
The Case for File Swapping

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2

Introduction

The purpose of this article is to explain why Internet file swapping (of media such as music files, video files, etc.) is moral, ethical and should be legal. Plus, people who share files on the Internet or download them, must not be prosecuted.

Debunking Some Misleading Terms

The Human Language is primarily a tool of thought, and only afterwards a tool of communication. As such, mutations in the meaning of words can affect clear thinking about issues. The issue of file swapping is no exception. Before we continue, allow me to explain about the improper validity or application of some terms.

“Intellectual Property”

As noted by Richard Stallman, [the term Intellectual property is a seductive mirage](#). Patents, Copyrights, and Trademarks are not equivalent to property, not even “intellectual” one. Furthermore, they shouldn’t be grouped together as they are intended for different purposes and do different things. (And are treated differently according to law).

Some people claim that since a copyrighted work is “intellectual property”, then copying it is equivalent to “stealing”. But that is not the case here.

“Stealing” or “Theft”

Copyright apologists like to say that copying a work that is copyrighted and was published to the public, is equivalent to “stealing” or “theft”. However, stealing involves taking tangible property without permission, and depriving the owner of one less instance of it. On the other hand, with a public work, we can make an unlimited number of copies, while not harming the original, and while respecting the exclusive rights of the author for his work. This is because we just copy it - we don’t claim it is ours.

Accusing people who share or duplicate media non-commercially of “stealing” obscures two other forms of media-related crimes that are in fact stealing:

1. If someone has somehow gained access to my private files and used it to prepare his own copies (or worse delete the originals), then he has performed stealing. Not of “Intellectual Property” but of actual property, because the files are private and I do not wish them to be inspected by someone else. And privacy must be respected.
2. If someone has made an inclusive work of someone’s else’s work, and claimed it was his, then it may be called “stealing” of copyrights.

But copying a work that was released for public consumption, can never be considered “stealing”. Instead it is merely “copying”, “swapping”, “sharing”, etc.

“Piracy”

The term “Piracy” is very common for the action of copying files, either for money or free of charge. One thing that should be noted about it is that the original pirates were sea-faring robbers, who took hold of ships, stole the goods, killed the people who were on board, and burned the ships. It would be a bit of a stretch to label a 10-years-old child who duplicated a CD of Music or several copyrighted files to his friend, after such villains.

I personally believe that the term “Piracy” in its applied context is quite harmless and is cognitively sound. However, I will not use the term here below.

“Crime”

If one violates the letter of the law of my country did he commit a crime? Not necessarily. A crime is an action that is globally accepted to be unethical, according to well-defined, absolute Ethics.

People who hid saved Jews during the Nazi regime, violated the law that took place in their lands. But can you call them “criminals” with a honest face? Not at all - they were very noble people, who did something almost everyone would agree was an ethical action.

Now, were people who bought Alcoholic beverages during [the time the U.S.A. had alcoholic prohibition](#) criminals? Again no. The Law at this point was completely irrational, and so the American Government could not have prevented such violations, and it was a regulation that the public could not withstand.¹

Similarly one cannot argue that people who violate laws that prohibit the non-commercial duplication of digital works are criminals. Just because the law is there does not necessarily make it a right law or a beneficial law. One can argue that these people are felons (or “Avaryanim” in Hebrew), but that’s not the same thing as a criminal.

Many times in history, acts of civil disobedience proved to be beneficial in the long run. The classical example for it is the American Revolution, but there are many other examples.

Conclusion

In one IRC conversation I had with supporters of actions against file sharers, I realised that while I gave a lot of arguments for my stance, they had nothing better to do than to repeat the same mantras of: “You’re stealing someone else’s (intellectual) property so you are a criminal.” or “You’re violating the law so you are a criminal.”, etc. It was obvious that their cognition was contaminated with the misinterpretations of these terms, which caused their thoughts and speech to be mutilated as well.

Thus, it is high time one eliminates all the mis-applications of these terms from his or her vocabulary, because they prevent clear thinking and growth on the matter.

Why File Swapping should be Legal?

So why should file swapping be legal? Let’s examine the reasons one by one.

