STUDIJE
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CYBERPIRACY AND MORALITY:
SOME UTILITARIAN AND DEONTOLOGICAL
CHALLENGES

Summary: This paper analyses one of the main problems of our time in the world of Internet – cyberpiracy. It is often said that it is illegal, since pirates who practice it violate certain domestic and international laws. When we ask for justification of this laws and their enforcement, philosophers and legalists usually apply to one of the two sorts of philosophical arguments – deontology and utilitarianism. The former think that piracy is immoral in itself, while the others argue it should be prevented, otherwise it will produce very bad consequences for society sooner or later, and thus diminish the overall happiness of the society. It will be shown, however, that both of these arguments, when closely considered, fail with their intention, and, if we decide to follow them, we actually arrive to the very opposite conclusion – piracy is justified.

Keywords: cyberpiracy, Intellectual Property Rights, deontology, utilitarianism.

1. Introduction

We are increasingly becoming more involved in interacting with machines everyday, through sending and receiving e-mails, reading news online, sharing photos with friends, etc. Work has become more efficient thanks to the computer and the Internet. It is no longer necessary to bother going to a bank, getting the money, and then spending time shopping for what we need, when all this can be done from home. In other cases, we can buy software or a book online, which helps us in doing our job or researching faster. But, not all of our fellow humans can afford such luxuries. As a matter of fact, most people today are unable to buy a book they need for improving their surgery skills, or purchase some software which might
help a company improve its business and employ more people. This is the place where certain people, called “pirates”, step in.

As we shall see, this term is highly misleading, as it refers to past (and present) sea buccaneers who used to attack other ships and steal goods from them. It is often argued that there is no real difference between them and cyberpirates, i.e., pirates on the internet, because both do more or less the very same things – rob materials protected by certain regulations, and then use them as they like, even though they are not authorized to do so. Some people, however, argue the opposite: cyberpirates do much more good to the world than copyright or patent holders. According to them, the same arguments employed to accuse cyberpirates of immoral and illegal behavior can be reversed and then used in favor of the cyberpirates themselves.

The main purpose of this paper is to show that all philosophical arguments, and legal ones as well (to some extent), which are usually classified into two camps – deontological and utilitarian – fail to show that cyberpiracy is a morally corrupted act. Whichever of these two ways of arguing one might take, he will arrive at the same point, which might even suggest that piracy is quite well justified.

Before we proceed, it is necessary to clarify some notions as much as possible.

2. Some remarks

As I have mentioned above, the term “pirate” today has mostly negative connotations, because of its history. It is a mistake, however, to label all “cyberoutlaws” as such. It is crucial to understand that these “outlaws” are guided by different motivations. Not all cyberpirates are good pirates, there are evil and selfish ones as well.

If we take their motivation for cyberpiracy as a criterion, we can perhaps sort them into the following camps:¹

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¹ This classification is purely based on my Internet experience. I have been interacting in various ways with many people from all over the globe, sometimes discussing their motives for sharing copyright protected materials, and also about ethical issues related to this.
1) There are pirates whose only objective is to make money in one way or another. Most of them come from countries with loose legal rules concerning piracy and copyright issues. They usually steal content or obtain it by unconventional means, upload it to a file hosting site with payoff policies, and then wait for the money. The other way of course is to sell these materials on the streets or maybe even stores.

2) There are pirates (who are also termed “hackers”) who want to destroy some system, without having any material (or other) ambitions. There were lots of such incidents during the computers era, and we still read about them from time to time, like breaking into US government’s computers and systems, and so on.

3) There are, however, pirates who condemn both of the above. In their opinion, those people are wicked persons, who deserve to be punished by authorities. Making money from the efforts of other people, or destroying anything just for fun is a very bad thing to do in their view. Instead, they should rather pursue the interests of the whole community, i.e., they have to keep in mind only one motif – charity towards other people. They feel some sort of compassion with those who were unlucky to have been born in one of the Third World countries, and therefore never have had the chance to afford books, efficient software, or good quality movies. Pirates of this sort want to help them, without pursuing their own interests. Even if they were offered some money or any other benefits, based on my experience on the Internet, they would certainly refuse them. It appears they have some strong moral principles which require them to help other humans who are in (possibly) worse off situations.

