

The Business Ethics Center of Jerusalem

ONLINE HI-TECH MAGAZINE: The Ethics of Software Piracy

Introduction

The articles in Values for Management typically stay away from issues of clear-cut law such as stealing, out of the assumption that most people are law-abiding. This month we focus on software piracy, an ethically and legally questionable action that is done by many people, even those who consider themselves ethical and law abiding.

Take a look at an average person's home computer, or the computer that he uses at work. Chances are, you can find plenty of software on his hard drive which he or his employer should have paid for, but didn't. **Worldwide, the software piracy rate is 37 percent**, meaning that more than a third of software being used is counterfeit! This has enacted an enormous financial toll on the legitimate software industry. Throughout the world, **\$11.75 billion** was lost in 2000 due to software piracy. (Business Software Alliance)

What is Software Piracy?

Software Piracy is the unauthorized duplication, distribution or use of computer software. There are five main types:

- Publisher Patent and Copyright Infringement: Company X copies a piece of software or process from Company Y for profit. This is a common form of software piracy, but is easy to identify and combat.
- Industrial Piracy: This occurs when individuals or groups duplicate and distribute software on a large scale for profit.
- Corporate Piracy: Company X purchases one copy of a piece of software, installs it on its network, and then allows employees to put it on any computer.
- Reseller Piracy: ABC Computers sells computers with illegal copies of software pre-loaded onto them.
- Home Piracy: The original type of software piracy, in which people trade software directly with friends, over bulletin boards or over the web. This form of piracy is very difficult to detect.

The high rate of software piracy leads to more than just a loss of profit for companies. It also leads to a loss of jobs, wages and tax revenue. In addition, companies have to charge higher prices for their software to account for their losses due to piracy. While it is easy to justify saving a few dollars by getting a piece of software for free, the impact on society as well as those around us must be considered.

Important Facts

Software piracy is a rampant global problem, according to the Sixth Annual Global Software Piracy Study by the Business Software Alliance. The rate of software piracy

varies significantly across the world, though no country is without it. Vietnam was rated the largest trouble spot in 2000 with a whopping 97% piracy rate, with China and Russia not very far behind (at 94% and 88% respectively). North America and Western Europe showed the lowest rates of software piracy, at 24% in the U.S. and 26% in the U.K. However it is often difficult to compare piracy rates between countries, because in many countries software piracy is legal.

Israel has the lowest software piracy rate in the Middle East, at 41%, compared with regional piracy leader Lebanon at 83%. The Israeli software piracy rate is very high compared to countries in Europe and North America, but there has been a significant drop during the previous few years, from a high of 74% in 1995.

During the early days of personal computers, software piracy was a small problem primarily limited to individuals trading computer games for personal use. Software piracy is no longer solely the domain of teenagers looking to get games for free; today even legitimate organizations routinely use pirated software. The Software & Information Industry Association reported that fully one-quarter of its open corporate software piracy audits involve high-tech companies. This is a problem not just of individual employees installing software on their computers, but of large companies using more copies of a piece of software than their license allows. Software piracy can also be found in schools and even in the government, which sends a negative educational message to students and to the public.

Software piracy is part of the larger problem of counterfeiting of commercial products. The International Anti-Counterfeiting Coalition (IACC) estimates that trademark infringement and counterfeiting robs the United States of \$200 billion annually.

Ethical Issues

One reason that so many people who consider themselves moral are guilty of software piracy is that they don't view it as a problem. Computer software is an intellectual creation with no physical components, and therefore it is difficult to identify a problem with getting it for free.

Software piracy is easy to justify for a host of other reasons. The Internet makes it easy to exploit the difference in laws between countries. If I live in a country where piracy is illegal, but I download a piece of software from a website set up in a country where it is legal, have I done anything wrong?

Another reason why software piracy is not clearly a problem is because people often talk about borrowing software and thereby rationalize not paying for it. It is common to borrow other forms of intellectual property such as books, so why not software?

Like any literary work, song, etc., computer software is considered intellectual property. These all remain the property of the creator, unless the creator or his agent gives explicit permission to someone else in the form of a license. The license brings with it limited rights to use, reproduce and distribute the program.

Software piracy is any act that goes against the guidelines established in the license. Therefore, one who distributes licensed software or uses it without paying for it is guilty of violating the license. This includes installing the software on more computers than the

license allows. If a piece of software comes with a message that says "don't copy," doing so is a legal and ethical problem.

