The Morality of Piracy

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Abstract

Piracy is a growing issue in today's digital world, and it has become a very polarizing topic. File sharing, which usually includes piracy, has been a consistent fact ever since the first decade of the Internet's existence. As the years have gone by, numerous technologies that facilitate this sort of file exchange have emerged. Today piracy has become so easy and commonplace that movie and music producers fear that it threatens their entire industry. However, the general narrative presented by the owners of copyrights that holds that digital piracy violates a fundamental moral imperative is inaccurate. While it is true that it is morally wrong in the sense that breaking any law is morally wrong, legality aside, it is not. Instead piracy is a symptom of a paradigm shift in the market economy and how people view the nature of intellectual property due to a corresponding change in technological advancement. This change will require the creation industry to change its business model in order to remain profitable as technology changes. There is historical precedence for such shifts having occurred before, and the future of the creation industry rests on its ability to adjust to this new environment.

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Introduction and Presentation of the Issue

In the early 20th century the world witnessed numerous technological revolutions which would forever change the daily life of most every human being on the planet. Among these was the rise of the airplane, which promised to make the world a smaller place like no other form of transportation or communication had ever done. It was indeed one of the most amazing things mankind had ever seen, and its repercussions continue to effect the nature of our daily lives. This new technology did not only effect the way in which we travel, or how long we have to wait for a shipment of goods. It changed the entire way in which we look at terrestrial property rights.

In 1945 Thomas Lee and Tinie Causby, a couple who farmed in North Dakota, had been losing chickens due to low-flying aircraft. The sight and sound of these machines apparently so frightened the birds that they would run into walls and die. The economic impact to these farmers was obvious, and they felt that something must be done to protect themselves from this blatant violation of their property rights. At the time US law held that one's property extended upwards from the earth to an indefinite extent, and this obviously would mean that airplanes flying over someone's land without consent were guilty of trespassing. However, to expect airlines to procure consent from every land owner was both a logistical and economic impracticality. They were then at an impasse and the case had to be taken to the supreme court. (Lessig, 2004) When presented to the court the argument was made that clearly the law as it then stood did not permit the aircraft to pass over the airspace of their land without their permission. However, the court's decision was firmly in the favor of the aircraft:

> "[The] doctrine has no place in the modern world. The air is a public highway, as
> Congress has declared. Were that not true, every transcontinental flight would subject
> the operator to countless trespass suits. Common sense revolts at the idea. To
> recognize such private claims to the airspace would clog these highways, seriously
> interfere with their control and development in the public interest, and transfer into
> private ownership that to which only the public has a just claim." (Lessig, 2004)

Today it would be ridiculous to consider that an airplane passing over your land to be

trespassing, However, there was a time when this was not such a strange idea in the minds of the public. At one point what had been considered a basic property right had to be redefined so as not to hinder technological progress. Few today would question that wisdom.

Now we are again facing a dramatic technological revolution, which has been, and promises to continue, changing the very basics of how we communicate information across the world as well as across the block. However, this new revolution has posed a threat to many industries as it becomes negligibly easy to clone and share information that, in the past, these industries had sold as physical commodities. This has lead to a clamor for new and increased regulations and technological controls to curtail and stifle the consistent rise in on-line file sharing. Often these appeals are laden with claims that such file sharing is wrong because it violates the basic intellectual property rights of these companies.

Still, we must wonder now if such regulation and control would serve only to "clog these [information] highways" and "seriously interfere with their control and development in the public interest".

Thesis

Legality aside, file sharing, or piracy, as some forms of it are commonly known, is not morally wrong in of itself. Rather it is the natural result of a paradigm shift in the market economy, which must be compensated for in business models rather than persecuted by further controls and regulations.

