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Morality of Pirating Media

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The tale of Robin Hood was of a man that took from the rich and gave to the

poor. While disobeying the law and being seen as a criminal by the authorities he

was celebrated by those voices of the oppressed. The question at the center of this

tale, and the center of this paper, is whether it is morally acceptable for a man to

engage in this behavior? One of modern day's issues, the piracy of media, is the

same tale in a different time and society still struggles to answer the morality

question. Napster was the website that brought this idea of peer-to-peer file sharing

out into the public eye. Napster was taken down because of copyright infringement

but just like the mythical Hydra, once one head is cut off, two more take its place.

Since 2001 when Napster ceased operations, many more file sharing websites, and

now even applications, allow a person to download and torrent content, such as

Project Free TV, Popcorn-Time and the recently deceased Pirate Bay.

> "The value of software programs that were pirated around the world
>
> in 2009 totaled more than $51 billion. Currently, in the United States,
>
> approximately one out of every five software programs installed on
>
> personal computers is pirated. The value of these pirated items totals
>
> roughly $8.4 billion." [1]

Although pirating software and media is illegal people still regularly and openly take

the risk of prosecution. Nevertheless, I believe pirating's growing popularity is due

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[1] Patel, Ankur R. "BitTorrent beware: legitimizing BitTorrent against secondary copyright liability."
Appalachian Journal of Law 10.2 (2011): 117+. LegalTrac. Web. 3 Aug. 2015.

to its accessibility and the invisible fourth wall that separates the audience and those who are being stolen from.

This paper will explore the evolution and morality of pirating media not through accusation but by giving data and facts to decide not only the future of media but whether these pirates are actually moral versions of Robin Hood. I will explore this topic through the lens of the pirate starting with a background on the beginning of piracy; explain the illegality of copyright infringement, inform the reader about what happens to caught assailants, and the psychology of why more and more of the US population are illegally downloading media. I am investigating this topic not to point a finger at those guilty of piracy but to discover the analytics behind it and to discover why people take the risk of being prosecuted. The sources I will be pulling from are legal texts; interviews of prosecuted pirates and phycology texts regarding Internet anonymity.

Some terms to keep in mind during the reading are piracy, torrenting, seeders, and leechers. Piracy is act of illegally acquiring any source of media through the Internet. Torrent or torrenting is the act of downloading a small piece of data and then sharing it with other people who have other pieces to create one full file. The unique thing about this is the pieces constantly shift between users so when one person leaves that data is transferred to another person so it is always available. Conversely, for downloading media, seeders are people who have a complete file that they upload to share, and leechers are people who in turn are downloading that same data. The only two sites that I will be referencing are Popcorn Time, which is a torrenting movie and TV show application and Pirate Bay

which is a downloading website where seeders post and leechers can download anything from Microsoft Word to video games.

Background:

To understand piracy of today, understanding its roots and the history of pirating digitized media is extremely relevant to examining its evolution and its impact. Napster was one of the first in this new field of the digitalization and stealing of media back in 1999. Even though it was only 16 years ago there have been leaps and bounds in speed, reliability and abilities to compress data. People were still using VHS tapes and DVD's had begun taking the world by storm. Pirating media was well established even before the use of the Internet but was much more time intensive and difficult utilizing VHS recorders and DVD burners. The Internet was the game changer in the access of "free" media. The purpose of the Internet was to create a network that could be reached globally and give access to the record all humanity's knowledge of the world thus far. Going from the difficult task of purchasing a VHS or a CD burner and spending hours to download evolved and expanded with each evolution of the Internet. All you needed was a home computer and you had access to any source of media available. This was a new experience for the whole world and the access to download content instead of purchasing it was a very real threat to the profitability all of those in the business of entertainment and media.

Napster led the charge in this piracy revolution of free media but, like a shooting star, its bright visibility ensured its demise. Shawn Fanning, Sean Parker, and John Fanning created Napster in 1999 and it was designed to share music MP3's

on a peer-to-peer network. In total, 18 companies tried to sue Napster over

copyright infringement and leading the charge was A&M Records. A&M Records v.

Napster Inc. was the court case that closed Napster for good.

> "The court found the use of Napster harmed the market for
>
> copyrighted material in two ways. First, the use of Napster reduced
>
> CD sales among college students, and secondly, the use of Napster
>
> made it difficult for recording companies, such as the plaintiffs', to
>
> enter into the market for digital downloads of music." [2]

Napster was awarded five million dollars to compensate for its losses and if the

injunction was ever reversed in the future Napster was required to cooperate with

A&M Records to determine which copyrighted works A&M owned.

