

“In our dreams we have seen another world....And this new, true world was not a dream from the past; it was not something that came from our ancestors. It came to us from the future; it was the next step that we had to take.”

--Subcomandante Marcos (1994)

“Military officials predict that future wars will manifest themselves in the form of information warfare and multi-dimensional warfare and the battles are likely to have no distinction between the front and the rear, in addition to nonlinear, dispersed, and distant. This means that victory or defeat in future war depends on state-of-the-art military technology and information power.”

--Basic Defense Policy Document

(*A 15 Year National Defense Vision for South Korea*, 1999)

“While bin Laden may have his finger on the trigger, his grandson might have his finger on the mouse.”

--“Cyberspace Seen as Potential Battleground Battleground,” *The New York Times* (November 23, 2001).

### **Electronic Civil Disobedience (ECD):**

#### **Inventing the Future of On-line Artivism After 9/11 Before 9/11.**

By Ricardo Dominguez

9/11 has been constructed as an ontological event which redefined the nature of all forms of political realism for both war and security, an event zone where history bifurcated between a bad end and a terrible restart, on that day the neo-conservative “End of History” narrative became the future-present “Operation Infinite War,” all under the signs of speed and the instantaneous that radiated from the attack on the World Trade Towers. What is not always considered is the history of protest, of how activist, artists and those ever pesky “artist,”<sup>1</sup> responded to this cultural shifter long before the 9/11 event. These activist formations, or “post-media”<sup>2</sup> swarms, never left the waves of histories as sites for critical interventions that sought to disturb the borders of the State and the border(less/ness) of trans-national flows – these activist assembled, “a new language of civil disobedience”<sup>3</sup> that combined “social netwar”<sup>4</sup> and “tactical frivolity”<sup>5</sup> placing first one under erasure and amplifying the other as a “meta-political disturbance”<sup>6</sup>. Activist networks understand that the ontological core of 9/11 that is being sold under the “politics of fear” is one that cannot/could not completely seal away critical resistance, counter-publics and the speed of dreams that had come before 9/11 or after.

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1 Activist is a portmanteau word combining "art" and "activist". Activism developed in recent years while the alter-globalization and antiwar protests emerged and proliferated. A typical short term goal of activists is to reclaim public space, especially by subvertising or destroying ads in urban areas or city transportation systems. Nevertheless activists engage in different media like the internet not only for actions which could be described as hacktivism. <http://en.wikipedia.org/wiki/Activist>

2 The independent forms of communicative agency which have emerged over the past years in free radios, mediactivism, telestreet, subvertising, etc. can be seen as the expression and prefiguration of what Félix Guattari called a “post-media civilization”. Their independence is a challenge to the powers that be. To understand its meaning, one needs to go back to the Guattarian notion of “collective assembling” and to reflect upon the difference between the concept of technical automatism that of technical arranging. <http://multitudes.samizdat.net/spip.php?article2719>

3 Simon Critchley. *Infinitely Demanding*, Verso, 2007, p. 123

4 David Ronfeldt and John Arquilla. *The Zapatista Social Netwar in Mexico*. RAND, 1998. p. 1

5 Simon Critchley. *Infinitely Demanding*, Verso, 2007, p. 124

6 Ibid., p.129,

This is not to say that activists do not or did not understand that virtual activism/digital disturbances, such as, electronic civil disobedience (ECD) were not full of gaps, failures and “...persistent pitfalls in conceptions of 'electronic activism:' on the one hand, the tendency on the part of some activists and scholars to romanticize electronic action, and on the other, the dismissal of contentious electronic tactics as ineffective, as distractions from 'real' mobilization, or as a troubling 'return of the mob'. Either extreme represents a failure to carefully engage with and differentiate the wide range of tools and techniques that make up the electronic action repertoire, or to consider what 'effective' might mean in this context.”<sup>7</sup> Indeed activists diagrammed responses to these concerns by inventing gestures that went beyond 'saying' or 'showing' ECD – to 'doing' ECD action after action, as a serious and necessary repetition before and after 9/11, and letting theory hit the ground-as-practice in order to shape the 'ineffective/effective' dyad at the fault lines between computers and peace, bombs and bandwidth, networks and exploits.

While the age of insecurity began to stumble around with all the fury of a new manifest destiny, that had been lost and re-found, as early as 1999, the neo-conservative dreamed of a new “Pearl Harbor” was set to play and record, (the missions traced in *Rebuilding America's Defenses (2000)* was to “fight and decisively win multiple, simultaneous major theater wars.” It also asks for a nightmare-before-Christmas wish : “Further, the process of transformation, even if it brings revolutionary change, is likely to be a long one, absent some catastrophic and catalyzing event – like a new Pearl Harbor.” The neo-conservatives also hoped to deploy an expansion of internal controls of the multitude in the U.S. with “free speech zones” that were holding pens far away from the power brokers, uncontrolled surveillance of U.S. citizen, the indiscriminate gathering of anyone who seemed 'other' (the soon to be profiled as “enemy combatants”), and making anyone who was not with the “Osama bin Bush” regime invisible to the dominant media.

