Anti-Piracy Measures: Futile, Unsuccessful, and Counter-Productive

With the rise of an increasingly digital world, new methods of viewing, sharing, and manipulating information have become easily available. This influx of different forms of digital media has allowed companies to distribute their creations, whether it is music, movies, videos, or video games, to many people at once. Unfortunately, this innovation has brought with it problems, the most prominent of which is piracy. It being a major issue in the digital world, many companies have begun to employ anti-piracy measures. Rights holders are making a push to prevent piracy, especially since, thanks to the Internet, it is easy to pirate any form of digital media. While piracy is a major issue and rights holders should be able to protect their profits, many of the forms of anti-piracy are unpopular due to the restrictions they place on those who wish to use digital products fairly. Not only that, anti-piracy measures are seen as unnecessary by many because they do not seem to be preventing piracy, as they should. In fact, the restrictions have encouraged otherwise honest consumers to resort to piracy in order to fully access the content for which they paid. To better understand this argument, some concepts and terms should be explained and defined. Piracy is the unauthorized use or manipulation of a copyrighted work, usually some form of digital media such as movies, music, and video games. Anti-piracy measures are any software or hardware that restricts the use of a copyrighted work in some way so as to, ideally, prevent piracy. Digital rights management (DRM) is software that restricts the usage of copyrighted software or other digital media in order to prevent any piracy of that
copyrighted work. Regional coding is a measure typically implemented in movie DVDs that prevent that DVD from playing in a device from a region different than the one permitted on the DVD. With those terms in mind, the argument set forth in this paper will be more easily understood. Anti-piracy regulation is a failure and a danger to the rights of users of digital media and is at risk of promoting the very practice it tries to prevent; thus, it should be avoided or entirely removed.

Since the time music and, later, movies were capable of being mass produced in a form that allowed common citizens to purchase such media for personal use, piracy has plagued copyrighted material and has proved to be an annoyance to copyright holders. In the days when media came in a more physical form, such as records, tapes, and eventually CDs for music and VHS tapes and DVDs for movies, piracy was simply an illegal reproduction of that physical form of media. Copyright holders grew increasingly annoyed at piracy, but other than pushing for legislation that would punish those caught and convicted of piracy, little could be done. However, as modern society grew increasingly digital, more methods of preventing piracy became available. Movie companies began using region coding on DVDs, thus preventing users from watching a cheap copy of a movie they purchased legally or illegally from another country. Unfortunately for copyright holders, with the Internet’s rise in popularity came a new medium through which to pirate and distribute copyrighted works, which include video games, movies, and music. Attempts to curb piracy, which is now almost entirely digital, through software and other means, have become more invasive and restrictive. With increased use of anti-piracy measures, many people are beginning to find the restrictive nature of such measures a hindrance to the use of the product they purchased.
For long-term use of anti-piracy measures to be justified, of course, the measures have to work. According to Mikhail Atalla in his article article “Steal This Article: Battening Down the Digital Hatches,” non-intrusive piracy protection exists and “delay[s]—and often entirely prevent[s]—the hacking of software” (28). This may be true. If a less experienced pirate is accustomed to cracking software that is unprotected, measures placed within the software to hinder piracy may either deter the pirate outright or it may prove to be too much of a hassle for the pirate to attempt to circumvent the measures.

However, anti-piracy measures have failed to significantly impact piracy, despite what Atallah believes. While intended to prevent piracy, DRM has not done so. Pirates have still discovered ways to get pass the DRM and illegally use the product supposedly protected. One study made of piracy rates concluded that from 2005 to 2006, piracy rates rose 15% (Atallah 26). At that time, application of anti-piracy measures in digital media increased. The implication is, of course, that the DRM being applied to various forms of digital media is not producing the desired results. Unfortunately, rights holders and big companies do not see this. They see the growing prevalence of piracy as a reason to increase the application and restrictive nature of anti-piracy measures. What had previously been only a minor annoyance in the form of a CD check or an authorization code has now become larger issue in the form of restricted use and software-protective measures, such as a limited number of installations. Rights holders insist that such increased restrictions are necessary evils to protect their revenue. Of course, to say that anti-piracy measures do not impact piracy at all would be difficult to prove, as hard, unquestionable data on issues regarding piracy and financial gains and losses is currently unavailable, as reported by Erasmus University assistant professor Christian Handke (392). Perhaps another reason for the unsuccessful nature of anti-piracy measures currently in use is that, as Forbes
video game and business writer Paul Tassi argues, piracy will never go away, no matter what is implemented to prevent it (n. pag.). Someone somewhere will always prefer a free copy of copyrighted software, and no matter what measure is used, another person will be ready to crack the software and offer it for free or for a discounted price. While such is a sad truth, it is one that should be considered by rights holders in their decisions about piracy prevention measures, especially considering more money is required to implement such measures (Handke 390).

