

PIRACY IS GOOD

WHY IT IS MORAL TO STEAL INTELLECTUAL PROPERTY

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In this paper I will examine the moral landscape¹ of piracy laws and expound that the legal attitude is one of economic good, not necessarily of moral good; put differently, legal deliberation seems to favor making money, not human happiness or equality. Furthermore, I will demonstrate that piracy may not be bad and that in a considerable amount of cases it is a moral good in the world.

PROFIT IS NOT GUARANTEED

Most of us should be familiar with the idea of protection of intellectual property (IP). This protection is often achieved by assuming that the holder of intellectual property is entitled to gain profit from it by selling it and I will argue in the next chapter that such an assumption is erroneous and should be abolished. For the purposes of my argument it is vital, foremost, to recognize that companies dealing in artifacts (goods) and services have no positive claim for sales and profit. Even though the legal system works under the assumption that companies must be able to conduct their business in a *quid pro quo* manner free of theft, fraud and unjust economic manipulation, there can be no positive claim for economic success for every company (since it is an impossibility under a monetary economy); thus the economic failure and bankruptcy of a company is nobody's legal fault and economic success is only a legally unobstructed *possibility*. Once we realize that NO company has a claim for sales and profit and most companies fail as soon as the first year of business, the legal argument that artists' claim for sales and profit must be protected seems less straightforward.

Anti-piracy laws protecting the interests of artists by preventing the loss of profit from potential clients draw strength by assuming that ALL pirates would be clients, were it impossible to pirate. Notice here that a similarity with usual, physical theft can be drawn and that it *does not apply*, since in physical theft actual loss is always inflicted, but in IP theft actual loss is inflicted in select cases at best. Thus I posit and hope to make it clear that "if a person is never to become an actual client, him pirating the material has zero impact on the artist".

Another line of thinking here concerns the "market value" of intellectual property. The problem lies in the fact that, contrarily to physical property, which can be sold only once, IP can be sold repeatedly (theoretically, infinite amounts of times). How to ascertain the total value of a "single IP item"? Considering the phenomenon of rarity, first copies could be more expensive than the millionth. When, if ever, would it be reasonable to consider that the price of an IP copy has fallen below the threshold of token price and should be considered zero? Hard to say, it would probably depend on a number of factors like the resources used in production of an IP and market situation.

It seems that the only serious source of criticism on this could come from the concession that a *quid pro quo* relationship must exist and piracy breaks it, since information is acquired with nothing of equal (read: acceptably similar) value being provided in return. My answer might be

¹ See Sam Harris's The Moral Landscape

unsatisfactory for neo-liberal economists, but nevertheless is that given the nature of monetary economy, there will never exist enough wealth to exchange even a token amount of goods for the amounts of intellectual property we see today and, no doubt will see in the future. It seems that at one point or another, the only item of value to use in exchange for intellectual property will be again intellectual property. This poses a problem – either unsustainable (or just plain dumb) situation of secrecy and deficit of intellectual property arises or intellectual property one desires to use in exchange is available for free, i.e. has an effective value of zero. The only reasonable solution is to forfeit the claim for payment, since all possible “payment” is already available, or in the case of information, in the possession of the one desiring payment, hence, is paid already.

Notice that this can be inverted to analyze the requirement for payment itself. Can an artist demand payment for music files, which can be downloaded for free, i.e. can an artist demand payment for something with an effective price of zero? No, this would be absurd or simply fraudulent, hence either payment should be abolished or IP deficit state is desirable, which is even more absurd. Abolishment of payment for IP is a logical inevitability; this is evident if we realize that anti-piracy laws seek to solve the central problem of economy in IP context, namely, the problem of distribution of limited resources in a state of unlimited desires, a context in which the problem need not apply, since IP has the property of not being limited – there can be an infinite amount of copies of a single IP item².

THE PARADOX OF INTELLECTUAL THEFT

For theft to occur, it could be argued, the artist has to prove that something is stolen, i.e. missing. In intellectual theft cases nothing is missing, for the artist still has the information. Theft has not occurred. This goes in vain with the anecdotal murder investigation requirement that there must be a body. It would be comically bizarre to claim that a person has been murdered and moments later watch the person walk in the room alive and well, much more so, while the person is *in* the room.

