

**A COMMENT: NUMBER-CRUNCHING IS NOT JUST A
'NEUTRAL' ACTIVITY**

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1. VALUE AND VALUES

There are various ways in which to approach the economics of copyright. As in other fields of economics, empirical research has a crucial role to play in understanding what the policy issues are and how current measures are working. A preliminary stage of this is fact-finding to establish the economic significance of the matter in hand. The next stage of empirical research is to test hypotheses about underlying relationships and causal forces. At present, we have only reached stage one of this analysis. However, those who want to use its results – industry interests, lobby groups, governments – may not be as careful as the analysts who crunched the data about its limitations and, more importantly, about making inferences about causality that numbers alone cannot support. The expert care with which the data on the value of the so-called copyright-based industries have been collected does not protect their use or misuse by well – or ill – intentioned persons or organisations and that is something economists may have to live with, as do other scientists. People want numbers – the value of the film or music industry or the net benefit of implementing a new right under copyright law – but however many caveats are issued, there is a tendency to ignore them in the quest for the ‘silver bullet’ of a persuasive number, verified by a professional economist.

Related to this problem is the question of the underlying values that economists themselves hold, sometimes unconsciously. Those of us who have worked alongside other social scientists are all too frequently made aware of our implicit values, for example methodological individualism, that others reject. One of these is the view that economic growth is the maximand of all societies (and it is somewhat alarming to those economists who have thought a lot about welfare issues that the law and economics fraternity has embraced the Posnerian doctrine so enthusiastically). This leads to the view that there is merit in fast-growing industries and that they are *ipso facto* welfare-improving whatever the distributional side-effects. Most economists when challenged can give good reasons for their belief in economic growth; however, the sheer size of an industry is another matter and I know of no economic doctrine that says ‘size counts’. Yet that is precisely the inference that we know is going to be drawn from the data on the copyright-based industries. Indeed, in the majority of cases, the finance for the research that produces these data comes from interested parties who have an established record of intentionally or unintentionally misusing the data. They have then gone on to persuade policy-makers of the strength of their case for increased copyright protection based on two numbers: the growth rate of the ‘copyright industries’ and their share in GDP. This is what I have called ‘data for advocacy’ and it is a familiar story from cultural economics. Studies of

the economic impact of the arts became the standard way of justifying government subsidy and the arts lobby flashed around figures ‘proving’ the economic benefits of this or that arts installation (or the whole arts sector) as objective facts that in and of themselves made the case. We are in the same situation now with respect to the economic impact of copyright.

2. COMMON MISUNDERSTANDINGS

Common misunderstandings of how data on the size of the sector can be interpreted by non-economists are: that resources currently employed in it have no alternative uses; that they imply an underlying causal relationship; and that institutional arrangements are given, that is, ‘counterfactual’ situations are not considered. Showing that the arts or the cultural industries account for x percent of national or local income does not imply that withdrawing subsidy or protection by copyright law would reduce income by x percent, though that is commonly said by advocates of these measures. Nor is their presence the cause of the growth or size of these sectors; the arts and cultural industries developed and thrived in a free market for centuries before the introduction of arts subsidy and copyright law. What we need to know in order to establish causality is how much output has increased due to their introduction and how much more output would increase if subsidy or copyright protection were to be increased. The evidence from a mountain of empirical work on patents over a considerable period of time has failed decisively to ‘prove’ the efficacy of the patent system in stimulating innovation and economic growth. Such work has not yet been done for copyright. However, what is certain is that measurement by economists of the economic contribution of the copyright industries does not prove that copyright law is the cause of their growth. All we can say is that the sound recording, film, broadcasting and other cultural industries have developed historically alongside increasing copyright protection. Nor, as every economist knows, is it possible to measure the economic effect of illegitimate use with reference to the reduction of revenue though copyright industry advocates continuously to do so and governments believe them sufficiently to bring in increasingly stronger (or more repressive) measures to counter the supposed effects. The economic analysis needed to establish the causal relationship between piracy and economic variables is complex and the data needed for it are not to be found in these macroeconomic measures of the industries’ contribution to GDP. It does not seem very likely that the lobby organisations that have financed that research will assist the microeconomic studies that could establish causality.