Purchasing pirated software instead of a legal copy is a blatant act of stealing, because it robs the creator of income he should receive for his labor. Software piracy also takes a toll on society, and sends a strong message to innovators that innovation is not profitable. This in turn limits scientific and technological progress.

Perspective From Jewish Sources

When we examine the question of software piracy through the lens of Jewish law, we find a great discrepancy between the obligations of the software purchaser and those of third parties. The copyright owner has many effective legal devices, which prohibit the licensee from copying the program illegally. For one thing, the program is most likely a trade secret, and trade secrets are strictly protected in Jewish law. It is also possible in Jewish law for the licensee to assume liability for any damages caused by disclosure of such a secret. An additional and complementary mechanism is to view the sale of the license as subject to the condition that no illegal copies are made; this makes the license void when copies are made.

However, the copyright owner finds his ability to prosecute third parties very limited. Just as in secular law, trade secrets in Jewish law don't enjoy much protection once a secret is revealed outside the circle of licensees. And conditions on the license are not much use against third parties who never obtained a license in the first place.

If the software is pirated by a business which uses it to make money, then the copyright owner is likely to be able to claim unjust enrichment, insofar as the user is taking advantage of the copyright owner's investment in order to enrich himself. In such a case, Jewish law would obligate the user to pay his fair share of the development costs - which might still fall far short of the market price of the software.

Ultimately, the protection of copyright needs to be rooted in legislation. When the protection of copyright became an important issue with the advent of printing, Jewish communities throughout the world protected the rights of publishers through bans which were promulgated specifically for this purpose.

Secular legislation is also generally recognized by Jewish law, if it can be shown that such legislation serves a valid public interest and is consistent with the ethical principles of Jewish law. When Torah authorities scrutinize the applicability of secular law, they generally seek a parallel rule in Jewish law.

One Jewish legal principle which has an ethical basis similar to the protection of copyright is the recognition of the sovereign's right to grant concessions for toll roads. Although the road belongs to the sovereign, and each person who uses it imposes a negligible cost on the community, the right to collect tolls is necessary in order to raise the revenue which would make it possible to build the road in the first place.

By the same token, although Jewish law gives limited scope to intellectual property rights and in most cases copying software does not impose a cost on the copyright holder, the right to collect money from software sales is needed in order to raise the

revenue which makes it worthwhile to develop the program in the first place.

Jewish tradition acknowledges the community's right and obligation to make rules and regulations which foster the highest standards of fairness and protection of individual rights. Copyright laws are an outstanding example of the exercise of this obligation.

Excuses Offered for Software Piracy

One explanation for the high prevalence of software piracy is that it is very easy to do. Computers can make exact copies of programs in seconds, and these can be widely distributed without detection, whereas counterfeiting of physical products is relatively difficult.

The advancement of technology has led to a large increase in software piracy. The recent proliferation of CD burners and the growth of the Internet have made it easier to distribute software to large numbers of people. Microsoft estimates that 90 percent of software available on Internet auction sites is being sold illegally.

Another factor is the high cost of software. Individuals and businesses commonly justify their software piracy by claiming that they cannot afford the high cost of software, especially with the need for frequent upgrades. Software manufacturers respond that the high costs are a response to software piracy, since they have to compensate for their losses.

The Impact of Software Piracy

Purchasers looking to save money by buying pirated software should be cautious - pirated software can end up costing them much more than they are saving. In many countries the legal punishments are severe. According to the U.S. Copyright Act for example, illegal reproduction of software is subject to civil damages of as much as \$100,000 per title infringed plus criminal penalties, including imprisonment. Under "vicarious liability" of the US Copyright Act, an employer is liable for acts committed by its employees when those acts are within the scope of their employment duties.

Other problems exist outside of the legal issues. Often the pirated software is a test copy or an improperly made copy, which may come with bugs or viruses that can damage the computer or cause a loss of data. The costs saved by purchasing the pirated software may be quickly outweighed by the costs to repair the damage it has caused.

Are Your Computers Kosher?

Although the crime of software piracy may be hidden inside the hard disk, it should not be ignored. A company that strives to be ethical in all its business dealings should carry out regular software audits. Management should also make it clear that software piracy is a legal and ethical problem, one that will not be tolerated by the company.