Copyrights and User Rights: Theory, Evidence, and Issues

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Copyright: Previous Economic Research

- SURVEYS: Landes and Posner (2003), Park (2009), and Handke (2011)

- THEORY
  - Stronger copyrights and enforcement → Increased Cost of Reproduction
  - Decreased Supply of Imitations and Infringed Work → Increased Profits to Rights holders
  - Increased Quantity of Creative Works (up to a point): Diminishing Returns or Inverted U (due to increased access cost)

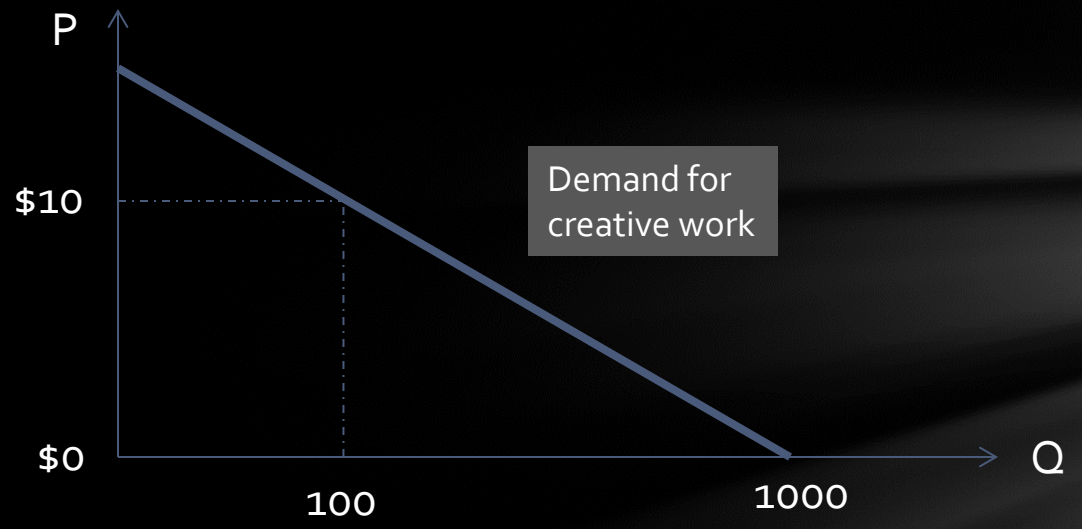
- EMPIRICAL WORK
  - Baker and Cunningham (2006, 2009), Ku et al. (2009): Single country (U.S. and Canada)
  - Park (2005) and Smith et al. (2009): International (Cross-national) Evidence

Copyright: Previous Economic Research

- EMPIRICAL WORK (Methodology)
  - Ku et al. (2009)
    - 'Dummy Variable' approach; dependent variable: copyright registrations
  - Baker and Cunningham (2006, 2009)
    - Cumulative Copyright reforms (Statutes and Court Decisions) that Broaden L^B or Narrow L^N copyrights:
    - $\Delta L^B(t) = L^B(t) - L^B(t-1)$ and $\Delta L^N(t) = L^N(t) - L^N(t-1)$; overall $\Delta L^O(t) = \Delta L^B(t) - \Delta L^N(t)$
    - Impact on Stock market valuation (U.S.) and Copyright Registrations (Canada)
  - Park (2005) and Smith et al. (2009)
    - Based on an 'Index' of Statutes and Case Laws around the world (1965 – 2003)
    - Park '05 finds no direct impact of copyrights on manufacturing productivity growth, but on R&D. Smith et al. '09 find strong impact on investments in Copyright-Related Capital (CRC); e.g. personal computers, internet servers, and bandwidth.

Copyright: Previous Economic Research

- PIRACY LOSSES (overstated by Industry)



- Actual Loss is not 1:1 due to sampling, network effects, among others

- Piracy may be a function of copyright strength and enforcement, but other determinants are important (social norms and income level (e.g. poverty)).

User Rights: State of Research

FAIR USE

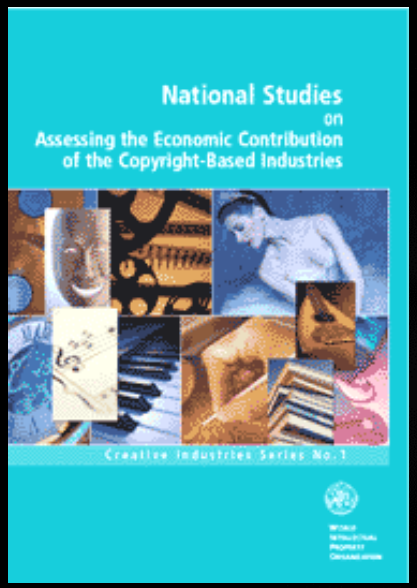
- U.S., Singapore, Taiwan, Israel
- Flexible, General
- Principles-Based:
  - *Purpose & Character of Use, Nature of Work, Amount/Portion used, and consequence for Potential Market/Value of Copyrighted work.*