Activist, artists, activist and International Civil Society would soon discover what the “new normal” would mean to the “movement of movements” (another name for the alter-globalization movement) during the World Economic Forum meeting on January 31, 2002 (only 4 months after 9/11), who usually met in Davos, Switzerland, and instead decided to teleport to New York City, to show that “Virtual Capitalism” was not shutting down but only revving up for the next good war. Our choice was to march across the arcs of the realities without fear, to let loose the puppies of play, and that everyone would continue to share lateral tactics on the streets and on-line - we were all in a fractal agreement, the alter-globalization movements would not be shut-down. “When the World Economic Forum website collapsed just as its meeting began, it seemed a major win for online anti-globalization activists. But the organizers of the “virtual sit-in” are refusing to take credit for the takedown.”<sup>8</sup> Indeed give credit where credit is due – it was the electronic multitude that downsized the World Economic Forum. “Although the streets of New York City remained relatively subdued while the World Economic Forum (WEF) met here, over 160,000 demonstrators went online to stage a “virtual sit-in” at the WEF home page.”<sup>9</sup> While the Electronic Disturbance Theater did not proactively seek to take the

7 Sasha Costanza-Chock “Mapping the Repertoire of Electronic Contention”, *Representing Resistance: Media, Civil Disobedience, and the Global Justice Movement*, Praeger Publishers, September 30, 2003, p. 173.

8 Noah Shachtman. “Hacktivists Stage Virtual Sit-In at WEF Web site”, AlterNet, <http://www.alternet.org/story/12374>. Posted February 7, 2002)

9 Ibid.,

honor of what had happened, we instead offered this response: *"I think that something else happened to the WEF URL or, perhaps, the WEF infrastructure is as badly built as the WEF's economic vision during the last 31 years."*<sup>10</sup> For the activist being able to disconnect the internet access of the most powerful individuals representing the richest nations on our planet was not important – what was important was to be able to state that the trans-national flow of the WEF was faulty at all levels.

### **Back to the Future: Critical Art Ensemble (CAE) and Electronic Civil Disobedience (ECD)**

Critical Art Ensemble staged the theory of ECD as a gamble against a specific form of the all too-present-future of “dead capital.” Electronic disturbances would be the core gestures that initiated a “performative matrix” that was deeply linked to Hakim Bey's dream that: *“These nomads chart their course by strange stars, which might be luminous clusters of data in cyberspace, or perhaps hallucinations. Lay down a map of the land; over that, set a map of political change; over that, a map of the Net, especially the counter-Net with its emphasis on clandestine information-flow and logistics - and finally, over all, the 1:1 map of the creative imagination, aesthetics, values. The resultant grid comes to life, animated by unexpected eddies and surges of energy, coagulations of light, secret tunnels, and surprises.”*<sup>11</sup> While this was true of trajectories of counter-flows, it was also true of “virtual class.”

*The Electronic Disturbance* re-maps the flows of nomadic power in the chapter “Nomadic Power and Cultural Resistance” as new shifting zones where: *“The location of power - and the site of resistance - rest in an ambiguous zone without borders. How could it be otherwise, when the traces of power flow in transition between nomadic dynamics and sedentary structures - between hyperspeed and hyperinteria?”*<sup>12</sup> CAE argues that “dead capital”, otherwise known as “late-capital,” was being constituted as an electronic commodity-form-in-constant-flow. Capital had been, was and would continue re-ensembling itself, *“...the flight of capital into cyberspatial realms that it is even now more difficult to see. As the contemporary elite moves from centralized urban areas to decentralized and deterritorialized cyberspace....”*<sup>13</sup> The answer to this riddle was to tele-port the system of blockage and trespass that was historically anchored to Civil Disobedience (CD) to this new phase of economic flows in the age of networks: *“The strategy and tactics of ECD should not be a mystery to any activist. They are the same as traditional CD. ECD is a nonviolent activity by its very nature, since the oppositional forces never physically confront one another. As in CD, primary tactics in ECD are trespass and blockage. Exists, entrances, conduits, and other key spaces must be occupied by the contestational force in order to bring pressure on legitimized institutions engaged in unethical or criminal actions. Blocking information conduits is analogous to blocking physical locations; however, electronic blockage can cause financial stress that physical blockage cannot, and it can be used beyond the local level. ECD is CD reinvigorated. What CD once was, ECD is now”*<sup>14</sup>

<sup>10</sup> Ibid.,

<sup>11</sup> Hakim Bey T. A. Z. *The Temporary Autonomous Zone, Ontological Anarchy, Poetic Terrorism*. Brooklyn, NY: Autonomedia. p. 107-108, 1991.

