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## **Ethics of Punishment for Individual Digital Piracy**

### **Introduction**

Before the advent of the internet, the term ‘pirate’ would invoke images of swashbucklers stealing rum and tobacco from merchant vessels. However, the term “piracy” in modern vocabulary generally refers to unauthorized replicating of media through any means (Roberts & Smallridge, 2013). Specifically, digital piracy refers to copying media using computers or other electronic devices and sharing them either physically or over the internet. The issue with digital piracy is the scale in which individuals partake in the activity. Due to the high volume of users and their relative anonymity, it can be challenging to track and prosecute these individuals. This obstacle raises the question, should law enforcement agencies and courts even bother with punishing individuals? If so, to what degree should the justice system penalize offenders?

### **Background**

While this practice is not new, the issue was made exponentially more complicated with the advent of the internet and file sharing. In December 2020, the Covid-19 Stimulus Bill had an add-on law designed to punish illegal media streamers (Valinsky, 2020). This law targets services that explicitly pirate and stream media to make money. (Valinsky, 2020) rather than individuals who consume this content. However, this is not the first law that targets digital piracy. According to the Recording Industry Association of America [RIAA], “A long series of court rulings has made it very clear that uploading and downloading copyrighted music without permission on P2P networks constitutes infringement and could be a crime” (n.d.).

Large-scale efforts against digital piracy entered public discourse in 2000 when artists such as Lars Ulrich and Wyclef Jean spoke out against the peer-to-peer file sharing service

Napster (Chandross, 2000). After an estimated 300 million dollars in lost sales, federal authorities shut down the site after a lawsuit pressed by the RIAA, even though studies suggested that Napster users were more likely to purchase music than non-users (Chandross, 2000). Years later, the RIAA pressed a similar suit against LimeWire, a similar peer-to-peer sharing service, which lasted four years until federal judges shut down the site (Halliday, 2010). Services like these were problematic for the music industry, given the effort put into lawsuits since the new millennium.

## **Stakeholders**

With the new wave of piracy, there is an ever-evolving game of cat and mouse between law enforcement, copyright lawyers, and pirates who fight to keep their content online. In the middle of this struggle are two parties: users who illegally download films and music from these sites and copyright media owners who regularly lose millions of dollars to piracy (Chandross, 2000). These include record labels, movie distributors, software companies, and game publishers (Roberts & Smallridge, 2013).

### ***Stakeholder 1***

The first stakeholder to discuss is the individuals who download media from file-sharing services. There is an important distinction to make here: these individuals are not distributors of pirated content or those who use pirated software to make money. Instead, they are defined here as people who download content for entertainment. While it may be easy to assume that these individuals participate in the pirate ecosystem to save money, evidence suggests the contrary. This group of stakeholders who download content for free is more likely to purchase media afterward than those who do not (Frosio, 2016). It seems as though piracy for them serves the purpose of a sample booth at the grocery store: the consumer tries out something that they were

unsure if they like or not and ultimately becomes a paying customer if they enjoy the product. Giancarlo Frosio sums this up nicely: “Specifically, studies have largely found that file-sharers tend to spend more on cultural goods on the internet than any other category... The conclusion that file sharers consume more cultural goods has been consistent among very diverse research studies” (2016). It seems then that pirated media consumers are not necessarily against paying for goods, but instead, they value spending their money on media they are more confident they will enjoy. As such, this stakeholder will use value claims to suggest that they do not deserve punishment. After all, their actions are not harming companies because they are more likely to spend money after using the product.

### ***Stakeholder 2***

Opposite of these consumers are the copyright holders. This broad term encompasses the groups as mentioned above of record labels, etc. As these groups are primarily composed of large corporations, it might be easy to dismiss them as greedy or selfish. However, it is vital to recognize the scope of losses involved with this practice. Just in the space of streaming shows and movies, there are annual losses estimated at 30 billion dollars (Valinsky, 2020). These losses are no small amount, and it may reflect a considerable loss of profits for streaming media services and the copyright holders as a result. To ignore these claims would be overly dismissive of the other party because a company requires income to function by nature. The copyright holders also value innovation. Innovation is essential for both consumers and the creators of media and the economy as a whole (Roberts & Smallridge, 2013). These copyright holders use claims of fact to suggest that the government should prosecute individuals who consume pirated media because the practices cost them so much money in lost sales.

## **Argument Question**

With this knowledge, we must consider both sides. We have concluded that individual ‘pirates’ are not opposed to acquiring media legitimately. They are more likely to purchase media the more they pirate it (Frosio, 2016), suggesting a direct correlation between media consumption and purchasing regardless of ‘pirate’ status. However, we see that there is still a direct financial impact from piracy, both through lost income (Valinsky, 2020) and lack of innovation (Roberts & Smallridge, 2013). Considering this, should the justice system and relevant law enforcement agencies punish and prosecute individual, non-commercial digital file-sharers for piracy to a similar degree that they would punish theft?

