

Sailing the High Seas: A Christian Exploration of Piracy

Pedro J. Avalos Jiménez, Niklas Anderson

Wheaton College
April 9, 2024

1 Introduction

1.1 Background Information

[T]hat ideas should freely spread from one to another over the globe, for the moral and mutual instruction of man, and improvement of his condition, seems to have been peculiarly and benevolently designed by nature, when she made them, like fire, expansible over all space, without lessening their density at any point, and like the air in which we breathe, move, and have our physical being, incapable of confinement or exclusive appropriation. Inventions then cannot, in nature, be a subject of property. Thomas Jefferson [1]

It is generally accepted that piracy is an illegal activity, but what is often overlooked is the legitimate role that piracy plays in a variety of contexts. When it comes to subverting oppressive regimes, for instance, the tools that piracy provides are indispensable and for protecting the interests of consumers from predatory business practices, the abilities of piracy are unmatched.

Needless to say, with every unregulated system comes abuse and piracy is no exception. On top of that, piracy, on an individual level, is extremely difficult to combat because of the immaterial nature of the items that would need to be protected. Ideas flow freely between people especially when the Internet is involved, so stopping this flow becomes an exponentially more difficult problem the more people have the restricted data. The ease with which ideas propagate lead people like Thomas Jefferson to claim that they are “incapable of confinement or exclusive appropriation.” Consequently, two parties form: those that support piracy for its free and open spread of all information and those that see piracy as a threat to the further advancement of technology and ideas.

Before proceeding further into the issue of piracy, it is important to have a grasp of what piracy means insofar as how this paper interprets it. The dictionary defines piracy as “the unauthorized use of another’s production, invention, or conception especially in infringement of a copyright.” While this covers the technical definition of piracy, this paper elects to utilize a more wholistic definition. Piracy not only includes the unauthorized use of someone’s work,

but it includes the tools and techniques that are commonly used to accomplish this task such as torrent trackers, VPNs, and torrent clients.

As a Christian, how should one approach such a tool and how can it be utilized for the betterment of God's kingdom? In the paper that follows, piracy will be analyzed through a number of lenses, culminating in a Christian response to this issue. In doing so, the hope is that the reader attains a fresh, wholistic understanding of the potential value of piracy.

1.2 Thesis/Argument

Piracy should not be hastily thrown aside. Piracy is an excellent tool for disseminating information, services, content, &c. that may not have been available any other way.

2 Arguments For Piracy

As mentioned above, even though piracy is illegal, there is still merit to the tools of piracy and the values behind them. The merits of piracy can be divided into three realms: equal access to information, governance, and privacy.

2.1 Equal Access

At its core, piracy is primarily concerned with accessing information of all kinds, regardless of whether someone is authorized to access that information or not. This is what piracy is best at and, contrary to popular belief, it is not always a bad thing.

Take the restricted access to academic journal articles, for instance. Many academic journals require all readers to pay not an insignificant sum to access research articles that could contain insight that is valuable to the human race as a whole. Because of the high cost of entry, certain groups are automatically excluded from reading and building upon the research that has already been done. John Barlow puts the situation eloquently in *Selling Wine Without Bottles: The Economy of the Mind on the Global Net* when he says, "I am not comfortable with a model which will restrict inquiry to the wealthy." [1] In the case of academic journal articles, why shouldn't anyone be able to better themselves by consuming quality research articles? All humans should be allowed to continue to learn more about God's creation without being bound by their financial status. Just as how someone can go to the library and checkout any book that tickles their fancy, they should be freely able to learn from the ongoing research of our world. Of course one should recognize that not all information is safe or helpful to be freely available on the internet, but that is a topic for a later section.

A more concrete instance of where paywalls can be directly harmful to the human race is with regards to medical research. Till et al. stresses how important access to medical research is in their article *Who is pirating medical literature? A bibliometric review of 28 million Sci-Hub downloads*.

Access to the medical literature is essential for both the practice of evidence-based medicine and meaningful contribution to medical sciences. Nonetheless, only 12% of newly published papers are freely accessible online, and, as of 2014,

only 3 million of the 26.3 million articles indexed on PubMed were available on the site’s repository of free materials, PubMed Central. Access to paywall-protected literature remains primarily through institutional subscriptions. Such subscriptions are costly and many struggle to afford access. The result is a disparity in access to the medical literature, particularly for those in low-income and middle-income countries (LMICs). [2]

According to Till et al. the high subscription cost to access medical journal articles means that those in less advantaged countries cannot afford access to the material, which is detrimental to the furthering of medical sciences. In light of this, it should come as no surprise that “Nearly 1 million articles published by medical journals are downloaded on Sci-Hub each month.” [2] Piracy enables the less fortunate countries to access valuable medical data that is essential to furthering medical research for the human race. In such a specific case as this, it should not be controversial to conclude that piracy is a good thing.