<sup>12</sup> Critical Art Ensemble, *The Electronic Disturbance*. Brooklyn, NY: Autonomedia. p. 11, 1994.

<sup>13</sup> Ibid., p. 13, 1994.

<sup>14</sup> Critical Art Ensemble, *The Electronic Civil Disobedience and Other Unpopular Ideas*. Brooklyn, NY: Autonomedia. p.

Indeed it was the open and transparent connection between CD and ECD that would enable the performative power of mass nonviolent direct action on-line to actualize. This asymmetric formation would become not only be a tool for the disturbance of digital capitalism, but a new counter-network that would move the ontology of the dominant circuit of communication and documentation, as the only possibility of action for the “networks of struggle,” to a stage where the multitude would soon be able to march across the ephemeral lanes of this new super highway. In 2004, many years later, in the book *Multitude: War and Democracy in the Age of Empire*, Michael Hardt and Antonio Negri write, “*basic traditional models of political activism, class struggle and revolutionary organization have become outmoded and useless*” (p. 68), for CAE it was clear that cyberspace, as it was called then, was the next stage of struggle and that it would mean that instead of the easy to see signs of command and control, it would be necessary to re-configure the command lines of code flows and shift their value registers and data patterns, “*CAE has said it said it before, and we will say it again: as far as power is concerned, the streets are dead capital! Nothing of value to the power elite can be found in the streets, nor does this class need control of the streets to efficiently run and maintain state institution.*”<sup>15</sup> In the strange days that were to come it would become difficult to distinguish a technical failure in the system or a social gesture of mass-cyber-presence. So it became extremely important to make sure that all ECD actions were transparent disturbances to a system that was all too willing to give itself over to its desire for the borderless “battlespace” of “cyberwar”, “cyberterrorism”, “cyberwar” and the very tight dream of “homeland security.”

### **Filp\_Foward: Digital Zaptismo Re-connects the New (lo)balism**

“We follow the speed of dreams.”

– subcommandante Marcos, 2007

“Anderson traced “hacktivism” to the 1994 Zapatista guerrilla uprising for greater democracy and Indian rights in the southern Mexican state of Chiapas.”

- Jim Wolf, “*Hacktivism*” credited to Zapatistas, Washington, Nov 2, 2001 (Reuters)

The conditions for a performative matrix to stage ECD as a practice came from a world beyond digital networks, it came from southern most state of Mexico – Chiapas. It was here that “hacktivism” would arise on January 1<sup>st</sup>, 1994 as the North American Free Trade Agreement (NAFTA) was rolled out, which just happen to be the moment when web browser (*Mosaic* for X-Windows on Unix computers was released in February, 1993) was starting its very first flights, which just happened to occur as the neo-liberal vision for globalization was being rolled out and David Ronfelt and John Arquilla had just published “Cyberwar is Coming!” in the 1993 Summer issue of *Comparative Strategy*. These events cascaded into one another to manifest as invisible rebellion by indigenous groups to become the first “postmodern” revolution. The new browser based networks felt the first seismic information swarm and they all started riding the waves – all of the moving at the

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18, 1996.

15 Critical Art Ensemble, *The Electronic Civil Disobedience and Other Unpopular Ideas*. Brooklyn, NY: Autonomedia. p. 18, 1996.

speed of dreams.

The Zapatista rebellion allowed the emerging activist networks to traverse the gap between the impossible and possible, between fantasy and protocols, between critical theorization and direct action gestures – bombs and bandwidth could be disturbed and rerouted. As RAND tried to keep pace with the rise of the swarming 'peace networks,' bits and pieces of the new (lo)balization movements to counter the neoliberal glocalization process began to play out as multiple lateral moves. One of the most important lateral networks were the digital Zapatistas, who were changing the master frame of “cyberwar”, “cyberterrorism” and the soon to come post-9/11 “war on terror,” they were “...literally dispatches from the future.”<sup>16</sup> At the same time other (lo)balization movements were seeking to alter the form and function of globalization-as-glocalization (the dominant media used the phrase “anti-globalization movement” which is far more reflective of the desire of transnational business trajectories than of anything else), to shift the top-down and bottom-up style of glocalization towards the hyper-connective lateralization of (lo)balization, that flowed between hi-fi, low-fi to no-fi cultures.

