

Research on the Effect of Copyright system on the Development of Creative Industries

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Abstract: Based on its property attribute and incentive function, copyright is often regarded as the organizing principle of creative industries. This paper believes that the positive effect of copyright system on creative industry is limited, and there are negative effects of copyright on creative industry such as monopoly, high cost and negative incentives. Copyright may be not the primary factor for the development of creative industries, and the empirical research on the relationship between copyright and creative industries needs to be further studied.

Keywords: Copyright, Creative industries, Copyright industries.

1. Introduction

Since creative industries involve a lot of human intellectual labor, many scholars believe that intellectual property, especially copyright, is closely related to creative industries. At present, the mainstream attitude of academic research and policy system believes that copyright system is one of the important guarantees to promote the development of creative industries.

However, the promotion effect of copyright on the creative industry is mainly from the perspective of utilitarianism, but many cultural creative achievements come from the creators' own creative driving force rather than the result of economic stimulation. In addition, monopoly problems also arose when large companies bought copyrights on a large scale. These negative impacts brought by the copyright system show that the relationship between copyright and creative industry is complicated, and it is a one-sided view that copyright must have a positive effect on creative industry. In the following, this paper will comprehensively discuss the positive and negative impacts of copyright on creative industries.

2. Creative Industries and Copyright

2.1. About the Creative Industries

Creative industries are considered increasingly important for the economic well-being of the twenty-first century [1]. Governments also regard the formulation of relevant policies to promote the development of creative industries as an important factor to enhance national competitiveness.

In the process of planning and developing creative

industries, different countries define creative industries differently and use different terms. The concept of creative industries was first put forward by the UK and adopted by countries such as New Zealand. The United States, Canada, Australia, the Netherlands, Singapore and China define the industries corresponding to creative products as “copyright industries” based on the intellectual property rights of creative products. Germany and Spain use the term “cultural industries”. Japan and Korea call it “content industries”. These four definitions are similar in their main content, and there are approximate or identical, overlapping or covering relationships in terms of extension. In common, the activities of creative industries result in the innovative achievements generated by the development and utilization of resources such as thought, art, creativity and science and technology, whose core values are embodied in intellectual property, especially copyright.

2.2. There Is a Close Relationship Between Copyright and Creative Industries

For example, the UK was the first country to articulate the concept of creative industries in the Creative Industries Mapping Document. The document describes the creative industries as “those industries which have their origin in individual creativity, skill and talent and which have a potential for wealth and job creation through the generation and exploitation of intellectual property”. As shown in Figure 1 below, this definition emphasizes the originality of the product and the value of intellectual property, which closely echoes copyright.

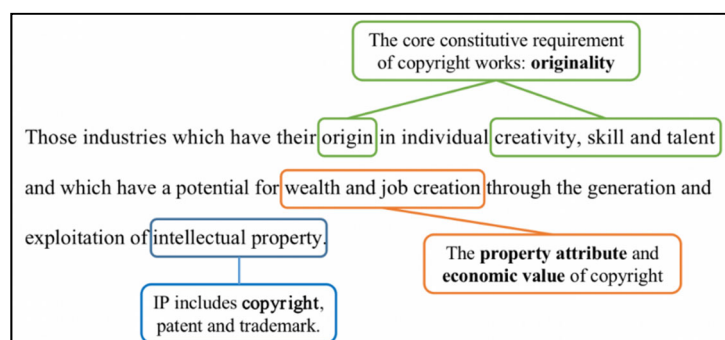


Figure 1. The close relationship between copyright and creative industries

In addition, as shown in Table 1 below, the Creative Industries Mapping Document identifies nine creative sectors,

which also correspond closely to the subject matter protected by copyright.

Table 1. Creative sectors and copyright subject matters

Nine creative sectors of creative industries	Main corresponding copyright subject matters
Advertising and marketing	Artistic works, literary works
Architecture	Artistic works
Crafts	Artistic works
Design: product, graphic and fashion design	Artistic works
Film, TV productions, TV, video, radio and photography	Sound recordings, films, Broadcasts
IT. software and computer services	Literary works
Publishing	Artistic works, published editions, literary works
Museums, galleries and libraries	Artistic works
Music, performing and visual arts	Musical works, dramatic work

Howkins argues that each form of intellectual property law is matched by a large industry [2], and the industries matched by copyright are often creative industries. Just as in the United States, the creative industry is called the “copyright industry”, which shows the significance and value of copyright for the creative industry. Therefore, it is widely believed that copyright plays an important role in the development of creative industries. It is also a common practice in various countries to promote the development of creative industries through copyright reform.