Today the world has access to any form of data such as music, movies and

software there is very little consideration to the thought that pirating can all be

stopped. This is because Napster's trial was a failed scare tactic by the government;

pirates did not see the fall of Napster as a punishment but a challenge. Napster

became a martyr who lost for a cause bigger than itself and inspired those with the

skills to make something better than its predecessor. Computers have evolved to

become faster and exponentially more powerful allowing for more efficient and low

profile streaming and torrenting sites to take the stage. This results in copyright

laws still being broken but data sharing site managers, leechers and seeders are less

likely to be caught in the act.

Legality:

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[2] Patel, Ankur R., 177

Stealing copyrighted materials, or copyright infringement, is the basis upon which illegal downloaders are called pirates. While sometimes romanticized, pirates are group of people that attack ships full of goods to take for themselves. While quite similar in perception and outcomes, there are no boats involved in Internet piracy. Copyright infringement is the equivalent of an author, movie studio or musical artist creating a piece of intellectual property or a product that they intend to sell when another person illegally acquires the product and gives away to the public for free. In the most basic of real life examples, if you have ever shared your Netflix account with a person outside of your family you have committed a crime. Similarly if you have bought a CD and let your friend download the songs you have committed a crime as well. There are so many rules and boundaries in copyright law it is hard for the layperson to even tell where they begin and end.

> "In a study titled Investigation into the Extent of Infringing Content on
> BitTorrent Networks, conducted by the Internet Commerce Security
> Laboratory of the University of Ballarat, Australia, researchers found
> that in a sampling of 10,741 files of which 1,000 random torrent files
> were selected, only 0.3% of the files were truly non-infringing. (187)
> Given the statistical evidence and BitTorrent's popularity among
> piraters, it is reasonably certain that users of BitTorrent have violated
> the copyright of protected material."[3]

If most, if not all, torrents are copyright infringing then the whole system is at fault and there are two ways to categorize it. There is primary copyright infringement

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[3] Patel, Ankur R., 177

whereby the website and its creators are at blame, as well as secondary liability claims whereby the individual who either uploaded or downloaded the copyrighted data is to blame, not the website. Usually when it is a case of primary copyright infringement there is also secondary infringement, but not vice versa as a website can track and report illegal activity of a user and pass it on to the police. Some websites have been able to avoid the entire spectrum of liability such as Popcorn Time by the use of an application. The application has no primary server that holds the copyrighted material but rather the data is completely self-sufficient by the constant use by operators. There are many loopholes in the legal system because the Internet evolves so fast that there is no way to keep the laws current.

Today the government uses a new technique that only provides them the ability to catch leechers. The government will become a seeder of some software and track all the IP addresses of all the people who downloaded the software. These traps are not looking for the single use leecher, even though their data is stored, but for the high profile seeders who come across multiple government sites. For those few being caught in the act, prosecution is hasher for seeders than it is for site managers.

Caught Pirates:

There are rarely pirates that are caught and prosecuted as explained above but there are some special cases such as Peter Sunde a co-founder of Pirate Bay and a man out of Mississippi. These two cases highlight the different between hosting and distributing data.

"In 2009, the founders of The Pirate Bay, the world's most notorious

file-sharing site, were found guilty of copyright offences in Sweden.

After being internationally wanted for two years, Peter Sunde was

arrested and transported to jail. Sunde was the only one who

remained in the spotlight. He spent a lot of time travelling, speaking at

conferences in the US and Latin America."[4]

Peter Sunde goes on to talk about how if he went back in time that he would entirely

change the way he confronted his arrest. He was traveling the world as a wanted

criminal to talk about his illegal actions. He stole and distributed over 5.5 million

dollars of entertainment through Pirate Bay and didn't even make any money doing

it. He sounds less like a pirate and more like Robin Hood.

The other side of the coin is a seeder like the man in Mississippi who pled

guilty to six counts of copyright infringement after leechers downloaded the six files

he uploaded over 10,000 times. He was sentenced to 15 years in prison followed by

3 years of surveillance. This seems skewed because Peter Sunde, ringleader of

Pirate Bay, only spent 6 months in prison. Some of this difference may be a result of

Sunde being persecuted in Sweden versus the United States. The crime of illegally

distributing media is much harsher in the United States than the rest of the world.