The (lo)balization movements are not anti-globalization but are instead seeking to invent another type of globalization, (lo)bal movements are not centered or de-centered social formations, instead they spread out across the arcs of the realities as distributed networks that seek to link with all those who are left-out of the neoliberal globe, they are peer-to-peer networks that were and are more about the humans on the ground than about those who had or have access to the network – the networks became networks for the network-less: “*The temporal fractalization of dead capital has allowed a spasm of micro-invention to emerge and flicker in the liminal-space of the Lacandona jungle; occurring somewhere between the imaginary borders of the American hologram and the real Taco Bell power of neo-liberalism's NAFTA: the Zapatistas. In the Lacandona, a jungle in delirium, floats a temporary construction of plant, flesh, and circuits that is attempting to play out a rhizomatic disturbance, an "ante-chamber" of a "revolution that will make revolution possible..." The Zapatistas are not the first postmodern revolution, but the last; they are a vanishing mediation between the breaking mirror of production (dead capital) and the shattering of the crystal of (de)materialization (virtual capital).*”<sup>17</sup> The “tipping point” was now steaming and ready to shout out as a full spectrum force of (lo)bal movement(s) who were flung into the 21<sup>st</sup> century by avant-garde of the indigenous.

The Zapatistas not only ripped into the electronic fabric of first world networks, as an information distribution node, but more importantly, they created new types of political subject(s) and new condition(s) for agency on a global scale, they created a diagram for a new (lo)bal name, which offered a guiding anchor for the emerging (lo)balization movement(s) by their, “...strategic occupation of universalistic terrain of international rights and international law that provides the leverage of a local political articulation that has had global effects.”<sup>18</sup> It was a local-to-local call that established the deep connections between slow micro-politics and the speed flows of transnational articulations –

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16 Jon Mckenzie and Ricardo Dominguez. “Dispatches from the Future: A Conversation about Hacktivism”, *Connect: art, politics, theory, practice*, Volume 2, 2001, p. 118.)

17 Ricardo Dominguez. “Run for the Border: The Taco Bell War,” *CTHEORY*, [www.ctheory.net/articles.aspx?id=155](http://www.ctheory.net/articles.aspx?id=155) , December, 13, 1995.

18 Simon Critchley. *Infinitely Demanding*, Verso, 2007, p. 107

(lo)balization is a feed-back loop for those who were willing to invent other social formations beyond the flexible zones of precariousness being pushed forward by the “free market” ideology that was ready to take over Canada, Mexico and the United States in 1994.

The 'intergalactic' emergence of the Zapatistas, digital Zapatismo and (lo)balization came to be framed as a movement of movements that, “*exemplifies a new approach to social conflict*”<sup>19</sup> that the RAND promoted as an important type of “social netwar.” This research was prepared for the U.S. Army by the RAND Arroyo Center as a tracing of a new social formation that did not fit the “cyberwar” and “cyberterrorism” paradigm, but instead created a transversal activism that was not seeking to “crush the state” and “seize power” - (lo)bal movements, like the Zapatistas, “*draw on the power of 'networks' and strengthen 'global civil society' in order to counter balance state and market actors.*”<sup>20</sup> This new formation of (lo)bal-publics was also linked to re-configured modes of protest that took the measure of globalization around the world: “*It is in protest that globalization's true contours begin to be perceived: it is only with the Zapatistas that the meaning of a North American Free Trade Association becomes clear; it is only with hacktivism that the politics of the Internet is uncovered; it is only with culture jamming that the absurdities of postmodern advertising are laid bare....*”<sup>21</sup>

### **Flip\_Out: When Theory Hits the Ground, or Digitally Incorrect Hacktivism**

“We see that a certain revolutionary type is not possible, but at the same time we comprehend that another revolutionary type becomes possible, not through a certain form of class struggle, but rather through a molecular revolution, which is not only sets in motion social classes and individuals, but also a machinic and semiotic revolution.”

-Felix Guattari, 1977

“The battle between The Electronic Disturbance Theater and the Pentagon may go down in history as a defining moment.”

- Winn Schwartau, 2000

Since our first encounters with analytic machines, we have flickered between machine smashing Luddites of 1811 to Augusta Ada Byron King, Countess of Lovelace writing code for the “difference engine” in the mid 1800's, between utopia and apocalypse, between labor saving and loss of jobs, between ordinary and all too new, between bad machines and good machines. The activist group The Electronic Disturbance Theater (EDT) was among the first to develop a relationship between bad technology, inefficient code and rebellion with a good cause – EDT operated/operates in “*contradiction to cyberspace.*”<sup>22</sup> EDT created a mass demonstration machine (FloodNet) that connects to mass actions on the streets that was and is intimately linked to the Zapatistas and the alter-(lo)balization movements – a performative matrix which shifts the core of the network from

19 David Ronfeldt and John Arquilla. *The Zapatista Social Netwar in Mexico*. RAND, 1998. p. 1

20 *Ibid.*, p.5

21 Tim Jordan and Paul A Taylor. *Hacktivism and Cyberwars: Rebels with a Cause?* Routledge, 2004. p. 64.

22 Tim Jordan and Paul A Taylor. *Hacktivism and Cyberwars: Rebels with a Cause?* Routledge, 2004. p. 74.

communication and documentation to one of mass direct action on-line, a gesture that attempts to suture individuals and browsers, the virtual mass and mass demonstrations in public spaces that are local and (lo)bal at the same time.