Medical journals are not the only source of information that can sit behind a paywall. Sometimes, as in the previous case, there is information that one might argue is unjustly kept away from the common man. What one considers to be unjust is subjective, but the idea is that piracy is a tool that consumers can employ to fight systems that they deem to be unjust. Without piracy, one might have to roll over and accept their limited access or resort to a more extreme and likely illegal approach. To put it another way, piracy acts as a check on businesses to discourage them from integrating unpopular, anti-consumer practices into their business model. When a consumer wants to purchase something and they cannot afford it, they might start to look for alternative way of obtaining it. But, when they can afford it and they think it is fairly priced, they will purchase it. Thus, piracy is often where tech-savvy persons turn to when they need something that they feel is exorbitantly priced, but is not often utilized when they feel the purchase is worthwhile. This way, piracy acts as a safeguard for consumers when they feel they are being taken advantage of by predatory business practices.

2.2 Governance

Given that piracy is an illegal usage of another person’s conception, it has much to say in the way of governance and intellectual property laws. The tools of piracy provide the means of subverting an oppressive regime and call into question the legitimacy of intellectual property laws.

Having a very firm grip on what citizens can see on the internet is one of the key characteristics of a despotic government. Such governments know that if they can control the flow of information on the Internet, it becomes much easier to keep the populace under control. The government’s imposing of restrictions on the Internet is clearly seen when “Tunisia significantly ramped up its already aggressive blocking of specific websites in response to unrest that would ultimately unseat its government.” [3] Even more extreme is when governments shutdown the internet entirely to quickly cease the spread of information. This is exactly what happened on January 28, 2011 in Egypt: “Almost simultaneously, about 3,500 individual Border Gateway Protocol routes [...] were withdrawn on orders from the Egyptian government, cutting the country off from the rest of the world and bringing internal

communication to a halt.” [3] Fortunately, as already mentioned earlier, piracy excels at spreading information even when there are those that do not want it spread. BitTorrent is a peer-to-peer file sharing protocol that is often used when pirating content on the Internet. A peer-to-peer protocol, by its very nature, does not require a centralized server to store all the files that are to be shared. Instead, the source of the file is each person who has the file downloaded. What this means for those under the rule of an oppressive government is that they can spread information to others in such a way that the government cannot easily block its source. Pieces of the information are sent to the one downloading the file from everyone who had the file. There is no single source of the information that the government can block to stop the spread. By a similar token, there are peer-to-peer instant messaging applications that do not require an internet connection to function; you need only be in the vicinity of other people that the message can hop through to get to the destination. Both of these tools, in the context of piracy, facilitate the illegal spread of information, but in the context of a despotic government, can be employed to subvert their attempts at quelling the dispersal of information that could be harmful to their rule.

Regarding piracy and intellectual property laws, it is clear that the two are at odds with one another. That being said, it is worth examining whether IP laws accomplish what they seek to do: encourage innovation. Mark Lemley presents an argument against IP laws when he writes,

[IP] intervenes in the market to interfere with the freedom of others to do what they want in hopes of achieving the end of encouraging creativity. If we take that purpose out of the equation, we are left with a belief system that says the government should restrict your speech and freedom of action in favor of mine, not because doing so will improve the world, but simply because I spoke first. [4, p. 1339]

To put it differently, intellectual property laws are based on the assumption that in restricting who is allowed to have certain information, they are encouraging creativity when, in reality, creativity does not always come first. IP laws are supposed to make people want to work hard to get a good idea that they can have exclusive ownership of, but having exclusive rights to an idea stifles further innovation. Under this system, only the owner has the right to make changes. In fact, it seems that there would be more creativity without IP laws. If everything was open to scrutiny and replication, there is bound to be some improvement eventually because of all the people that could have a hand in making it better. If a big streaming platform were to forfeit one of their IPs to the public, there is no telling what kind of content could be created. In this way, piracy could allow for the incremental improvement and scrutiny of conceptions, thus making them better.

2.3 Privacy

As a side note, there are instances where pirated software can be more privacy-oriented than the paid version. Sometimes the pirated version is “cracked” to remove certain digital rights management (DRM) tools that often run background tasks unbeknownst to the user. These background tasks often leak bits of information about the user in order to validate that they are legitimate owners of the software. By collecting information about users, a

business invades the privacy of its user base. However, pirated and cracked software does not have such DRM because it needed to be removed to allow it to be freely distributed. Thus, when it comes to software that contains aggressive DRM, piracy offers better security by default. Unfortunately, some pirated software introduces malicious code, a subject that will be explored in the next section.