Perhaps criticism would come in the form of an argument that in the case of intellectual property, the artist holds exclusive rights to said information. Let us examine why this is not so.

Imagine there is just one huge diamond on Earth and Mr. Rich owns it and derives huge pleasure out of being the sole owner of this type of precious mineral. Does Mr. Rich hold exclusive rights to the diamond? Not directly, only in the sense that he purchased it or facilitated it being excavated or some such investment and the legal system recognizes his right to private property. Now, a Mr. Blue quite innocently finances a deep ocean exploration expedition and this expedition comes upon a huge diamond, identical to Mr. Rich's. Would we lament this discovery of another

² Make a mental note of this as „Fixing what ain't broke”.

huge diamond on the grounds of Mr. Rich losing the privilege of being the sole owner of such a resource and, possibly, not being able to sell his diamond for as high a price as before? Would we press charges against Mr. Blue for this “theft” of potential profit from Mr. Rich? No, of course not! Mr. Blue’s discovery would be an auspicious addition to human wealth and moral good, since, the conventional wisdom goes, the single pleasure of Mr. Rich is less than the combined pleasure of Mr. Blue and saddened Mr. Rich. Consider then a similar situation, with the single difference being Mr. Blue’s intentions – he financed the expedition(s) with the express desire to find the long lost twin of Mr. Rich’s diamond in hopes of depriving Mr. Rich of his pleasure of being the *sole* owner of a huge diamond *and* undermining his plans of selling the diamond for an outrageous price. For those with a knee-jerk reaction to judge Mr. Blue’s actions under this scenario as immoral/borderline illegal, recognize that you are wrong to do so, since the actions are *identical* to the first scenario. Moral quality of an action is irrespective of intentions driving it.

Let us apply this insight to intellectual property in a “case of diamond .jpeg”. Mr. Rich owns the only copy of a sublime diamond picture which he himself just authored. He derives pleasure both from the fact that the picture is beautiful and that he will be able to sell several copies of it on the net. Suppose there is a visual artist Mr. Blue and he happens to author an uncannily similar diamond picture to Mr. Rich’s and has similar aesthetical and economical expectations as him. Mr. Blue even happens to upload his picture to stock photo site sooner than Mr. Rich, undermining his prospects of selling his picture. Can Mr. Blue be held legally responsible? Not at all, he is merely exercising his rights for unobstructed *possibility* for profit through his endeavor as a visual artist. Considering the opposite illustrates this perfectly – if we would broach that actions that rob artists and researchers of *potential* profit are illegal, ALL business competition is illegal.

Consider this then: Suppose a hacker calling himself Mr. Blue hacks Mr. Rich’s computer, downloads the diamond.jpeg and makes it available on a stock photo site before Mr. Rich has had the chance to upload it himself. Again, take care to judge Mr. Blue, since, oddly enough, the salient actions are identical to the previous scenario, especially the sale of .jpeg. One might take issue with the act of hacking as an overall less desirable skill than visual design, since it creates no new information, but other than that, it seems to me, consideration of “intention irrespectivity” and “no claim for sales and profit” reveals that Mr. Rich has not been harmed or deprived by either Mr. Blue the visual artist or Mr. Blue the hacker.

Previous discussion has illustrated how the idea of exclusive rights is unimaginable perversion concerning physical goods and is similarly unfounded and recent invention in the intellectual property arena, possibly based on the aspiration to secure potential profit, for which having a claim is understandable, but intangible.

ECONOMIC GOOD AND MORAL GOOD AT ODDS

Let us consider another situation, “Cancer Cure”. A pharmaceuticals company (P1) has been researching a cancer cure for some years and invested roughly 50 million dollars in the endeavor. An industrial spy copies the formula just after it is finished and sells it to a competing company (P2). The conventional wisdom goes that P1 has been harmed, since it has lost its ability to at least earn back the resources expended, not even considering the loss of overhead profit. Notice that “intention irrespectivity” applies. It reveals that just as there is no difference between malicious and coincidental *redistribution* of potential profit, there is no difference between malicious and coincidental change in ability to break even. This case presents even further counter-intuitive aspects. Since P2 spent considerably fewer resources developing (read: stealing) the cancer cure, it can now sell it at a considerably lower price, thus facilitating the eradication of cancer and improving the lives of millions. One should even wonder, how economically viable would a cancer cure be:

