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Copyright indicators and the costs of symbolic production: The cultural dimension of telecommunications policy

Esteve Sanz

Information Society Project, Yale Law School, USA

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ABSTRACT

The paper discusses the current situation of the economic case of copyright through the available theoretical and empirical literature, and from a cultural economics perspective. For its classic case, copyright can only increase welfare in a dynamic setting, when the static welfare losses are offset by dynamic welfare gains: monopolistic rents give producers an incentive to produce more, offering consumers more innovation in return. In the digital age, many economists have remained skeptical about the welfare benefits of strong copyright policies, notwithstanding the lack of indicators of the actual effects of such policies, especially in terms of the production of new cultural goods. While accepting this conclusion, the paper argues that, in order to construct a more realistic landscape of indicators to inform copyright policy makers, the economic case of copyright needs to be broadened to include not only the direct producers of the work in its material form, but also the producers of the meaning and value of the work (the overall perception of its "quality"). Once both symbolic and material production are theoretically and empirically incorporated in the economic case of copyright policy, a new set of hypothesis and indicators can be constructed and tested in relation to changes in the telecommunication system.

1. Introduction

Copyright is a legal, economic, institutional and cultural mechanism, enforced only for a designated period, which is supposed to stimulate intellectual innovations by offering relative economic security to the initial producer of a public good.[1] The general assumption is that, without copyright, there is no incentive for the producer to create, as competitors would simply copy the first unit of the cultural product and gain market advantage from the lower marginal production costs. While it is also assumed that copyright involves high access, production and management costs, the overall social welfare is thought to benefit from it, as copyright guarantees the supply of intellectual products. In this theoretical context, the lowering of costs of copy, which is associated to the advent of interactive telecommunications services, would radically affect the traditional economic case of copyright (Baldwin, 2014; Johns, 2010; Waldfogel, 2012).

This paper starts by surveying the economic literature on copyright with two research questions in mind: What indicators are being used to design and assess copyright policy in the digital age? Is there enough empirical evidence to

E-mail address: esteve.sanz@yale.edu

[1] A public good is a good that individuals cannot be effectively excluded from use and where use by one individual does not reduce availability to others. In economics, this is called non-excludability and non-rivalrous properties. Public goods are generally associated with market failures (Stiglitz, 1986).

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sustain or reject the economic case for copyright policy?[2] Beyond this exploration, I also address what Landes and Posner (2003: 11) have identified as the necessity to overcome the "tendency among economic analysts of intellectual property to reduce the entire problem of intellectual property rights to a trade-off between "incentive" and "access". To do so, I populate this paper with a series of propositions drawing from the insights of cultural economics. Cultural economics is broadly understood as the branch of economics that studies the relation of cultural variables to economic outcomes (Cowen, 2008; Douglas & Isherwood, 1979; Mauss, 1923; Schweizer, 2003; Simmel, 1907; Throsby, 2010; Towse, 2003). It has a more or less acknowledged sociological and an anthropological dimension, so it can also be considered as an epistemic branch of these disciplines. These will not necessarily contradict but bring greater empirical and theoretical sophistication to the economic case of copyright, one of the central research questions of our age, with massive policy implications (Castells & Cardoso, 2012; European Commission, 2012; United States House of Representatives, 2013).

In Section 1 of the paper, I briefly discuss the available economic theories of copyright. In Section 2, I investigate the current stock of copyright policy indicators borne out of such theories. In the following section, I outline the cultural economic case for copyright and in Section 4, I discuss the theory and indicators that in my view would bring greater analytical power to the field. The conclusion of the study presents a summary of the indicators discussed through the paper.

2. The theory: from social welfare to skepticism

The historical landmarks of intellectual property include the Venetian Patent Act of 1474, the English Statute of Monopolies of 1624, the English Statue of Anne of 1710, the US patent and copyright statues of 1790 and the French Patent Act of 1791 (Patterson, 1968; Sábada Rodríguez, 2007). Classic economists such as Smith, Bentham, Mill, Pigou or Taussig subsequently engaged in lateral discussions about the economic benefits of these and other policies, the initial motives of which were ample and complex (Marshall, 2005). The earliest systematic debates on the economics of copyright emerged from political economic approaches to monopoly, which were later sophisticated with the incorporation of the notion of public goods and the economics of information (Arrow, 1959; Towse, Handke, & Stepan, 2008).

The resulting economic theory can be stated quite simply. Copyright confers a monopoly on the rights holder over an informational (Shapiro & Varian, 1999) or cultural product. In static terms, this is generally interpreted as a loss of economic efficiency and thus in social welfare. Producers can apply monopoly prices and users are blocked from appropriating and improving the product. The revenue transferred to the copyright holder does not compensate the welfare loss for the consumer, so on balance the net economic effect is negative. Copyright can thus only increase welfare in a dynamic setting, when the static welfare losses are offset by dynamic welfare gains: monopolistic rents give producers an incentive to produce more and consumers receive more innovation in return.

In this dynamic context, questions of economic incentives and market failures come to the forefront. Copyright can in principle contribute to address the economic problems associated with the existence of increasing returns and transaction costs (Landes & Posner, 1989). Moreover, the high fixed costs of producing artistic works, for which the variable costs, including distribution costs, are generally low, makes the traditional pricing strategy based on marginal cost undesirable (Caves, 2000), as the resulting price would be incapable of generating further incentives for future innovation. Within a dynamic perspective, the monopoly of copyright is then economically justified by the increase in the production of innovative artistic work.

This is in principle all dependent on the technologies of production, copying and sharing. Digitization is considered in the literature to have increased the non-excludable and non-rivalrous characteristics of certain cultural products (Kreiken & Koepsell, 2013). It is now more difficult to effectively exclude individuals from consumption of cultural products once they have been digitized and distributed, and the use by one individual of one digital file does not reduce availability to others. Since the free-riding involved in public goods would not encourage innovation and further investment, economic efficiency requires property rights that exclude those who do not contribute to the creation of value.

Landes and Posner (2003) depart from the premise that cultural and intellectual products are rival products, and thus subject to the basic economics of property.[3] Instead of placing the emphasis on the monopolistic characteristics of copyright, the authors point out that the high transactions cost for establishing and enforcing intellectual property imply that the law will not by definition seek to regulate transactions by means of broadly defined property rights, since the vast majority of intellectual property would not be worth renewing. In this update of the classic Arrow's theory of information goods, the maximization of the economic benefits derived from property and intellectual property law requires a stronger protection and an indefinite duration of such rights.

Yet, an increasing number of economists are taking a more critical theoretical stand on copyright. Boldrin and Levine (2002, 2010) have pointed out that the costs associated to enforce the right to control the use of ideas involved in copyright regimes far exceeds its economic benefits. The rent-seeking activities used to get and keep the monopolies of copyright, including litigation, violation of privacy and regulatory capture, constitute a powerful case against copyright. According to the theoretical analysis of these authors, innovation would also be stimulated at the value of intellectual products outside

[2] Christian Handke has written a notable recent work in this field (2011), which serves as a starting point for our inquiry. In terms of the theoretical literature, the work of Watt (2000) remains the best in providing a comprehensive survey on the different economic perspectives on copyright. Only the full reference of the posterior and important work by Landes and Posner (2003) is of course missing from his contribution.

[3] For a critical review of the literature on such question, see Bessen and Meurer (2008).