It is not a Crime

The primary reason why file swapping should be legal is because it’s not a crime, at least not an ethical one. Sites or services that point to where to download the content are just referencing the presence of the information. Referencing or linking is **never** a crime. It’s like instructions on actions like how to prepare bombs, where to find illegal drugs, how to cheat various systems, or where to find stolen goods. By itself this information is not a crime to know, because it’s protected speech. So does pointing to a copyrighted resource.

¹ One correspondent to this article complained that I shouldn’t have given these two examples, because one cannot compare downloading files to the highly moral acts of the people who hid Jews during the Nazi reign, and because the Prohibition on alcohol was a starting point to the American mafia.

However, this is the [style over substance fallacy](#), where one criticises the style of a writing instead of what it says. My point was to bring two cases where people were acting illegally yet were acting either ethically or just morally, and that the Law was not on Ethics’ side in this case.

So now we're left with the question whether sharing a copyrighted work (or downloading it) is an objectively criminal action. The answer is again "no". It's not a crime since the originator of a copyrighted work that was made public cannot prevent non-commercial copies from being made and distributed. As of today, many countries passed such laws, but these laws are unethical. Sharing of copyrighted work is common-place, and many of the people who do it (including many children) do not feel they're doing something wrong, or feel guilty about it. So it is ethical, and moral and should be legal.

Note that selling copies commercially (as in stores of pirated media), can be prohibited by the copyright holder. But non-commercial copying (from friend to friend, or via Peer-to-Peer services) cannot.

Several respondents to early versions of this article, claimed that I should **prove** that copying or receiving a copy of an artwork that was released to the public is ethical and moral. Well, I'd like to ask those critics "Why it is not moral?". And they'll probably have no answer.

According to [the definition of Ethics and Morality that I accept](#) (presented there as "Constitutionality and Beneficiality"), then file sharing is ethical, because it does not involve an initiatory force, threat of force or fraud against one's property, which as I demonstrated here does not include the so-called "intellectual property". Moreover, it is also moral or at least not immoral, because it does not harm or prevent the filling of human biological needs.

Copyrights are not an absolute "nature-given" right like the rights for life and freedom. Instead, they are a state-enacted monopoly that is meant to protect the originators of artworks from abuse by commercial distributors. However, due to the computers and Internet revolutions, it makes no sense to try and prevent non-commercial digital distribution of them.

There are other ways to make money

There are many other ways in which originators of media can make money even if they allow free distribution. First of all, they can regulate the commercial use of the works. That way, commercial entities (such as Music stores, online music download services, D.J.'s in charge-for-entrance parties and commercial radio stations) must pay them royalties.

Another financial option is to restrict derivation of the work. That way, persons who wish to build upon the work or include substantial parts of it in their own must consult the originator.

Another option (of less substance) is to require attribution for the originator. That way, people who wish to build upon a work without crediting the originator must purchase permission from him.

These three methods together give enough options for an artist to make money off his art, without restricting non-commercial copying.

This is naturally excluding live performances of artists of various sorts, like Rock concerts, that are also a huge potential source of revenue, as well as sales of Merchandise. [The Grateful Dead made more money on merchandise than they ever did on selling records.](#)

File Sharing Does not Hurt Media Sales

Many people erroneously believe that file sharing hurts media sales. However, there is a lot of evidence to the contrary:

1. [Legal Music Downloads Increase in 2005](#)
2. [Slashdot Article about CD-R's and MP3s not hurting record sales in Australia](#)
3. [CD Sales in Israel went up by 15% in 2004.](#)

4. [Success of the single “No Meaning No” by Chuck D and the Fine Arts Militia](#) that was released under a liberal [Creative Commons](#) license, that allows free distribution.
5. The U.S. band [Wilco](#) released their album [“Yankee Hotel Foxtrot”](#) as mp3s online after their record label demanded they remix their songs. After a different record label decided to distribute their songs instead, and distributed the album, it became their best-selling album, selling over 500,000 copies.
6. The Movie “Pirates of the Caribbean” [was heavily “pirated”](#), yet also had very successful sales and was incredibly profitable.
7. Some new artists that published albums and singles in recent years, have proven to be very successful commercially, despite the fact that their songs are commonly available for download on the Internet, via Peer-to-Peer networks or otherwise.

Media Organisations hunt File Sharers and Prosecute Them

You’ve probably all heard stories of the Media organisations’ witch-hunt against file sharers. From suing a female 12-years-old honour student, to a grandpa in his 70’s, to a college player of American Football. They also were closing many online sites. In New Delhi the police gave the media companies an unlimited warrant to raid the houses of people suspected of media sharing.

