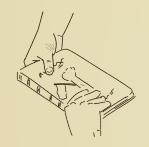# Literary Piracy

During his political exile, when Johannes Gutenberg developed an early prototype of the printing press in the 14th century, he was aware that the device might spark off a literary and cultural revolution. Yet, it must have been beyond his imagination that the invention would eventually open the floodgates of grey-market economy, inevitably striking the moral and legal debates regarding intellectual rights.

What was the first instance of piracy? How did these incidents pave the way for modern copyright laws? How can piracy be defined? The unrecorded activities of the-then book pirates means historians are often at a loss or widely differ among themselves in answering the first question. Adrian Jones deftly comments in response to the same; "Piracy and literary property both originated as phenomena of the press". To answer the remaining, let's attempt to trace piracy through the ages, since its inception; to how it has emerged as a prominent phenomenon of the 21st century.

Attempts to define piracy

In the 15th and 16th centuries, 'piracy' was solely used to denote the maritime activities of the sea-plunderers. Except in metaphorical senses (as by John Donne and Samuel Butler) it did not mean the violation of rights of intellectual property. The first attempt to explicitly equate literary and maritime piracy came from Daniel Defoe. In his A *General History of the Pyrates* (pseudonymously published in 1724) Defoe advocated for criminalization of unauthorized reprints, in the context of Restoration. Defoe's usage made the term suddenly popular, as evident in the writings of Jonathan Swift, Joseph Addison and Alexander Pope. The term entered even into dictionaries published during this time, first in English and subsequently to French, Italian, and German.

The debate regarding contesting usages of this term was explored initially by Diderot's *Encyclopédie*. It upheld author's rights over his intellectual materials like a landowner's to a piece of land; and it could be represented by a publisher in the market. In *The Metaphysics of Morals* Kant deals with similar questions, starting from the question of authorship, which he defined not as property, but an authority of expression of ideas. A pirate did violate, therefore, the financial rights of an author/publisher, but he did not infringe upon any natural right. Through such arguments, Kant was successful in demonstrating the ambiguities inherent in the earlier definitions.

> George Herbert's poem 'Jordan I' argues convincingly regarding the second-handed nature of language, and in turn exposes the myth of poetic creation.
>
> "May no lines passe, except they do their dutie / Not to a true, but painted chair?"
>
> If language is itself something 'borrowed', and poetry is to represent 'truth', is originality even possible?

Licensing

The modern usage of 'copyright infringement', colloquially referred to as piracy, itself acknowledges "the exclusive and assignable legal right…" (OED) to an intellectual work. Such rights were conferred upon publishers on certain works either by the State, or through a mutual arrangement among publishers, usually within a definite geographical domain. The first instance of licensing was the granting of exclusive rights to Andrea de Bosiis, to publish and distribute Jean Simoneta's *Sforziade*.

Except for books published by Oxford and Cambridge universities, in Elizabethan England, the Stationers' Company maintained an absolute monopoly in recording of publications. Their members (called Stationers) needed to enter the details in Stationers' Register to retain exclusive rights over that work. Prior to that, they needed a license to be issued from the Archbishop of Canterbury.

The Statute of Anne could be referred to as the first modern copyright law, passed by the English parliament in 1710. It brought several fundamental changes regarding the regulation of printing. However, though it prioritized the rights of the author over the rights of publishers , legal historians do not consider it as a clear assertion of the rights of the author . On an international scale, the Berne Convention

(1886) is considered to be one of the earliest attempts to protect intellectual and artistic rights.

Historical Instances

The initial acts of piracy can be traced right back to the days of printing itself, and the unrecorded nature of the same makes it close to impossible to pinpoint exact historical instances of such acts. Possibly we can never say with certainty how far and wide ranging they were— students of English literature are already familiar with debates regarding the authenticity of A-text of *Doctor Faustus*, Hamlet's answering of his own query of 'To be or not to be' with 'Aye, there's the point' in a spurious text of *Hamlet*, and Alexander Pope's frequent jibes towards the Grub Street booksellers and hack-writers. In this section, let's cast a glance at two representative case-studies: concerning Henry Hills the Pirate and the American piracy scenario.