Background

File sharing had its birth in the 1970s, less than a decade after the Internet was born. ("A technical history," 2001). It began initially with the rise of the first social networks and forums which were known as Bulletin Board Systems (or BBS's). These early servers functioned as enclosed networks to which an external party could connect, via a dial-up modem, to exchange messages, read news and share files. (Lee, 2012)

These early BBS's formed the original backbone of the public Internet which we know and use today. It was on these systems that many early computer games and algorithms began to be

distributed widely. Some algorithms, such as the PKZIP algorithm, which made the rounds on these early systems, are still in use today. (Lee, 2012) The BBS's were later joined by the rise of "Usenet"; a decentralized protocol for exchanging information and files to a wide range of users across the Internet. These systems provided news, discussions, and file exchange to countless users over the decades and continue to operate to this day. They also provided a key advantage over BBS's, at least in regards to file-sharing, by decentralizing data storage and creating many copies of each file on the network as they disseminated the data, which was uploaded to them to the various nodes on the network. This sort of redundancy, along with future advances in file archival technology, allowed Usenet file sharing to explode by the 90's as the Internet's growth exploded with the birth of the World Wide Web protocol in 1993. (Lee, 2012)

Along with the explosion of the World Wide Web in the 90's came the birth of the first dedicated file sharing systems known as "Topsites". These ultra-secretive systems were some of the first bold-faced, underground digital pirates and operated intricate systems for propagating and delivering digital content to their users across the world. Using the File Transfer Protocol (FTP), along with the File Exchange Protocol (FXP) and Internet Relay Chat (IRC), these systems were able to broadcast and distribute large volumes of pirated content all around the world moments after a copy hit the system. (Lee, 2012) (Howe, 2005)

Internet Relay Chat (IRC) by itself also contributed to the rise of rampant file sharing in the 90's with the implementation of the Direct Client to Client (DCC) protocol. With these protocols, users were able to setup servers with automated "users", known as Bots, which would facilitate the rapid exchange of copied files to its users. (Lee, 2012)

File sharing, which had largely begun as a way to exchange computer code and programs, started to branch out as well, with the rise of standardized formats to encode other mediums, such as music, video, and books. Chief among these technologies was the "Motion Pictures Expert Group Audio Layer 3" (or MP3) format which rapidly rose above all other standards in the 90's to become the principal encoding system for music. The format allowed for a "good enough" encoding of audio, which could sample and compress audio data to a few Megabytes while still preserving an enjoyable listening MORALITY OF PIRACY 6 experience. Although not alone among audio file formats, it's efficiency may have only contributed to the collision course on which

the Recording Industry Association of America (RIAA) and file-sharers found themselves. (Bellis)

Up until this point, however, file sharing was relatively unknown to the average member of the public. This all changed in 1999 when "Napster" brought piracy to the masses. Founded by John Fanning Shawn Fanning and Sean Parker, who would later help found Facebook, Napster provided a distributed way to exchange countless copies of individual songs in the MP3 format. Napster's public and publicized nature, however, made it different from file sharing systems that came before it. It provided users with a simple interface requiring almost no special technical understanding, and thus facilitated the wholesale exchange of music among users across the world with its peer-to-peer network. With its peak number of registered users coming in at around 80 Million, Napster became a force to be reckoned with and it was not long until the RIAA had it squarely in its sights. (Gowan, 2002)

However, the subsequent trial of Napster, brought the question of file sharing's morality into the public discourse for the very first time, and many users and non-users alike had to examine where they stood on the issue. Despite its eventual collapse under legal pressures three years after its start, Napster had indelibly left its mark by ensuring that a copyright holder's absolute right to the control of redistribution was no longer a cultural absolute. As a result, the decade following Napster's collapse has been marked by a hotter debate on the issues of file sharing, piracy, copyright and intellectual property in general. All the while, piracy has continued to spread.

Following Napster's lead, many other more decentralized peer-to-peer networks were born, not the least of which included notorious networks such as Gnutella and Kazaa, which allowed users to continue Napster-like file sharing for much of the first decade of the 2000's until legal action finally broke them. Some of these networks became deserted, most notably, Gnutella, (Lee, 2012) while others ended up facing millions of dollars in fines and legal penalties (Nguyen, 2006). However, prior to their fall BitTorrent was already poised to become the dominant method for file sharing.

