

Monkey See, Monkey Steal:

Digital Piracy's Threat to a Universal Human Right

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Copying Is Natural But Not Always Ethical

Since the first human cells split, mankind has been making copies. It is in our DNA. When we see a good idea, we like to repeat it. We developed sayings to describe this copycat nature: “Monkey see, monkey do,” and, “Let’s not reinvent the wheel.” We also invented an array of tools and technologies to help us make duplicates: carbon paper, copy machines, DVD duplicators, torrents, screen recorders. We even have the technology to 3D-print functional human organs. We cannot help but copy things; nevertheless, this tendency to duplicate someone else’s ideas can cause issues and even violate laws. Online, this illegal copying of intellectual property (IP) is known as “digital piracy,” and it is wreaking irreparable damage.

As digital piracy pervades the net, entire industries are losing critical revenue, and the ethical definition of theft is slipping. The music industry, publishing industry, and movie industry all report drastically shrinking profits, and they cite digital piracy as a major culprit responsible for the decline. At the core of piracy is a dangerous cultural shift. More and more, the average person views digital piracy as ethically different than theft. Altogether, this decline of ethics and culturally significant industries raises an important question: how do we stop digital piracy?

In general, lawmakers have attempted to use legislation and technology to prevent the illegal duplication of intellectual property and to protect the economic incentives of creators. But current laws do not stop digital piracy, and recent bills proposing technological preventions have sparked controversy and have ultimately failed. Very little consensus has formed around any one method of stopping piracy, and some argue we should not stop it at all; they believe it

helps rather than hinders affected industries. To educators, these pro-piracy arguments and ethical slippage should be troubling.

While the best way to combat online piracy is debatable, educators can play a very strategic role. In education, teachers already discourage and penalize the appropriation of someone else's intellectual property. Educators have a special term for this type of piracy, especially concerning written work: presenting someone else's ideas and words as your own is *plagiarism*, and teachers go to great lengths to ensure students produce original work and properly cite their sources. The fight against plagiarism is important in upholding academic integrity, and teachers should take this same stance with all forms of digital burglary. To gain ground in the war on piracy, we must attack it at its core. Educators should advocate the legal and ethical use of digital information to combat the belief that piracy is ethically more acceptable than theft.

The Importance of Copyright and Fruit

The right to reap the fruit of one's own labor is integral, not only to US law, but humanity itself. As the Universal Declaration of Human Rights (1948) states, "Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity . . ." (p. 6). Copyright is a law meant to protect this economic right of creators, and is a core legal principle of our nation. In fact, according to the Copyright Office (n.d.), less than fifteen years after America declared independence from the British Empire, Congress enacted the nation's first federal copyright law in 1790 to protect the economic incentives of creators (Brief History section, para. 1). Copyright, in a general sense, has been

part of our national DNA from the start, and it endeavors to protect remuneration as a universal human right.

In order to protect the right of remuneration, copyright law controls who can copy, and make derivatives of, a piece of intellectual property. The law also stipulates how much can be copied, the amount of copies that can be made, the context in which the IP can be copied, how the copy can be stored, and how long the copy can be used. The Copyright Office (n.d.) says violators of this law can be fined up to \$150,000 for each work they infringe. Historically, these constraints have created a false scarcity by limiting the number of IP copies. If only the copyright holders can make endless duplicates and derivatives, in whatever context they like, then theoretically only the copyright holders' copies will be available to the public, usually at a price. And, theoretically, the public is willing to pay that price because these are the only copies available. In short, copyright law tries to protect the economic incentives of the copyright holder by creating artificial scarcity and exacting steep penalties on infringements; however, copyright is not solely about protecting the human right to remuneration. Congress has instilled yet another core belief in the law: public value.

From its beginning, copyright has contained clauses that help create a cultural commons. Renowned author and speaker Clay Shirky describes the law's role in creating this commons to benefit the public:

The first thing . . . is to abandon copyright maximalism, the doctrine that says the only rationale for copyright (or intellectual property, generally) is to give businesses the right to rent-extraction over the population. Copyright law . . . has always had significant provisions for the value to the public for creative work, and ideas like limited duration,

required library deposit, and the public domain were part of the bargain from the beginning. (Frog Design, 2012)

Clay Shirky writes, consults, and teaches on how the internet affects society. He also is a Fellow at the Berkman Center for Internet and Society. As Shirky explains, copyright is good, not just for the creator, but for the general public. For example, the term of copyright only lasts so long before the work becomes available to the public domain. Once a work is in the public domain, anyone is free to make copies and derivatives of the intellectual property without permission and without paying. Through such clauses, Congress has given the public the gift of free ideas, cultural expressions, and information. Unfortunately, in today's digital world, copyright law falls short of protecting intellectual property and, more importantly, ethical behavior.