3 Arguments Against Piracy

While piracy enables free access to information and content, it is crucial to faithfully and charitably explore the potential dangers and economic implications associated with this practice. The arguments against piracy are not easy, nor should be, easy to dismiss. This paper will focus mainly on the ethical and economical concerns that the use of piracy introduces into society.

3.1 Access to Dangerous/Illegal Content

Piracy has been associated with unrestricted access to information and content. As previously discussed, this aspect of piracy provides the means for those in need to access information that would otherwise be unavailable to them; similarly, piracy can thus provide avenues to bypass governmental restrictions on public information. This same benefit, however, becomes a strong argument against piracy when what is distributed is dangerous or illegal content.

3.1.1 Criminality of the Seeder and Leecher

This paper has focused on a more wholistic definition that encompasses the tools, techniques, motivations, and content, but the motivations and content that are involved in piracy should not be ignored. Piracy does involve a form of theft and dissemination of an individual's or organization's intellectual property. Piracy, thus can and most often does violate laws in most jurisdictions. Piracy, when it uses torrenting, involves both the seeder and the leecher (or the uploader and downloader, if not using torrenting). Depending on the legislation of the country in question, the leecher may or may not be found guilty of a crime, but this is complicated by the global context of digital piracy.

In the United States, the downloader/streamer/leecher are generally considered offenders that could be subject of fines or even criminal charges. The severity of the penalties of piracy in these cases pose a major argument against the use of piracy, at least in the United States or nations where the individual downloading can be found guilty of a crime. "Fair use" and statutes of limitations may alleviate penalties, but repeat offences may also lose one's favor in these cases. [5]

3.1.2 Malware

Piracy may openly distribute dangerous illegal content, but arguably the larger threat is the dangerous content that remains undisclosed. Piracy circumvents mainline distribution channels that may incorporate secure policies of data integrity, authenticity, and privacy.

Some piracy tools provide some ways to vet the authenticity of an uploader based on past uploads or based on the user's relationship with the piracy/torrenting site¹, but not all sites provide these metrics or warnings for the average end-user. Instead, the burden is often on the end-user, and it is not unfair to assume that the average person would not be able to analyze downloaded software for malware.

3.1.3 Illegal content

Piracy, as discussed above, provides a way to distribute illegal content. This content is not always beneficial to society; research articles, art, movies, &c. are not the only sorts of content that a pirate may distribute. Piracy opens the door for questionable and illegal content that may be harmful to society or national security.

3.2 Economic

Piracy, as a theft, also causes real harm to businesses. The act of piracy does involve stealing and distributing content from creators and organizations that invested time, money, and effort into the content. In this sense, piracy is stealing from the individuals' revenue and the government's tax revenue. [6]

"According to Gould and Gruben (1996), IPRs protection stimulates economic growth if it is accompanied by a policy of trade liberalization. By encouraging initiatives to innovate, IPRs protection may influence the economic growth of an open country. Park and Ginarte (1997) found that IPRs protection affects economic growth indirectly by stimulating the accumulation of factors of production such as physical capital and R&D capital." [7] Piracy, therefore, discourages innovation in the capitalist marketplace.

4 Christian Response

A Christian response to piracy should honestly take into account both sides of the debate. As shown above, piracy does have some merit to it. Christians have to admit that piracy-promoting tools do enable

1. Drawing distinctions: Paywall to information is different from withholding information for sake of security
2. Paywalls provide the means of living for artists, writers, &c. Providing ways to circumvent these when unnecessary may hinder their livelihoods.
3. Betterment of mankind as a whole, should not be behind a paywall
4. Piracy provides an avenue for missionary outreach; piracy provides means of secret dissemination within an oppressive regime.
5. Piracy provides the means for access to content/information without much accountability

¹ThePirateBay, for example provides icons to display whether a user is *Trusted*, *VIP*, or *Moderator*

5 Conclusion

5.1 Final Thoughts / Responses

1. In response to economic argument: Would the pirate have bought the product/service in the first place?

Of additional concern is the fact that by making [Intellectual Property] theft a national security threat without being clear about what actually constitutes intellectual property, not only does the U.S. government create a new reason for a militarized Internet, but it also sets the stage for companies to assert that a range of other activities from file sharing to producing counterfeit DVDs threaten national security and require further state intervention. [8, p. 264]