Developed in the early 2000's, BitTorrent allowed Piracy to become more decentralized than it had ever been before. Borrowing many techniques from previous technologies, and eventually removing the need for centralized orchestration, BitTorrent has rapidly become one of the most pervasive and unrelenting file sharing technologies in the world today. Centralized

"Torrent" servers now only need to store small files known as "Torrents" which contain the information necessary to facilitate the establishment of a peer-to-peer connection between users interested in a particular file. This connection is then used to propagate the file between users, starting with the initial "seeder", over a sort of "Ad-Hoc" network. This level of decentralization has thus enabled the BitTorrent protocol to be very resilient and allowed it to continue unobstructed despite numerous legal actions, including even arrests and sentences, against Torrent server operators, most notably, The Pirate Bay, and Demonoid.

Despite such legal actions by copyright holder interest groups such as the Recording Industry Association of America (RIAA) and the Motion Picture Association of America (MPAA) as well as legal motions by the Federal Bureau of Investigations and others, piracy has continued to grow. These lawsuits have resulted in numerous judgments against copyright infringers and file-sharing network operators, including prison sentences for some. However, these lawsuits and investigations have also resulted in a public relations nightmare for the plaintiff and prosecuting parties. This is best illustrated by the backlash against the RIAA for their notorious lawsuits in 2003 against individual file sharers, which included lawsuits against children and the elderly, sometimes demanding hundreds of thousands of dollars in reparations. ("Riaa v. the," 2008) Additionally the Justice Department has recently come under fire from Internet advocacy groups over their investigation of Internet pioneer Aaron Schwartz, which is thought to have lead to his suicide in 2012.

These things are certain, after about four decades of file sharing over the Internet and through the "Sneaker Net", the sharing of files via the exchange of portable digital storage devices such as Floppies, CDs and Flash-Drives, piracy shows no signs of abating. Through the last decade plus of high-profile legal proceedings, along with an increase in technologies that have made file-sharing ubiquitous and common-place, the public is now more keenly aware of a serious question as to the role which copyright should play now and in the future of technology. Some say that we should find new technological or legal ways to stop piracy, while others call for a revamping of copyright law and our understanding of "fair use", while still others call for the complete abolition of copyright. One way or another, a solution must be found.

Lines of Argument

When I was young I had a cassette recorder. These were very common in the 90's, although they are not nearly as easy to come by today, and I remember that I used it to its full extent. One of my favorite things to do was to listen to the radio and record my favorite songs when they would come on. Eventually I got a nicer stereo system that would allow me to directly record the radio broadcast onto a tape without the need of a microphone. It was great, especially if I had a nice clear signal, because my recording would sound just about as good as a recording sold in the stores. Under the law this was completely legal. However, that all changed when I decided to branch out. (Segan, 2013)

I listened to a lot of radio when I was younger. I was an only child, and it was a great way to stay entertained without spending more time in front of the T.V. than my parents would like. I even got really attached to certain radio shows and would make sure I tuned into them whenever I could. I grew really fascinated with what it must be like to be a radio personality and get to play whatever music you wanted to, as I supposed, on the radio. So at some point I decided that I wanted to start my own radio show. I didn't have any broadcasting equipment, obviously, but I did have my tape recorder. So I started taking 90 minute TDK cassette tapes and recording music on them from CDs, with myself playing the part of the bantering disc jockey. It was lots of fun, and I used to then take those tapes and give them to my parents or other adults I knew as gifts. These gifts, which amounted to "mix tapes" with commentary, would have been perfectly fine for my own use, but the moment I began distributing them I was a pirate. (Cosby, 2008)

Looking back now, I have to wonder if what I was doing was really wrong. I was in violation of copyright law. There is no question about that. So yes, so far as breaking the law is concerned, it was wrong. Irrespective of legality issues, was there some natural law that made my actions wrong? Just because something is illegal does not mean that it is inherently wrong. To those who subscribe to a belief in the rule of law as I do, it is immoral to break the law. But if chewing gum were illegal, there would still be nothing inherently wrong with chewing gum. The wrong then would be in breaking the law, not in chewing gum. So then do we chew gum anyway? If we wish to be law abiding citizens, the answer is no. Now what if a law exists which causes harm if obeyed? At that point enters the question of civil disobedience in protest, and

philosophical questions about moral imperatives; which are all beyond the scope of this paper. I merely wish to illustrate that the demonization of an action simply because it is "against the law" is not sufficient. We can demonize the breaking of the law abstractly, but we must be careful that the narratives we are being sold concerning a particular action are viewed in the proper context.