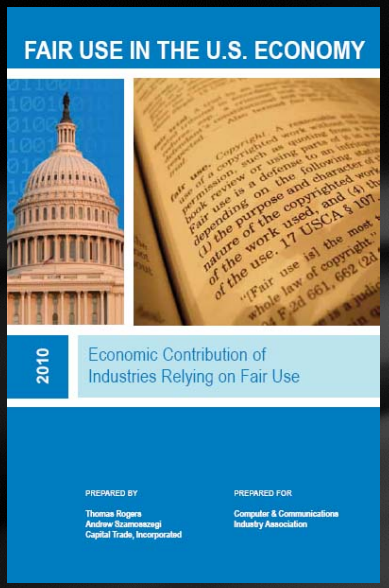
FAIR DEALING

- EU, Australia, Canada, UK
- Specific, More detailed
- Enumerated list of exceptions:
  - *This, This, and That*

Broad Objectives: Enable copyrighted works to be reproduced for Education, Libraries/Museums, Disabled, Research, Criticisms/Reviews, News Reporting, Governmental and Judicial Proceedings, etc.

User Rights: State of Research





Informative, but:

- Neither type of studies demonstrates *causality* – the effects of policy shifts. They provide shares in GDP, for example.
- Industries using and relying upon copyrights and user rights *overlap*

User Rights: State of Research

- Standard Justification for Copyright 'Exceptions': transactions costs (Gordon, 1982).

IF
TRANSACTIONS COSTS > VALUE OF TRADE → MARKET FAILURE

- E.g. of transactions costs: negotiation (or bargaining), licensing agreements, obtaining permission; search costs; monitoring and enforcement costs; dealing w/ fragmented rights, hold-ups.

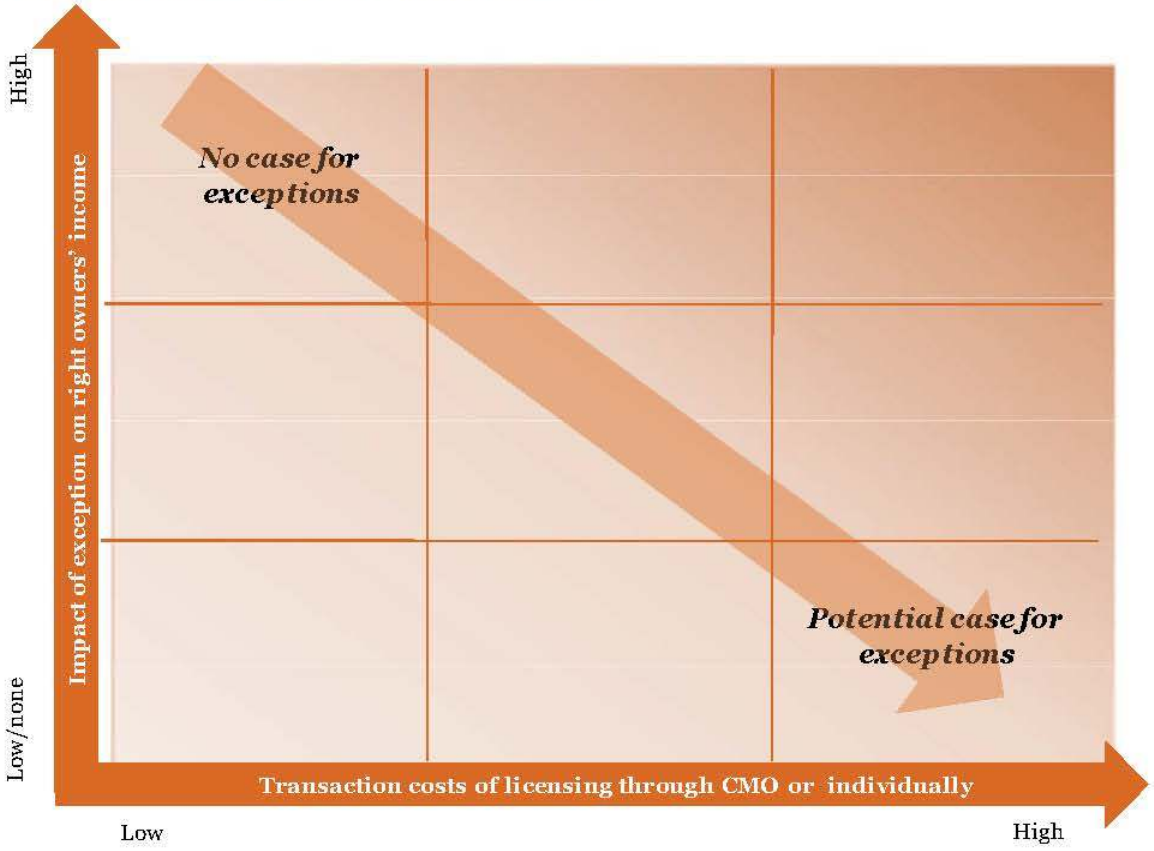
- Legal 'Exceptions' create trade. *No harm to copyright holder because no transaction would've occurred otherwise.*

Qualifications

- Subject to availability of 'Alternative Mechanisms':
  - i.e., market may come up with solutions:
    - Collective Licensing, Exchanges, Clearing Houses
    - Copyright holder may permit some copying (as terms of agreement), with *Technology Protection Measures (TPM)* to ensure compliance
    - Specific products may be created
    - Price Discrimination (segment market): enables some users to access works, which they would otherwise not be able to do under uniform pricing.

