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Do Consumers Own Digital Content?

Shopping online has changed how consumers and retailers transact, but does it also change what defines a product? For consumers, the online purchasing experience is more convenient due to unlimited store hours, no long travel distances, no lines for checkout, and often cheaper prices. Online retailers benefit from having less overhead costs than having a physical storefront, more product exposure through an internationally accessible storefront, and a higher rate of consumer purchases with automated digital checkouts. With digital content like electronic books, or e-books, music files, and video games, consumers can receive their purchases instantly and online retailers do not have to worry about restocking physical products to meet demand. Unlike tangible products, digital products are conveniently accessible on consumers' electronic devices which displays content from a retailer's servers. Digital content is generally not owned by the retailer, but given exclusive rights to sell the content from a publisher. If the retailer loses the exclusive rights, then the retailer is legally obligated to remove the content from their servers, and consumers would likely lose access to the content. An online retailer's failure to comply with removal of content is an infringement of copyright laws that could result in costly litigation. But if a consumer had already paid for the digital content, should the consumer have the right to access their purchased content?

Definition of Ownership

While online retailers lease digital content, consumers do not intend to purchase digital content temporarily. When a consumer buys a product from the physical stores of a traditional market, the consumer's goal is the ownership of the product. Similarly, consumers aim to own digital content when purchasing from an online storefront. By understanding the goals of consumers through extensive research, retailers design their storefront to ensure an easy purchasing experience. But online storefronts have a misleading user interface design for their digital content. In an interview by Lazarus (2016) with UC Berkeley's Chris Hoofnagle, Hoofnagle focuses on the language of the "buy now" button and how "It's not saying 'rent now.' It's not saying 'gain conditional access' … and that means something very specific to customers." The "buy now" button influences consumers to believe that purchases of digital content from an online retailer holds the same experience as buying physical products from a traditional retailer. The parallels in shopping experiences lead consumers to believe that digital content is irreclaimable by the retailer after a purchase. Lazarus's article also mention a 2009 incident when Amazon abruptly removed e-books from consumer's digital library and issued refunds without consumers' consent. Such actions are a violation of consumers' trust and goes against the duty-based ethical standards that consumers seek from retailers. Those ethical standards being: ensuring customer satisfaction, relaying accurate information to the consumer, and upholding fair trading practices. If online retailers had knowingly leased digital content to consumers without intentions to sell despite displaying a "buy now" button, then retailers had a duty to relay more accurate information to consumers prior to purchase.

In an experiment by Atasoy & Morewedge (2017), consumers were inclined to pay less for digital content because the "difference in ownership that people feel for digital and physical goods may be due to a weaker sense of control over digital objects." This experiment suggests that consumers are deriving a difference between a traditional product and a digital product from its retail value, and consumers are not likely to be confused by an ambiguous user interface design. When Amazon removed specific titles from consumers' libraries in 2009, the reason was that permissions to specific titles were compromised (Lazarus, 2016). With traditional retailers, permission to sell certain products is given by the product manufacturer or an intermediary representative as a publisher. Online retailers use the same permissions as traditional retailers to sell digital content. If permission to sell is rescinded, retailers are legally responsible to halt distribution. For traditional retailers, physically retrieving recalled products is nearly impossible, but in Amazon's case, consumers' e-books were stored on Amazon's Kindle platform where Amazon had full access. Amazon's Kindle platform acts as a consumer's content library while the e-books that the consumer purchases are accessories that enhance Kindle's features. By enhancing the platform's features, the consumer has a more enjoyable experience. Consumers own access to the content through the Amazon-governed Kindle services. Apple has a similar business model selling music through their iTunes platform, as does Netflix with their online streaming services of videos. Video games are notorious for restricting a user's access to a game's features behind in-game purchases of digital content. This business model of delivering content through a retailer-controlled platform, also called a paywall, allows online retailers to enforce anti-piracy practices, generate more profit, and protects the interests of content creators. Mitigating such risks are justifiable through ethical egoism because self-preservation is a rational necessity to a business's survival. Amazon's benefit in recalling e-books outweighed the risk of litigation from the content's publisher. Because ownership of digital content ultimately do not belong to Amazon, the success of Amazon's Kindle platform depended on the appeasement of content publishers over consumers.

A product is an instance of the culminations of someone's intellectual property. For example, a book is a culmination of an author's words and thoughts, and a computer is a culmination of innovative ideas from multiple engineers, designers, fabricators, and consumer product companies. What consumers own is not the intellectual property itself but rather the tangible product resulting from that intellectual property, and the problem with digital content is that "they're not just not touchable, they also contain intellectual property" (Marsh, 2017). Without any tangible product, it is difficult to defend ownership rights. The closest tangible and obtainable representation of digital content for consumers would be the content's data. Consumers argue that purchases of digital content should result in consumers owning a copy of the content's data stored on a retailer's server, but the servers containing the data are owned by the retailer. Online retailers have a right to manage access to their servers just as traditional retailers have the right to refuse business. Besides, the data legally belongs to its publisher and creator, so online retailers are obliged to maintain the integrity of the contents. Both consumers and online retailers justify their arguments with duty-based ethics, but differs on who online retailers are obliged to. Consumers believe online retailers should be obligated to respect their transactions with consumers. Online retailers believe that legal obligations to publishers supersedes obligations to consumers, and that consumers inherit the same responsibilities that publishers impose on retailers. Those responsibilities are bound by copyright law, and consumers must surrender possession of content that is no longer leased.

