Chapter IX

Copyright and Piracy

As I noted in Chapter II, information technology’s basic feature of easy reproduction of digital information gives rise both to new benefits and to new ethical problems. Easy reproduction allows new—and sometimes unwelcome—ways of sharing material previously much harder to copy, such as digitized music and movies. Napster, based on the brilliant and revolutionary idea of distributed storage on millions of machines with no centralized profit-taking, was defeated by centralized profit-takers. Of course, there was also an issue of copyright violation. Currently, movie and music companies are aggressively pursuing digital copyright violators.

The response of the record and movie companies might have been different. The earlier technological advances of cassette audiotapes and VCRs facilitated copying music and video but did not elicit a wave of court cases against
consumers. After an initial attempt to block any copying, the recording and movie industries realized that amateur copying was actually promoting sales. However, since the inception of Napster, music CD sales have gone down significantly. It is an open question whether copying or poor music quality is more responsible. Music commentators state that current industry producers have strong incentives to promote mediocre music in familiar genres.\(^1\) An accompanying issue is control of channels of distribution to reduce competition against mediocre music.\(^2\) In fact, much of what these companies now treat as piracy had always been considered “fair use” in other areas.\(^3\)

As these issues show, although we can see clearly the facts about the IT situation, the ethical principles aren’t clear. We see clearly that people can make digital copies at will, and that these copies can be available to anyone on a large network or the Internet. The ethical question is whether this is merely an extension of friends swapping copies (perfectly ethical) or whether it is an illegal (and unethical) violation of copyright. An entirely new method of sharing copies requires a rethinking of ethical principles. In this chapter, I will consider the ethical basis for copyright in property rights and ownership from the point of view of Rawls’ (1999a) Principles of Justice. Then I will apply these results to the current issues involving digital copying.

The original stated purpose of copyright is to give the artist or creator of intellectual property the exclusive right to reproduce it, but not just for the artist or creator to be able to reap suitable rewards for his creation. Ultimately the existence of this right is to stimulate creativity. U.S. Supreme Court Justice Sandra Day O’Connor writes:

*The primary objective of copyright is not to reward the labor of authors, but “To promote the Progress of Science and useful Arts.” To this end, copyright assures authors the right to their original expression, but encourages others to build freely upon the ideas and information conveyed by a work.* (Lewis 2001, p. 1)

The original intent of copyright has clearly been attenuated (and apparently distorted) in recent years as corporations come to hold copyrights and to use their influence in Congress to extend the copyright period indefinitely. The agreement by the U.S. in 1976 to abide by the (European) Berne Convention adds a conflicting principle. For the Berne Convention, the basis of copyright is an unlimited perpetual right to property, rather than the development of ideas.