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The Moral Implications of Software Piracy

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Abstract

Computer software is integrated into almost every aspect of our professional and personal lives. Much of this software requires payment for use and is legally protected by the copyright system. This paper examines and analyzes the arguments pertaining to the moral use of protected software (digital piracy). The three arguments presented are the “victimless crime” argument, the “noble justification” argument, and the “willing but unable argument.” These three arguments claim that piracy is morally justified in certain cases, and claim that software providers are not harmed in such situations. The three arguments are tested against counter-arguments, and it is discovered that each debate comes to a stalemate at a single question: is an action immoral because it is illegal? The paper also examines this question in relation to act-Utilitarian and rule-utilitarian ideology. The key research of Gary Santillanes and Ryan Marshall Felder is used to come to the conclusion that piracy is morally acceptable only in situations where there is sufficient need and no alternative. Rule-Utilitarian thought is found as insufficient to handle situations where such piracy is vindicated. The victimless crime argument is dismissed as failing to meet the two conditions, but the noble justification and willing but unable arguments are found as morally justified in certain situations.

The Moral Implications of Software Piracy

In recent decades, software has facilitated research and business operations in virtually every modern institution. Large corporations such as Microsoft and Adobe cater to schools and businesses of every size. Most of this software requires purchased licenses from companies, and legal measures ensure that the software providers are compensated for their work. Gary Santillanes and Ryan Marshall Felder (2015) examine the moral implications of using the software without compensating the owner, and argue that such piracy can be morally justified in certain circumstances.

The digital world is so unlike the one we are born into that we are forced to analogize parts of it to understand it. While this allows us to easily conceptualize operations such as transferring and storing information, other concepts such as ownership, property, and rights become gray areas in both legality and morality. Is copying a file really stealing if the original owner never loses the original? If someone buys music online, can they make as many copies as they want? If someone buys a license to a software, can they let their friend use it? These issues would be either morally clear or impossible in the physical world, but the analogies we create through years of experience with information technology give people a variety of different moral standings and opinions. Where one person sees blatant thievery, another sees a sharing community. Where one person sees a justified use of authority, another sees a miscarriage of rights. In many cases, the use of analogies is actually detrimental to the ethical concept of the act. Because digital rights laws were created using these analogies, they are often unclear or insufficient to handle situations. Even where the laws are sufficient, the moral implications of an illegal act may not be enough to deter those who can so easily perform the illegal acts. Over the

years, the people labeled as “pirates” have developed a number of justifications for using software without the express permission of its creator. These range from petty spite and unwillingness to support a particular company to a genuinely altruistic desire to promote knowledge and learning in an economically limited situation. The latter is the focus of Santillanes and Felder’s research (2015).

The field of academics is no stranger to treating digital rights as more of a guideline than a law. While research on the subject is uncommon, studies show that piracy is as common in research institutions as it is among the general public. In one study, the majority (69%) of academics admitted to have knowingly used pirated software (Santillanes & Felder, 2015, p. 969). In another, about a quarter of individuals expressed the belief that it was acceptable to copy software for academic purposes. From this evidence it is easy to see an obvious disconnect with the analogy of piracy as synonymous with thievery. The failure of anti-piracy ads that use analogies to stealing a car are to be expected, when you consider that most pirates do not see piracy as comparable to stealing. The illegality of Piracy makes for very few pro-piracy arguments outside of internet forums. Reddit user faceyourfaces shares a mentality held by many pirates: “Most people I have seen argue against this go off on tangents about how piracy is immoral and hurts the content creator. Is piracy immoral? It certainly can be. Does piracy hurt the content creator? It definitely can. Does that make it theft? No” (Reddit, 2014).

Arguments for Piracy

Stealing a physical object can be a moral dilemma for many people because it deprives an owner of their rightful property, and damages the person. It is fairly easy for pirates to justify the decision with the following argument: Because the owner never lost their property, and because I was never going to purchase the software to begin with, I am causing no harm to the owner.

Essentially, the owner is not affected at all whether the software is pirated or not, because the decision not to pirate would not lead to a purchase of the software. The decision to not purchase the software can stem from many reasons: an unwillingness to support a creator, no funds to do so, or an unwillingness to adopt the platform the content exists on. This victimless crime argument is another result of the range of worldviews that exist among users of information technology. The moral restraints created by the analogy to thievery are removed, and the ease at which the act is performed account in part for the high percentages of reported pirates.

A second argument that is the main focus of Santillanes and Felder regards software in relation to economics. Copyright law is credited with driving the progression of science and invention by rewarding individuals with accepted contributions to society. If individuals' work could be directly used by others with no compensation, there would be much less motivation to work in creative fields. The rewards that individuals receive are control over the usage of their work. In software, individuals or more likely corporations can charge customers for the use of their digital property. Santillanes and Felder (2015, p. 968) present a situation in which copyright law can act as a hindrance to the progression of science. A graduate who has recently received his doctorate in the field of biology wishes to complete his research that can benefit society. Difficulties in living in a capitalist environment force him to take low-paying jobs. His research can be performed alone, but requires the assistance of proprietary software that he is unable to afford. This is a clear example where copyright law prevents the advancement of knowledge by legal means. This noble justification argument is rarer than the victimless crime argument, but is much more attractive in such situations. Even software providers themselves may find it acceptable that such important work was performed on a pirated version of their product. Logic implies that the good the research will bring outweighs the relatively minor issue of using illegal software.

