Spinello’s Framework Applied to Nintendo Sending Gary Bowser to Prison

Michael Alexander Bates

Neumont College of Computer Science

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Michael Given

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Nintendo is a prominent and well-known behemoth in the gaming industry. Nintendo is so well known that everyone from your grandparents to your grandkids probably knows who they are. Let this illustrate the size of Nintendo: In 2013 they lost 229 million dollars due to the poor performance of the Wii U, despite them turning these losses around in the following years, they could have stayed losing 229 million dollars every year for the next 10 years before they would have gone bankrupt.

Fast forward to the far future of 2020, Nintendo is 3 years into their most successful console generation since the Wii/DS. Nintendo is also in the midst of suing the video game console hacking team known as Team Xecuter. Team Xecuter is a group that develops hardware to create and play digital backups of physical games. Nintendo decided to take legal action against 2 members of the team, Max Louarn and Gary Bowser. Max Louarn was the leader behind team Xecute, while Gary Bowser’s primary role was advertising their products. Nintendo sued Bowser for 14.5 million dollars stating that piracy and hacking cost them more than 65 million dollars over a decade long period of time. Nintendo will be receiving 30% of Bowser’s income for the rest of his life. Gary Bowser’s case raises a few ethical questions, especially when analyzed using Spinello’s framework.

The basic problem revolves around the clash between intellectual property rights how severe the punishment for breaching those rights should be. Nintendo alleges that Team Xecuter’s actions, particularly those of Gary Bowser in promoting hacking tools, lead to significant financial losses due to piracy. The stakeholders primarily include Nintendo, Gary Bowser, the broader gaming community, and potentially other businesses in the gaming industry facing similar issues. The consequences for Bowser are severe, extending to a lifelong financial burden, while Nintendo aims to deter piracy and protect its assets.

My moral intuition is that Nintendo is 100% in the right legally, but given the harshness of the charges, not entirely in the right ethically. Nintendo claimed to have experienced significant losses due to piracy and hacking, but comparing that to their profits, or even their losses from 2013, would show that their losses to piracy are relatively insignificant or at the very least far less than 30% of their income. This was a situation where Nintendo wanted to send a message more than they wanted to act ethically, why else would they sue Gary BOWSER instead of the leader of the hacking group? Because they wanted the case to be memorable, not because they wanted justice.

Let’s take a look at some of the normative principles to see how they line up with my moral gut instinct: Autonomy - Bowser exercised his autonomy in making decisions that led to his promotion of piracy tools, being punished for that makes sense. Non-maleficence – The obligation not to harm others was violated by bother Bowser and Nintendo. There’s no denying that Bowser did harm at least a little farm to Nintendo and Nintendo financially crippled Bowser for life. Beneficence – Bowser’s actions were beneficial to the gaming community, both those wanting to legally back up their games, and those with harmful intentions. Justice – Nintendo did not act justly at all; Gary Bowser was not treated fairly and equally. Utility – I would argue Bowser was maximizing happiness by increasing the availability and accessibility of videogames for those who may not be able to afford them. Bowser was not actively stealing from Nintendo, so there’s no counter argument to be had stating that he was also decreasing happiness in the world. Respect for Persons - This principle is challenged by the punitive extent of Bowser's punishment, potentially disregarding his dignity. Fidelity - Both parties were expected to uphold legal and ethical standards, with Bowser breaching these through his advocacy for piracy.

Utilitarianism would support Bowser’s actions as maximizing overall happiness by enabling piracy. Deontological ethics would focus on the adherence to rules – Bowser’s actions are unethical because they break laws designed to protect intellectual property. Virtue Ethics would look at the character and intentions of the individuals, perhaps criticizing both Bowser's disregard for the law and Nintendo’s perhaps overly harsh retaliation. Given these analyses, the course of action Nintendo took can be seen as justified from a virtuous and deontological perspective. However, the extent of the punishment—claiming 30% of Bowser's future income—might be seen as excessive and lacking in compassion or respect for personhood.

Personally, I think piracy is ethical, but at the same time suing someone for piracy is also ethical so long as the punishment fits the crime. Nintendo was in the right to sue, but they should not have pushed for such an extreme ruling. They should have assessed the damages that piracy has caused over the period that team Xecuter were selling hardware for Nintendo consoles, then split that between all of the team Xecuter members with the highest paycheck cut being the amount of assessed losses over the assessed profit of that same period. This would likely mean that Bowser would still be paying Nintendo for the rest of his life, but it would affect his day-to-day finances with the same weight that he affected Nintendo’s finances.

In conclusion, Nintendo's actions align with certain ethical principles and frameworks but may fall short when considering justice and respect for persons. A more balanced approach could involve significant but not lifelong penalties, ensuring both deterrence and fairness. This nuanced perspective helps highlight the complexity of ethical decision-making in modern digital rights management.