When stealing isn't stealing

STUART P. GREEN

THE Justice Department is building its case against Megaupload, the hugely popular file-sharing site that was indicted earlier this year on multiple counts of copyright infringement and related crimes. The company's servers have been shut down, its assets seized and top employees arrested. And, as is usual in such cases, prosecutors and their allies in the music and movie industries have sought to invoke the language of "theft" and "stealing" to frame the prosecutions and, presumably, obtain the moral high ground.

Whatever wrongs Megaupload has committed, though, it's doubtful that theft is among them.

From its earliest days, the crime of theft has been understood to involve the misappropriation of things real and tangible. For Caveman Bob to "steal" from Caveman Joe meant that Bob had taken something of value from Joe say, his favorite club and that Joe, crucially, no longer had it. Everyone recognised, at least intuitively, that theft constituted what can loosely be defined as a zero-sum game: what Bob gained, Joe lost.

When Industrial Age Bob and Joe started inventing less tangible things, like electricity, stocks, bonds and licenses, however, things got more complicated. What Bob took, Joe, in some sense, still had. So the law adjusted in ad hoc and at times inconsistent ways. Specialised doctrines were developed to cover the misappropriation of services (like a ride on a train), semi-intangibles (like the gas for streetlights) and true intangibles (like business goodwill).

In the middle of the 20th century, criminal law reformers were sufficiently annoyed by all of this specialisation and ad hoc-ness that they decided to do something about it.

In 1962, the prestigious American Law Institute issued the Model Penal Code, resulting in the confused state of theft law we're still dealing with today.

In a radical departure from prior law, the code defined "property" to refer to "anything of value." Henceforth, it would no longer matter whether the property misappropriated was tangible or intangible, real or personal, a good or a service. All of these things were now to be treated uniformly.

Before long, the code would inform the criminal law that virtually every law student in the country was learning. And when these new lawyers went to work on Capitol Hill, at the Justice Department and elsewhere, they had that approach to theft in mind.

Then technology caught up.

With intangible assets like information, patents and

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copyrighted material playing an increasingly important role in the economy, lawyers and lobbyists for the movie and music industries, and their allies in Congress and at the Justice Department, sought to push the concept of theft beyond the basic principle of zero sum-ness. Earlier this year, for example, they proposed two major pieces of legislation premised on the notion that illegal downloading is stealing: the Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act (PIPA) and the Stop Online Piracy Act (SOPA).

The same rhetorical strategy was used with only slightly more success by the movie industry in its memorably irritating advertising campaign designed to persuade (particularly) young people that illegal downloading is stealing. Appearing before the program content on countless DVDs, the Motion Picture Association of America's much-parodied ad featured a pounding soundtrack and superficially logical reasoning:

You wouldn't steal a car.
You wouldn't steal a handbag.
You wouldn't steal a mobile phone.
You wouldn't steal a DVD.

Downloading pirated films is stealing.
Stealing is against the law.
Piracy: It's a crime.

The problem is that most people simply don't buy the claim that illegally downloading a song or video from the internet really is like stealing a car. According to a range of empirical studies, including one conducted by me and my social psychologist collaborator, Matthew Kugler, lay observers draw a sharp moral distinction between file sharing and genuine theft, even when the value of the property is the same.

If Cyber Bob illegally downloads Digital Joe's song from the internet, it's crucial to recognise that, in most cases, Joe hasn't lost anything. Yes, one might try to argue that people who use intellectual property without paying for it steal the money they would have owed had they bought it lawfully. But there are two basic problems with this contention. First, we ordinarily can't know whether the downloader would have paid the purchase price had he not misappropriated the property. Second, the argument assumes the conclusion that is being argued for that it is theft.

So what are the lessons in all this? For starters, we should stop trying to shoehorn the 21st-century problem of illegal downloading into a moral and legal regime that was developed with a pre- or mid-20th-century economy in mind. Second, we should recognise that the criminal law is least effective and least legitimate when it is at odds with widely held moral intuitions.

Illegal downloading is, of course, a real problem. People who work hard to produce creative works are entitled to enjoy legal protection to reap the benefits of their labors. And if others want to enjoy those creative works, it's reasonable to make them pay for the privilege. But framing illegal downloading as a form of stealing doesn't, and probably never will, work. We would do better to consider a range of legal concepts that fit the problem more appropriately: concepts like unauthorised use, trespass, conversion and misappropriation. This is not merely a question of nomenclature. The label we apply to criminal acts matters crucially in terms of how we conceive of and stigmatise them. What we choose to call a given type of crime ultimately determines how it's formulated and classified and, perhaps most important, how it will be punished. Treating different forms of property deprivation as different crimes may seem untidy, but that is the nature of criminal law.