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2 Some of these sites, which provide hosting for your files, use point systems. When someone downloads a file uploaded by you, you earn (usually) one point. After you collect enough points prescribed by the site, you get paid. For example, see http://rapidshare.com/earnmoney.html, and http://hotfile.com/affiliate.html. Both sites were accessed on January 7th, 2010.

3 The whole contemporary cyberpiracy story in its full glory actually began somewhere around the year 2004, the year of revolution on the Internet. This year, as well as preceding years, was full of events which defined the Internet as we know it today. There were significant advances in the software and hardware fields, like Hard Drives with huge storage capacity, advanced physical memory for faster data processing, etc. It is not coincidental that phpBB forums (today’s main battle ships of cyberpirates), and popular sites like Facebook were created at that time. All
As this paper proceeds, I will deal only with the third kind of pirates.

Great majority of legal systems “hunt” pirates of all three sorts, accusing them of breaking laws and acting immorally. Most countries have certain regulations, of varying degrees of effectiveness, which apparently protect the rights of authors and publishers, such as copyright laws, patent/trademark rules, etc. Whenever someone wants to circumvent them, for any particular reason, he or she is violating either domestic laws or international treaties, or both.

There are two main types of arguments which justify the punishment of these violations: utilitarian and deontological arguments. According to both, cyberpirates are said to be immoral persons. But what exactly do they do? Do they really violate deontological or utilitarian moral requirements, or do they actually follow them? Is it possible that rules regulated by the authorities are actually the immoral ones? The rest of this paper will try to show that utilitarianism and deontology cannot provide any convincing argument against piracy, or at least, they can not do it in an acceptable way.

2. Deontology

Whenever I purchase some goods, for instance a DVD, I am usually allowed to make one copy of it on my computer for archiving purposes, in case the DVD gets damaged. Anything beyond that is prohibited, like making another copy for a friend of mine, or sharing it with other people online. Now, if I still decide to act against these regulations, I will feel guilty and admit to myself that these lead to another very important consequence, namely, that these information technologies became very popular, which caused a drop in their prices. Now more people from Third World countries were able to afford a decent computer, and enjoy the same things as people who live in richer countries. It might be one of the main reasons for the evolution of cyberspace, where differences from real life, such as rich-poor, religious, national, racial backgrounds simply disappear. All people are completely equal, no matter where they live or how much they earn per month. Thus said, people from the whole world became involved in cyberpiracy, downloading files from the Internet sometimes without even knowing that they are doing something illegal. Whatever the future solutions for piracy will be, if any, it will be very interesting to see how it will be stopped, since there are so many persons with various cultural-historical traditions and beliefs who are usually not legally obliged to the laws of Western countries.
I am acting immorally. Why? According to deontology, I am simply aware of the fact that an action is not allowed and therefore I should not do it, and that is it.\textsuperscript{4} End of the story. We are not to take into account any consequences of my actions, legal or otherwise. My action of copying protected material is simply immoral in itself. If I still decide to accept consequences as well, then I am an utilitarian.

However, if we examine this a little closer, we arrive at different points. Let us consider the following example.

Smith is a German citizen, who is moderating a famous warez forum.\textsuperscript{5} One day, he finds, somewhere on the Internet, a heart surgery video tutorial. He decides to post it on his forum. He is well aware of the fact that it is copyright protected, and therefore he acts illegally by sharing files with others, which is something he is not authorized to do. At this moment, he feels awkward to post it, since his moral principles require him not to do so, as he will be doing something wrong. In spite of all that, he shared the tutorial with others. A few weeks later, he receives a private message from a user who lives in India, who is thanking him for posting the tutorial which he would never have been able to afford otherwise. He also adds that, after watching and studying it, he learned many new surgery tricks and techniques, so he was now able to save few more lives than before, which he wouldn’t have been able to if he had not watched the video. After reading the message, Smith realized that there is now another moral principle born in him, which requires him to do his best and save as many lives as possible. Which principle should he adopt in further actions? Should he follow the first principle and quit posting on his site? If he does, he will no longer feel guilty about distributing unauthorized copies, but then the other principle urges him to save lives. On the other hand, if he embraces the other principle, that of saving lives, he goes against the first principle which requires him not to break the law.