Lots and lots of “1984”-style terror. And for what? For preventing the supposed loss of sales by a limited private sector of the industry? For preventing a practically costless operation of distributing an mp3 that can be done by the “criminals” at the comfort of their homes?

In a presentation he gave, Richard M. Stallman (of the Free Software Foundation and GNU project fame) gave another good reason why it wasn’t unacceptable. He said that when he was a kid in school, his teacher asked the children to share their sweets with the other children. And now, suddenly they have to tell them something like “No, Tommy, don’t share your music/software/videos/etc. It’s illegal!”.

What’s a child to feel in this case? Sharing is a nice part of living in a friendly society, and there’s no reason we should prevent it, or else we ourselves will become more and more selfish.

Put it into Perspective

Let’s put things into perspective. What the media companies do is sell entertainment to people. Entertainment. They don’t save lives and the economy does not depend on them, as there are many other sources of entertainment a consumer can choose instead that are available independently.

The worst case (and extremely unlikely) scenario is that no-one pays for online media, and everybody just share and download music from the Internet. Would that be a bad scenario? No, the world will go on. Without people making money off selling media, but nevertheless.

Refuting Common Arguments against File Swapping

This section aims to refute some common arguments against file swapping.

The Domino Effect

Some people are using “the Domino Effect” as an argument that file swapping should be stopped. What they say is that if the profitability of the Music industry would be harmed, then it will cause an economical

chain-reaction that may devastate the rest of the economy, because other dependent industries may be harmed.

There are two problems with this argument. The first is that there is no evidence that the profitability of the music industry is harmed due to file swapping, so there is little risk of this happening. The other is that assuming that would happen, it won't be a bad thing. That's because we essentially reduce the money that is transferred to a heavy taxer, and make the public, as a whole, richer. The public in turn, can spend this money on other merchandise, and make other industries as a whole more prosperous. This is similar to reducing income tax, while laying off some government workers.

Violating the Law against File Swapping will Cause Anarchy

Some people say that if the law of a country prohibits sharing files, then this law must be obeyed, because otherwise there will be anarchy. However, one must understand that if certain laws are irrational, they cannot be practically expected to be obeyed.

I also personally don't see how assuming everyone share files online, the integrity of a country will be harmed. Sharing files does not involve killing people, stealing from them, nor does it involve force, threat of force or fraud.

20% of Americans enjoy file swapping, and yet the United States is functioning perfectly fine, and no anarchy is in sight.

Sharing Files is like Disobeying Traffic Laws

The comparison of sharing and downloading files to disobeying traffic laws seems to be quite prevalent. But naturally, copying files does not endanger lives, nor is it actually a crime. The worst thing that can happen if one shares works of art, is loss of profit. If you disobey traffic laws, you risk the lives of yourself and of other people. This makes it a difference of Heaven and Earth in this analogy.

“Stealing from the Rich and Giving to the Poor” is still Stealing

Some people claim that because the main entities that will supposedly be harmed from making file swapping legal are media conglomerates, and to a lesser extent best-selling artists who are very rich, and those who would benefit are the poor everyday people, then this is a case of “stealing from the rich and giving to the poor.”, which is still stealing.

One thing that has to be understood about the Robin Hood myth is that Robin Hood supposedly stole from the exploiters and gave to the exploited. Secondly, it's not really true in this case.

Copying a copyrighted work is not stealing, because the money that the author can charge for its commercial copying is due to copyright law - a civil (not criminal) contract between the State and the artists, in order to encourage original creation. However, breaking this contract is not stealing.

It should be understood that record labels and other distributors of entertainment and non-technical media should either adapt to the new situation where Internet users can download such files for free and enjoy them, and to a greater extent contribute such media on their own, without much help from them, or simply perish as a no longer necessary establishment, that just gets in the way.

This is not about stealing from the rich and giving to the poor. This is about cutting down the middle man.

The Golden Rule Argument

A few people who criticised the article, claimed that by proposing that media will be free to be non-commercially copied, I've been violating [the Golden Rule](#) ("Treat others as you wish them to treat you") as I don't want copyright to be undermined for my own works.