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Self-sculpting sand robots in the making

BBC ONLINE

TINY robots that can join together to form functional tools and then split apart again after use might be ready for market in little more than a decade, according to researchers.

A team at the Massachusetts Institute of Technology says it has developed about 30 prototype "smart pebbles" and the software to run them.

The sides of each cube are 1cm (0.4 inches) in length.

Efforts are now focused on creating smaller models.

The researchers from the university's Distributed Robotics Laboratory liken the ultimate product they are trying to develop to "self-sculpting sand."

"We want to have a bag of this material that can form any shape you demand," PhD student Kyle Gilpin told the BBC.

"So if you are in an isolated situation and you need a certain tool, you can tell that to the bag by making a miniaturised model of the tool, drop it into the bag, shake it around - and what you would end up with inside would be a magnified copy of the tool which is usable."

The test cubes have electropermanent magnets embedded into their sides to allow them to stick together. The magnetic effect can be switched on and off and does not require an electric current to remain active.

The cubes also contain a microprocessor to work out which of the magnets should be activated and when.

Each processor can currently store 32 kilobytes of code and has only two kilobytes of working
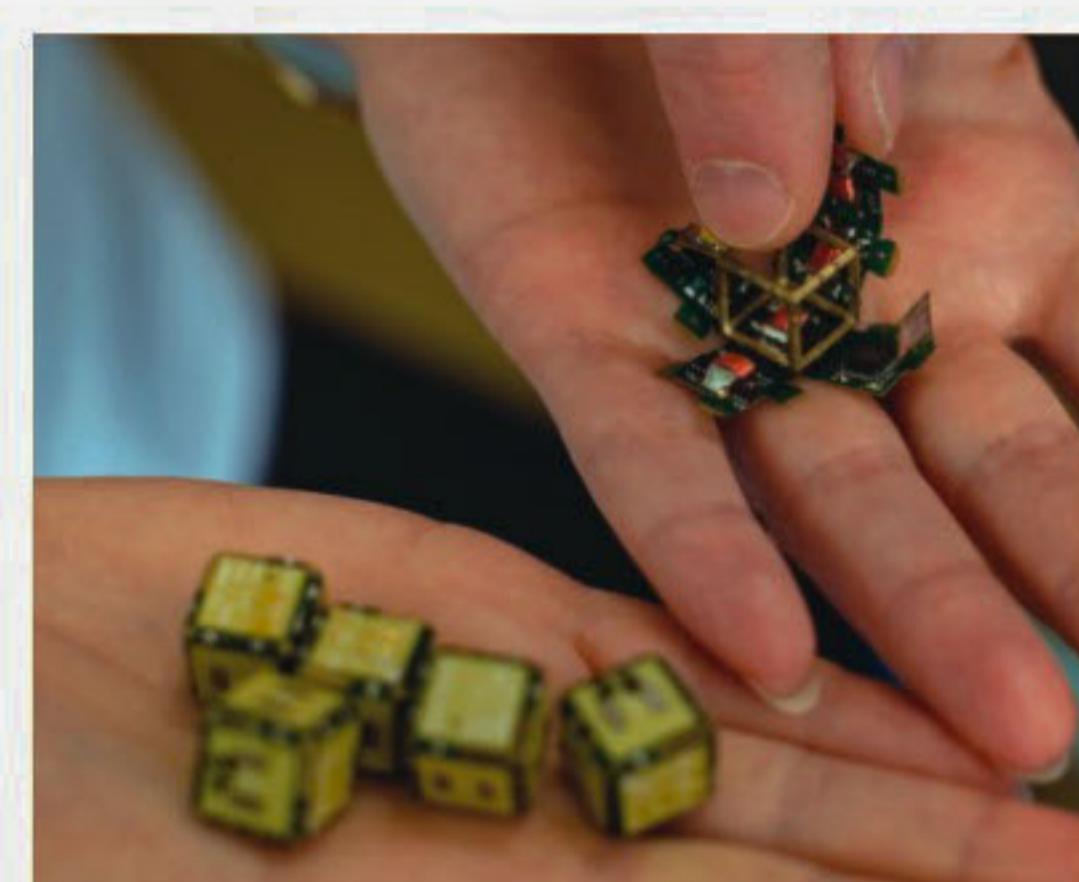
The MIT team have built test modules with microprocessors and magnets to prove their theory.