“Virtual sit-ins,” as EDT came to name these network based actions were a direct echo of CAE vision for ECD, but rather than the CAE version of a cadre of secret and efficient hackers, EDT created a transparent and artistic reconfiguration of ECD – that by all the laws of well-made code should never work – but, since when does art need to be well-made to spill out into world? It was a new social poesis that allowed EDT's version of ECD to negotiate with pre-9/11 state and transnational powers over the discursive mobilizations of “cybercrime,” “cyberwar” and “cyberterrorism” and shifting the frame to that of Civil Disobedience (CD) and its legal histories in relation to ECD – without giving up the “art” in activism or the “activism” this hybrid term contains: “...*the Electronic Disturbance Theater illuminates a new set of possibilities for understanding the relation between performance, embodiment, and spatial practice in cyberspace. Unlike a number of other performance artists who have explored the relation of the body to technology through the literal encounter of individual physical bodies to machines—Orlan's livecast surgeries; Stelarc's cybernetic experiments—EDT, in turn, has placed the very notion of “embodiment” under rigorous question, and thought to understand the specific possibilities for constituting presence in digital space that is both collective and politicized...Those actions suggest that performance in cyberspace can reproduce—rehearse or practice—cyberspace in ways that produce an alternate form of spatiality. For EDT, as for the Zapatistas, cyberspace can be practiced as a new public sphere, a runway for the staging of more productive “lines of flight” for those struggling for social change.*”<sup>23</sup>

The plane of EDT's group composition was predominately artist centric and extremely focused on its version of ECD being simple and highly distributed from its inception – but perhaps its most transgressive and aberrant decision was to be completely transparent, or as transparent a “databody” can be via the signature to the “real” body. Since at that point in cyber-time the call to utopian anonymity was a core doctrine for hackers, phreakers, crackers and every company selling the Internet to the world from 1994 on -- no one had to know your gender, your race or your class – the being “no-body” was the new freedom. EDT chose to disturb this social ontology of immateriality by making a clear connection between “names” and action: Carmin Karasic (artist, Interface design and graphic design for FloodNet), Brett Stalbaum (Java programmer, artist and author of FloodNet Applet), Stefan Wray (theorist, writer, and agitator) and “myself” Ricardo Dominguez (organizer, agitator, artist and theorist), these were the designations that we gave ourselves on the Electronic Disturbance Theater web site in 1998 and the roster that we added to every e-mailed call to action. In this manner we were able to create a performative context that gave us high degree of control over the question of signification (is this “cyberwar” or “cyberterrorism” or a “cybercrime” or a new form of CD?), the gesture towards the transparent - since the networks of digital Zapatistas, artists, activist, on-line strangers, governments, military and dominant media all knew what we were going to, when we were going to do an action, why we were doing it and where you could find us – if you wanted even more information. EDT's choice of translating the Ghandian “Satyagraha”<sup>24</sup> to connect our “databodies” to our real bodies

<sup>23</sup> Jill Lane. “Digital Zapatistas”, *The Drama Review: the journal of performance studies*, Summer, 2003, p. 131.)

<sup>24</sup> Gandhi called his overall method of nonviolent action Satyagraha. This translates roughly as “Truth-force.” A fuller

created a form of “digitally incorrect” activism, which routed around the future of post-9/11 “fear based” networks developed by U.S. and transnational policies.

This choice to connect the out-side and in-side of the cybernetic continuum allowed ECD as an activist gesture to also instantiate a gesture against the, “*hegemony of communication*.”<sup>25</sup> In the last footnote of the last chapter of *Felix Guattari: An Aberrant Introduction* by Gary Genosko points out that: “*Deleuze raised this idea: 'the key thing may be to create vacuoles of noncommunication, circuit breakers, so we can elude control.' A kind of creativity, then, that was not linked to communication but broke it at some point by establishing cavities through which its messages could not pass or, to put in positive terms, passed to well...an example of the former vacuole suggest more virulent forms of network attacks of the sort developed by hacktivist such as the creation of disturbances...using FloodNet software that swarms sites and saturates lines.*”<sup>26</sup> FloodNet created an extreme form informatic transparency and a counter-communication system, that not only saturates the network with a new form of mass embodiment, but also creates a simple flight of gaps-as-meaning that parasitically attach themselves to the “disappeared” and the “missing” in the databases of dominant power and makes them visible – with the Dadaist force of the “404\_file not found.”