This example clearly indicates the most fundamental trouble with deontology – the conflict of principles. According to Nissen-

\textsuperscript{4} For an excellent general overview of contemporary issues in deontology and related subjects, see Davis 1993: 205–218.

\textsuperscript{5} Warez forums are online communities – sites, where people from all over the world share various materials, most of them obtained illegally, like video games, movies, etc.
baum, we can resolve all this by keeping in mind that the difference between various cases has to be taken into account (Nissenbaum 2009: 361–380). It may be incautious to accuse Smith for being immoral in all of his activities on the forum. In the case presented above, that would obviously be a big mistake. On the other hand, he would definitely be guilty if he shared some material (copyrighted or not) on making C4 explosives, since someone might use it for evil deeds.

There is another way of deontology argumentation which runs as follows. Smith may not share the tutorial with others, because it is disrespectful to the tutorial owners and especially creators. They had put some effort in creating it, and if they decided not to spread it freely, one must respect that fact. Now, moral principles strongly suggest not to neglect this fact, as disrespecting persons is highly immoral.

This argument is very complex, and it involves various interrelated problems. One of the first that comes to mind is the copyright issue. Authorities have assigned copyright protection to the tutorial in order to protect creators from people like Smith. This is, at first glance, acceptable. It is necessary that some laws exist, for abuses would be numerous otherwise. For example, someone might claim ownership over the tutorial, even though he did not participate in making it in any way. But if we set aside these radical cases, are copyright laws indeed in favor of authors or creators? Why do we have to respect them? After all, what actually is a copyright law?

One of the main reasons for introducing copyright laws was to grant the author/creator an exclusive right to own and promote his products, without being interrupted by anyone. Also, his work must be useful for the public interest; otherwise it cannot be protected by law. For example, if I make a time machine, it is something that the whole community (and maybe even future generations) will benefit from. In this case, the time machine will be protected by laws, so that no one may reproduce it or make a similar one and obstruct me from further improving it, e.g. by trying to modify it in a way that it can only be used for commercial purposes. That may, perhaps, make people who fund my research to reconsider their investments in my project, and decide not to support me financially any more as my time machine is much more useful if sold as the modified version.
On the other hand, if I create some device for mass destruction, it will obviously not fall under legal protection.

Here is what the US Constitution says about this issue:

[Congress shall have the power] to promote the progress of science and the useful arts, by securing to limited times to authors and inventors the exclusive right to their respective writings and discoveries (US Constitution: Article I, Section 8, Internet).

All of this gets complicated once we move to another level, called intellectual property. This kind of property is ownership of any object that is not tangible, for example, a poem, a book, a video tutorial, and so forth, unlike tangible stuff like the time machine. When I write software, or a song, it may not be reproduced by anyone without prior permission from me or my publisher. Anyone disobeying this is violating my moral and legal rights, and therefore, acts immorally.

This is, however, quite mistaken, and it is easy to show that Copyright Laws and Intellectual Property Rights contradict themselves in reality; that is, contradictory to the reason why they were introduced at the first place. Anyone who has published a book has observed that the greatest part of rights is held not by himself, but by the publisher. It is also quite obvious today that publishers have only one goal – making money, without caring too much about promoting the public interest. They find their strongest support in Copyright and Intellectual Property Laws. According to the U.S. Constitution, copyright lasts for the lifetime of the creator/author, plus 50 to 75 years, depending on the situation. Some of the authors call this law ironically “the Mickey Mouse Law”, or “Mickey Mouse Copyright Extension Act” since it is known that it was The Walt Disney Company who lobbied Congress to pass these laws. The trademark of Mickey Mouse and related materials was about to expire and fall into the public domain (where anyone is now allowed to use it and do whatever he wants with it), so they decided to protect themselves with the regulations.