Costs of Media:

The cost of media is a very important component when talking about this

kind of issue. The reasons that piracy exists is in an attempt to reduce or eliminate

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4 Larsson, Linus, and Daniel Goldberg. "Http://www.theguardian.com/technology/2014/nov/05/sp-pirate-bay-cofounder-peter-sunde-in-prison." The Guardian. The Guardian, 5 Nov. 2014. Web. 9 Aug. 2015.

the high cost of media and give the public access to luxuries. The worlds view on

basic human rights today has morphed into one where all human beings deserve the

right to food, water, shelter, and stable internet. While a few years ago this would

be laughable it is now reality because of how much first world countries take the

internet for granted. Elon Musk and his company SpaceX are planning to give the

world access to free internet by sending satellites into space. This may lead to a

bright future for the internet but the future for digitized media seems to be coming

to a peak that can and will only lead to a crash. Speeding to the scene of this crash

are primarily young adults and college students who are by far the highest users of

piracy sites although they do not commonly seed content, they just leech.

> "Students continue to become more sophisticated in acquiring their
>
> course materials at the lowest cost as illicit and alternative acquisition
>
> behaviors, from scanned copies to illegal downloads to the use of
>
> pirated websites, continue to increase in frequency."[5]

This is a great fun fact but what does that have to do with pirating and downloading

media? Everything. If a student can find their textbooks and needed software online

what is stopping them from downloading movies like the Notebook too.

> "It isn't legal to upload or download copyrighted material without
>
> permission, but that isn't stopping students from doing it. The website
>
> said in its story that schools aren't doing a lot to proactively stop it."[6]

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[5] BISG. "New BISG Research Shows Students Will Pay for Reduced Study Time, Better Outcomes."
Book Industry Study Group. BISG, 6 Aug. 2014. Web. 18 Aug. 2015.
[6] Strauss, Valerie. "More Students Are Illegally Downloading College Textbooks for Free."
Washington Post. The Washington Post, 17 Sept. 2014. Web. 18 Aug. 2015.

When it comes to paying for books that have no return value, or downloading prohibitively expensive software such as Microsoft Word, Excel, and PowerPoint; it has become a cultural norm to cut down the cost. The average American spends a little over $3,000 annually on media entertainment. This includes music, cable, other subscriptions such as Netflix and HBOGO, and out of the home entertainment such as movie theaters. For the cheapest streaming service for Netflix is $95.88 annually and for HBO you have to bundle it with cable. AT&T U-verse costs about $600 annually for Internet and Cable including HBO and HBOGO. That is close to $700 of only in-home entertainment, leaving over $2000 still to spend on other sources of media. One may question who has this kind of disposable income to spend? Adults and senior citizens most definitely have money to spend, children and teens are taken care of by their parents, so that only leaves young adults and/or college students likely struggling to afford such luxuries; $3000 in a college student's pocket goes a long way.

Accessibility:

Trying to enforce illegal downloads and streaming of media is a lot like the Roman Empire trying to keep order and peace when it was too large to properly function. Yes, there have been small victories such as the takedown of Pirate Bay, but over all there has been slight to no effect on the overall system. There are so many ways to access illegally acquired content that there are literally too many to count.   To name a few there is Popcorn Time, Pirate Bay, Project Free TV, Putlocker, Vodlocker, Vidbull, File Hoot and many more. The most ironic part about it is they are all available through Google, there is no need to go to the dark side of the

Internet or even a suspicious website. Additionally there is the "Stream" anomaly where if you type in any movie or TV show and add the word "stream" behind it, you will find a link to watch it. It is crazy how easy the process is and somehow by doing it you just did something illegal. Is anyone going to find out? Probably not.

> "Out of the 18,000 total cases, 11,000 either settled immediately or were not prosecuted for some reason by the labels. 7,000 people held out or did not respond, and the RIAA filed named federal lawsuits against them."[7]

This source is looking at the US as a whole but for statistics I had to do the math myself. This article was written in 2009 and the United States Census from that year puts the total population of the United States of America at 308,745,538 people.[8] That makes the statistic of being caught at a whopping .00583% not even being pursued or even prosecuted by the United States legal system.

There are so many places but the most impressive has to be Popcorn Time. Popcorn Time could be compared to a combination of Netflix and HBO on steroids. You can get everything and anything on the site and it all comes in HD as well; what more could you want. This is a quote from the site explaining who is behind it all.

> "We aren't sponsored by anyone, we don't have a paid team of people behind the project, we aren't a business, and we don't have any affiliations. We are a community. Just some people who are truly dedicated, spending well over forty hours a week to a couple hours or

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[7] Anderson, Nate. "Has the RIAA Sued 18,000 People... or 35,000?" Arstechnica.com. Condé Nast., 8 July 2009. Web. 18 Aug. 2015.