Brett Stalbaum, a co-founder of EDT, frames this “404\_file not found” gesture within the frame of conceptual network art (net.art) history, “*FloodNet is an example of conceptual net.art that empowers people through activist/artistic expression. By the selection of phases for use in building the "bad" urls , for example using "human\_rights" to form the url "http://www.xxx.gb.mx/human\_rights", the FloodNet is able to upload messages to server error logs by intentionally asking for a non-existent url. This causes the server to return messages like "human\_rights not found on this server."*”<sup>27</sup> This aberrant function of browser based technology allows the weightless dreams of cyberspace to reinforce what is absent from the infrastructure of governance and the neoliberal drive that was solidifying a relationship between the global market and information in Mexico under NAFTA at that time.

ECD, was never, nor is it now, about cyber-bombs and bandwidth, but about a style of “*sustainable pulsing*”<sup>28</sup> that is now possible for the social formations which emerged in 1990's (the Zapatistas, digital Zapatismo, tactical media, hacktivism, cultural jammers and the alter-globalization networks) which entangled the communities in Chiapas, Mexico, the streets, digital infrastructures, software and semantic interventions on a (lo)bal level. For the RAND's the prospect of ECD in 1998 as practiced by EDT would create, “*divisive effects, possibly leading to a split between those proponents of netwar...who believe that new, real-world organizational designs should be the basis for activist doctrines and strategies, and the more anarchistic proponents who believe that theatrical technological strikes-- "digital Zapatismo"--should lie at the heart of doctrine and strategy.*”<sup>29</sup> While it is true that a

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rendering, though, would be “the force that is generated through adherence to Truth.”

<http://www.markshep.com/nonviolence/Myths.html>

25 Gary Genosko. *Felix Guattari: An Aberrant Introduction*. Continuum, 2002, p. 227.

26 *Ibid.*, p.227.

27 <http://www.thing.net/~rdom/ecd/ZapTact.html>, 1998.

28 David Ronfeldt and John Arquilla. *The Zapatista Social Netwar in Mexico*. RAND, 1998. p. 10.

29 *Ibid.*, p. 73.



disturbance took place among many activist and new media art groups about the nature of ECD as shift away from *communication and documentation* as the primary nexus of activist/artist practices online, it was not to the degree that the RAND predicted. Within a couple of years (1998 to 2000) EDT's version of ECD was able to integrate itself into the typical menu of tactical gestures available to activist and artist "across arcs of the realities" as Zapatistas enjoying singing.

Jon McKenzie's diagram of EDT's recombinant gestures and entanglements manifested *a priori* futurities as an intimate condition of its possibilities in its past, which allow the ECD gestures to route around the post-9/11 syndromes of "fear as politics", social "insecurities" and the constant information war alarms of digital electrons being "10 feet tall." McKenzie destratified the "noopolitiks"<sup>30</sup> of EDT's style of ECD as an ontological time-machine: *"It would be interesting to trace how physical, syntactical, and semantic interventions each unfold on the three levels of major performance I've identified: the level of discourses-practices (i.e, words and gestures, the level where most artist still work; formal and conceptual experimentation), the level of sociotechnical systems (i.e, social groups and organizations, such as cultural, educational, and corporate institutions), and the level of onto-historical strata (i.e, formations of power/knowledge that largely define "what is" for a giving society over long period of time) Minor performances operate across these three levels to destratify the forms and functions of major performativity...Moving to the level of onto-historical strata not only requires situating today's knowledge-formations and power-mechanisms in order to anticipate and indeed rehearse future modes of destratification. For me, the most striking thing about EDT's FloodNet technology is not its messages but its potential as an unheard-of writing machine: it literally dispatches the future."*<sup>31</sup> This movement between stratifications and de-stratifications was also linked to the question of the law(s), both within the U.S. and internationally in relation to the history of CD, and what part of this history could be established with ECD and its relation to local/global law paradigms and electronic practices.

### **To Nomos and Back: Is Electronic Civil Disobedience Civil Disobedience?**

"If the Electronic Disturbance Theater wasn't illegal it was certainly immoral...."

--U.S. Defense Department, *New York Times*, Front Page, October 3, 1998.

"In its ruling (1 Ss 319/05), the First Penal Senate of the Higher Regional Court of Frankfurt has now overruled the initial verdict. The Higher Court found that the online demonstration did not constitute a show of force but was intended to influence public opinion."

--Torsten Kleinz and Craig Morris. <http://www.heise.de/english/newsticker/news/73827> , 2006.

The strata of the law was an early encounter in the recombinant performance by EDT – over

30 "Noopolitik is an approach to statecraft, to be undertaken by nonstate actors, that emphasized the role of soft power in expressing ideas, values, norms and ethics through all manner of media. This makes it distinct from realpolitik, which stresses the hard, material dimensions of power and treats states as the determinants of world order." John Arquilla and David Ronfeldt. *The Emergence of Noopolitik: Toward An American Information Strategy*. RAND, 1999. p. 27.