2.3. Copyright is Recognized to Promote the Creative Industries at the Institutional Level in China

Take China's Copyright Law as an example. Article 1 of China's Copyright Law stipulates that “..... encouraging the creation and dissemination of works which would contribute to the construction of socialist spiritual and material civilization, and of promoting the development and flourishing of socialist culture and sciences.”, which indicates that China has recognized the positive role of copyright in cultural and creative industries at the institutional level.

In addition, China has made timely amendments to its copyright law in recent years in order to respond to the new changes in the creative industry. For example, it expands the scope of subject matters protected by copyright and recognizes the concept of audio-visual works, which makes it possible to protect online games, short videos, visual art and other new forms of works. Xu argues that the new copyright law will encourage the development of digital technology and the innovation of cultural forms, and will have a far-reaching positive impact on creative industries [3].

At the same time, China’s copyright-related policies have set out the objective of promoting the development of cultural and creative industries by copyright. For example, The 14th Five-year Plan of Copyright Work proposes that: (1) Copyright is a basic resource of culture, an important embodiment of innovation and a pillar industry of the national economy. (2) Copyright plays an important role in the process of building an innovative and powerful cultural country. (3) By 2025, the added value of the copyright industry will account for about 7.5% of GDP, and the added value of the core copyright industry will reach about 4.75% of GDP.

To sum up, China tries to develop cultural and creative industries through copyright system reform and proposes corresponding quantitative targets by GDP, which is a typical

reflection of copyright promoting the development of creative industries.

2.4. The Theoretical Basis of Copyright Promoting the Development of Creative Industries: Incentive Theory

As mentioned above, copyright has always been considered effective positively for creative industries and creators from the institutional perspective. For example, the world’s first modern copyright law, the Statute of Anne (1710) in the UK, expresses the idea of copyright law as an incentive to creation in its preamble: “..., and for the encouragement of learned men to compose and write useful books”. Since then, the intuition about the copyright system has been that copyright gives authors or copyright holders the market opportunity to control their works exclusively through the mechanism of granting the exclusive rights to their works, and the potential market-based economic returns will encourage them to create and disseminate new works [4]. This intuition can be traced back to Adam Smith's view of the impact of copyright and the “rational economic man”, that is, the author is motivated to engage in creative activities when the benefits from the work outweigh the various costs of creation, and that copyright can therefore be an effective means of encouraging creation [5]. Given this, incentive theory is often regarded as one of the philosophical foundations of copyright laws in many countries. For example, the Code of the United States stipulates “to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries”.

For the same reasons, copyright is also viewed as the “organizing principle” for the creative industries, and thus many international agencies and governments have definitions of creative Industries that involve copyright (intellectual property). For example, United Nations Conference on Trade and Development says “the creative industries ... are the cycles of creation, production and distribution of goods and services that use creativity and intellectual capital as primary inputs ... generating revenues from trade and intellectual property rights”. The classification of the creative industries by the World Intellectual Property Organization unsurprisingly places copyright at the centre of its model, with the “core copyright” industries, surrounded by the ‘interdependent’ and the ‘partial’ copyright industries. The Creative Industries Mapping Document of the UK encouraged “ensuring wider public awareness of the

importance of intellectual property rights to longer-term creativity”, which has been consistently identified IP (copyright) as a prerequisite for creative industries growth in the UK.

3. Skepticism About the Idea that Copyright Promotes Creative Industries

As mentioned above, there is a close positive relationship between copyright and the creative industries. However, copyright also has the potential negative impact on creative industries, and the effect of copyright on the creative industry may be an ongoing debate.

3.1. Controversial Monopoly by Copyright

One view holds that, in the context of strong intellectual property (copyright) protection, copyright will form a controversial monopoly over creative industries, especially the tendency for oligopoly in the creative industries. In this regard, the creators usually work alone or in small creative firms and, although their works are protected by copyright when they are sold, the creators are vulnerable to economic pressures, which leads to the uneven bargaining power of individual creators in the creative market. Individual creators often find themselves in a weak bargaining position when contracting, which is also reflected in the evidence of creators' earnings from copyright [6]. In contrast, the top artists and creative companies earn high royalties and are able to hire ordinary creators and encourage oversupply, resulting in the rewards of ordinary creators being depressed [7]. Especially in professions where the “top tier” is in a relatively small number, such as writing, film and television production, and music composition, the benefits are highly unequally distributed [8].