However, this results from two confusions. The first is the belief that I too will mind people re-distributing my work. However, I don't have problems with that: all my work is freely re-distributable and a most of it is also Free Content. The second confusion is that I completely reject copyrights. However that's not the case as I still accept that some copyright principles are valid.

So I did not violate the Golden Rule in voicing this opinion.

Uses of File Swapping Services, which are More Legal

Aside from gaining a copy of a file one didn't buy, there are many ways to use file sharing services, that are more legitimate:

1. Getting tracks from a misplaced CD by downloading them from the Internet. Alternatively some people are too lazy to find the CD in their collection, and instead download it from the Internet.
2. Getting a digital recording of a file from a purchased audio recording like an audio cassette or a Vinyl record.
3. Getting the video clip of a song one has bought. These are usually hard to acquire separately.
4. Try before you buy.
5. Sharing songs that were declared freely-distributable by their originators.
6. Getting singles with different variations for albums that were purchased, especially a long time after the release of the singles, when they are very hard to find.

Prohibiting file swapping entirely will, thus be like throwing the baby along with the water. Nevertheless, all of this is secondary to the fact that preventing the non-restricted non-commercial distribution of artworks is bad.

Reflections on Online Music Stores

Lately we've been seeing online music purchasing services such as [iTunes](#), [Real Music Store](#), etc. Such services are a good thing as they allow Media companies to make money off selling music files, while allowing users to buy and download their favourite songs without too much hassle.

Some of these stores attempt to use one of the so-called "Digital Rights Management" (or "DRM") systems, to prevent the users from making use of the files as is. However, since players to play the files are present on the users' computers and these players can be reverse engineered, then this offers only fig leaf protection, and is just an annoyance. Online stores would do better to avoid such schemes altogether and just provide the plain, non-scrambled, music files.

While online music stores are a good thing, it still doesn't imply that file-swapping services like Peer-to-Peer network are illegitimate. There is room and legitimacy for both.

Can File Swapping Really be Stopped?

People who fight file swapping would like to believe it can be stopped. But the opposite is the fact. The first part is the fact that there are distributed Peer-to-Peer networks, that are not controlled from a central place and in which search, uploads and downloads are not centralised.

So they can say “that’s fine. We’ll log in with a fake client and find people who upload files are prosecute them according to their IPs”. Enter [Tor](#), the anonymous Internet communication system. Within the Tor network, traffic to the actual Internet is trafficked to different nodes in the network, and everything is encrypted, so one cannot determine the real origin of the request. If someone uploads a file from a Tor node - the file may actually reside on the host of a completely different Tor user.

The measures that copyright conglomerates have taken to try and stop file-sharing were appalling. From pulling out file sharing sites and services under legal threats, to demanding ISPs to give the identities of their file-sharing users (against any reasonable measurement of privacy), to prosecuting and harassing file sharers. All of this for fighting against a non-existent loss of profits. Will you sell your soul to the Devil in order to make a profit of 1.2 billion dollars instead of 1 billion?

The Internet as an Alternative Medium of Distribution

Now that the Internet is becoming more and more common and more and more integral for life, artists should consider that instead or as well as publishing their artworks via traditional means, they should publish them online. First of all, it makes one have much better chances of people noticing his creations, rather than the very slim chances of having his song, book, or video distributed by traditional distributors.

It is also often a way to eventually get published like that, after being noticed by such distributors. Let’s inspect the various venues for each content type.

Music

There are several venues for having freely re-distributable Music on the Internet:

1. [GarageBand.com](#) is an online community for artists which have made some tracks available online. GarageBand allows one to download the music for free, rate it, review it, and link to it from other places on the Internet.

From experience, I can say that a lot of the music that is available there is very good.

2. [ccMixter](#) is a Creative Commons sponsored community for sampling, mixing and sharing music under licences that allow that.
3. [MagnaTune](#) is a records’ label which publishes artists whose music is licensed under freely-redistributable licences.
4. One can distribute music using web sites and BitTorrent torrents.

Text

Most of the Web is text, and publishing text works that you wrote is possible in several ways:

1. [Wikis](#) such as [the Wikipedia](#) and friends.
2. One can set up a web site for his textual works, or have the PDFs downloadable via BitTorrent.
3. Weblogs and blog comments are an increasingly popular way of publishing content online. Many blog services such as [LiveJournal](#), or [Blogger](#) will publish your blogs free of charge, as will many community web sites.
4. Several writing or artist communities like [MySpace](#) and [Writing.com](#) accept submissions to publicise one's artwork.

