

IN DEFENSE OF COPYING

Selmer Bringsjord

There rages a brouhaha revolving around the question: Is it morally¹ permissible to copy rented movies (or books, articles for students, computer software, and so on)? I think the answer to this question is “Yes,” and in order to defend this opinion I’ll present a deductive argument for the schema

T *Ceteris paribus*, it is morally permissible for *s* to copy [. . .], without permission, and without payment, for her use and the use of others, as long as *s* does not sell [. . .] and [. . .] is in public circulation

where [. . .] may be filled in with such expressions as “rented video movies,” “computer software,” “paintings,” “books,” and so on.²

Here’s the plan I follow. In section II present an argument schema *A* for *T*; how one fills in *A* depends on how one fills in [. . .]. In II, I fill in [. . .] with ‘rented video movies’ and present twelve thought experiments which yield an instance of *A* which shows the “movie instance” of *T* to be true. It will become transparent that the argument schema *A* can be filled in successfully for [. . .] set to the other expressions I’ve mentioned. Finally, in Section III, I rebut some objections against my case for *T*.

I. THE ARGUMENT SCHEMA

Let $A_1, A_2, A_3, \dots, A_{n+1}$ denote $n+1$ moral agents, not necessarily distinct. Then the argument schema *A* runs as follows:

- (1) A_1 ’s actions³ in case (=thought-experiment) 1 are morally permissible.

- (2) If A_1 's actions in case 1 are morally permissible, then A_2 's actions in case 2 are morally permissible.
- (3) If A_2 's actions in case 2 are morally permissible, then A_3 's actions in case 3 are morally permissible.
- ⋮
- (n) If A_n 's actions in case n are morally permissible, then A_{n+1} 's actions in case n+1 are morally permissible.

Therefore:

(n+1) A_{n+1} 's actions in case n+1 are morally permissible.

Now once n is fixed to some natural number, the resultant argument is formally valid by successive applications of *hypothetical syllogism*, and one application of *modus ponens*. The length of an instance of A is determined by how many cases one chooses to devise; this choice is in turn determined by how "fine grained" one wants to be with regard to copying [...]. The intuitive notion of "fine grained" will be clarified ostensively below.

II. THE THOUGHT EXPERIMENTS

Now here's an instance of T with its corresponding instance of A . Set [...] = 'rented video movies,' $n=12$. The twelve cases are as follows.

Case 1. A_1 rents a video movie m , watches it on her VCR, and then A_1 returns m . A_1 liked m , and so in the future she sometimes thinks about the scenes, dialogue, and so on, in m for her own enjoyment.

Case 2. A_2 has a very good memory. Like A_1 , she rents a movie m , watches it on her VCR, and returns it. A_2 liked m , and so in the future she sometimes thinks about the scenes, dialogue, and so on, in m for her own enjoyment. Because A_2 , has a good memory, she is sometimes able to make the scenes in m quite vivid in her mind.

Case 3. A_3 has an *extraordinary* memory. She behaves just like A_2 , except that because A_3 has an extraordinary memory, she sometimes is able to make the scenes in m *utterly* vivid in her mind.

Case 4. A_4 , a genius of some sort, is blessed with what you might call a superhuman visual and auditory memory. Like A_3 , she rents a movie m , watches it, and then returns it. The viewing of m affected A_4 deeply: she loved the movie. And so in the future she sometimes employs her special gift when thinking about the scenes and

dialogue in m . Because A_4 has a memory like the one she has, she is able to run the scenes of m by her "mind's eye" exactly as they ran past her eyes when m ran on her VCR.

Case 5. A_5 has the superhuman memory of A_4 , but is also blessed with excellent verbal fluency. She behaves like A_4 , except that in addition to running m by her mind's eye exactly as it ran past her eyes when running on her VCR, she is able to, in good part, express verbally what is going on in the movie as she recollects it.

Case 6. A_6 is like A_5 , but has *astonishing* verbal fluency. And so she is able not only to run the scenes of m by her mind's eye exactly as they ran past her actual eyes and at the same time express what's happening in m , but she can express to an astonishingly high degree what is going on in the movie as she recollects it. She can also repeat dialogue in m verbatim; with an inflection that mirrors that of the actors.

Case 7. The agent here, A_7 , acts just like A_6 , except that she visualizes and describes m in "real time": if m was two hours long, it takes her two hours to visualize and describe m .

Case 8. The agent here, A_8 , acts just like A_7 , except that she entertains her friends for the length of m by visualizing and describing it for them so that they can get the gist and, even picture, in their own minds of some of the images of m .

