lawyers convinced a federal judge to enjoin the campaign's publicly editable wiki, the Electronic Frontier Foundation intervened to defend their client's First Amendment right to publish this information.

This episode of cyberactivism employed tactics on the bleeding edge of participatory media and explored the frontier of civil liberties. Shared cultural histories and ideologies also enabled the participants to act with great agility and coordination. Crucially, the consequences of these actions were not confined to the echo chambers of cyberspace – their impact crossed over into more established domains of political engagement, such as civil disobedience, strategic litigation, and capturing the attention of the traditional mainstream media. This story suggests models for the purposeful deployment of emerging technologies by social justice movements, and demonstrates the strong symbiotic relationship between new and traditional media. Finally, this paper contends with some of the issues surrounding whistle-blowing in an era of omniscient surveillance, the relationship between anonymity and free speech, and the politics of memory.

“Change comes from power, and power comes from organization. In order to act, people must get together... Power is not only what you have, but what the enemy thinks you have.”¹ – Saul Alinsky

Like the telegraph² and the railroad³ in their time, the Internet has been heralded as the promoter of equality, freedom, and democracy. And like the technologies that preceded it, its impact will ultimately derive from the ways we choose to use it. In the post dot-com era, the Internet is best known for entertainment, commerce, and socializing although it is also being utilized for more earnest activities such as education, political advocacy, and direct social action.

Leveraging the writable web is an important way that organizations are improving their operational efficiency. The de-facto suite of Web 2.0 applications – a mailing list, a wiki, a blog, shared public tags, and RSS, are rapidly becoming part of the typical grassroots communications toolkit. Purposeful implementations of these environments can help balance the flow of knowledge, communication, and power within an organization⁴. Beyond the backoffice, organizers are also learning to embrace the network as their new medium, just as authors learned to embrace the word processor. This emerging wave of technologies is can provide transparency, accountability, and sustainability to loosely connected advocates and activists. But the use of these tools is not just confined to the echo chambers of cyberspace – their impact is crossing over into more established domains of political engagement, such as civil disobedience, strategic litigation, and the traditional media.

This essay spotlights a recent episode of cyberactivism which employed tactics on the bleeding edge of technology and the frontier of civil liberties. The story suggests how participatory culture might give to way to participatory democracy, and especially how these kinds of technologies can play a leading role in radical actions. It also demonstrates the strong symbiotic relationship between new and traditional media, and presents new models for their future collaboration.

This is Serious... Too Much of Us is Dangerous

The ZyprexaKills campaign was launched in December 2006 after the New York Times published a series of front-page investigative articles exposing a decade long scandal within the pharmaceutical industry. The campaign targeted the blockbuster antipsychotic Zyprexa (Olanzapine), a drug approved to treat schizophrenia and acute mania, manufactured by the multinational pharmaceutical corporation Eli Lilly. Internal documents leaked to the Times revealed that Lilly had knowingly downplayed the lethal side-effects⁵ of their best selling drug Zyprexa, and conducted an illegal marketing campaign encouraging primary care physicians to prescribe Zyprexa off-label, beyond its FDA approved purposes⁶.

The evidence substantiating these allegations was leaked to the Times by a human rights attorney, James Gottstein, who had lawfully subpoenaed them from Dr. David Egilman, an expert witness in ongoing litigation against Lilly. Lilly had produced over 11 million electronic documents during discovery for this trial, which were sealed by the court to expedite the case. In addition to the New York Times, Gottstein distributed the documents he had obtained to the National Public Radio, a congressional oversight committee, and about a dozen health and human rights advocacy organizations. Gottstein testified that “he wanted to get them out in a way that would make it impossible to get them back.”⁷

Vigilante Justice Served Over HTTP

Soon after the first wave of New York Times stories hit the stands, electronic copies of the documents surfaced on the Internet, served from a variety of sources over a range of protocols. HTTP, FTP, Tor, Freenet, Bittorrent, Usenet, and complimentary file sharing services were all employed in efforts to rapidly and anonymously distribute these resources.