PHOTO: MIT

memory - so the algorithm powering the process had to be kept simple.

The solution was to use a "subtractive" method - removing modules rather than adding them.

The first step works out what the original object looks like by covering it with the "pebbles".

"The idea is that they sense the border of the original shape - if a module detects it doesn't have a neighbour, it assumes it may be on the border of the shape," Mr Gilpin explained.

The cubes then message the shape of the original object to other "pebbles" a fixed distance away. These then define themselves as the perimeter of the duplicate object. If the replicated object is supposed to be five times the size of the original, then each square surrounding the object will map onto five cubes making up the reproduced perimeter.

All the cubes inside the duplicated border then recognise themselves to be part of the newly created tool.

"Once all those modules within the border have been notified and have confirmed their status, then we start the disassembly process," added Mr Gilpin.

"All the other bonds which are not crucial to the duplicate shape are broken, while the bonds between the modules in the shape are left intact - and so you are left with just the recreated shape when the process ends."

Mr Gilpin admits a lot more work needs to be done, but he has an ambitious targets.

"It's not something that's going to happen in two years or necessarily five years," he said.

"But in 10 years you might see a product on the market that starts to rival traditional manufacturing approaches. I think we might all be surprised at how quickly this advances once people really start looking at the technology."

More details of the project will be presented to the IEEE International Conference on Robotics and Automation in St Paul, Minnesota next month.

TECHPHOTO

Md Nazrul Islam Khan, national project director of Support to Digital Bangladesh, speaks at the Digital Marketing Summit 2012 at BRAC Centre Inn in Dhaka recently. ARRIVAL GO Brand in partnership with Citycell Zoom Ultra organised the event. Naveed Mahbub, country head of IBM Bangladesh; Arild Klokkerhaug, president of Nordic Chamber; Jonathan Nguyen, regional strategy director of Ogilvy, Hong Kong; Aftab Mahmud Khurshid, chief marketing officer of Go Brand Arrival; Habibullah N Karim, chief executive officer of Technohaven; and Sayed Farhad Ahmed, managing director of aamra, were also present.

PHOTO: DMS

Knowledge sharing session for BASIS members

IT & TELECOM DESK

A day long knowledge sharing session on 'Project Management & CMMI (Capability Maturity Model Integration)' was held on Saturday at BASIS office in Dhaka, says a press release.

GPIT and BASIS jointly organised the session for the project managers and the officers of the forum members of BASIS.

The session was conducted by Arifur Rahman, head of governance and risk management, GPIT and Miraj Ul Haque, deputy general manager, Project Management Department, GPIT.

They shared their knowledge and experience with details of CMMI with the participants.

This was the 4th session of BASIS and GPIT's 5 separate day-long knowledge sharing sessions to develop the managerial skills of the employees of BASIS member companies.

Acer partners' meet

IT & TELECOM DESK

Acer India, along with Executive Technologies Limited (ETL), Bangladesh organised a 2-day 'Mystic Dubai' scheme last month for its partners on achieving their targets set for the 4th quarter in 2011. Acer had a team of 22 participants from different dealers of Bangladesh for the conference-cum city tour in Dubai.

Microsoft Technology Day 2012

IT & TELECOM DESK

MICROSOFT Bangladesh on Tuesday organised 'Microsoft Technology Day 2012' to demonstrate its new service- virtualisation and its benefits to the IT professionals and IT administrators at a hotel in the capital.

The event also showcased System Center 2012, SQL 2012 and Share Point and focused on how these new innovations are redefining the management and delivery of service from the data centre.

The event also highlighted Microsoft's Cloud Strategy and its contributions to increased productivity and business growth.

"Microsoft has always made it a point to deliver the needs of our customers and partners. System Center 2012 helps manage your IT environments across traditional data centers, private and public clouds, client computers, and devices." said Carlos Lopes, general manger, APAC small, mid-market, solutions and partners group.

Zane Adam, general manager, Microsoft cloud computing, Asia, Alexander Oddoz-Mazet, director, APAC business productivity, Gayan Peiris, technology strategist, Bharat Mirchandani, business development director partnership for APAC and Atiqur Rahman, head of business development, Microsoft Bangladesh Ltd were the other speakers at the event.