

**DOWNLOAD THIS ESSAY: A DEFENCE OF STEALING
EBOOKS**

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Philosophers write essays. Nowadays most of them are highly technical and argumentative. They have titles like 'A Rejoinder to So and So' or 'A Critique of Such and Such'. This is somewhat understandable. Like others in my field, as a philosopher, my work is predicated on having interlocutors – all of whom, with a few exceptions, I have never met. This is the beauty of the written word combined with public libraries. Because of printing I can engage the ideas of others from a different time or place; because of libraries I am not excluded from the conversation because of social or economic class.

Public libraries are a wonderful resource. However, not too long ago I realized that I could greatly supplement the service libraries offer. To put it bluntly, I steal books online. This descriptive claim leads to two normative questions, which I often pose to my ethics class: 'Can one give an argument in favor of public libraries (in the bricks and paper sense) that is not also an argument in favor of stealing books online? Or, can one give an argument against this kind of stealing that would not also be an argument against libraries?' I contend that the answer to both questions is no.¹

Let's begin by looking at what public libraries are exactly and the arguments in favor of them. Public libraries are institutions that buy books and then allow members of the community to freely borrow them. If we were not so accustomed to this process, it would seem quite odd (or at least it should). Libraries get to buy a copyrighted book, the content of which is the property of either a publisher or author, and give it out for free. Not only this but the person borrowing it,

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under fair-use law, can photocopy the book or article in its entirety and keep it forever. Recently, in order to meet rising demand with decreasing budgets, libraries have started engaging in interlibrary loan. By this process, I can request and receive a book, which my particular library does not own, through another library. I can, by this same process, also request and receive photocopies of journal articles and chapters of books that my library neither has access to nor owns, and I can keep these copies indefinitely.²

It is important to keep in mind that all of this material is someone else's copyrighted property, so what would justify libraries in providing this kind of service? The standard argument hinges on the claim that no one should be deprived of information because of morally arbitrary contingencies such as race, sex, class, and age. But regardless of this, one might still ask, why should individuals have public access to information? The responses here may vary, but at the core all seem to hold that open access to information plays a pivotal role in a well functioning society. For instance, an informed citizenry seems to be the best (if not the only) way of holding lawmakers accountable, which is why effective tyranny requires propaganda, silencing of dissent, and information distortion – all of which are thwarted by access to public libraries.

Beyond leveling the playing field between citizens and lawmakers, libraries attempt to mitigate the epistemic disparity among citizens. That is, we can eliminate inequalities in the amount of knowledge citizens have based on privileges that not all share. Minimally, it seems clear that acquiring information through reading books requires both time and money. Eliminating even one of these obstacles for the least well off members of society is surely a worthy endeavor, which is precisely what libraries attempt to do. Libraries prevent people from looking down on those who did not have certain educational advantages; they make, borrowing an expression from Philip Pettit, citizens capable of looking one another in the eye.

Hence, insofar as libraries facilitate in meeting the twin goals of promoting a well-informed and equally-informed

citizenry, we have good *prima facie* reasons for their existence and promotion.

But we should pause here to spell out why libraries are so peculiar in terms of their relation to property rights, specifically, intellectual property rights. Intellectual property is protected by copyright, and here lies the conflict: libraries provide access to information; copyrights attempt to limit access to information. We have briefly looked at the argument in favor of libraries, what then is the argument in favor of copyrights?

To take a familiar case, the United States Constitution holds that congress has the power '[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries' (art.I, §8, cl.8.). The idea here is that progress in science and arts is motivated by economic incentives, and authors will be less motivated to produce work if they are deprived of this incentive. Thus, if one copies or steals a work, the author is harmed in virtue of the economic loss, and society is harmed because of the decreased incentive to innovate. I do not want to judge the merits of this argument quite yet, although I think it rests on two questionable assumptions (which I will return to below). Rather, I want to highlight that if one is in favor of libraries, one must hold something like the following premise: The cost of making every member of society pay to gain access to information – what seems to be an obvious implication of copyrights – is outweighed by the benefits that society receives by providing that information for free. But how is this not also an argument, consistently applied, for the theft of books online?

That is, if one is on board with the benefits libraries provide to societies, then one should be on board with the electronic distribution of books (indeed even rejoice in its speed and ease of access). If I can walk into a library, check out a book and scan it to my computer (or better, have someone else do the scanning for me through interlibrary loan), how is this relevantly different from logging on

to a website and downloading a scanned version of the book? Do I mix my labor with the PDF while I am scanning so that it now becomes my property in some Lockean sense? If this counts, then so does moving around my mouse and typing. The important point here is that if access to certain information trumps copyright and justifies libraries, then it looks like access to the same information trumps copyright and justifies downloading books online. And the fact that one can access this information more efficiently is a *virtue*, not a vice.