While individuals would pay if they could, they are forced to use pirated software to complete their goals. Santillanes and Felder argue that these individuals are morally justified in pirating the software. While they are careful not to accuse the copyright system of being ineffective at promoting invention, they argue that in the copyright system limits the free exchange of ideas in certain situations (Santillanes & Felder, 2015, p. 974).

A third argument exists that has different roots than the first two. Many people simply cannot access software through legal means. For example: Company A offers a video-editing application that uses a proprietary file type that can only be legally created in that particular software. A recent college graduate named Jonah works from home for a private international news organization. The organization recently made the decision to switch to the proprietary file type, but the software from Company A is not licensed in Jonah's country. The price is very reasonable, but Jonah has no legal way to pay for the software. Jonah instead finds a cracked version online for people who suffer the same predicament. Because Company A does not seem to want his business, it doesn't seem wrong for Jonah to pirate the software. This "Willing but Unable" argument has many forms and is much more popular in media than software. People overseas often assert that they would gladly pay to watch American dramas at the same time as American audiences, but they would have to wait eight months for the shows to reach their home country. Other variations of this argument address unsatisfactory delivery methods. For example: Some software providers attempt to combat piracy by requiring users be constantly connected to the internet. This type of DRM does not satisfy those with spotty or limited internet access, and those users (who would gladly pay for the software otherwise) turn to piracy to fulfill their needs. A similar situation can be found in companies that go bankrupt or go are purchased and shut down. If the software is not available to be purchased anymore, is it wrong to pirate it?

Argument Analysis

These three arguments, the victimless crime, the noble justification, and the willing but unable are three very attractive arguments for pirates of software because they morally justify (or at least remove moral barriers to) piracy using logic. The victimless crime argument maintains that whether the individual pirates or not, the creator/owner is unaffected. Therefore, the pirate is not harming the owner through piracy, nor benefitting the owner through inaction. The noble justification argument treats the issue like a simple mathematical equation: The benefits the research will bring are greater than the detriment of piracy. The willing but unable argument has many forms of varying strength, but even some that denounce piracy admit that those who are not presented with a legal way to use the software may be justified in doing so. There are many more arguments relating to the freedom of information or political ideologies, but these three arguments more often than not correspond to the brand of morality and the appreciation for logic that exist in those that denounce piracy. This allows both sides to debate with a similar mindset, and suggests that each argument can be understood by the opposite side. This is essential to explore the arguments in the dialectic method.

The victimless crime argument raises the most opposition of the three. People against piracy accuse the logic as an attempt to justify an immoral action after the fact. The decision not to purchase the software legally should come with pre-assumed consequences, one of which is the inability to use the software. The pirate's avoidance of the consequences means that the pirate actually benefits from the decision. This benefit raises serious doubts about the reason for the stance, and people against piracy argue that if the benefit had any influence on the pirate's decision to pirate, then the pirate's decision is a result from selfishness. Using this line of thought, the driving reason the pirate made the decision not to buy the software was because they

could get it for free. This suggests that it would be possible that the pirate would purchase the software legally if there was no alternative. If this were true, then the decision to pirate would in fact be hurting the software provider because it is robbing them of business (even if it is the pirate's own). Of course, this cannot be proven and pirates are free to give any number of reasons why they made the choice not to buy the software. A very popular argument for piracy is that people pirate because they want to try the software out before they purchase it. If they like the software, then they will buy it to support the developer. Using this logic, a pirate can use the software as much as they want and payment is treated as optional. This argument has little affect on people against piracy. This difficulty in ascertaining the truth leads to a stalemate in arguments, but some find issues with the underlying assumption of the victimless crime argument. After the logic, the main assumption is that because nobody is being harmed by the piracy, it is morally acceptable to pirate. The filtered message is that it is morally acceptable to break laws if nobody is harmed by the action. The underlying assumption is that all laws are created to protect people from harm of any type. Arguments that disobeying the law is in itself an immoral act are shot down by pirates as legalism and irrelevant to morality. When applied to other laws, the moral content of the pirate's distilled message does not seem to change. Is it morally wrong to run a red light on a deserted street? Is it morally wrong for a large group of people to sing happy birthday (a licensed song) loudly, thus violating copyright law? The difficulty in arguing the morality of such actions usually results in a stalemate at legalism, with people against piracy holding that it is immoral because it is illegal, and pirates holding that such an argument is invalid. When discussing the idea that piracy is immoral because it is illegal, Reddit user Alterego9 believed "[t]his statement itself is of course a matter of ideological conviction and temperament, (and counterable with a belief in ideas such as civil disobedience),

and not followed by most people who would rather believe that laws themselves are derived from moral axioms, and this morality is superior to legality” (Reddit, 2013). This disconnect seems to be the dividing factor for this argument.

