GLOBAL COPYRIGHT MARKET

- **U.S. FDI and LICENSING in the Copyright Industries**
  - Newspapers, Broadcasting, Motion Pictures, Radio & TV, Sound Recordings, Software Publishers, Satellite, Wired, and Wireless Telecommunications.

- **Inter-sectoral linkages (via technology transfer and sales)**

- **Green Paper (US Dept. of Commerce)**

Rights  Exceptions

- **Economics Research (Lisbon Study)**

SALES

Information Industries	Copyright Reform: Before	Copyright Reform: After
Fair Use: Before	1	2.4
Fair Use: After	0.34	2.8

Technology Hardware	Copyright Reform: Before	Copyright Reform: After
Fair Use: Before	1	10.7
Fair Use: After	0.03	10.1

Source: Thomson Worldscope Datastream

Global Copyright Market

Magnitude of Market (based on published figures from US Bureau of Econ Analysis)

- In 2013, U.S. FDI in copyright sector (defined as the Information Industry: Newspapers, Broadcasting, Motion Pictures, Radio & TV, Sound Recording, Software Publishers, Satellite, Wired, & Wireless telecommunications) = ¼ of Manufacturing.
- In 2013, U.S. licensing in copyright sector > licensing of industrial processes (patentable matter); e.g. 47% vs. 35%; software licensing dominates other kinds (licensing of music, films, books).

- What's more is that the sales and licensing of copyrightable works are not limited to firms in the copyright sector but to others as well, albeit to a smaller extent. For example, the energy and computer sectors license software works, electrical and electronic goods wholesalers license film-related works, and the professional, scientific, & technical services sector licenses digital goods.

- On sales by industry, we can observe many manufacturing firms or industries that have the copyright sector listed as among their destination of sale; i.e., to which they supply goods or inputs. In that regard, there are *inter-sectoral linkages* between the copyright sector and others (as markets for their output or as inputs). And therefore, copyright policies (rights or exceptions) can be far reaching, affecting creators, users, and supporting industries.

Green Paper (Department of Commerce)

- It notes that the copyright system has been founded upon a balance: rights AND exceptions. (By exceptions, we mean copying and using copyrighted works w/o having to obtain permission).
- It asks whether the current balance of rights and exceptions designed mostly before the technological advances in computing and networking we've seen over the past 20 years is appropriate or whether the system needs updating.
- It also points out that the updating of exceptions should comply with the Berne three-step test:
  i) exceptions should be limited to *special* cases;
  ii) not interfere with the *normal exploitation* of the work;
  iii) not duly *prejudice the legitimate interests* of the rights owner.
- Examples of exceptions: whether to permit format shifting (copying a protected work on to different devices: CD to MP3 player); to the 1st sale doctrine to digital transmission; or to permit data mining (extraction of database contents for some purpose, like research).
- Some economic theories about copyright flexibilities, limitations & exceptions exist, but not a whole lot:
  i) Transactions cost (i.e., cost of bargaining, negotiating rights, or obtaining permission). If these exceed the value of trade (producer surplus plus consumer surplus), then it may be better to permit some act to be an exception.
  ii) Expanded permissible uses may increase the value of the copyrighted work and hence the demand for it. For example, format shifting may increase the sales of CDs and more than offset the sales of the other format (MP3), or vice versa.
  iii) Any positive impact on education and research (via improved access to knowledge) may later benefit future R&D and creative activity.
- Economics research on copyrights is relatively small compared to that on patents; empirical research even smaller and empirical research on copyright exceptions is quite rare. But some

work is going on. However, detecting the impact of limitations and exceptions has been hard or elusive.

Research on 'Exceptions'

- For example, a recent Lisbon Council Policy Brief (hence forth Lisbon study) has appeared which tries to measure the scope of limitations and exceptions (L&E) and relate it to measures of industrial growth in 8 countries (all developed countries).
- This study examines the copyright industry (publishing, audio-visual, broadcasting, ICT) and complementary industries (electrical and optical equipment, consumer manufacturing, wood and paper products, and construction).
- The Lisbon Study's index consists of four categories: i) Does the country follow the Berne 3-step test (yes/no); what is the scope for L&E for public use (like criticism, parody, reporting, education) – broad, narrow, or none?; what is the scope for L&E for private use – again, broad, narrow, or none? And lastly, are there levies on private copying equipment (no, means flexible).
- The problem right away for research purposes is that their index is highly correlated with indices of the strength of copyrights: w/ the US Chamber of Commerce, the correlation is 0.74 and w/ mine, it's 0.67. It is therefore challenging to try to untangle the effects of copyrights and exceptions on economic activity.
- Their measure suggests a positive co-movement of copyrights and user rights, not a zero-sum game, where more exceptions mean weaker rights for the owner. While it's possible that both are needed for a robust creative economy, it's got to be the case that some expansions in L&E should detract from copyright strength (e.g. applying the 1st sale doctrine to digital transmissions). Moreover, a number of user rights groups are critical of the 3-step test as a world standard. They find the wording too narrow and would not regard its adoption as an expansion in a country's system of copyright exceptions.
- I think, in any case, that it is important to control for both shifts in copyright policies and shifts in exceptions, since they both shape the copyright regime. Let me conclude by showing the size of the copyright and related markets under each 2 x 2 scenario (before/after a major shift in copyright policy AND before/after the adoption of a fair use regime). Five countries recently adopted fair use: Philippines, Israel, Singapore, Malaysia, and Taiwan. (Korea did too, but it occurred outside my sample period.) The following are sales figures in real 2005 dollars, normalized to one in the upper left corner.

Information Industries	Copyright Reform: Before	Copyright Reform: After
Fair Use: Before	1	2.4
Fair Use: After	0.34	2.8

Tech-Hardware Industries	Copyright Reform: Before	Copyright Reform: After
Fair Use: Before	1	10.7
Fair Use: After	0.03	10.1

These are just raw figures. They don't control for other factors. The tables simply provide a first look. It's tempting to speculate that the shift to fair use is beneficial after a country undertakes copyright reforms first. But that is not the case for Technology Hardware industries, which presumably serve as input providers, or produce goods that are complementary to copyright output: computers, tablets, and photographic equipment. Lower sales are associated with post-fair use periods. *[Source of Data: Thomson Worldscope.]*