Case 9. Agent A_9 acts just like A_8 , except that she entertains her friends by creating and using a remarkable machine, D , which scans the mental imagery and auditory memories in her brain and projects them onto a screen for her enjoyment and for the enjoyment of her friends. D isn't fine-tuned: the screen shows a series of events which, though *somewhat* like what you see when you watch m , is a bit vague, choppy, and out of focus.⁴

Case 10. A_{10} behaves like A_9 , except that she has perfected the brain scanning and projecting device D .

Case 11. This case involves two agents: B_1 and A_{11} . B_1 behaves just about like A_{10} , except that rather than using D , she attaches D firmly to her head, and then takes a drug which renders her semi-conscious, but which leaves her in a state which allows another person to operate her visual system and D . B_1 has given permission to a friend, A_{11} , to do the following while B_1 is "asleep." A_{11} can rent m , run it on her VCR while B_1 is "watching" it, return m , and then later flip on the device D hooked up to B_1 in order to run, for her and her friends, what is now fairly called a copy of m . A_{11} does exactly what she's been given permission to do.

Case 12. this case, like its predecessor, involves two agents: B_2 and A_{12} . B_2 behaves similarly to B_1 , except that what she does is give

A_{12} , a great inventor and scientist, permission to build a portable self-contained device D' modeled on the composite device which is B_2 's brain and D . A_{12} builds D' and it works perfectly. A_{12} rents m , uses D' to make a copy of m , returns m , and views the copy of m in the future with friends.

Denote the instance of A to which cases 1 through 12 give rise by " A^{movie} ." And let T with $[\dots]$ = "rented video movies" be T^{movie} . I think A^{movie} is a sound argument for T^{movie} .⁵ Clearly, this argument is formally valid, and, I would say, just as clearly, premise (1) is true. Each of the material conditionals encapsulates, of course, the contention that the change from case n to case $n+1$ isn't such as to make a moral difference; and so each conditional is in some sense a challenge to those who think A^{movie} unsound: find a morally significant distinction between A_i 's actions in case i and A_{i+1} 's actions in case $i+1$.

Before considering objections, let me point out that it does not require much ingenuity to follow this recipe so as to fashion a series of cases which support T with $[\dots]$ set to "computer software," "books," "paintings," and so on.⁶

III. OBJECTIONS

The first type of objection consists in the claim that there is a faulty transition, that is, that one of the aforementioned challenges can be met. Some of the software creators I know have gone feverishly out of their way to try to find a morally significant difference between two successive cases. I think this line of attack is unpromising, however. For what happened in my debates with software creators is that the instance of A in question, to their dismay, ballooned to as many as 30 cases.⁷ And in light of this, or rather in light of the apparently limitless expansion of A , I'm inclined to think that for every reasonable assignment to $[\dots]$ there is an instance of A with n set to a natural number large enough to yield a sufficiently fine-grained proof of the instance of T in question.

The rather rhetorical previous paragraph can, to some degree, be focused if we consider a specific objection regarding a faulty transition: "The transition I find problematic is that between Case 11 and Case 12—a transition from a brain to a mechanical recording device. At this transition it becomes clear that the argument depends on the brain being treated as a machine all along—as just a naturally occurring recording device. On this implicit but crucial assumption, memorizing isn't merely analogous to copying, it's the *same* as copying. But the moral equivalence between copying and remembering is

precisely what's at issue, and so to tacitly assume equivalence is to beg the question."⁸

There are (at least) *three* promising routes one can take in rebutting this objection. In the *first route* one "expands" the transition in question. It's possible to do so in a way that requires as much imagination as the original sequence Case 1 - Case 12. Though I believe such an expansion surmounts the objection under consideration, it requires too much space to present here. And anyway, I suspect that my opponent would still insist that there's a transition where a mechanical device is substituted for the brain—a transition she will find problematic.

The *second route* is to confront the objection head on, by claiming that it's plausible, on independent grounds, that the brain *is*, in *some* sense, a copying device. If the justification for this claim comes from somewhere outside A^{movie} , then the argument wouldn't be question-begging. Is there independent support for the claim that the brain is in some sense a copying device? If it's true that the brain represents reality in some principled way, then I think so. In some quarters of Artificial Intelligence (AI), for example, what agents believe (know, remember, hope for, . . .) are thought to be formulas in some formal language Σ which includes first-order logic. Visual information grasped by the agent, in this scheme, would be expressed in Σ ; and so, then, would our movie m . Now this particular scheme may seem just an idealization, but something like it is, I think, taken very seriously in AI, psychology, and the philosophy of mind. To rebut the charge of circularity, I could let this idealization undergird my thought experiments.⁹