3. DISTRIBUTIONAL EFFECTS OF COPYRIGHT

An issue in the economics of copyright that has not received much attention from economists is the question of the distributional effects within the industries concerned of changes to copyright law. Specifically, it needs to be established what the share of authors – artists or other creators of content – is. This is particularly important for several reasons: first, it is commonly believed that the true justification of copyright is that it supports and nourishes artists; second, content creation is the *sine qua non* of the cultural industries, without which there would be no creative cultural development; third, artists themselves are increasingly unsure what copyright law can deliver in terms of income and what the effect of increased protection, especially Digital Rights Management and Technological Protection Measures, will

have on the cost of creation. (There are, of course, distributional effects for consumers, which have also not been fully investigated). The limited evidence so far suggests that artists' median earnings from copyright are low.

By definition, the whole output of authors should be counted as value-added. However, there are considerable problems in defining both the employment and output of artists. Many artists are self-employed freelancers and work part-time, sometimes in the cultural industries and sometimes outside them in other types of work. That does not necessarily imply that they are 'amateurs' not 'professionals', though that is sometimes inferred – and, of course, there are many amateur artists of all kinds. Censuses of Employment and the like may well not include the whole artist population because they designate employment according to the occupation or the earnings of the artist in Census week (for example, a 'resting' actor working as a waiter is designated as a waiter). Such conventions under-report the number of artists and the extent of under-reporting depends on the employment practices in the country. Furthermore, a Census of Employment excludes self-employed artists and may only cover larger establishments (for example, in the case of the UK, the Census only includes workplaces with more than 25 employees). Nor are temporarily unemployed artists included in such surveys. Surveys of artists have revealed the prevalence of under-estimating the number of artists (Towse, 2001). Thus, value-added by content creators and their 'true' contribution to the cultural industries is liable to be under-estimated.

The distributional effects of changes to copyright law are another issue. The award of new rights to one group of artists – say, performers – may be at the expense of another group, say composers. Though lawyers see the framing of copyright law as being able to prevent that by such measures as derogation, economists are more sceptical about how markets respond; giving rights does not ensure that they have economic value. Put at its crudest, the money has to come from somewhere. It must come either from higher prices to consumers and users, from the profits of firms in the industry or from another group of workers. This bald (and frequently disputed) economic fact has mostly been obscured by growth in the cultural industries, which has caused creators' earnings to rise. Although the interests of the 'artists' and the 'industries' are frequently represented as being in harmony, in fact there is conflict of economic interests over the distribution of rents (Caves, 2000). A valuable result of more repeated studies of the copyright industries over time that identify artists' and other creators' copyright earnings will enable cultural economists studying artists' labour markets to track their share in value-added. That would enable researchers to test the claim that increased copyright protection provides greater economic benefits for creators.

In terms of the wider distributional issues, copyright law can be seen as a line drawn in the sand: shift it and it results in a greater share of the pie (or in the growth of the pie) for one group of stakeholders and less for the others. Who those stakeholders should be is another troubling issue. All too often, as is well known from public choice theory, it is the industry's interests that predominate and those inside the industry are regarded by governments as the main stakeholders: producers are few, united and focussed while consumers are many, difficult to organise and do not know how to represent their interests. These last-mentioned features may well also apply to the content creators. It is believed that having good data on the copyright industries will raise awareness of their political and economic importance. It is to be

hoped that consumers learn how to stake their claim for something they essentially have to pay for through higher prices.

4. CONCLUSION

Many of the concerns expressed here were brought up in WIPO meetings in which I took part. Excellent work has been done on the preparation of the WIPO Handbook and by the various researchers in the classification of data and of solving measurement problems. They are a testimony to the power of rigorous economic thinking and professionalism. No-one can blame economists for any misuse or misinterpretation of these measures of the economic contribution of the copyright industries. Nevertheless, they are likely to happen, as we know from experience and that is a matter for some concern. Some economists may see these as excessive scruples. Maybe we economists should heed the increasing concerns of the academic law community about the continuing extension of the scope and duration of copyright law and not be so quick to accept them as given. Moreover, the economic justification through empirical testing of recent (or indeed all) changes to copyright law, which, by the way, by definition increase the apparent growth of these industries, requires much more than the collection of good data, however well that is done. That is the next task for economists and, let us hope, for all those with an interest in understanding the economic contribution of copyright law.

REFERENCES

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