## **Arguments**

### ***Stakeholder 1***

The first stakeholder argument to assemble is that of the individual ‘pirate’ consumer. As previously noted, the type of claim that this group could make is a claim of value. These claims are supported well by the ethical framework of virtue ethics. This framework is quite ancient, beginning with Socrates’ Classical Greek teachings and expanded upon by Plato and Aristotle (Bowin, 2020). This framework focuses on a person’s integrity and how their actions affect their self-interest (Bowin, 2020). In the case of the digital file-sharing community, this comes into play when talking about the idea that individuals are more not any less likely to purchase legitimate products than anyone else (Frosio, 2016). When faced with the choice of effectively stealing something when nobody is watching or paying the vendor for it as expected to, digital file-sharers are statistically still making the right decision to pay for movies, music, and software. This argument’s point is not necessarily to suggest that there are times when it is okay

to steal media in this fashion. Instead, it is to insinuate that individuals are not causing an overall net loss of profit, as they are still more likely to purchase products.

Another argument to defend the first stakeholder is related to the nature of digital piracy. This stakeholder could argue that with digital piracy, one is not taking a physical copy of anything. In contrast, they duplicate the media based on someone else's copy, be it from a physical CD or a computer file. One could compare this to a musician hearing a song they like and replicating it on their guitar at home for entertainment; they are not selling this for profit or passing it off as their work. They are merely mimicking the song for their amusement. Playing the music would not constitute an infringement of anyone's copyright; in this example, the musician has not necessarily given the record label or songwriter any royalties for their intellectual property.

As it stands right now, this stakeholder doesn't have much to gain from the issue but could face misdemeanor or even felony charges if digital piracy was treated similarly to theft. The penalties for theft currently vary from state to state and are based on the stolen goods' monetary value (FindLaw, 2019). Assuming that law enforcement caught an individual downloading a single film, they could face "misdemeanors that carry fines or relatively short jail times typically less than six months, but certainly less than one year." (FindLaw, 2019).

## ***Stakeholder 2***

We have established that copyright holders are corporations that require a certain level of revenue and innovation to survive. The ethical framework of ethical egoism can defend these companies' arguments. Economist and philosopher Adam Smith popularized the framework of ethical egoism in his book "The Wealth of Nations" (Westacott, 2020). This framework argues that it is in every person's best interest to act in a way that benefits themselves (Westacott, 2020).

As such, it is in the best interest of corporations to support the adoption of a new law that would formally criminalize digital piracy at an individual level to discourage all forms of digital piracy. This direction is ideal for copyright holders. It allows them to divert resources away from research and development of anti-piracy measures and back into content creation instead. If digital piracy is allowed to continue, the stakeholder will continue to lose billions of dollars annually (Roberts & Smallridge, 2013).

### **Author's Position**

I believe that individuals who download pirated media should not face the same penalties and punishments as traditional thieves. Based on the arguments provided, it makes the most sense that individuals do not deserve these punishments because they are not a significant source of loss for copyright holders. Instead, this blame is placed more on the illegal distributors such as Napster (Chandross, 2000). My position thus aligns more closely with the first stakeholder. I differ in opinion in that I do not believe that the act should go unpunished in every case. While most cases should not be bothered with, some fringe cases would be in the copyright holders' best interest to prosecute without harming the vast majority of file-sharers.

In severe cases in which law enforcement can prove that an individual has downloaded media to an extent where they are demonstrably downloading media in exceptional quantities, it may be worth creating a special exception, as this does not align with the argument presented before. My recommendation for this would be to make a law that explicitly provides a monetary lower limit of how much content an individual pirates before the copyright holders can press charges. This limit would use the retail prices of whatever digital product the individual downloaded and should be a figure in the thousands of dollars at least. The purpose of the law would be to discourage large-scale digital piracy and encourage individuals to rely more heavily

on legitimate distribution sources. This solution would offer the most protection for individuals who cannot defend themselves in court against media companies while still giving those companies recourse to protect their intellectual property in severe cases of infringement.

## References

- Bowin, J. (2020). Aristotle's Virtue Ethics. *A Companion to World Literature*. John Wiley & Sons, Ltd. Retrieved from <https://people.ucsc.edu/~jbowin/virtue.pdf>
- Chandross, N. (2000, July 27). Napster Shut Down. *ABC News*. Retrieved from <https://abcnews.go.com/Technology/story?id=119627&page=1>
- FindLaw. (2019, April 04). Theft Sentencing and Penalties. *FindLaw*. Retrieved from <https://www.findlaw.com/criminal/criminal-charges/theft-penalties-and-sentencing.html>
- Frosio, G. F. (2016). Digital piracy debunked: A short note on digital threats and intermediary liability. *Internet Policy Review*, 5(1). doi:10.14763/2016.1.400
- Halliday, J. (2010, October 2010). Limewire shut down by federal court. *The Guardian*. Retrieved from <https://www.theguardian.com/technology/2010/oct/27/limewire-shut-down>
- Recording Industry Association of America (n.d.). About Piracy. *RIAA*. Retrieved from <https://www.riaa.com/resources-learning/about-piracy/>
- Roberts, J. & Smallridge, J. (2013). Crime Specific Neutralizations: An Empirical Examination of Four Types of Digital Piracy. *International Journal of Cyber Criminology*, 7(2). <https://www.cybercrimejournal.com/smallridgerobertsijcc2013vol7issue2.pdf>
- Westacott, Emrys. (2020, August 28). What Is Ethical Egoism? *Thought Co*. Retrieved from <https://www.thoughtco.com/what-is-ethical-egoism-3573630>
- Valinsky, J. (2020, December 22). 10 years in prison for illegal streaming? It's in the Covid-19 relief bill. *CNN*. Retrieved from <https://www.cnn.com/2020/12/22/tech/illegal-streaming-felony-covid-relief-bill/>