For sometime, it was, and may still be, common to see a dramatized public service announcement at the beginning of DVDs you would rent or purchase of the latest films. This video, which may have been entitled "Piracy, it's a Crime", showed a girl at a computer downloading a movie on shady looking website while dramatic guitar music played over cut-scenes and text declaring:

> You wouldn't steal a car
>
> You wouldn't steal a handbag
>
> You wouldn't steal a television
>
> You wouldn't steal a movie
>
> Downloading pirated films is stealing,
>
> stealing is against the law,
>
> PIRACY. IT'S A CRIME

This short segment has since been much maligned due to its overly dramatic tone. Since it's release, it has been the target of a great deal of mockery and some parodies including the television show "The IT Crowd" and , to a lesser extent, Weird Al Yankovic's video "Don't Download this Song". Much of the criticism surrounding the video also focused on the possible "straw man" fallacy it contains. Many believed that the comparison of stealing physical objects to the copying of intellectual property was ridiculous. As a result some on the Internet MORALITY OF PIRACY 10 began mocking the video's dramatic statements with the line "You wouldn't download a car". This was made famous by a meme posted on-line of that statement with the comment: "[expletive] I would if I could". ("Piracy, it's a," 2013)

This video and the resulting reaction to it, does a very good job of illustrating the different sides of this growing argument in our culture. Some claim that, since file sharing is not a zero-sum-game, it can't be equated to theft. Still others point to the legal restrictions on the

redistribution of copyrighted material. The division is sharp and often heated. Obviously, the law is on the side of those who claim that the file-sharing of copyrighted materials is theft. That matter cannot be adequately argued as a general principle. Obviously, there are certain gray areas which must be recognized, such as matters of Fair Use, but those tend to be the exception. Most arguments and legal proceedings surround the copying and distributing of copyrighted materials, mostly music and movies, and to a lesser extent, articles and books for "selfish" use. But the question is not about whether those things are illegal, but rather whether they should be.

I believe that many who feel that they should be able to copy and download files freely and without restriction, feel that way largely because of how they were raised. As part of the millennial generation, or Generation-Y, as we are often called, we grew up with modern technology and with the Internet. We were exposed to the idea of digital files at a very young age, and because of that: I think we see them differently than some others might. We were taught from a very young age that data poured freely from the Internet, and we began to see all this free data as part of a large flow of common information. As more and more things became freely accessible on the Internet, we began to see all the data found there as part of this larger commons. As such it began to become harder to see information on the Internet as something you could steal. Instead information was for sharing. Many claimed that this was no different than how a library functions, only that since the data shared was being copied there was no reason to return it after you were done with it. You could then keep it on your machine for as long as you wanted, since that was more convenient. This fundamental difference in how people now view information is no small part of what makes the premise that file sharing is theft, harder to believe. It is becoming more difficult to reconcile that in people's minds and I believe that is what is causing the rise in piracy.

This shift in how we view intellectual property as a culture is the result of new technology which has provided a new way to interact with data and has changed the market place of information. Users now interact with information in new ways, which are fundamentally different from how they did prior to the rise of computers. This has in turn changed the demand and what is marketable to users. Companies cannot merely cling to business models of the past, claiming that they are fundamentally right, if they wish to survive.

When new technologies spring up, business must often change their approach. This has always been the case and it will be no different for this issue. The real danger that companies face is the money they may lose through delaying the adjustment of their business models, in favor of holding on to a desire for stasis and complaining that its all their customer's fault. Complaints and legislation will not help you sell more hot chocolate on a hot summer's day.