An ad-hoc community of passionate activists and citizen-journalists began to (self-)organize around the scandal and rapidly created an open, dedicated mailing list alongside a publicly editable companion wiki at pbwiki.com – a popular gratis wiki service. The community began to critically analyze the issues around Lilly’s illegal conduct and track the worldwide dissemination efforts. Many of the contributors edited the wiki while running the Tor program⁸, effectively anonymizing their participation.

In anticipation of potential threats to any single website, the ZyprexaKills campaign introduced a shared tag, ‘zyprexakills’, around which all public communications relating to this campaign could organize. This tactic insured that in the ensuing game of wack-a-mole, the compromise of any particular domain would not prevent activists from locating one another – they could simply find each other using any common search engine. Naming the campaign also helped previously unconnected activists find one another in the first place.

Upon learning about the breach Lilly’s legal team sprang into action with predictable vigor. They persuaded a Federal District Judge to issue an injunction against Gottstein forbidding the dissemination of the memos. The gag order was extended twice in an attempt to control an ever expanding diffusion. The third version of the court’s injunction forbade any speech which “facilitated the dissemination of the documents”⁹ and was directed at both individuals and web sites (specified by domain name). One of the domains enjoined was the publicly editable wiki, *zyprexa.pbwiki.com*.

Linking is Not a Crime

The Electronic Frontier Foundation (EFF) responded to the contributor’s pleas for assistance, and cried foul at the Court’s sweeping prohibitions on speech. At stake was the well established First Amendment doctrine of prior restraint. This principle guarantees every American the right, with very rare exceptions, to say what they please and suffer the consequences afterwards. A court has the limited power to restrain the speech of parties participating in litigation, and trade secrets may also be subject to this type of protection. However, the wiki contributors are several degrees of separation removed from the parties in the case, and it is preposterous for Lilly to claim that illegal marketing practices constitute a trade secret.

The case represented the EFF’s first wiki case, and the technical characteristics of a wiki made feasible certain legal arguments which would not readily apply to blogs. For example, the venerable Judge Learned Hand once offered a famous opinion that the court “cannot lawfully enjoin the world at large, no matter how broadly it words its decree.”¹⁰ Fred Von Lohmann applied this reasoning to the facts, and argued that to enjoin a publicly editable wiki, was to effectively enjoin the world.

The actions of the mythical netroots fed numerous news cycles in the traditional media, increasing public awareness of the issue and creating a huge demand for the documents. Lilly was caught in a Chinese finger trap – the more they squirmed, the more attention they received from the press. The Wikipedia community closely tracked the story, since a ruling in this case

would likely apply similarly to them. In fact, links to the documents quickly appeared in entries on “Zyprexa” and “Eli Lilly”. The story had been essentially transformed from one about corruption in Big Pharma, to a digital First Amendment story featuring wikis, BitTorrent, and Tor.

In late February 2007, Judge Wienstien issued a lengthy and complex ruling which upheld the injunction against a few named individuals, but concluded that “it is unlikely that the court can now effectively enforce an injunction against the Internet in its various manifestations, and it would constitute a dubious manifestation of public policy were it to attempt to do so.”¹¹ While the Judge did not accept the broader First Amendment arguments, nor decide to treat the wiki with the full fledged privileges of a news organization, the ZyprexaKills campaign was still a politically significant success.

At the time of this writing, ten state Attorney General’s offices have opened investigations against Lilly, and, Dr. David Graham, the FDA staffer who played a major role in Vioxx’s withdrawal from the market, has begun to scrutinize Zyprexa. Finally, on March 5 2007, Representative Henry Waxman (D-Calif), the chairman of the house committee on Oversight and Government Reform, subpoenaed the documents directly from Lilly¹²; congressional hearings are likely. It is impossible to demonstrate that these investigations were spurred by the additional media attention that the ZyprexaKills campaign garnered, but it is fair to say that this additional attention did not hurt the cause. In fact, the documents are now legally being analyzed and served by a professional investigative journalist, Philip Dawdy, who authors the increasingly popular blog, furiousseasons.com. Furious Seasons now hosts individual documents, each addressable at their own URL, links to searchable plain text versions of the documents, and he reports that the both the US government and Lilly are frequent visitors of his site.