Consequences of Ownership

Without content creators, online storefronts would not have any digital content to sell, so it is in an online retailer's interest to protect a creator's interests. Content creators depend on online retailers to sell their product to generate profit. Online retailers offer content creators a platform to distribute their product while securing the product from acts of piracy. One method of securing digital content is with digital rights management, or DRM, which "is coding designed to prevent the people who buy an e-book [or other digital content] from making copies of it" (Miller, 2013). DRM binds digital content to their respective content delivery platform and restricts transferability. The DRM coding is usually embedded into the content itself, making it hard for the average consumer to delete. Miller also notes the use of watermarks to combat piracy, for content that are “tagged in such a way that if a copy is discovered being use illegally, it can be traced back to the original purchaser.” This latter option is less secure because watermarks do not restrict the distribution of digital content. Ultimately, no digital content is completely secure from piracy. E-books and digital magazines can be copied or captured in an image. Copies of audio files can be made by re-recording with a microphone. Videos can be intercepted in a browser’s temporary files or re-recorded using screen capturing software. Video games restrictions can be circumvented in code with illegal downloadable patches. An article by Rzhevkina (2017) reported that a survey found “two of three Russians believe that viewing and downloading pirating content is legal … more than half of the respondents also admitted to active use of pirated content.” With such rampant piracy and little to control unlawful distributions, online retailers and content creators lose a significant amount of potential revenue. Allowing consumers the right to ownership of digital content, which entails downloadable copies and transferability rights, is irrational because pirates would have easier access to content. The decision to disallow consumers’ ownership of digital content is justifiable through care ethics. Online retailers have a mutually beneficial relationship with content creators, so retailers must prioritize creators’ needs.

Not all consumers engage in piracy. Anti-piracy practices build distrust and animosity between consumers and online retailers because the practices do not protect nor give any rights to consumers. These practices assume that all consumers will pirate. But allowing consumers more ownership rights by withdrawing anti-piracy practices would benefit consumers, ease shopping experiences, and benefit online retailers by decreasing piracy. According to Dinahy

Vernik, an assistant professor of marketing at Rice's Jones Graduate School of Business, DRM and watermarks are deterring pirates and consumers alike, and "because of these inconveniences, some consumers choose to pirate" ("DRM encourages piracy", 2011). Disallowing ownership rights, such as the right to share, trade, sell, and pass on their copy of digital content, encourages consumers to seek illegal alternative methods to obtaining content. Anti-piracy practices give consumers an impression "that digital goods do not facilitate the same feeling of ownership that physical goods do" (Atasoy & Morewedge, 2017). If digital content had the same ownership rights as physical products, consumers would be more inclined to pay more for the added value of those rights and less inclined to resort to piracy. Since the fight against piracy is futile, online retailers should appease paying consumers to maximize profits because "DRM hits customers that the company knows are paying for their game, and it risks turning those actual sales into lost sales" (Thier, 2013). By appealing to businesses' sense of ethical egoism which prioritizes profitability, consumers' argue for a utilitarianism approach where both parties benefit. Consumers receive ownership rights, online retailers benefit from more revenue from the added value to digital content, and the content creators mutually benefits from the retailer's success; every party benefits.

Personal Position

In terms of management of content and obligation to integrity, I believe online retailers are correct in their regulation of digital content. Online retailers have more resources to protect digital content than the average consumer, and retailers are generally too large to commit piracy without the public noticing. Fraudulent retailers like Redbox takes advantage of loopholes "allowing consumers to obtain a copy of a Disney movie that they can then download from any of the major digital retailers at a fraction of the price" to undercut content creators (Bishop, 2017). To combat such acts of piracy, consumers need to be more conscious of their purchases and retailers need to implement better security. New anti-piracy practices may lead to more inconveniences for consumers, but better practices protect content creators from unnecessary monetary losses. Protection of the creators' interests should be the highest priority. Using Kant's ethical framework of justifying rational actions, consumers should act in support of creators so creators can create content for consumers. Because without creators, there would be no content to consume. For consumers to support content creators, consumers must support legitimate online retailers that protects and sells the creator's digital content.

Conclusion

Are the conveniences of digital content worth the trade-off of technically not being able to own the content when purchased? Consumers cannot resell or trade digital goods as they could with tangible goods, for online retailers restrict these transferability rights to deter piracy. Deterring piracy benefits online retailers and content creators, but anti-piracy practices are an inconvenience to consumers. Consumers must shop smarter and become more aware of terms of purchase. Better anti-piracy practices leads to a safer retail environment for creators to confidently sell their digital content. With more retailer transparency and better content security, the future may see an online shopping experience where buying digital content is the same as buying a physical product.

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