

## Hollywood reads from the wrong script: AFR, 23<sup>rd</sup> January 2012

Back in 2002, a group of pre-eminent economists – including George Akerlof, Kenneth Arrow, Milton Friedman and Ronald Coase – wrote a lucid and powerful (but ultimately unsuccessful) summary of the reasons why the 20-year extension to the copyright term embodied in the Copyright Term Extension Act of 1998 was a bad idea.

Now we hear that another storm over strengthening copyright has emerged in the form of the Stop Online Piracy Act (SOPA) and the Protect IP Act (PIPA), which essentially boils down to a fight between Hollywood and Silicon Valley over policing alleged copyright infringers on the internet. The forces on the Hollywood side of the debate see any infringement as tantamount to piracy which should be stamped out. They want perfect enforcement of copyright laws. All this has echoes about the debate of 10 years, so it seems appropriate to revisit the economic rationale for copyright and then reconsider the Hollywood vs Silicon Valley debate in this light.

Governments should grant monopoly rights over creative expression only in very limited circumstances and for only one reason – to increase the provision of original creative expressions. Monopoly rights are not granted because a person has a ‘natural’ right to the fruits of their creation; nor is it to reward the artist, author or film maker for their efforts *per se*. An increase in the provision of creative works is only desirable when it can be shown that too few creative works are being produced. Do our societies produce too few compositions, films, books and other creative works? Before governments strengthen copyright laws they need to make a convincing case that there is a deficit of creative expression in society and the economy. Unless this can be established, an extension to copyright protection looks like naked pandering to vested interests.

Many people believe that copyright exists because it is ‘fair’ to reward artists and authors (or agents such as publishers and producers who have bought their rights) for their contribution to expression and creations. However, if we accept this notion then the same principles need to be applied to all types of value creation – that is all jobs. Rewards have to be seen in the context of the whole society. How much should doctors who save lives, civil engineers who bring us clean drinking water and teachers who teach our children to read be paid? Should we pay doctors a percentage of someone’s future salary if they save their life? Should school teachers get a percentage of the wages of people they have taught? These are partly philosophical and partly economic questions. There is nothing intrinsically special about artists, authors and publishers that mean they should get special rewards.

It is possible to have too many creative works, too many new books, film, songs etc written in each year. Don’t forget that the success of copyright should be measured by the number of new titles it creates and the number of units consumed (enjoyed) – not the number of units

sold. *Copyright does not exist to prop up businesses with out-dated business models for generating profits.* So copyright can be too strong. The more people that are employed in the creative industries, the fewer we have for other sectors such as education, tourism, health and the like.

Even if we believe that not enough new films, books and compositions are being created each year, stronger copyright laws are not always the answer. Copyright is a balancing act between incentive and deadweight loss. While the incentive effect is easy to understand the deadweight loss is less easy. For example: if the ticket price of seeing the latest Mission Impossible movie is \$15 – but the cost to society of one more person viewing Mission Impossible is \$0 – then all the people who want to see Mission Impossible but are not able, or willing, to pay \$15 cannot view it. Society loses when we prevent some people from deriving positive satisfaction that costs society nothing. You may think there is no real loss in someone not seeing Mission Impossible. But if you think it's not important then let's not have this conversation; let's not have copyright for films at all.

To determine whether it is worth strengthening copyright laws, one must compare the additional incentive effects with the additional deadweight losses. If the additional incentive effects are greater than the additional deadweight losses, then copyright is justified. If deadweight loss dominates, then an alternative incentive regime such as public stipends, grants or prizes, along with free distribution of the work, is best.

Even if we can make a case for strengthening monopoly rights, it may not hold if transaction costs are high, including the costs of establishing freedom-to-operate and licensing. To paraphrase Professor Mike Scherer "...developing new products that enhance human welfare should not be like walking through a minefield, with risk of severe consequences should a loosely-related IP claim be infringed..."

Copyright law has too-long operated under a veil of ignorance with regard to the economic rationale for these monopoly rights. Through monopolies commissions and anti-trust agencies, governments around the world are spending enormous effort to limit and control monopolies in society. It does not then want to turn around and grant new monopoly rights without thoughtful consideration and a sound evidence base.

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