- Would Exceptions/Limitations undermine the development of these 'Alternative Mechanisms'?

Figure 25 Illustrative exceptions evaluation framework



Source: PwC

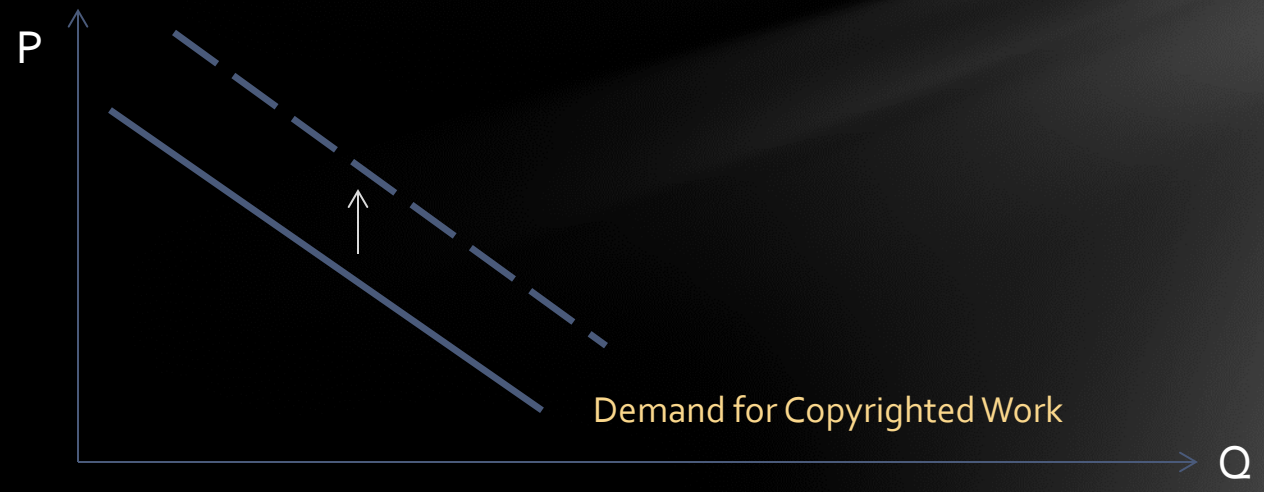
Issues (for Empirical Work)

1. Measuring 'Exceptions' – or User Rights
2. Assessing Transactions Costs
3. Effect of Technology (e.g. Digital) on Transactions costs and Valuation of copyrights and user rights.
4. Feasibility of 'Alternative Mechanisms'
5. How User Rights affect the Economy: Commerce, Creativity, Incomes of Copyrights Holders, and Welfare of Users
6. Variation by Industry or Sector – and by Country/Region/Level of Development

Costs & Benefits of Increased User Rights: Factors to Consider/Estimate

- **Costs:**
  1. Extent of lost sales of copyright owner due to any displacement or confusion with original work
  2. Adverse Dynamic Effects: incentives for future creative work.

- **Benefits**
  1. User Rights, Exceptions, and Flexibilities may enhance the value of copyrighted works



Costs & Benefits of Increased User Rights: Factors to Consider/Estimate

- **Benefits**

1. User Rights, Exceptions, and Flexibilities may enhance the value of copyrighted works
   - Scenario:

Legal Shift	Format A	Format B	Price
Before	100	100	$1
After	200+	0	> $1

2. User Rights, Exceptions, and Flexibilities may encourage 'transformative works' or 'derivative works' (which rights holders do not have a comparative advantage):
   - Create New Industries, New Businesses
   - Stimulate investment and employment

3. User Rights, Exceptions, and Flexibilities reduce the cost of R&D and creative work
   - Inputs: Internet search services, mash-ups, musical phrases, quotations, data, journals, books, software, etc.

4. User Rights, Exceptions, and Flexibilities may alleviate market power
   - Increase user access, and enhance the utilization of creative works

Empirical Work on User Rights

CASE STUDY:

- Dojinshi (Derivative Work) – see Arai and Kinukawa (2014)
- Self-published works (usually amateurs) who liberally use copyrighted material (anime or manga)
- Copyright owners ignore/tolerate them (perhaps because they raise the value of their works) and in turn incorporate ideas/styles from Dojinshi.

ECONOMETRIC WORK:

- Ghafele and Gilbert (2012) on Singapore Fair Use
- 3 Meta industries: i. Copyright industries (music, film, books, TV, Radio); ii. Private copying technology (computers, optical media, DVD players, etc.); iii. Control Group
- Main Findings: after fair use introduced, growth in value added fell in i., rose in ii., and changed insignificantly in iii.
- Criticisms: Sector ii perhaps too broad; didn't control for all other determinants of growth in VA in ii; and time-series observations are too few (sample size = 12).

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