But let us now examine how tight the connection is between libraries and stealing books online by looking at the argument from the other direction. Is there any argument that could be leveled against stealing books online that would not also impugn libraries?

With few exceptions (extreme want or necessity), it is considered morally blameworthy to steal another's property. In the most obvious cases, I have harmed you in some way by taking what is yours. For example, if you own a pear and I come along and steal your pear, then I have deprived you of some good that was rightfully yours. You can no longer enjoy it. If you worked for it, then your work was for naught. And this highlights one of the key features of property rights – physical excludability.

But intellectual property is relevantly different. If you work to write a book and I come along to copy it after its publication, I have not excluded you from selling future copies the way I could exclude you from selling your pear. I can, at least in one sense, leave you with exactly as much and as good as you previously had – intellectual property is nonrivalrous. But, it is argued, something seems to have gone awry. If you write a book, then you should be entitled to profit from it. So instead of physical excludability, copyrights step in and legally provide exclusive rights – barring others, without permission, from using the product – i.e., legal excludability. Again, this idea rests on the notion that an author would be unable to secure royalties and hence

overall production of work would decline because of decreased incentives.

Here it is worth noting that this point seems to ride on the following two claims: First, that those who copy or steal a work would have been willing to pay for it, and second that authors will not be self motivated. So, first, is it fair to say that if I steal a book I have harmed the author by depriving her of some good? This first claim must assume that if I were prevented from stealing the book, I would have purchased it. Only under these conditions can one safely assume that the stealing of a book would result in the harm of lost revenue for the author.

I would like a newer translation of Plato's *Five Dialogues* but if it is going to cost me \$75, then I am willing to stick with the G.M.A Grube version. But if I did happen to steal a newer version, this fact does not entail that I would have otherwise purchased it. In fact, most people steal *because* they cannot afford to purchase. So we cannot assume that there is a one to one ratio between books that are stolen and books that would have otherwise been purchased, hence we cannot assume that stealing deprives the author of a good they would have otherwise received.

The second claim has more intuitive appeal. It seems at least plausible that increased economic incentives are linked to increased production of new works. However, England was the first to pass copyright laws in the early 18th century, and there is a large body of works that pre-dates this. Taking this fact into account, we can make a distinction between works that would not have come into existence if not for royalties and those that would have come into existence regardless of royalties (and recall that the justification for copyrights assumes that royalties have to be the *primary* incentive, not just one among many). Certainly, however, there are a host of incentives that motivate authors, arguably taking primacy over royalties – e.g. fame, tenure, and humanitarian ends, among others. And even if this is not convincing, here I am willing (although I do not think required) to opt for a narrower version of the

argument, focusing only on those books that would be produced regardless of the incentives provided by copyright. Although one may think there are few books that meet this criterion, virtually *all* academic books do (with the exception of a few textbooks). And this nicely connects up to the first half of the argument, which shows that libraries and the electronic distribution of books are justified in the first place by the educational benefits they provide to societies, for it seems uncontroversial to assert that academic books (whose purpose it is to educate), fulfill this requirement much more than books that seek royalties above all (e.g. romance novels). In short, it seems there is an *inverse* relationship between the information that would be useful for a well functioning society and a book's creation hinging on royalties.

Perhaps, one might challenge again, even if most (academic) authors are not in it for the money, the publishers are, and in the same way that one makes her holdings less secure by stealing from others, stealing and copying books make the production of future books less secure. But here's the rub, if this argument is correct it should also be an argument against libraries, especially those that do not buy all of their books, relying instead on interlibrary loan. If it is the case that it is morally wrong to upload a book because the unlimited number of downloads that might follow could jeopardize future publishing, then it should be equally wrong for a place to exist where anyone is allowed to walk in and do effectively the same thing. Or, to put it differently, how is a library buying one copy of a book and then distributing it to multiple individuals any different from one individual buying a book and distributing it to multiple individuals online?

The argument put forth here does not resist copyrights wholesale, rather it shows that the way we think about copyrights is inconsistent. Let's conclude then explicitly with what I take to be the most interesting upshot of this argument: There is a kind of willful taking of another's property – stealing books online – that is not morally wrong,

and if it is morally wrong, then operating or using a library is also morally wrong.

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Notes

¹ Recently (March 2012), 17 publishing companies filed an injunction which shut down a website called library.nu – the most efficient and well-stocked resource for stealable electronic books.

² See §107–108 of the United States Copyright Act, which holds that ‘it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than one copy or phonorecord of a work.’ Since it is not a violation of copyright there are no royalties involved with photocopying a book that a library holds.