31 Jon McKenzie and Ricardo Dominguez. "Dispatches from the Future: A Conversation about Hacktivism", *Connect: art, politics, theory, practice*, Volume 2, 2001, p. 118.

and over this question was asked by activist, artists and security forces -- is ECD legal? The question itself became part of the performance as a “politics of the question” that interpellated a response, that had already been formulated by CAE – ECD is CD now. The establishment of an epistemological connection between ECD to CD as part of the aesthetic trajectory by CAE in theory and EDT in practice created the necessity of response to this meta-pattern by all involved – so that the question became not how is this not CD, but in what ways does ECD fit the legal definition of CD? While in 1998 the question was often framed as potentially illegal as a “cybercrime” known as DoS (Denial of Service) or DDoS (Distributed Denial of Service): *“A denial-of-service attack (DoS attack) or distributed denial-of-service attack (DDoS attack) is an attempt to make a computer resource unavailable to its intended users. Although the means to, motives for, and targets of a DoS attack may vary, it generally consists of the concerted, malevolent efforts of a person or persons to prevent an Internet site or service from functioning efficiently or at all, temporarily or indefinitely.”* ([http://en.wikipedia.org/wiki/Denial-of-service\\_attack](http://en.wikipedia.org/wiki/Denial-of-service_attack), April 2008). EDT was consistently clear that this was not the proper question, since ECD was a social ontology question and not technological question – this was not about code qua code between machines, but about a new form of social contestation and the law(s).

John Rawls in his essay “Civil Disobedience and the Social Contract” states that civil disobedience is *“a public, nonviolent, and conscientious act contrary to law usually done with the intent to bring about a change in the policies or law of the government.”*<sup>32</sup> He also expands on a number of other legal phases of CD that function to create a counter-public space: *“Civil disobedience is a political act in the sense that it is an act justified by moral principles which define a conception civil society and the public good...Civil disobedience is a public act which the dissenter believes to be justified by the conception of justice and for this reason it may be understood as addressing the sense of justice of the majority in order to urge reconsideration of the measures protested and to warn that in the sincere opinion of the dissenters, the conditions of social cooperation are not being honored.”*<sup>33</sup> For EDT the performative matrix of tele-porting CD into cyberspace was an important anchor for the future ECD. ECD as practiced by EDT and any group that functions within the scripts that have been established by EDT must be judged by local, national and international courts as a transparent civil act of disobedience and not as a “cybercrime.” As Dr. Dorothy E. Denning of Georgetown University stated in her testimony before the *Special Oversight Panel on Terrorism Committee on Armed Services in the U.S. House of Representatives* on May 23, 2000: *‘... EDT and the Electrohippies view their operations as acts of civil disobedience, analogous to street protests and physical sit-ins, not as acts of violence or terrorism. This is an important distinction. Most activists, whether participating in the Million Mom's March or a Web sit-in, are not terrorists.’*

ECD is not a secret group of anonymous individuals or networks 'cracking' into servers and enslaving of servers in order to set off Distributed Denial of Service-attacks (DDoS). These actions only represent one or two hidden people, or “crackers”, those break into systems and then use those systems secretly. ECD is the product of mass agency on-line in a civil and transparent protest - whose main goal is to question and spread information about what they feel is a social condition that must be

32 In J. Arthur ed., *Morality and Moral Controversies*, 4<sup>th</sup> ed. New Jersey; Prentice Hall, 1996, p. 356.

33 *Ibid.*, p. 358.

corrected to create a better society for all. This act of digital transparency is important for civil society and the courts to understand - ECD is and should be treated as another digital condition intimately tied to the long and deep Western tradition of Civil Disobedience - nothing more and nothing less. Legal scholar William Karam, from the University of Ottawa, in his essay *"Hacktivism: Is Hacktivism Civil Disobedience"* in 2000 sees links for ECD that go beyond, *"...modern theoretical roots of the late 1800's, the jurisprudence of civil disobedience involves a global narrative stretching from Aeschylus and other Athenians, to a visionary prisoner in an Alabama jail, to nomadic protesters opposing globalization."* For Karam the ECD practice that the Electronic Disturbance Theater uses in its campaigns fit two important conditions of CD, (deliberate unlawfulness and accepting responsibility), EDT *"have commonly used their real names and openly accepted responsibility for their actions...Although, such practices are still far from the norm, there is both a recognition that Thoreau's ideas are equally applicable to hacktivism in the information age...in short, if hacktivism is to be treated as civil disobedience there will have to be a continued increase in the willingness of hacktivists to accept responsibility and punishment for their acts."* For EDT the establishment of a plane of consistency between the legitimacy of CD and ECD was extremely important, not only on a State level but a transnational level, it was now a question of having legal theory connect with legal practice as the outcome of EDT's ability to tune into "futural patterns" of Post 9/11 illegal/legal models.