This period can produce many negative consequences. It might happen, for example, that someone invents a device for the

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6 See e. g., Stallman 2002: 141.
safe transplantation of any organ to another body, which grants that all possibilities of negative outcomes are completely eliminated. There is, however, one “small” problem for this inventor. He needs to slightly modify an already existing device, which is protected by copyright for another 20 years, and he may not modify it without the permission of the author or manufacturer. Then he finds out it is no longer possible to determine who holds the rights to it, as the creator is dead and it is not clear which company took exclusive rights over that device. What should our inventor do in this situation if he follows deontology? It appears we have a conflict of principles once again, like in Smith’s example, and, yet again, it seems that the alternative which violates laws wins; in this case, the option of using and modifying the device and neglecting the copyright story.

It is also worth mentioning one more attempt to condemn cyberpirates by applying Kant’s categorical imperative (hereafter CI). Richard Spinello\(^7\) says it might be possible to show that cyberpirates are immoral if their mottos can not pass test of CI. The formulation might be as follows:\(^8\)

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\begin{align*}
(1) \text{It is allowed that each one of us copies and freely distributes material which is someone else’s product, without prior permission by author or publisher.}
\end{align*}
\]

According to CI, it is necessary for this statement to be made universally acceptable for everybody, including me, otherwise we should reject it. This sentence is apparently not capable of that, because one day it could be me whose property is being “stolen” and distributed without my permission. The naïve view would suggest that I can not accept this, because my property is mine, and other people have no rights to do what they want with it. That is, in my opinion, completely mistaken. Whenever someone creates anything, be it a book, a song or whatsoever, he or she has only one thing on mind: that the world should see it. Few write books simply to earn money, but rather because they want to give something new to the world or, if they are writing an academic book, to teach students and colleagues something new. If you try to restrict that by imposing some protections (which copyright laws do), it is quite natural to

\(^7\) Spinello 2003: 17–19.

\(^8\) Cf. Ibid.
expect that the author will resist it. He will do anything that is in his power to spread the knowledge, to let other people hear and learn about something new. Are we entitled in such case to call the author a pirate? Can one pirate one’s own book? Is it just to condemn someone for completing his task of writing a book when he shares it with others? I do not think so. That is why I believe that the above formulation does qualify for a moral principle, as long as distributed material goes in favor of the public interest and not against it. Even if someone disagrees with this opinion, he must accept that conflict of different moral requirements can not be avoided here, and that the sharing option triumphs.

On the contrast, let us try to give the opposite formulation:

(2) It is not allowed that each one of us copies and freely distributes material which is someone else’s product, without prior permission by author or publisher.

Imagine now we all embrace this as a moral principle to follow. Where would it lead us? Maybe to the same point as the first formulation, but with much more wasted time of waiting for Copyright laws to expire, so that we can take over a good to advance it further.

Cyberpirates are probably aware of the both cases, and they accept case (1) rather than (2). They also have that feeling of promoting public interests on the level of the whole world. Accusing them for acting immorally probably leads to contradiction for the reasons described above, and the persons who is attacking them could be the one who is actually immoral.

It appears that it is not possible to find a convincing way of arguing against cyberpiracy in deontological manner. Whichever way you take, you end up arguing against yourself, and you are committed to accept the view which is completely opposite to your starting one. This is so because deontological arguments always seem to have the problem of conflict of principles. In such situations, people are sometimes confused and not sure about which way to take. It is not a rarity that they eventually chose the rival principle, and decide to follow it in further acts. Maybe their rivals – utilitarians – can offer more convincing arguments against pirates.
4. Utilitarianism

The great majority of moral and legal arguments against cyberpiracy are utilitarian. According to this theory, roughly speaking, piracy will be directly responsible for bad consequences, like decreasing the level of quality products in digital industry, and therefore it is immoral to practice it. Unlike deontology, the consequences are now taken into account. Of course, there are lots of various interesting utilitarian arguments, but I believe they also fail to keep us away from piracy. As a matter of fact, they force us sometimes to support it, just as it was the case with deontology.