Opposing View

Many arguments made in favor of file sharing, however well intentioned, are neither accurate nor relevant. It is important for those who support file sharing to recognize these and so that they might be placed on a sure footing. In a 2012 blog post, Rob W. Hart listed off some of the most common arguments made by pro-file sharers in defense of "piracy". In it he made some very good points and touched on arguments which, albeit common, are rather weak. Some of these included (a) "We're only hurting big business" (b) "Authors already have plenty of money" (c) "If you're a writer you should just be happy to write" (Hart, 2012)

For those who believe that they are only hurting big business through piracy, it is important that this gets cleared up. Any damage which is inflicted through file sharing does not happen in a vacuum. Instead the effects do propagate throughout the entire industry. Additionally, it is obvious that these incidents of "piracy" also occur to small releases and smaller markets. Eventually, some middle-man, or some self publisher, will feel the effects of file-sharing, be they good or bad.

An erroneous idea that authors are, as a rule, 'rich' has somehow worked its way into our cultural mindset, when in reality most do not make that much money to begin with. Some would then go so far as to say that it is of no concern to us whether they get money or not because they should only be writing for the love of the art form, as opposed to doing so for profit. There is only so far the love of art can be expected to carry a man in this world where the bills need to get paid and the children need to be fed.

I also believe that many would go so far as to say that file sharing is purely beneficial to creators, and that many unseen benefits from file-sharing will help artists and creators in the long run. While I agree with this in principle, there is no evidence that says that artists are, as a rule,

making more money because of piracy. However, I believe this only further illustrates the need for the industry to overhaul its business model to survive.

The basic arguments which are often leveled against file sharing are flawed in their basic premise. Almost without exception, the majority of all critics of file sharing claim that file sharing is fundamentally wrong because it is the violation of a natural right which belongs to copyright holders. I reject that premise since, as we can see in the case of the Causby's, property rights may be redefined as needed to cope with changing technologies. Despite the claims of these property holders, crying that their livelihoods are fundamentally threatened, it has been shown that these changes can be coped with whenever they have arisen throughout history.

Just because there is a paradigm shift in how we view data, does not necessarily mean that it is correct. What benefit can there be from treating data in this way? My answer is—creativity. Allowing data and ideas to flow freely in this way will allow for more creative expression, which in turn leads to a richer and more advanced society. Despite the out-lawed nature of my early tape radio "broadcasts" I firmly believed they helped encourage me to be more creative and were helpful in my long term development. The same can be seen on YouTube where copyright infringement runs wild, despite plenty of restrictions, and leads to numerous fresh and original new creations which use the works of others as material.

Still, even if it is good, how can any good come of it for the copyright holders and professional creators? Cory Doctorow, a famous author and copyright reform advocate, shared an example from a government study in Switzerland, where it was found that despite their loose copyright laws, which do not restrict downloading for personal use, users still were spending their money on other forms of entertainment. (Doctorow, 2011) The argument being that if a user can download media freely, they might then spend money on other merchandise for that media, such as concert tickets, posters, and other collectible items. This transition however, may not be smooth, and there may be some money lost by the music and movie industry until their business models can adjust to the new technological reality.

Much criticism of file sharers, or rather of pirates, is very understandable when seen through the lens of previous decades before the rise of modern computer technology, just as Causby's argument against planes flying over their property made perfect sense when viewed

through the lens of the past. But as technology has changed, so has our understanding of property. And so it must again.

Conclusion

Piracy is a problem. One way or another, it does harm. Whether that harm is done because it is morally wrong, or because it goes against a system of business models that are outdated, is for the reader to decide. I believe that what we are witnessing is a fundamental change in how we are able to exchange data, and that, as a result, our understanding of intellectual property must change with it. I am not advocating for a wholesale abolition of a creator's right to copyright, but rather a reexamination of what that right entails. I believe that we are witnessing the rise of a new era in public communication and discourse which offers such a rich quantity of benefits to us as a people and culture that, much like the justices ruled in the case of the Causby's, we cannot allow out-dated understandings of the law to interfere with its development in the public interest.

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