In 2005 a legal case in Frankfurt, Germany, was developing over an ECD action against Lufthansa, for the immigrant deportation business it was doing with the German state. EDT was invited by two important activist groups in Germany 'no one is illegal' and 'Libertad!' to speak in different cities in Germany in June 2001 about the history of ECD and EDT's use of mass non-violent direct action online since 1998. EDT helped to spread the word about the "virtual sit-in" on Lufthansa during that would take place during the yearly shareholder meeting on June 20<sup>th</sup>, 2001. We spoke to small and large groups of activists, media, artists, hacktivists, as well as, all the major newspapers, radio and Television. The "Deportation class' Action", as it was called, followed all the protocols of transparency that had been established for ECD. All the activist, artist and activist announced the dates, times and reasons for the actions online, all the actions in the streets and inside the shareholders meeting - nothing was hidden. Some 13,000 people joined on that day on-line to protest and the Lufthansa web-site went off-line. The outcome was quiet positive for the communities protesting – Lufthansa ended its deportation-class business with the Germany government (<http://go.to/online-demo>, June 2001).

On June 14<sup>th</sup>, 2005 Andreas-Thomas Vogel went on trial in lower court of Frankfurt, Germany, Vogel had been the activist who had registered the domain (libertad.de), where in 2001 the call for the Lufthansa action had been published. Vogel was prosecuted in a high-security-courtroom where normally terrorist trials were and are being held. The outcome of *"...the first-instance court of Frankfurt found initiator Andreas-Thomas Vogel guilty and sentenced him to a fine of 90 days' pay. The court found the demonstration to be a use of force against Lufthansa as a web site operator as well as against other Internet users; specifically, the airline had suffered economic losses from the campaign, while other Internet users had been prevented from using Lufthansa's web site. The online demonstration was found to be a threat of an appreciable harm as defined by German Penal Code*

*Section 240; Vogel was therefore found to be inciting people to commit coercion.*”<sup>34</sup> One could see that the lower court was reading the question of ECD between the frame of market drives and “cybercrime” -- and not as a form of CD represented by the constitutional rights of its German citizens. A year later newspapers reported that, “*the First Penal Senate of the Higher Regional Court of Frankfurt...*” had, “*... overruled the initial verdict. The Higher Court found that the online demonstration did not constitute a show of force but was intended to influence public opinion. This new interpretation left no space for charges of coercion, and the accused was found not guilty.*”<sup>35</sup>

(<http://www.heise.de/english/newsticker/news/73827> , 2006)

This decision by the Higher Regional Court of Frankfurt was and is an important step introducing the theory and practice of ECD that was established by the critical aesthetics of EDT into the emerging legal language of the (lo)bal that counters the disappearance of constitutional presence and rights under the erasure of the rule(less) law by the global markets and the “war on terror.” This connection was fore-grounded by the German activist, for them ECD action was not about the law and technology, but about the law and the inhuman condition of the “migrant” who were being killed by the hyper-violence of the lawless law of deportation: “*As Libertad spokesperson Hans-Peter Kartenberg put it, "Although it is virtual in nature, the Internet is still a real public space. Wherever dirty deals go down, protests also have to be possible." He also called on everyone not to forget the actual goal of the online protest in light of all the legal turmoil. According to Libertad, some 20,000 people are forcefully deported each year. Kartenberg reminds everyone that this "inhumane policy" causes hundreds of deaths each year.*”<sup>36</sup>

(<http://www.heise.de/english/newsticker/news/73827> , 2006)

For the “Libertad” activist, as for EDT, ECD is technology as an amplification gesture for those who do not have access to the biopolitical rules of globalization or State laws, both within and without, both for citizens and immigrants, these days no one is except from “the state of exception” post 9/11 – it will also continue to be the case that to, “*the extent that hacktivist efforts remain committed to responsibly and conscientiously drawing attention to important social issues, justice and human right issues, they will continue to be successful in meeting...the model of civil disobedience.*”<sup>37</sup>

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<sup>34</sup> <http://www.heise.de/english/newsticker/news/73827> , 2006

<sup>35</sup> *Ibid.*,

<sup>36</sup> *Ibid.*,

<sup>37</sup> William Karam. “*Hacktivism: Is Hacktivism Civil Disobedience.*” University of Ottawa, Faculty of Law, Department of Graduate Studies, on Karam's Home page, 2000. p. 27. (This Home page and essay is no longer available on-line as of April, 2007. A hardcopy of the essay is in the authors hands).