Digital property rights: Renting vs. buying

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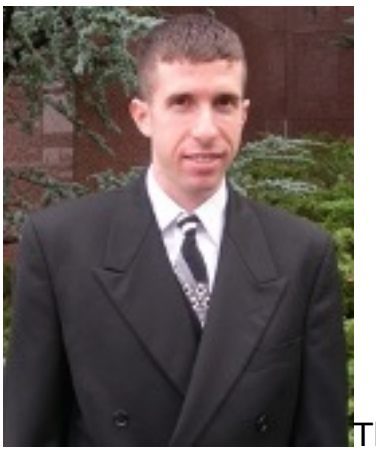

The Amazon Kindle fiasco brings up a host of issues related to digital property management and individual rights. For those with a personal (read: *financial*) stake in E-reader technology, it's a shot across the bow. It puts them on the defensive, as one company (that would be Amazon) has unwittingly put out a negative ad campaign against E-readers. For bibliophiles, the incident is succinct proof that the physical medium is preferable. But it also illustrates the chief issue regarding digital property: *what's mine isn't really mine*.

For those who missed our skipper's editorial [1], the incident can be summarized thusly: Amazon sold digital copies of 1984 and Animal Farm to Kindle owners. But as it turned out, Amazon didn't own the property rights to said literary works, and when the rightful owners complained, Amazon "recovered" the works from users' Kindles (and refunded the purchase). As our Editor-in-Chief pointed out, this is tantamount to breaking into your house and stealing your book (even if the thieves leave some money). The irony is that the "recovered" works depicted autocratic societies where information was constantly altered to fit the official party line. Amazon's move seemed very Orwellian in nature.

This also speaks to larger issues regarding digital property rights. It boils down to the notion of the "First Sale [2]" doctrine. First Sale allows the lawful owner of a work to sell or reproduce that work as they see fit. But Kindle owners do not own their E-books (at least according to Amazon's interpretation and the terms and conditions they set forth). Rather, Amazon licenses the works to Kindle owners. In this sense, it is more like renting than buying. There is much dispute on this last point. If a transaction looks more like a sale, courts could rule that the "digital property" then belongs to the buyer. In other words, the buyer would gain First Sale capabilities.

This foggy notion of ownership is one of the primary reasons why I don't own a Kindle or play Massively Multiplayer Online Role-playing Games (MMORPGs [3]) like World of Warcraft [4]. I'm uncomfortable with the notion of "virtually" owning something. Call me a Luddite, but I'd rather hold it in my hands. WoW's

publisher states [5] unequivocally that, “Blizzard owns, has licensed, or otherwise has rights to all of the content that appears in the Game.” This also means that selling individual accounts is illegal (though that hasn’t stopped budding entrepreneurs). Says Blizzard, “You may not purchase, sell, gift or trade any Account, or offer to purchase, sell, gift or trade any Account, and any such attempt shall be null and void.”

This last bit is important. As mentioned, a whole industry has sprung up around building primo WoW accounts then selling them on the secondary market. These accounts can fetch many thousands of dollars (in one case [6], 7,000 Euros, and the examples go higher). Think about this-- paying 7,000 Euros for a piece of digital information that *someone else owns*. Imagine paying 10 grand for a souped-up WoW character, only to see the account closed. This is a very real possibility. It’s a risk that buyers take, but it’s a big one. Ebay has banned such transactions, but other auction sites haven’t.

The crux of the matter is this: should ownership rights be the same for online property as physical? Or does the very nature of online “property” preclude that? Because the web is a fundamentally different medium, should that necessarily dictate different rules? As technologies like E-readers mature, we will be forced to confront these issues.

Do you agree? Disagree? Think I'm crazy? Leave a comment below or e-mail me directly.

Note: The preceding represents the view of the editor and not necessarily ECN.

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