Strengthening copyright could exacerbate this inequality and even bring additional monopoly risk instead. Strong copyright protection can give top firms and artists the ability to fully control downstream uses of their intellectual property [9], but it may lead to the restriction or prohibition on the re-use of copyrighted materials, which is also known by economists as the “deadweight cost” due to monopoly. In order to maximize the benefits of copyright, strong copyright may encourage the mergers of firms and ultimately lead to the formation of oligopolies in creative industries.

These phenomena indicate that copyright instead acts as an impediment to the creative process or the dissemination of cultural resources, rather than as a necessary element of thriving creative industries.

3.2. Creative Industries Also Develop Under the Environment of Weak Copyright, and the Business Model May Be More Important Than the Copyright

Based on these negative views on strong copyright protection, some scholars have studied the development of creative industries in a weak copyright environment.

Montgomery and Potts analyzed the development of China's creative industries in a weak copyright protection environment at the beginning of the 21st century, and they found that Chinese companies succeed due to developing targeted strategies for operating in a context of very high levels of copyright violation, which suggests that the creative industries have less reliance on intellectual property

protection than hitherto assumed [10]. For example, although piracy has usurped most revenue streams, China's film and music industries still make enough profits respectively through the box office and phone ringtone [11]. In other words, creative industries could still develop and persist through a variety of business models despite high levels of piracy. This suggests that business models are good at adapting to the legal, social and technological contexts within which money might be made, which might raise doubts about the social value of strong copyright.

Indeed, although business models and legal systems co-evolve, legislative reform often takes decades, because the overall effect of copyright rules on social welfare often being relegated to an afterthought [12]. Therefore, whether for profit or survival, business models have to proactively adapt to the rules of the day rather than passively waiting for the law to change, so it is not surprising that creative industries can still develop in a weak copyright environment. According to this adaptive evolution of business models, IP (copyright) may be the secondary influence on the creative industries.

3.3. The Financial Benefits of Copyright May Not Be the Only Incentive for Creators

As mentioned above, the economic benefits brought by copyright are one of the key drivers that stimulate the creation and promote the development of creative industries, but there are also views that non-economic factors should not be ignored. Smiley's investigation revealed that it is often not the desire of acquiring intellectual property that drives artists to create, but the pursuit of personal and professional happiness, as well as freedom of expression among influential groups [13]. Such non-utilitarian-related motivation can also drive innovation in the creative industries, with many new forms of work often driven by creative freedom and exploration rather than economic factors.

3.4. Economic Data Do Not Accurately Reflect the Development of Creative Industries

The way in which GDP is used to measure the contribution of creative industries also has been questioned. For example, The 14th Five-year Plan of Copyright Work in China takes GDP as the indicator of copyright industry development. This practice is common in the paradigm of creative industries because economists typically argue that only marketed goods generate value for GDP [14]. However, this statistical approach may overstate the contribution of a creative industry sector to GDP, because the GDP figures for the creative industries that the government relies on are mere “advocacy data” rather than objective evidence [15]. In particular, judging the development of creative industries by economic data may ignore some creative achievements whose cultural value is higher than their economic value.

4. Conclusion

To sum up, the impact of copyright on the creation of creative industries is likely to remain an ongoing debate. In the current research on the relationship between copyright and creative industries, legal scholars generally agree that copyright has a strong positive effect on creative industries. Meanwhile, copyright-related systems, policies and laws also carry on this view to a considerable extent and advocate strengthening copyright protection. On the contrary, copyright may also bring monopoly, negative incentives, high

costs and other problems to creative industries, and the positive effect of copyright have not met theoretical expectations and may be lower than the role of business models for the creative industries.

In fact, copyright policy is often in the hands of legal scholars. However, given the close relationship between copyright and creative industries, in addition to legal issues, relevant research should also fully consider factors such as culture, creativity, creators, business models, monopolies and digitization. Empirical research still needs to expand and improve the understanding of the relationship between copyright and creative industries, instead of automatically leaning towards strengthening copyright.

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