Chapter X

Would Be Pirates: Webcasters, Intellectual Property, and Ethics

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ABSTRACT

The debate in Canada that occurred prior to the amendment of the Copyright Act regarding the regulation of television retransmission on the Internet emblematizes significant ethical issues arising from shifts in communications technologies. The alleged piracy of Internet retransmitters demonstrates the broader consequences of the regulation of communications technologies and intellectual property at a variety of levels. Future treatments of new media innovations should be spared the retransmitters’ fate, whereby the innovators were called “pirates” and the law was amended to make them appear so in response to industry pressure. Instead, appropriate criteria should be determined with ethical foundations to administer decisions regarding the responsible governance of communications technologies. Legal, political, and social observations complete the analysis in this chapter, whereby such considerations are raised to advocate a principled approach to the regulation of new media and innovations in communications technologies.
Often there are no persons or organizations with clear authority to make the decisions that matter. In fact, there may be no clearly defined social channels in which important moral issues can be addressed at all. Typically, what happens in such cases is that, as time passes, a mixture of corporate plans, market choices, interest group activities, lawsuits, and government legislation takes shape to produce jerry-built policies. But given the number of points at which technologies generate significant social stress and conflict, this familiar pattern is increasingly unsatisfactory.

- Langdon Winner (1995, p. 65)

**INTRODUCTION**

At a convention of the Canadian Association of Broadcasters (CAB) on October 29, 2001, then Canadian Minister of Heritage Sheila Copps announced, “We cannot allow a loophole to permit pirates to steal your product” (Scoffield, 2001). These would-be “pirates” to whom she referred were Internet retransmitters of television signals, or “webcasters.” Copps further indicated that Canadian copyright law would be modified by the year’s end to exclude the medium of the Internet from the Canadian retransmission compulsory licensing scheme that exempts traditional cable retransmitters from copyright breach. Her announcement was significant. The reference to Internet retransmitters as “pirates” simplified and made seem morally reprehensible precisely the kind of innovation that the Canadian government had previously seemed eager to support. Since then, the Canadian government has indeed closed the “loophole,” exempting Internet retransmitters from taking advantage of the retransmitters’ compulsory license provided by Section 31 of the Canadian Copyright Act.

Webcasting, or Internet retransmission, has appeared on the Internet in a variety of forms. In Canada, certain webcasting companies emerged, retransmitting television signals in such a manner as to make them available for viewers via their Internet connections. The activities of the webcasters may be said to demonstrate one of the outgrowths of convergence in communications technologies. Here, “old” media can be streamed via digitization. This is commonly accepted as one of the effects of the digital revolution, which has changed both the carriage and the content of communications (Handa, Janda, Johnston, & Morgan, 2000, para. 10.8). Television retransmission on the Internet may
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