In the 18th century, publishing was still in its nascent stages, and books were treated as expensive commodities. However, Henry Hills 'the pirate' was able to sell books at a fraction of the original price, ignoring the claims of rightsholders. He published an unofficial compilation of the first hundred issues of *The Tatler* even before an official compilation was released. Using the cheapest materials possible and keeping per-copy prices to a minimum, he was boldly able to flaunt his motto printed on his penny-prints— "For the benefits of the poor".

The American piracy of British works in the 18th century, as Bodó Balázs calls it, is "a clear-cut case of situational piracy". As a nation without a marked literary identity, it was feasible for unauthorized publishers to procure original copies from Britain and reprint them in US in an unregulated manner. The only reason why this was possible was because of the geographic distance and possibly a misrepresentation of Statute of Anne. "I am the greatest loser alive by the present law", wrote Dickens to his publisher. However, such cases of piracy were the sole reason for the rise of the common American reader and strengthening of the publishing industry. Only in 1989, US joined the Berne Convention, bringing an end to century-old practices.

Implications

Considering the American context, it is easy to infer that piracy in general helped a work reach a wider audience. The outcome was similar for transnational printing in Europe which was not always regulated. It again prompts us for another definition of piracy — a publisher who was respected in his own homeland was considered a pirate abroad. Thus, as Bodó Balázs informs us, "Scottish and Irish publishers competed with London publishers for English audiences; Dutch and Swiss publishers printed for the French market under the ancien régime".

Piracy is the prime route through which a banned text reaches its audience. An important and recent example of this is Rushdie's The *Satanic Verses* which saw boosted sales worldwide, both authorized and unauthorized, following its ban in India. However, it has negative consequences as well. A reviewer at *The Hindu* comments that he finds absolutely nothing worthwhile in Naipaul's *An Area of Darkness*, yet a ban on the text triggered its popularity.

> Paulo Coelho
> @paulocoelho
>
> People call this "pirate" editions.
> For me this is an honor, an honest way for this young man to make money

The road ahead

The popularization of internet from the second decade of the 21st century onwards opened up a whole new chapter with regards to piracy, and literary piracy was not left behind. Mass access to personal computers and other hand--held digital devices meant that the cost of production was dramatically reduced; unlike the long delay of publishing in Shakespeare's age, one can now publish eBooks within days using Amazon's Kindle Direct Publishing programme. Piracy of books is easier than ever through p2p file sharing, or websites like Library Genesis and various other methods. An article published by *The Guardian* also cites convenience as the primary motivation for piracy from the consumer's side.

Launched in 2011, Sci -Hub proudly claims in their homepage, "the first pirate website in the world to provide mass and public access to tens of millions of research papers". The basic philosophy of the website, as well as its founder Alexandra Elbakyan remains to be a complete denunciation of copy--right laws. Library Genesis has similar aims with respect to books of both academic and non-academic purposes, though their founders are unknown.

> In June 2020, Internet Archive faced wrath of publishers and authors as it opened the Emergency Library, through which users can access ebooks without waitlist. A lawsuit soon followed from four publishers. It's founder, Brewster Kahle's response to the same sparked quite another branch of controversy—if lending of books by physical libraries diminishes book sales, should they be also accused of piracy?

Responding to demands from academicians, students and researchers, particularly with regards to the pandemic situation, JSTOR increased their free reading limit to 100 articles per month. This move is seen not just as a step towards accessibility, but also to reduce access to third-party piracy websites, ultimately retaining the traffic revenue.

The suit against Rameshwari Photocopy Services (2012) presents interesting observations on the issues of academic publishing. The plaintiff side was composed of two universities— Oxford and Cambridge; and the publisher Taylor and Francis. They objected against the selling of photocopied portions from academic texts by the defendant. In 2016, Justice Rajiv Sahai Endlaw dismissed the law suit, observing that Copyright Law is not a divine and inherent right. Thus, photocopying by students and teachers, whether inside or outside the University Campus, does not constitute an infringement of the same.

The questions, its interpretations, and answers are endless, which cannot be objectively judged; for concurrently we look back to history, and on the other hand witnessing and observing history as it is in the process of formation. We started off with questions, and answering them begets even more questions— whether piracy, which has the potential to unshackle the limits of knowledge, can ever be decimated, or will it be sacrificed at the altar of ethics? While analyzing the nuances of piracy, can we, at all, take a moralistic viewpoint? Of course, the onus is on History to answer these queries.

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