[8] "Your Geography Selections." American FactFinder. U.S. Census Bureau, June 2011. Web. 18 Aug. 2015.

minutes a day. Everyone contributes with the goal of making it

amazing for everyone else. Every little bit makes us who we are. The

thanks goes to every single contributor."[9]

The best part of the site is that everyone is responsible for its creation but is this

because that the people contributing feel like they will never be caught or is this

because that they feel like they are truly anonymous.

Internet Anonymity:

Internet anonymity is when a person believes that whatever they do on the

Internet does not follow them. It is very hard to be truly anonymous on the Internet

today and no, "Private Mode" does not hide everything.

"You don't have to be a mass downloader. Someone who downloads a

single movie will be logged as well," the lead researcher told the BBC.

"If the content was in the top 100 [most popular downloads] it was

monitored within hours. Someone will notice and it will be

recorded."[10]

So if this information is known then why do people think that everything they do

online will not get them into trouble? We have already confirmed that there is a very

low percentage that you will be caught and prosecuted for and that is why we are

going to look at the psychological side of the issue.

'The Internet has the potential to foster discussion and deliberation

among far-reaching audiences in spaces such as the comments section

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[9] "Popcorn Time Official - Watch Torrent Movies and TV Shows Instantly." Popcorn Time. N.p., n.d. Web. 19 Aug. 2015.

[10] Stone, Jeff. "How People Are Caught Illegally Downloading Music, Movie Torrents." Http://www.ibtimes.com. IBT Media Inc., 12 Sept. 2012. Web. 15 Aug. 2015.

of news items and blog posts. However, such discussions are not

always rational. Discussions on the Internet can take an uncivil route,

with offensive comments or replies impeding the democratic ideal of

healthy, heated discussion."[11]

Knowing the Internet is a short tempered mess full of people creating opinions over

topics they know absolutely nothing about is a key piece to knowing why people

decide to irrationally download whatever they want. The morals of those on the

Internet are warped because of this fourth wall that separates the leecher or

streamer from those real people they are stealing from. The psychology that drives

our morals is altered due to the screen.

"We look to research about what causes people to feel that they have

been wronged. We thus locate our account in moral psychology, the

field that examines people's intuitions about right and wrong as a

phenomenon of the mind, not just as a matter of analytical philosophy.

In particular, we turn to an emergent variant of moral psychology,

moral foundations theory (MFT), that seeks to identify the particular

intuitions that drive our moral reasoning. MFT suggests that there are

at least six different moral foundations that may be activated when

people perceive certain patterns in the social world, and that these

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[11] Anderson, A. A., Brossard, D., Scheufele, D. A., Xenos, M. A. and Ladwig, P. (2014), The "Nasty Effect:" Online Incivility and Risk Perceptions of Emerging Technologies. Journal of Computer-Mediated Communication, 19: 373–387. doi: 10.1111/jcc4.12009

patterns in turn guide their instinctive judgments of right and

wrong."[12]

The theory's six foundations consist of harm, fairness, liberty, loyalty, authority, and

purity. Harm is defined as when illegally downloading copyrighted material

physically or economically has negative repercussions on a person or

entity. Fairness is demonstrated when someone expects to be paid for their

intellectual property. Liberty is shown when you have the freedom to choose, in this

case between paying and illegally downloading. Authority can be perceived or

legitimate permission to illegally download copyrighted materials. Purity like

authority, can be dependent upon perception and in this case is defined as the right

thing to do. On the Internet, because of the fourth wall, the foundations have pretty

much all collapsed on top of themselves. If you cannot see the producer being

harmed economically or emotionally then why should it bother the consumer? The

invisible wall that is the computer screen turns humans into creatures, fending for

themselves and taking what they desire because they have justified it in their own

minds regardless of the law.

This paper is presented in a way to show the thought process behind the

mind of a pirate. First is to present the history and background of pirating digital

media to understand its current position today. Then Legality to express not only

how Napster was caught but also to explore new ways and loopholes in the system

that site managers, leecher and seeders use not to be caught. There are even

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[12] Buccafusco, Christopher and Fagundes, David, The Moral Psychology of Copyright Infringement
　　　(March 30, 2015). Minnesota Law Review, Vol. 100, Forthcoming. Available at SSRN:
　　　http://ssrn.com/abstract=2587339

statistics to prove the likelihood of being caught is extremely below even 1%. At this point it seems that pirating media is a good alternative due to its low profile and high popularity. Being caught even though it is very unlikely faces huge charges. Site managers face less jail time than seeders do which is a very scary thought to the novice pirate who just wants to download a movie. Next is the costs of media which is extremely high which causes the main consumer; college students and young adults to reach for the more cost free and accessible option. When it comes down to the basics even though it does not seem like a big deal these pirates are stealing from people which is a very big moral dilemma. The paper is set up to make the reader go back and forth on the issue of pirating thinking its good then bad then good again. To weigh the pros and cons and realize at the end the truth behind the fourth wall. Opinions are important but without the truth and facts the water becomes murky and the reflection is lost in the muck.