The problems with anti-piracy measures are also at risk of being exacerbated by legislation. That is not to say that legislation has not already contributed in some way to the problems of anti-piracy measures. According to Professor of Law Steve P. Calandrillo and law clerk Ewa M. Davison, the intended purpose of the Digital Millennium Copyright Act (DMCA), an act signed into law in 1998 (354) as the first major legislative attempt at thwarting piracy, was to protect copyright holders without hindering the users of copyrighted works (360). The first major issued related to the DMCA came about when a person on the Internet who called himself AiboPet hacked the Sony Corporation-produced Aibo and developed enhancements for the robotic toy, which he then provided to other Aibo users via the Internet. Sony claimed that the enhancements were illegal according to the DMCA and wanted AiboPet to pull all the enhancement programs off the Internet. Fortunately for AiboPet, the many people who enjoyed the enhancements were able to convince Sony to back off (Calandrillo and Davison 353-354). Still, the DMCA had almost been the cause of a developer-consumer conflict over programs that should have been protected by fair use rights, especially considering the programs did not harm Sony’s sales or profit AiboPet in any way (Calandrillo and Davison 353). Unfortunately, the DMCA has since been used many times to hinder fair use because the act considers illegal any
circumvention of technology protection measures (TPMs), even if such circumvention is not committed with the intent to harm the developer of the copyrighted product.

However, interpretation of the DMCA in the last few years has become less harmful in regards to fair use—just in time for legislators to attempt to pass two acts that would be significantly more restrictive than the DMCA ever was. The Senate’s version of the act, the Protect IP Act (PIPA), did well and was passed to the House of Representatives, according to Reihan Salam and Patrick Ruffini in their article “Innovate or Legislate” (n. pag.) The House’s version was changed to the Stop Online Piracy Act (SOPA), but unlike PIPA, SOPA did not do as well (Salam and Ruffini n. pag.). Essentially, SOPA would allow rights holders to take legal action against any Internet site suspected of containing copyrighted content (Salam and Ruffini n. pag.). Thus, rights holders would be given incredible power to regulate the Internet. However, this legislative form of piracy prevention received a swift reaction from Internet sites and users. In January, strong opposition to SOPA was displayed in the blackouts of over 100,000 websites (Salam and Ruffini n. pag.). This caused many of SOPA’s backers to withdraw their support of the bill (Salam and Ruffini n. pag.). Thus, some comfort can be taken in the fact that while legislation has the potential to exacerbate the problems of piracy protection, it is also influenced by the people it would affect, allowing for a check in the legislative process.

Perhaps a more important aspect of anti-piracy measures to consider when deciding on its implementation is the impact on consumers and users of copyrighted works. Atallah states that the purpose of anti-piracy measures should be to protect the software or other form of digital work from piracy without negatively affecting the user of the product (28). In her essay “Broadcast Flags and the War against Digital Piracy: A Solution or Dilemma for the Digital Age?”, Debra Kaplan argues that both rights holders and users should be protected (344), even if
that protection requires some type of concession on one or both sides. Thus, a “delicate balance” would be reached (Kaplan 344). However, the ideal anti-piracy measure is no longer ideal for both rights holders and consumers. Methods of preventing piracy are becoming more restrictive, and fair use is taking backseat to the protection of copyrights. An example of the restrictive nature of DRM is the video game *Spore*. Prior to its release, it gained much popularity. Pre-release hype rose to an incredible level, and many game players awaited their chance to play the game. However, when it was finally released, it came packaged with a program called SecuROM, which was necessary for the game’s installation. While many game players were annoyed at the need for an additional program, they were even more annoyed at the fact that the program limited the number of times the game could be installed (Hoffman 17). Such restrictions essentially limited the extent to which game players could use the product they had legally purchased.