Eyepatches Threaten IP and Ethics

Despite the existence of copyright law, intellectual property and ethics are in grave danger. The major threats are the current structure of the internet, the devaluation of cultural expressions, and the culture of piracy itself. Together, these culprits tend to create a porous, slippery environment with ill-defined boundaries, degraded values, and gray ethical fogs. And it is in this same environment where the majority of today's creators decide to distribute their intellectual property. On the internet you can reach billions of people. This is true for creators, and equally true for pirates.

Structurally, the internet has facilitated illegally copying and distributing someone else's copyrighted IP without getting caught and penalized. Not only is there a wealth of content to steal, but the tools to steal it with abound. For example, to remain relatively anonymous online, users can set up a no-log virtual private network (VPN). No-log VPNs do not log any

information about users or the information transmitted during a session. This increases privacy and security for users, but also provides good cover for criminals. Pirates often use no-log VPNs to protect themselves from copyright infringement lawsuits. This type of anonymity is often at the structural heart of the internet, which Jaron Lanier--computer scientist and celebrated technology writer--cites as a major flaw. In his book *You are not a gadget*, Lanier (2010) suggests that the anonymous nature of the web leads to bad behavior: “[I]t isn’t exactly anonymity, but *transient* anonymity, coupled with a lack of consequences, that brings out online idiocy” (p. 62). While Lanier is describing the cause of trolling, where people anonymously insult and harass each other online, his statement could explain one reason why people feel it is okay to commit digital piracy. The very structure of the internet itself, with its baked-in anonymity, could lead to an environment that nullifies a major deterrent to breaking copyright laws: punishment. If people do not fear getting caught, they may start to believe piracy is not so wrong after all--especially if everyone is doing it.

With the dwindling fear of punishment, pirates have copied IP to the point of removing artificial scarcities that media firms have imposed, leading to the devaluation of cultural expression and the propagation of piracy. Lanier (2010) contends that artificial scarcity is critical to the workings of the entire economy. For example, we can print as much money as we want, but this abundance lowers the value of the dollar. Money needs to be scarce, even artificially scarce, in order to be valuable (p. 102). In the same way, Lanier says digital cultural content relies on scarcity to hold its value: “If I know my neighbor is getting music, or cable TV, or whatever, for free, it becomes a little harder to get me to pay for the same things” (p. 105).

This devaluation of cultural content is a grave threat to copyright holders' ability to earn remuneration for their intellectual property, yet piracy culture refuses to view this as a problem.

As the biggest enemy of the human right to remuneration, piracy culture is corroding the ethics surrounding digital piracy. Pirates believe that stealing digital material is ethically different than theft. In fact, as Lanier (2010) points out, they view it as a form of activism, of civil disobedience, similar to the acts of Gandhi and Martin Luther King. These digital thieves believe they are acting out against a corrupt system that takes advantage of both consumers and artists (p. 88). According to the study "Why is online piracy ethically different from theft?" conducted by Wojciech Hardy, Michal Krawczyk, and Joanna Tyrowicz (2013) from the University of Warsaw, internet users do not believe piracy is the same as traditional theft. One of the biggest reasons is the lack of "physicality" in digital theft. Pirates do not deprive the owner of any physical object. When they steal a digital file, they do not take the original, but simply copy it, so the owner can still sell copies of the original. Pirates also think creators do not suffer a loss due to piracy. Often, the pirates' rationalization is that they would not have purchased the product anyway, so their act of stealing does not translate into a lost sale. And if the product is cheap, pirates believe producing it must have cost very little, so the creator's losses are minimal (p. 10). These attitudes make it seem okay to steal, that it is not really theft at all, but in reality piracy is undermining creative industries.

Effect of Piracy on Content Creators

As piracy becomes more and more acceptable according to social norms, the effect on content creators worsens. Revenues fall as sources of pirated materials rise. To combat the effect of piracy, content providers attempt to offer products at either rock-bottom prices or for

free, and they struggle to find alternative ways to earn money from their intellectual property. The current environment makes it very difficult for the creative class to survive, and it violates their right to remuneration for hard work.

Probably the industry hit the hardest by the ravages of piracy is the music industry. In his book *Culture crash: the killing of the creative class*, author Scott Timberg (2015) describes the initial impact of piracy on the record business: essentially revenues dropped from \$14.6 billion in 1999 (the year Napster was released) to \$5.35 billion in 2012 (p. 89). In little over a decade, the music industry lost nearly two thirds of its value. As Timberg explains, musicians now struggle to make a decent living: “A 2012 study of US-based musicians and composers by the Future of Music Coalition, which involved a survey, interviews, and financial audits, found median earnings from music to be \$34,455 gross, before expenses” (p. 91). The huge decline in record business profits directly correlates with the mass digitization and sharing of digital music files through internet tools such as peer-to-peer networks like Napster. Consumers simply were stealing more music than they were buying, and this spike in piracy has hobbled the music industry ever since--or has it?