Lessons Taught, Lessons Learned

The ZyprexaKills campaign is a powerful case study of an ad-hoc community which spontaneously formed around a particular issue that cut across legal, academic, activist, and journalistic concerns. The participants shared ideologies and histories – many immediately recognized the similarities of this case to the release of the Diebold memos, and the ancillary efforts in the fight to keep them available to the public. These shared cultural references allowed the campaigners to communicate with ease and operate with great agility.

From a pedagogical perspective, we can view the ZyprexaKills campaign as a lesson on the practice of safely and anonymously blowing a whistle in a world of omniscient surveillance. In contrast to the typical narratives around the tools employed -- terrorism, child pornography, and music piracy – this operation clearly demonstrated the pressing public need for these protocols. It bolsters arguments which assert the strong relationships between anonymity to free speech, and stands as a powerful testimony to the importance of maintaining network neutrality.

The campaign's choice of communication technologies reflected the dynamics of the participants relationships and demonstrated the vital role that these disruptive technologies can play. Software has gone social, but it’s not just for socializing. There is important and hard work to be accomplished and we need to be using technology intelligently so that we can communicate and act more purposefully and effectively.

Technology, Epistemology, and The End of Forgetting

The ZyprexaKills campaign also illustrates several ways which technology is impacting
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epistemology itself. Technology has always informed and constrained the limits of knowledge – changing the ways we go about knowing and modifying the range of what is knowable. During the current era of unparalleled technological acceleration, these changes are poised to significantly impact the ways we think about traditional domains of knowledge and meaning construction, including personal identity, culture and society. Our reflection on these transformations puts us in a better position to influence their outcome, ideally in ways that respect our aesthetics, values, and sense of justice.

As a part of the class action litigation, 11 million documents were submitted for discovery, a number whose sheer magnitude would have been unimaginable a decade ago, and whose volume demands radical new forms of study and analysis. Even the smaller subset of memos leaked to internet were quite formidable to review. Upscale corporate law firms are currently digesting massive amounts of information like this using a sophisticated suite of artificially intelligent tools that help them organize, classify, and annotate. However, many impact lawyers, journalists, and activists are not even aware that these kinds of tools exist, never mind have access to them. As this disparity in processing continues to grow, the power differential created by some group's ability to assimilate and formulate arguments using very large data sets represents a new kind of digital divide.

Elsewhere, I have described the era that we are embarking on as *The End of Forgetting*¹³, and its corollary, the *Information Flux* model which describes the possible topologies of this future. The simple geometrical model captures three alternative outcomes: a world in which other people know more about an individual than that person knows about themselves, a completely transparent world where everyone has equal access to each other's information, or a world in which the flow of information is redirected back around the individual, so that they continue to know more about themselves than others know about them.

The question of who is aware and in control of an individual's memories is central to politics and activism. In this campaign, Lilly desperately wanted the world to forget the memos implicating them, and symmetrically, the whistleblowers did not want to be identified or remembered either. Both parties were forced to confront this new reality that technology, software, and the Internet has helped shape. As with the emerging cognitive prostheses that are assisting us in comprehending large volumes of qualitative data, these vast stores of memories will be mined in attempts to recognize historical patterns, as well as predict future ones. Even the humble “search” operation takes on an entirely new significance when applied to the scope of records that we are collecting. These developments suggest new forms of discovery and evidence that are already beginning to transform business, politics, and law.

Conclusion

The ZyprexaKills campaign suggests how participatory culture might give way to participatory democracy, by highlighting the ways that collaborative technologies can play a leading role in radical actions. The title of this talk is intended to signify both the instruction of radical politics and a radical way for instructing. The first is elaborated on by this story of cyberactivism crossing over into the more established domains of political engagement, such as civil disobedience, strategic litigation, and the traditional media. The second relies on the participatory nature of this action, which defies the banking model of instruction that prevails in our modern educational system. The ZyprexaKills campaign teaches by participation and example.