Conclusion:

In this paper I offer the real question, are these Robin Hood like characters, who are taking from the rich and giving to the poor, or are these people the dreaded pirates that strike fear and pain without remorse? Through the illegal torrenting copyright infringement is clearly present, a crime, that in this case has become socially acceptable. The high costs of media leads to young adults, who are by far the largest consumers of entertainment data and conversely have smaller disposable incomes, to the highest rates of illegal downloads. This is also a reason why Napster was proven guilty of copyright infringement and criminalized for the economic losses caused by a downward spike in CD sales among young adults. A significant

downside is that if caught seeding on a website you could receive considerably more jail time than if you leeched the same file. The corresponding upside to this is that, using 2009 data, there is less than a .00583% that you will be prosecuted for copyright infringement in the United States. The access of free media is everywhere with new sites and applications showing up almost daily, even though our most mainstream search engines like Google and the "stream" anomaly. There is also the focus on the fourth wall that causes your already internalized morals to be completely ignored due to the fact that you cannot see the producer being harmed by your actions to save a few dollars. If the question comes down to a characterization of those that illegally download copyrighted material, often characterized as Robin Hood or evil pirates, then I would brand them as morally corrupt superheroes. They are engaged in activities that are culturally embraced in giving the people free access to media and asking for nothing in return, like a modern version of Robin Hood who steals a different subject matter through the internet. If you don't understand that reference, or any of them for that matter, you can head over to Popcorn Time to catch up on some great pop culture without any real threat of ever paying for the crime. I personally think the future of media will be free to all after a first release as these websites are revolutionizing media consumption to a point where there is no need to purchase cable or other subscription service. The media industry will need to embrace this new norm or they will continue to be robbed blind.

Work Cited:

Patel, Ankur R. "BitTorrent beware: legitimizing BitTorrent against secondary copyright liability." Appalachian Journal of Law 10.2 (2011): 117+. LegalTrac. Web. 3 Aug. 2015.

Journal of Investment Compliance J of Investment Compliance 4.2 (2003): 31-38. Http://globalstudy.bsa.org. BSA, June 2014. Web. 3 Aug. 2015.

Larsson, Linus, and Daniel Goldberg. "Http://www.theguardian.com/technology/2014/nov/05/sp-pirate-bay-cofounder-peter-sunde-in-prison." The Guardian. The Guardian, 5 Nov. 2014. Web. 9 Aug. 2015.

Anderson, Nate. "Has the RIAA Sued 18,000 People... or 35,000?" Arstechnica.com. Condé Nast., 8 July 2009. Web. 18 Aug. 2015.

BISG. "New BISG Research Shows Students Will Pay for Reduced Study Time, Better Outcomes." Book Industry Study Group. BISG, 6 Aug. 2014. Web. 18 Aug. 2015.

"Popcorn Time Official - Watch Torrent Movies and TV Shows Instantly." Popcorn Time. N.p., n.d. Web. 19 Aug. 2015.

Strauss, Valerie. "More Students Are Illegally Downloading College Textbooks for Free." Washington Post. The Washington Post, 17 Sept. 2014. Web. 18 Aug. 2015.

Wesley, Daniel. "How Much The Average American Spends on Entertainment." Visual Economics. Credit Loans, 2009. Web. 218 Aug. 2015.

"Your Geography Selections." American FactFinder. U.S. Census Bureau, June 2011. Web. 18 Aug. 2015.

Konnikova, Maria. "The Psychology of Online Comments." Newyorker.com. New Yorker, 23 Oct.

Stone, Jeff. "How People Are Caught Illegally Downloading Music, Movie Torrents." Http://www.ibtimes.com. IBT Media Inc., 12 Sept. 2012. Web. 15 Aug. 2015.

Anderson, A. A., Brossard, D., Scheufele, D. A., Xenos, M. A. and Ladwig, P. (2014), The "Nasty Effect:" Online Incivility and Risk Perceptions of Emerging Technologies. Journal of Computer-Mediated Communication, 19: 373–387. doi: 10.1111/jcc4.12009

Buccafusco, Christopher and Fagundes, David, The Moral Psychology of Copyright Infringement (March 30, 2015). Minnesota Law Review, Vol. 100, Forthcoming. Available at SSRN: http://ssrn.com/abstract=2587339