Contrary to Timberg's cited studies, some reports state that the record business is exaggerating its losses. For example, a study from The London School of Economics and Political Science (2013) claims a general increase in revenues for the music industry. As seen in Figure 1, the study states that the fall of recorded music revenue is attributed primarily to decreasing CD and vinyl sales. The study contends that other streams of revenue, like concerts, are making up the difference.

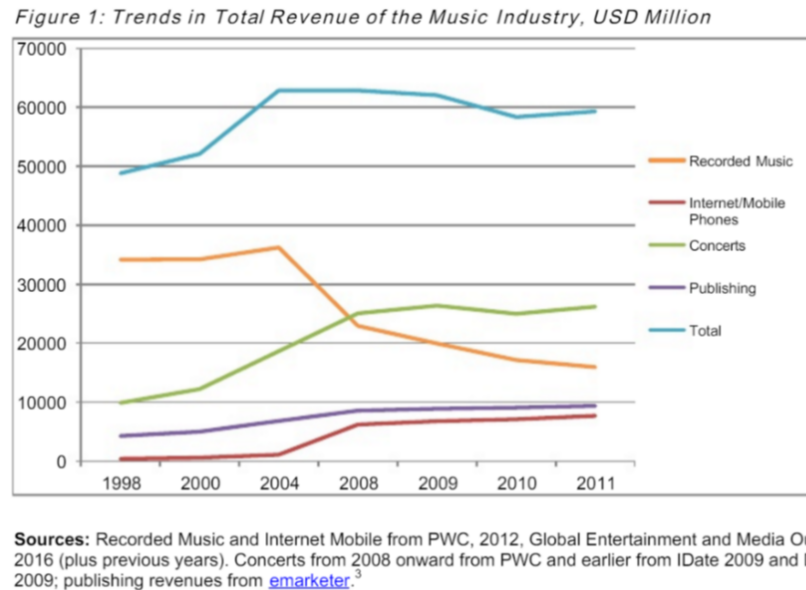


Figure 1. A graph showing a general increase in revenue for the global music industry.

The London School of Economics and Political Science (2013)

Judging by this study, piracy has not hobbled the music industry. What the artists do lose in revenue, some argue they gain in exposure. If someone pirates a band's music and likes it, the pirate is more likely to attend a concert or stream the next album legitimately; nevertheless, this study from The London School of Economics and Political Science fails to take into consideration the full reality of the situation in which musical artists find themselves.

Realistically, concerts may not entirely replace revenue lost from record sales because of related expenses. Author Robert Levine (2011), in his book *Facing the music*, lays out an actual tour budget of a developing rock act. After nineteen days and sixteen shows spread out across the Midwest and East Coast, the band could earn \$24,000--before expenses. After expenses, individual members might take home \$1,700 before taxes. And since they cannot play the same

cities more than a few times a year, touring does not seem like a viable way to compensate for lost record sales (pp. 51-52). Certainly, it is not a great way to make a living.

Although pirate culture views digital piracy as ethically different than theft, these studies make it clear that piracy is killing the creative class. Digital theft is not a victimless crime simply because it has no physicality. It has a very direct and deleterious effect, not just on the “corrupt system” of the media empire, but on artists themselves. Digital piracy is a problem that needs to be addressed.

404 Error: Law Not Found

To update copyright law and combat digital piracy, lawmakers have attempted several acts that have either created more issues, or that have ultimately failed. The Digital Millennium Copyright Act is an example of a current law that unintentionally abets online piracy. As Levine (2011) explains, “[T]echnology companies managed to manipulate it [the DMCA] into a compromise that undermined the market for media online from the very beginning.... [I]t enabled a culture in which online companies like YouTube can benefit from uploaded [and pirated] music or video, as long as they remove it when asked” (p. 10). Essentially the DMCA creates a safe haven for pirates because ultimately it does not hold Web 2.0 sites liable for user-uploaded pirated content. This is a major danger of policing piracy--unintended consequences.