The *third route* is different from, but arises out of, the second. In it one works out some of the details in the idealization alluded to in the second route, and then claims that this idealization doesn't imply that the brain is "a naturally occurring recording device," but rather that it implies something much more *subtle* about the brain. This route seems pretty powerful to me, largely because I see the "just a" in "just a naturally occurring copying device" as a gloss. For the debate to continue down route three, it will be necessary for my opponent to get somewhat more precise about " x is a copying device." As things stand, I should think there are permissible construals of this locution that leave my argument intact. The point here can to some extent be made by way of a little thought experiment: Suppose that I have a computer program P , hooked up to sensors, capable of taking in movies (books, paintings, computer code, . . .) and representing them in Σ ; and suppose P , when queried in English, can translate these queries into Σ , reason, and supply replies

first in Σ , and then in English (all of this in such a way that the creators of P like to say that their program *understands*). Would we want to say that P is *copying* the movies (books . . .) and the queries? The answer isn't clear. And I submit that things are similarly unclear when we ask about what the brain is doing on an explicit version of the idealization I've sketched above. But then the charge of circularity against A^{movie} is inconclusive.

Attacks on A^{movie} which aim at transitions seem unpromising. I think a more formidable type of objection involves an appeal to paradoxes like the Short Man.

The paradox of the Short Man, "PSM" for short, is familiar: You start with a man, say, one inch in height. Such a man, surely, is short. Adding one billionth of an inch (or one trillionth, or one zillionth, . . .) to the height of any short man still leaves you with a short man—this too seems true. But these two facts, with the aid of either mathematical induction or successive application of natural deduction rules, entail, say, that a man 500 feet in height is short, which is surely absurd.

How does PSM figure in an objection to A ? The objection is that my argument is just like that used in PSM. And since the argument in PSM is unsound, so is mine.¹⁰ Unfortunately, this is a very weak objection. Here's why.

What makes PSM a paradox, indeed what makes a paradox in general, is that the argument involved is formally valid and has apparently obviously true premises, yet the conclusion is absurd. So to say that argument A^{movie} is of the same type as that employed in PSM implies that A^{movie} is formally valid and has what appears to be obviously true premises. But to say this is to come very close to conceding that A^{movie} is sound! In fact the only thing in the way of accepting the argument now would seem to be the absurdity of the conclusion. But clearly, the conclusion in A^{movie} isn't absurd, since, among other reasons, there are a number of rational people who affirm it. It's hard to see how this appeal to PSM has any force.

There is, however, another objection to A involving PSM, one I've encountered in conversation, and I think it's more sophisticated than its predecessor. It's simply this. What PSM shows is that, although it seems incredible from an intuitive standpoint, and although no one knows where it falls, there just *is* an absolute cut-off between short and non-short. And A^{movie} can be handled the same way: although it seems hard to believe, and although it can't be located, there just *is* a transition which is crucial—a transition in which you go from moral permissibility to moral *impermissibility*.¹¹

What can be said in response to this objection? Two things,

both, I think, cogent. One, this way of handling PSM is almost universally regarded to be unpalatable. Two, this way of handling PSM would be the way to go only because *not* to go it would mean swallowing an utterly absurd proposition, namely that a man 500 feet in height is a short man. But accepting the conclusion of *A*^{movie} is not to do something irrational at all; it just may be that *A* is part of a recipe for showing that copying things for personal use is morally permissible. Keeping an open mind about the moral permissibility of copying should be easier than keeping an open mind about whether or not a 500 foot man is short.

The final objection against *A* based on PSM runs as follows. What PSM shows us is that some concepts, indeed many concepts, are just too vague to figure in arguments like that used to generate PSM. When we try to use these vague concepts as if they *aren't* vague, we get into trouble, trouble like PSM. Now what *A* shows, my opponent here maintains, is that the concept of moral permissibility is *also* too vague to be used in the way that I want to use it. PSM shows that you can capitalize on the vagueness of "short" to generate the consequence that a man 500 feet in height is short. *A* shows that you can capitalize on the vagueness of "morally permissible" to generate the consequence that copying *a la T* is morally permissible.¹²

This final objection, unsurprisingly, is no more powerful than its predecessor. Let me essentially repeat myself: It may very well be that "short" should not be used as it is in the argument which generates PSM. If so, what tells us this is that by so using "short" we arrive at an utter absurdity. But what tells us that we can't employ "morally permissible" in the way *A* employs it? Surely one thing which *doesn't* tell us we can't so employ it is the absurdity of the conclusion. After all, the conclusion *isn't* absurd. To say that it is is just to beg the question against the proponent of *A* and *T*.