5.2 Applications

5.3 Further Work

References

- [1] J. P. Barlow. “Selling wine without bottles, The economy of mind on the global net.” (), [Online]. Available: <https://www.eff.org/pages/selling-wine-without-bottles-economy-mind-global-net>.
- [2] B. M. Till, N. Rudolfson, S. Saluja, *et al.*, “Who is pirating medical literature? a bibliometric review of 28 million sci-hub downloads,” *eng, The Lancet global health*, vol. 7, no. 1, e30–e31, 2019, ISSN: 2214-109X.
- [3] “Shutdowns,” *The Current*, 4. [Online]. Available: <https://current.withgoogle.com/the-current/shutdown/>.
- [4] M. A. Lemley, “Faith-based intellectual property,” *UCLA Law Review*, vol. 62, pp. 1328–1346, 5 Jun. 2015.
- [5] H. al Mhana. “Is piracy a felony? punishments and fines for illegal downloading,” Felonies.org. (Jan. 2020), [Online]. Available: <https://felonies.org/is-piracy-a-felony-punishments-and-fines-for-illegal-downloading/>.
- [6] *Pirating the American dream intellectual property theft’s impact on America’s place in the global economy and strategies for improving enforcement : hearing before the Subcommittee on Security and International Trade and Finance of the Committee on Banking, Housing, and Urban Affairs, United States Senate, One Hundred Ninth Congress, second session [i.e. One Hundred Tenth Congress, first session] ... Thursday, April 12, 2007.* (S. hrg. ; 110-912), *eng*. Washington: U.S. G.P.O., 2009.
- [7] F. Mrad, “The effects of intellectual property rights protection in the technology transfer context on economic growth: The case of developing countries,” *Journal of Innovation Economics & Management*, vol. 23, pp. 33–57, 2 2017. DOI: 10.3917/jie.023.0033. [Online]. Available: <https://www.cairn.info/revue-journal-of-innovation-economics-2017-2-page-33.htm>.
- [8] D. Halbert, “Intellectual property theft and national security: Agendas and assumptions,” *The Information Society*, vol. 32, no. 4, pp. 256–268, 4 May 2016. DOI: 10.1080/01972243.2016.1177762.
- [9] R. Stallman. “The right to read.” (), [Online]. Available: <https://www.gnu.org/philosophy/right-to-read.html>.
- [10] G. J. Michael, “Catholic thought and intellectual property, Learning from the ethics of obligation,” *Journal of Law and Religion*, vol. 25, no. 2, pp. 415–451, 2009, ISSN: 07480814. [Online]. Available: <http://www.jstor.org/stable/20789489> (visited on 01/30/2024).
- [11] R. Darnton, *Pirating and publishing : the book trade in the age of Enlightenment*, *eng*. New York, NY: Oxford University Press, 2021 - 2021, ISBN: 9780195144529.
- [12] R. Bernstein, “Elsewhere in science: Pirating papers, handling harassment, and more,” *eng, Science (American Association for the Advancement of Science)*, 2016, ISSN: 0036-8075.

- [13] I. Phau, M. Teah, and M. Lwin, "Pirating pirates of the caribbean: The curse of cyberspace," eng, *Journal of marketing management*, vol. 30, no. 3-4, pp. 312-333, 2014, ISSN: 0267-257X.
- [14] I. Dombrovsky, "Pirating modernism: Without copyrights by robert spoo," eng, *Journal of Modern Literature*, vol. 39, no. 2, pp. 171-179, 2016, ISSN: 0022-281X.
- [15] C. Zeller, "From the gene to the globe: Extracting rents based on intellectual property monopolies," eng, *Review of international political economy : RIPE*, vol. 15, no. 1, pp. 86-115, 2008, ISSN: 0969-2290.
- [16] E. Colombatto, *The Elgar companion to the economics of property rights*, eng. Cheltenham, UK ; E. Elgar, 2004, ISBN: 1840649941.
- [17] R. F. Cochran and Z. R. Calo, *Agape, justice, and law : how might Christian love shape law?* (Law and Christianity), eng. Cambridge, United Kingdom ; Cambridge University Press, 2017 - 2017, ISBN: 9781107175280.
- [18] C. Kiedaisch, "Growth and welfare effects of intellectual property rights when consumers differ in income," eng, *Economic theory*, vol. 72, no. 4, pp. 1121-1170, 2021, ISSN: 0938-2259.
- [19] J. Bohannon, "Who's downloading pirated papers? everyone," *Science*, vol. 352, no. 6285, pp. 508-512, 2016. DOI: 10.1126/science.352.6285.508. eprint: <https://www.science.org/doi/pdf/10.1126/science.352.6285.508>. [Online]. Available: <https://www.science.org/doi/abs/10.1126/science.352.6285.508>.