- 1) P1 claim they will give the cure away for free – P2’s actions have no influence on P1’s profit, real or potential, since it is 0.
- 2) P1 desire only a portion in return. “No claim for sales and profit” begs the question, but, as I later accede, P1 can hold a claim for a portion of return on their investment if human life is at stake.
- 3) P1 desire a profit, since they spent years on the project. Given the limited amount of cancer patients and the lack of repeat business, profit can be gained only by increasing the price of cure, which defeats the supposed goal of P1, namely, curing of cancer.

Let’s take matters with cancer cure further in “Free Cancer Cure”. There is just P1 and it acquires a cancer cure by pure chance for free, say, one of the lab assistants sees the formula in a dream.

What price is it allowed to attach to the treatment? Any. Economically, one that maximizes profits.

Does a moral consideration dictate that the treatment be offered at prime cost? Yes, if prime cost results in maximum sales, i.e. results in most people treated.

How immoral would it be to attach a price somewhere in the middle? From a utilitarian perspective, the pleasure derived from the profit of increased price would have to be subtracted from the unhappiness experienced by cancer patients forgoing treatment due to increased price as compared to prime cost and the result would be the amount of unhappiness due to greed.

Would there be a moral duty to provide the treatment at prime cost? I think not. As long as we assume that there is only a moral duty not to cause harm, even selling the cure at an outrageous price is morally superior to not selling it at all. That being said, selling the cure at prime cost would be

exceptionally moral, inferior only to a completely free treatment, which would probably result in a loss for P1 and would no longer be considered business making but philanthropy.

I think this *free cancer cure* case illustrates nicely that the highest moral standard in business is achieved by forfeiting ALL profit while maximizing sales.

One last scenario to consider is the case of “the wicked scientist”. Imagine again P1, but not one that develops a cure for cancer, quite the contrary, P1 develops cancer inducing pills or, if this is dismissed as being illegal, a fattening treatment. P1 has invested 50 million dollars in this research already and right after finishing it, an industrial spy copies the formula... Perhaps I don’t have to go through the motions, since most people will smirk and conclude: “serves P1 right,” but how is this different from situation described in Cancer Cure? Doesn’t the wicked scientist have a right to earn back the investment he has made in the wicked research? If it can be conceded that the answer is NO, we arrive at the conclusion that the right for return on investment is not a legal or economic question, but, rather, a moral one, a faculty that is rather unappreciated in this society.

CLOSING THOUGHTS

What are we to do now? If my conclusion earlier that anti-piracy laws are trying to *fix something that ain’t broke* is correct, serious consideration has to be given to questions of artists’ claims for digital copies to their work that are pirated. The slightest thought that artists’ claims might not extend as far as we are used to is a counter-intuitive one and thus enters a sort of moral and legal grey area, which, oddly, is not dispelled even in the stark contrast with practices governing physical property. Nevertheless, I maintain that from a moral standpoint, theft of intellectual property is almost always justified on the grounds that artist suffers no direct loss, except in the cases where the production of IP has put the artist in such a vulnerable state that without a minimal restitution, the artist would suffer considerable harm, loss of quality of life and/or death. Again, the impressive difference in treatment of IP and, say, businessman dealing in toilet paper strikes me as unsettling. If a businessman would have made impressive investments in a toilet paper factory, leaving himself in such a state that failing earning even a minimal amount would leave him destitute, we would smirk and condemn him for poor business making, placing “all eggs in a single basket”. This does not apply to artists and researchers; they are viewed as disadvantaged at defending themselves economically.

Final bit of consideration has to be given to piracy’s influence on future piracy. If we grant that a pirate that would never have been a client does not impact the artist in any way, it is still possible that we thus enable the pirate to not be a client that he otherwise would have been for a different product. This is a problem if otherwise non-harmful piracy leads to cases of piracy that

would otherwise had not occurred, especially in those cases where a minimal return on investment is vital.

Other than that, pirate as much as possible, since the gain for the pirate is *always* greater than the loss for the artists/researcher!