I conclude that *T*, in light of *A*, is true. At the very least I think I've shown that *T* deserves to be taken seriously, which is something many people just don't do.¹³

Rensselaer Polytechnic Institute

Received May 5, 1988

NOTES

1. There is also the question which arises from changing "morally" to "legally" in this sentence—a question I won't address herein. I happen to

be of the opinion that the connection between these two questions is an intimate one, and in fact I'm inclined to believe that if the question with which I deal is to be answered affirmatively, certain laws should be changed, enacted, and so on. I think the practical implication of T could be rather far-reaching. Perhaps I understate the connection between ethical and legal issues involved in T . However, I would resist the claim that the two issues are *inseparable*. It may be thought, for example, that the issue of copying *essentially* involves property rights, rights which are legal in nature. Perhaps. But perhaps not. This is controversial stuff. Some think, as I do, that rights are wholly derivative from more basic deontic concepts studied in deontic logic; some think the reverse; and some want to find a middle ground. In light of this situation, I should think it's all right if I operate herein as if the ethical *can* be separated from the legal. This separation has the consequence, for example, that I see the transition between Case 7 and Case 8 below in a purely ethical way—a way which leaves aside breach of contract, violation of due confidentiality, etc. I'm indebted to an anonymous referee for valuable comments and suggestions involving the ethical/legal connection in this paper.

2. *Ceteris paribus*, as usual, is short for an infinite list of background assumptions, some of which are (i) copying [. . .] won't cause the death of an innocent bystander; (ii) copying [. . .] won't cause s to suddenly die; (iii) copying [. . .] won't make s so guilty she commits suicide; (iv) copying [. . .] won't result in the detonation of a hydrogen bomb in New York City because some terrorists rigged up a fiendish booby trap which s unknowingly set off by copying [. . .]; (v) s is embedded in a society roughly like ours, and so on. In light of these provisos, T is really short for

T For every s if (i) & (ii) & (iii) & . . . , then it's morally permissible . . .

I should think that the obscurity of "*ceteris paribus*" provides no ammunition for those wanting to reject an instance of T in the presence of an appropriate instance of A .

This is as good a place as any to say that I happen to think the qualifiers in T about selling and public circulation can be dropped, but defending this position would embroil us in complex issues not adequately treatable in the space we have.

3. Read "actions" as "morally significant actions" throughout the paper.

4. The claim that a case like this is possible presupposes that after watching a movie there is something in the brain from which, at least in principle, the movie itself can be recovered. I think there are ways of doing things so that nothing like this presupposition is made. (If so, there would be yet another route for handling the first objection to A^{movie} that I consider below.) I also think that movies, unlike books and computer programs, present special problems along these lines, because the internal representation for imagery in humans is somewhat mysterious.

5. Something like universal generalization is of course presupposed in the inference from line $(n+1)$ of A^{movie} to T^{movie} . Clearly, $A_{n+1} = A_{12}$

must be such that (i) her actions in case $n+1$ are a superset of copying rented video movies, using the copy, and refraining from selling the copy; (ii) she is arbitrary, to the extent that this is possible in light of the *ceteris paribus* clause; (iii) the conditions constituting the *ceteris paribus* clause are satisfied.

6. The fact that it's easy enough to get formidable instances of A with [...] set to different things is precisely what moves me to assimilate disparate subject matters (movies, books, articles, software, and so on) into the monolithic schema T . I don't move to T because our legal system tends to conflate these disparate subject matters. I realize that some have claimed that software is especially ill-suited to be lumped together with other kinds of intellectual property, but from the standpoint of T and A I find this irrelevant. For the fact remains that it's clearly possible to see [...] = software, and to produce the relevant instance of A with a clever progression of thought experiments. (This note is due to insightful comments made by an anonymous referee.)

7. One transition that can be greatly slowed down is that from Case 8 to Case 9. I leave it to the reader to dream up the additional cases needed for a protracted transition.

8. This objection, the most ingenious I've encountered in defending A^{movie} , is due to an anonymous referee. I've changed his/her words slightly.

9. Of course, I don't here *spell out* this idealization. I can't—both because I haven't the space and because I'm not sure how to work out all the details. But then again it shouldn't be necessary to spell out the idealization to counter the objection in question. All I need is justification from outside A^{movie} for what my opponent says is supported either only by A^{movie} itself or only by those inclined to affirm T^{movie} . This I have by way of the vague but not unpopular idealization I've sketched.

10. I don't think I'm being unfair in not trying to get more precise about type identity (or some such thing) for arguments. I think my response shows that the search for precision here would be unhelpful to my opponent. This is as good a place as any to point out that I'm now considering objections which differ in *type* from the first sort I considered in this section of the paper. The first type of objection is to challenge a transition; the second type arises when one *grants* that a bad transition can't be found, but goes on to specify another attack. Because of this, objections based on PSM aren't connected to claims that a particular transition is faulty.

11. The last three sentences of footnote 10 apply here.

12. The last three sentences of footnote 10 apply again here.

13. I am indebted to Michael Zimmerman, Jim Fahey, and an anonymous referee. The referee's helpful contributions have been noted above.