The pharmaceutical industry and the psychiatric establishment are in the process of
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pathologizing the full range of human experience, and the coming years are likely to yeild a steady stream of litigation, likely to outdo the Zyprexa scandals in their audacity. Other major drug companies have also been illegally marketing their toxic anti-psychotics, and their flagrant disregard for public health and human suffering will likely be revealed in their internal corporate communications. Unlike doctors, pharmaceutical companies do not take an oath to protect human life. Their sole responsibilities are to shareholder value and the law, though they seem to regularly disregard the latter. The current efforts to legitimate the Bipolar Child diagnosis are already creating rumblings in the blogosphere, and the courts, though the mainstream press has yet to seriously engage the subject, and the surrounding issues are not even on the radar of the national agenda. The radical mental health activists have their work cut out for them.

While the precise conditions surrounding the ZyprexaKills incident are impossible to replicate on-demand, many of the patterns of resistance popularized by this campaign are applicable to other contexts. The strategies and tactics exemplified by these efforts are abstract and reusable. I hope that this story provides some inspiration to other social justice efforts, and gives them ideas to help them accomplish their mission.

The participants in this action purposefully developed a pattern for marshalling these tools in a manner that was self-conscious, deliberate, and consequential. In contrast to the majority of technological development, which are often superficial or subservient to the hegemonic values controlling society, this case study suggests a practice informed by an understanding of the issues raised at this conference. Those of us who understand the opportunities and risks of our current historical moment have a responsibility to design and instruct others in ways that benefit society and help improve the human condition.

¹ Alinsky, S. D. (1972) *Rules for Radicals*. Random House, New York. (p. 113).

² Carey, James. W. (1989). "Technology and Ideology: The Case of the Telegraphy," in his *Communication as Culture: Essays on Media and Society*, Boston: Unwin Hyman.

³ Schivelbusch, Wolfgang (1968), *The Railway Journey: The Industrialization of Time and Space in the Nineteenth Century*, Berkeley, originally published as *Geschichte der Eisenbahnreise: Zur Industrialisierung von Raum und Zeit im 19. Jahrhundert* (Munich, 1977).

⁴ For a more detailed exploratoin of this claim, see J. Bossewitch, J. Frankfurt, A. G. Sherman, "Wiki Justice, Social Ergonomics, and Ethical Collababorations"(forthcoming), *Wiki Writing: Collaborative Learning in the College Classroom*, (U. of Michigan Press).

⁵ In 2002 the FDA issued a black-box warning label on Zyprexa linking the drug to excessive weight gain and severe hyperglycemia. To this day, Lilly publicly denies any casual connection between Zyprexa and early onset diabetes, though their internal memos indicate they have been aware of the association for over a decade.

⁶ Lilly sales representatives have aggressively marketed Zyprexa to primary care physicians as a treatment for long term bipolar maintenance, dementia in the elderly, behavioral problems in children, post-traumatic stress disorder, and other unapproved conditions.

⁷ <http://psychrights.org/States/Alaska/CaseXX/EilLilly/01-16-07Transcript.txt> (0049 3)

⁸ For more information see <http://tor.eff.org>

⁹ Psych Rights <<http://psychrights.org/States/Alaska/CaseXX.htm>> maintains a comprehensive repository of all the court documents pertaining to this action. The EFF <<http://eff.org/files/zyprexa>> also tracks their filings, with some additional press releases and commentary.

¹⁰ *Alemite Mfg. Corp. v. Staff*, 42 F.2d 832 (2d Cir. 1930).

¹¹ http://www.eff.org/legal/cases/zyprexa/zyprexa_judgement.pdf

¹² <http://oversight.house.gov/story.asp?ID=1199>

¹³ Bossewitch, Jonah, "Unforgettable in Every Way: Personal and Social Implications of Pervasive Omniscient Surveillance" <<http://pocketknowledge.tc.columbia.edu/home.php/viewfile/18367>>