One of the first things that come to mind here is economy. If I purchase a copy of Kaspersky Antivirus Utilities, and then make one copy for you, the author and the company will lose some money. Some authors argue that it is quite obvious. Others are more cautious and question such views. Monetary considerations may lead to further bad consequences, like very high software prices on the market. Since not so many people will be able to afford expensive software, they will simply stop buying it. Then, it is argued, this will demotivate programmers to make new and better programmes due to lack of financial interests, and eventually we shall meet the disastrous situation where only expensive software will be offered to customers, many of which will not be of very good quality. Utilitarians urge at this point that these consequences are not acceptable, as the overall happiness of a society will be diminished. Instead, we should completely ban pirates, which will directly influence better and cheaper software.

In my opinion, this argument is completely mistaken because it fails to take into account some very important empirical facts. First of all, it is not clear at all that piracy is the main factor of high prices and poor sales ratings. Actually, it can only improve these ratings! I am prone to say that there are two types of people: (a) those who can afford software, and (b) those who cannot. People in group (a) download pirated copies for various reasons: to test it before they

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10 Nisenbaum 2009.
11 Ibid.
12 For a good overview of such account, see e. g. Field Jr. 2005: 2–10.
buy, to see if they need it at all, etc. The other group of people is made up of those who either do not have enough money to buy it, or live in poor countries where this is not possible even if they wanted to. How do these two groups help and improve sales? The first one brings the company money, because people will buy software after they are assured that it is useful for them. Also, they will send feedback to the manufacturer, e.g. what else could the manufacturer do to improve the product, whether there were some malfunctions in the software, etc. As for group (b), they will also send their feedback and everything else like (a) do, but will not buy it under any circumstances. So, what is the loss of the company? They can only profit from both sides, by earning more money and getting more suggestions as to how to improve their products and sell them even more.\footnote{Cf. Nisenbaum, 2009.}

Let’s face it, few people will buy anything blindly; they need to do some tests first. Trial periods which are offered by most of manufacturers are usually very short for these tests.\footnote{Cf. Ibid.}

Secondly, this behavior of customers will not have bad influence on people who create software. They are usually employed or hired by companies: they have their daily tasks and duties at work, and they do and make what they are told to. It is not likely that they are allowed to do whatever they like with own creations. Now, wouldn’t a software engineer be glad if someone has tested his programme and sent him feedback? Or, if someone gives a book’s author good suggestions as to what to change in his chapters and make the book even better? Once again, in most cases, the main purpose of writing or programming is not profit, but rather bringing something novel to the world. It is even better when it gets accepted, which happens when someone sends you suggestions or comments about your creation. Utilitarians obviously neglect this too when they argue authors would get unmotivated if someone freely spreads copies of their programme. Of course, some restrictions are required. For example, that no one may change few chapters or sentences of a book and then claim it is his own work, but I am sure this can be easily prevented by effective laws.

This leads to a further point which concerns overall happiness (or usefulness for that matter) of a society. Utilitarians say pirates
decrease it. But is it really so? The case of open source programmes, which became rather popular in the year 2004, suggests a different conclusion. Not only that free access to information is not destroying society, it is improving it significantly. Just imagine that all software (including, of course, protected ones) is free, like Firefox web browser. People would then have access to the source code, and they would be able to change the software and make it better and more numerous. In this case, the amount of overall happiness (whatever this might precisely mean) would be much higher than in the case of protected software, because people have more goods to choose, instead of being offered only a restricted choice of software.

A somewhat similar idea has been advocated by Richard M. Stallman, one of the fathers of the free software idea.\(^{15}\) He believes that there is one bad tendency nowadays of turning anything useful into a law-protected item. This is bad in the first place because of the money which comes into play, Stallman believes that the fun of creating something new vanishes along with it. He also adds that this affects not only software industry, but also digital industries of any kind, including books for example. In his opinion, DRM\(^{16}\) protection is a very clever trick by publishers imposed on people to earn as much money as possible, since they can manipulate electronic books much easier than paper books.