Proposed laws meant to end piracy might have unleashed even worse consequences, which lead to their eventual failure. The most recent anti-piracy laws were the Stop Online Piracy Act and the PROTECT IP Act (SOPA and PIPA). SOPA sought to undo the protections of the DMCA, so that private companies could sue Internet service providers for hosting pirated

content, whereas PIPA would have blacklisted pirate sites by removing them from the domain name system. Basically, if a user tried to visit a blacklisted site by typing in the URL, they would receive a “404 Page Not Found” error. At face value, SOPA and PIPA seem like great ways to stop digital piracy, but they sparked huge controversy. Both bills contained vague language defining which sites and companies could be sued, and the proposed laws gave too much authority to private companies. In his article “Sopa and Pipa would create a consumption-only internet,” Clay Shirky (2012) argues that the bills would effectively end the internet as we know it: “Sopa and Pipa are, quite simply, an attempt to create a privatised form of international censorship, and . . . would render the internet a place where the only content to be seen or heard or read is produced by professionals, with the rest of use relegated to the role of pure consumption.” Like the DMCA, SOPA and PIPA could have caused more issues than they solved.

If written correctly, laws could help curb piracy. For example, if PIPA didn’t overreach, if it only punished *proven* pirates and didn’t preclude due process, it might help reduce the amount of piracy. Even then, though, people will break laws, especially if they don’t understand their value, or the value of the content they are stealing. Acts aren’t enough. Our confrontation of the digital piracy culture needs to be multi-pronged, with the sharpest prong aimed right at pirates’ justification for stealing.

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To confront digital piracy, we need to rely less on laws and focus on other options. We need an update. Laws certainly can help, but they tend to be reactionary: instead of preventing piracy, they work to punish only after the act is done. The approach to digital piracy needs to be,

not just reactionary, but preventative and adaptive. Content creators and providers should focus on revamping business models and rethinking their technological methods of storing and delivering content, and, most importantly, educators should work on instilling ethical thoughts and behaviors in online culture.

While businesses tend to stick with models that make them the most money, they need to practice more foresight and adapt to changes to avoid huge losses. As Cammaerts, Mansell, and Meng (2013) indicate, if the music industry adapted more quickly to the digital environment, perhaps they would not have suffered such huge losses. To adapt, Shirky (2012) suggests that creators make money, not on their IP, but on services related to their IP: “I’ve probably written a million words about the internet since 1993, and I’ve been paid for almost none of them (including these), but I still find ways to get paid for knowing about the net, and the writing is essential for all of them--teaching, writing and consulting.” This is a great idea, but as Levine (2011) has illustrated, IP owners like musicians do not necessarily make much money from related services, like concerts (pp. 51-52). Nevertheless, Lanier (2010) might have a solution for musicians: telegigging. Basically, musicians can perform at a distance while their audience watches from anywhere in the world (p. 108). Suggestions like Lanier’s are progressive and can remove a lot of costs associated with (and expand well beyond the reach of) touring. Telegigging might enable musicians to exercise their right to reap proper remuneration from their labor. Changing business models can be an effective way of adapting to the current environment and culture; however, innovative business models do not necessarily address the underlying ethical issues of digital piracy.

To attack the tenets of pirate culture directly, educators can play a key role. To truly teach someone the value of a law and the harm in breaking it, teachers can start by influencing student attitudes and by modeling different behaviors. Educators should teach their students on the laws where applicable, and the importance of those laws. For instance, they can use plagiarism as an example to activate student schema. Most students, once they understand what plagiarism is, understand why it is bad. They would probably be upset if someone copied their work, especially without permission. Teachers could pose a hypothetical situation, like the following: Imagine someone pirated and sold your thesis to plagiarizers, profiting from your work and promoting lazy, unoriginal thought and amorality. How would you feel? Teachers can also show students where to acquire (and how to cite) legal material for their schoolwork, like Pixabay, Wiki Commons, and the Free Music Archive. In their own lessons, instructors should model proper usage by citing where they acquired images, videos, and other material. This would help instill in students the ethical use of digital information.

Conclusion

Since the dawn of mankind, we have been making copies. We find immeasurable value in the ability to share and remix ideas and creations, but at times this can be at odds with our human right to earn money from our labor and the right to protect our intellectual property. Current copyright law attempts to create a balance between public value and private interests, but technology has undermined the law's ability to create the artificial scarcity that is essential in protecting copyright holders' economic right to remuneration. Piracy culture has also diluted the ethical concerns surrounding illegal copying of intellectual property, so that, societally, digital

piracy is considered ethically different from, and more acceptable than, theft. This is a huge problem that requires a multipronged approach to solve.

In order to protect ethics and the human right to remuneration, copyright holders need to rethink how they earn money from their creations, and educators need to teach students the value in following copyright laws and properly citing their sources of material and information. If we don't solve this issue, ethics will continue to dissolve, and creators will lose their ability to make money from their intellectual property; the creative classes will disappear, and so will our human rights to the point where, in the future, someone could make a perfect copy of your DNA and clone you without permission and without fairly compensating you. Digital piracy culture pushes us down a slippery slope that could potentially end with us losing rights we didn't even know we should have. Educators have a moral imperative to stop this from happening.

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