Images

Images are de-facto freely distributable, and to a slightly lesser extent modifiable. Trying to protect the gratis use of your copyrighted photograph or image is becoming more and more futile.

There are several images' search engines online, and there's also photos sharing communities such as [Flickr](#).

Videos and Animations

One can distribute videos and animations in the following means:

1. Animations using the proprietary (but de-facto standard) Flash technology, or using the open [SVG](#) ("[Scalable Vector Graphics](#)") technology
2. Web sites and torrents can be used to distribute videos.
3. Video sharing sites such as [Google Video](#), and [YouTube](#).

The Value of Linking

By having a legitimate link to a piece of content one can immediately enjoy and experience it. For example I can say: "[Jenna Drey's single 'That's What They All Say'](#) is very nice, follow the link to download it.", or "[Austin Acton's 'Two Point Six'](#) is lame but still cool.", or "Pearl Jam made their new single 'Life Wasted' freely distributable. [Here's the torrent](#).". Etc. (These are all legitimate downloads).

This is much better availability and accessibility than having to go to the store and buy it, or even buy it from an online store. And it an excellent publicity.

For more information consult Paul Graham's essays "[Web 2.0](#)" and "[What Business can Learn from Open Source](#)".

Weird Al Yankovic's "Don't Download This Song"

[Weird Al Yankovic](#), the famous musical comedian, has released the track "[Don't Download this Song](#)" out of his album *Straight outta Lynwood*. Despite its ironic title, it is available for free download.

[The Lyrics for the song](#) are illuminating the absurdity of the big copyright owners' fight against file-swapping in a funny way.

A Historical Perspective

This section aims to give a historical perspective to why copyrighted work ought to be freely and non-commercially re-distributable.

Ancient Times through the Middle Ages

During ancient times (before the invention of paper, and the press), texts were written on stone or on animals' hides and required a lot of effort to duplicate. As such, the authors encouraged people to copy, quote, and re-use their text, as long as they maintained proper attribution.

After the Invention of the Press

After the Press was invented, and became cheaper, commercial books started to appear. Eventually copyright on texts emerged to make sure that:

1. Artists would be protected so their works will not be re-printed by publishes and prints.
2. Make sure other prints won't be able to re-print the works of other publishers.

At first it was applied exclusively to written works. Not to audio or video recording, which did not exist yet, nor to melodies, pictures, videos, etc.

It was decided that after a limited time when the author or his estate held the exclusive copyrights for the work, the work would be transferred to the public domain, to make sure it can be freely reused and manipulated by future generations. The first such term in the USA was 14 years with a potential extension of another 14 years.

My Analysis of This

The [Copyright Act of 1790](#) granted the originator of a text “the sole liberty of printing, reprinting, publishing and vending” of a work. Note that it does not talk about mere duplication. Printing and reprinting were at the time very costly operations, produced works of good quality, and required a non-negligible amount of money to perform. On the other hand, if a person was to copy the work by hand, it would not have fallen under this law.

Furthermore, it makes sense that now that we have the Internet that can “copy arbitrary blobs of data from one place to another at virtually no cost, in virtually no time, with virtually no control” (to [quote Cory Doctorow](#)), then the copyright laws will once again be amended to reflect the new technological reality.

Trying to stop such copyright “infringement” on the Internet is not going to be successful. And so far, it seems the Internet helps the originators of such works, more than it harms them.

Conclusion

File swapping must be legal, because it's ethical, moral, makes economical sense, and is otherwise beneficial for artists, distributors and consumers.

There's a book on my bookshelf by Ashleigh Brilliant with a very good title: “I Feel Much Better, Now that I've Given up Hope”. I think this is one thing the Media companies don't understand. If they accept Internet File Sharing as a necessary “Evil”, they will be able to make the best out of the new situation.

Instead, they have chosen to perform a large-scale witch-hunt, which does not really help prevent file sharing, and just makes them look like the public enemy.

Once the Media companies try to fight file swapping by using lawsuits, or threats, then they should be fought back in order to protect the people's ethical right to share songs. All laws that are passed to prohibit non-commercial distribution of public works, are unethical, and should be replaced with more reasonable laws.