5. Where to go next?

We have seen that both utilitarian and deontological arguments fail to persuade us not to commit piracy. They simply neglect to take into account that there are some notable differences between various persons and situations in which they have to make choices. Cyberpirates are usually driven by noble intentions, and it is obvious in many situations that copyright holders (i.e. authors) are among them. On the other hand, there are legislators and laws, which are supposed to promote common good, but, as we have shown, they

\(^{15}\) Stallman, 2002.

\(^{16}\) DRM is shorthand for Digital Rights Management. It is a way to protect e-books sold by online vendors. You can buy their books in electronic format, but, to use an example, you may read them only few times, or maybe even only some chapters, after which the electronic book locks itself and becomes unreadable.
are actually destroying it by serving to publishers. Pirates are trying to prevent this, or, at least, to minimize it as much as possible.

I am not advocating that these laws should be abandoned, at least not all of them, since they are very much needed. It is very important that some order exists, with rules, according to which authors and publishers will behave and act. At this moment, I think the most important thing is to revise existing laws, and also to establish criteria for any future regulation. This is very important, since one can easily get the impression that things are already going out of control, and if that tendency persists, who knows what the future will bring. It is crucial to understand that common good for all people, no matter where they live, must be taken into account when one searches for such criteria. It is not just to observe only one or few communities or nations, and make international treaties only according to these communities and their interests, because cyberpiracy would be a fairly natural outcome.

If governments do not consider this, cyberpiracy will certainly not be stopped, but rather it will increase. Sooner or later, all the philosophical arguments proposed against in this paper will become pointless. It is clear that any human has some needs, to learn new things, to relax and enjoy arts, etc. If you take away the possibilities of acquiring those goods, they will seek any way to obtain some. Utilitarians will then have to remain silent in accusing their “immoral” behavior on the internet. Otherwise, their maxim of “overall happiness” is nothing but a word construction without its real referent. On the other hand, deontologists will remain silent too, as the principle of saving and promoting lives of other people will always rule out any other principle, especially those who prohibit such charity.

Of course, another way is to circumvent all philosophical arguments and simply impose certain laws, for example, that anyone, wherever he lives, will be arrested for downloading illegal files. It is not possible, however, to arrest the majority of the world population, because most of us who has ever used the Internet have downloaded at least one file illegally, probably without even knowing about legal situation concerning that particular file. If legislatures decide still to persist in such intentions, we have legal and moral rights to question their legitimacy, as there is obviously something wrong with
the law which suggests that most people are criminals, because the very same people are those who vote for that law in one way or another. In that case, it will be proven that cyberpirates are not immoral persons at all, but on the contrary, they are persons guided by acceptable moral principles.


References


Željko Mančić

SAJBERPIRATERIJA I MORALNOST: DOVOĐENJE U PITANJE UTILITARISTIČKE I DEONTOLOŠKE ARGUMENTACIJE

Rezime

Rad analizira jedan od glavnih problema današnjice u svetu interneta – sajberpirateriju. Često se za nju kaže da je ilegalna, jer pirati koji je praktikuju krše određene domaće i međunarodne zakone. Kada se postavi pitanje opravdanja tih zakona i njihove primene, filozofi i pravnici obično se opredeljuju za jednu od dve vrste filozofskih argumenata – deontologiju ili utilitarizam. Prvi tvrde da je piraterija nemoralna sama po sebi, dok drugi smatraju da je treba sprečiti jer će, pre ili kasnije, proizvesti vrlo štetne posledice po društvo, i time umanjiti ukupnu sreću društva. Međutim, pokazaće se da nijedan od ovih argumenata, kada se pobliže razmotre, ne uspeva u svojoj nameri, i da, ako odlučimo da ih sledimo, dolazimo zapravo do potpuno suprotnog zaključka – piraterija je opravdana.

Ključne reči: sajberpiraterija, pravo na intelektualnu svojinu, deontologija, utilitarizam.