A similar situation arises with regional coding on a DVD. The code that is programmed into the disk itself communicates with the device attempting to access the data on the DVD. If the code on the disk does not recognize the device, the data cannot be accessed. While the regions are generally countries, and thus do not have much effect on the average consumer, the fact that the limitation is in place causes some to question its need.

Unfortunately, reactions to such anti-piracy measures are not limited to personal annoyance and public outcry. After *Spore’s* release, many game players were understandably angered. Many were not satisfied to just be angry, however. Thus, *Spore* piracy rates began to rise. The game could be found on the Internet for free— and devoid of SecuROM (Hoffman 17). The reasons for such high piracy rates varied, no doubt. Some game players may have just wanted a copy of the game that was not limited in the number of times it could be installed. If a
person buys a game, he should reasonably expect to be able to install it on any computer he owns. It could even be argued that he should, if he wants, be able to lend it to a friend. With the limited installations, however, this would be difficult. Anger, though, was probably the more likely reason. According to Atallah, for anti-piracy measures to be successful, they must be implemented in a way that does not interfere with the use or function of the product. More importantly, the measures should respect the products’ consumers and not betray the trust built between the consumer and the company that made the product (28). In the case of Spore, the game’s developer implied that they did not trust their consumers to not pirate the game. While it is true that some would pirate the game, essentially punishing honest consumers because of dishonest consumers is not fair. If Paul Tassi is right that piracy cannot be stopped (n. pag.), as he appears to be, then implementing anti-piracy measures, especially heavily restrictive ones such as SecuROM, is pointless and only harms those who choose not to pirate (n. pag.). While Spore is a popular example of the possible results of harsh piracy prevention restrictions, it is not the only example. Neither are video games the only medium in which this happens. Music and movies are also susceptible to increased piracy due to anti-piracy measures, even if to a lesser extent when compared to video games. Thus, anti-piracy measures can inadvertently encourage piracy.

With so many problems with and stemming from anti-piracy measures, a solution is needed. It might be possible to develop some anti-piracy measure that hinders piracy, as it should, but does not hinder the user. Atallah’s vision of the ideal copyright protection scheme would be fulfilled: rights holders would be satisfied and users would be able to enjoy the product without any restrictions or frustrations. Unfortunately, with the unsuccessful push in the last few years toward developing copyright protection measures that completely prevent piracy, such a
solution seems impossible, at least for the next few years. A solution that seems more likely to be successful, but would not be favored by rights holders, is a complete cessation of the use of anti-piracy measures. Based on the evidence so far, this solution would be the most beneficial to rights holders and consumers. Consumers would be free of the restrictions that come with anti-piracy measures, and thus would be more likely to purchase the product. Rights holders would still suffer from some piracy, but it would no doubt be significantly less than when anti-piracy measures were used. Consumers and rights holders would profit financially, as well. With no money spent on anti-piracy measures and their implementation, the digital media could theoretically be sold for less money. This would allow for a greater number of people to buy the product. Even with a price lowering, then, rights holders would increase their profits. Another possible solution, at least for movies and video games, could be lower budgets. As Paul Tassi argues, many decent, low-budget movies have been made (n. pag.). With lower budgets come lower prices, and thus a greater incentive to pay for a product instead of pirate it.

Anti-piracy measures are unsuccessful, invasive, and can even be counterproductive. Often, however, rights holders do not see this, and instead they attempt to protect their copyrights using anti-piracy measures. The effects are more far-reaching than just simple restrictions on digital products. The threat anti-piracy measures pose on the unrestricted and fair use of digital media is important because our society is becoming increasingly digital, with much reliance on technology and its use. Users of digital media should not be hindered by rights holders whose sole goals are to protect their profits. Granted, rights holders should be able to do just that, but not at the expense of users’ rights. In the end, piracy will, as Paul Tassi argues, persist (n. pag.). If rights holders would realize this, perhaps they would cease using anti-piracy
measures. Not only would that do service to digital media consumers, but it might also do service to the rights holders themselves.
Works Cited