How you can Help

There are several ways in which you can help fight for the cause of protecting file swapping:

1. Write. Write school reports, university theses, essays, news items and articles about this cause. Feel free to use material from here, or to link to it.
2. Publish the art you create under a freely-distributable license. The [Creative Commons licenses](#) can give you enough protection, while still retaining this right.
3. Link and mention this essay on your web-site, in your blog, in your posts to online forums, in real-life (in chats, on newspaper items), etc. Get people to know it.
4. Write to your representatives at the government and tell them that you wish file swapping and all related issues to be legal. Don't vote for people who fight against file swapping, and vote for those who do.
5. Donate money, time and other resources to support the legal battle for file swapping.

Together, we can stop this insanity faster than it will be stopped on its own.

Other Important Copyrights Issues

This section will cover other significant copyright issues that are at stake today and require a struggle.

The first is the lengthening of the copyright term. Recently [the Sonny Bono Copyright Term Extension Act](#) that was passed in American congress extended the copyrights act by 20 years. One should note that the term was already extended several times in the past, since the first American copyrights law. 95 years for a copyrights of works of corporations is far too long, and we also risk that copyrights will be extended indefinitely this way. ("Forever minus a day")

A different issue is the [Digital Millennium Copyright Act](#) (or DMCA for short). This law that was passed in the 90's criminalises a lot of valid activity. It prohibits the writing of "circumvention devices" to bypass copyright protection (and some say every computer security measure, in general). It is actively used to threaten to remove allegedly copyrighted content from web sites, because they may violate it. (See [Cory Doctorow's excellent essay "Save Canada's Internet from WIPO"](#).) It also contains a lot of other damaging clauses.

The [Free Expression Policy Project](#) has an excellent [report on the various issues in copyrights law in the past and today](#). It is a very recommended read.

A different issue is that of the so-called "[Digital Restrictions Management](#)" measures (or DRM for short), which are measures meant to prevent the copying or ripping of digital media. Perhaps the most extreme form of this is [The "Sony Rootkit" scandal](#), in which a copyright-protection measure, turned out to put one's Windows installation at risk, once the CD was inserted to the computer.

The [Electronic Frontier Foundation](#) has many resources related to activity against various harmful copyrights regulations.

About this document

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It was written by [Shlomi Fish](#) who also holds the copyrights.

About the Author

Shlomi Fish was born in Israel in 1977, and has lived there most of his life. He is a user, developer, advocate and activist of Open Source Software. His greatest contribution so far in this regard has been [Freecell Solver](#), a Public Domain Library for solving games of Freecell and other types of Solitaire. However, he also [initiated several other projects](#) and [made important contributions to projects he did not initiate](#) some of them very large scale.

Otherwise, Fish has written [several humorous novellas, stories and aphorisms](#), which he has released online, under the CC-by or CC-by-sa licenses. He also wrote [many essays and articles](#) as well as [material for presentations](#) which (unless specified otherwise) were released under the CC-by license.

To conclude, if you think that “this guy attacks Intellectual Property so he obviously doesn’t have any significant IP of his own”, then this myth, in his case, cannot be farther from the fact.

Shlomi Fish is a Jew and an Israeli by nationality, an atheist by faith (or lack of it) and a [Neo-Tech](#) Objectivist by ideology. As such he is a firm believer in both individual rights and freedoms, and freedom from oppression, as well as a free economy (Laissez-Faire Capitalism) that is free of government intervention. He also does his best efforts to live by the values of honesty, integrity, individualism, independent thought, passion, and rational self-growth.

More Links

[“Acting against anti-File-Swapping Lawsuits in Israel”](#) was an early attempt to convey this message written by me. It sparked [a discussion at the Linux-IL mailing list](#) and [a discussion at the Hamakor Discussions mailing list](#).

Glyn Moody maintains a blog titled [opendotdotdot](#) where he talks about Open Source, Open Content, Open Access, and various other Internet paradigms. It is well worth reading and following.

Finally, Wil Wheaton has [some interesting insights in a Slashdot interview with him](#):

I’m no expert, but it seems like the MPAA would get a much bigger return on their investment if they stopped going after college students and went after the factories that turn out legitimate movies by day, and switch over to pirated material at night.

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