The noble justification argument further divides parties along the lines of legalism. In this sense, piracy may not be morally neutral, but may be morally justified. When presented with the choice to pirate or not to pirate, should people choose the action that will bring the most benefit to the largest number of people, or should they assume that the laws in place exist to do that for them? This is a prime example of the philosophies of the two major types of Utilitarians: rule-Utilitarians and act-Utilitarians (Johnson, 2009, p. 38). Rule-Utilitarians argue that rules exist to handle such ethical issues and that individuals do not have the moral authority to decide which laws may or may not be broken for the sake of the greater good. Act-Utilitarians argue that rules are insufficient to decide the proper action in every conceivable situation, and that the appropriate action should be determined by analyzing each situation. Santillanes and Felder (2015) assume the latter ideology in their analysis of piracy in the academic field.

...notice that a specific set of circumstances must obtain for this moral justification to exist. There must be no other alternative open to the researcher than to pirate the software, and the researcher must have actively pursued every possible alternative. We do not believe that the vast majority of software piracy in research meets these standards for moral justification, but we think it is reasonable to expect that some such cases exist. (p. 974)

Santillanes and Felder argue that the copyright system (while adequate in the majority of cases) may be morally ignored in select cases that cannot be determined by preexisting laws. It is easier to argue against the act-Utilitarian standpoint than it is to argue against the moral content of this

particular case of piracy. Opponents argue that even if there is moral justification for piracy, the individual(s) considering the act should not be vindicated in making the decision. Because every individual has a unique and personal set of moral values, there is no reliability in the outcome of the decision. Additionally, if such practice is accepted, anyone would be able to argue that any action corresponds with their moral code. Like victimless crime, arguments against the noble justification case usually result in an argument about whether it is or is not morally wrong because it is illegal. In this case however, proponents of academic piracy are able to argue for the moral value of the benefit such piracy will bring.

The willing but unable argument presents an entirely different set of ethical deliberations. Because the variety of arguments this category contains has different strengths, the argument example presented (absolutely no legal method of payment) will be analyzed as the strongest. The field of business is constantly evolving and expanding. What is unavailable today may be within reach tomorrow. A weakness of Jonah's reasoning is assuming that Company A does not want his business. Company A may wish to expand to Jonah's country at the first opportunity, but may be experiencing difficulties doing so. That being said, is Jonah justified in pirating the software if he pays for it once it becomes available? In this case more than in the victimless crime case, an act of piracy by Jonah will not harm Company A until it is available in his country. This may be seen as the strongest version of the victimless crime argument, but the motives are different. In Jonah's case, the decision not to purchase the software is replaced with an inability to do so. The logic still applies: whether he pirates or not does not affect Company A. For a third time, the only grounds for immorality can be found in the legality of the action. The question becomes: Is Jonah's need for the software greater than the moral issue of piracy when there is no legal method of purchase? The argument can be further simplified: Does the

exclusively moral (zero consequence) content of piracy have an effect on a situation, or does the act itself solely determine the morality?

Conclusions

In each case, the primary argument against piracy resulted from the legality of the action. While there are thousands of cases where arguments against piracy are simple and uncontested, these three cases best demonstrate examples where the act of piracy is moved away from harmful consequences. This allows the pure moral conduct of the act to be analyzed. When the recipient is not affected by the act (through pre-decision, lack of funds, or no access) the arguments against piracy skew towards the legality of the action: that it is immoral because it is illegal. While many would argue that such is the case with piracy, few would argue that all laws should be obeyed without question. In the United States of America, there are hundreds of documented cases of people violating laws because of a moral stance. The very foundation of America stems from an act that was considered illegal (rebellion against Great Britain), but morally justified. From this line of reasoning, it is tempting to follow the line of thought to a departure between morality and legality, but the intent behind the acts must be analyzed. In the foundation of America, and in the violations against laws, the acts were performed because the laws themselves were seen as immoral. The same cannot be said about copyright laws. While proponents of free information have opposite feelings and cannot be persuaded using such arguments, the individuals who pirate using either of the three justifications given cannot honestly give an argument that the laws prohibiting piracy are immoral. While it may be a fallacy to assume that disobeying laws is necessarily immoral, to do so without adequate justification is irresponsible to the society which one lives in. Taking into account Santillanes and Felder's conclusion, I agree that cases exist where it is morally acceptable to pirate software,

but such cases are few and far between. There must be no alternative to piracy, meaning that the victimless crime argument does not apply. The precondition that an individual will not pay for the software is not enough to justify piracy. The noble justification and willing but unable arguments apply only when there is sufficient need, and no alternative. These two conditions must be satisfied to morally justify piracy. While “sufficient need” is too vague for rule-Utilitarians, the reach of human imagination is not enough to create a set of laws to address every situation where such piracy may be justified. The legality of the act is not enough to condemn piracy, but individuals who pirate without satisfying the two conditions are not morally justified in piracy according to my research and reasoning.

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