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Property, Copyrights, and Economic Growth

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ABSTRACT: Economists have long noted the importance of clear laws and property rights to facilitate transactions and promote economic activity and growth. Intellectual property including copyrights is part of the fabric of property both in the United States and around the world. Empirical studies support the relationship between copyright

1. *Economic choices*

Samuelson emphasizes that economics is about choices, choices made by individuals and society. Extreme cases either where individuals have no choices in a form of serfdom, or where individuals are unconstrained in their choices in a form of tyranny, are not of particular interest in economics. To an economist, choices are usually made in the context of markets with buyers, sellers, and prices. Economists study how prices are determined in markets and how individual buyers and sellers make decisions in markets. Choices often require certain control aspects over an asset or item:

- *Authority to determine how an asset or item will be used* – It does little good to make a choice if one has no authority to do so. Even if we have no formal assets, we still may have some control over how we spend our time, or periods of time. There are no particular limits on how far the authority reaches or requirements of physical possession. An individual may have authority to use a parcel of land half way around the world, or a bank account in another country, or any number of

- *Authority to transfer the asset* – Often the best use of an asset is to sell it, or to buy it, or to lease it, rent it, or create an option for it, or to transfer some or all of the rights to the asset. One is substantially economically limited if one has no authority to transfer an asset.

Although economics texts rarely explicitly state these concepts, they are implicit in most discussions of economic choices made by individuals or larger entities.

Economic choices are not merely about the authority that an individual or entity has with respect to various assets but also about the general respect and acceptance that the individual or entity has for prevailing market conditions. Thus, economists rarely consider scenarios where a buyer or a seller simply ignores a market or circumvents a market by setting his own price. A thief steals an item impervious to the actual price of the item and implicitly sets of a price of zero to the item. Theft is a real world phenomenon, but the setting of the price to zero is not a market outcome. Implicit in the concept of economic choices is that individuals and entities make choices within the realm of prevailing laws.

Economists often consider how prices are set in a market, and economic choices are made based at least in part on those prices. The economic choices that individuals and larger entities make are rarely about the ability unilaterally to dictate prices. A buyer cannot go into a shop and unilaterally dictate the prices of goods, much less unilaterally announce that the price for everything is zero. Even in the extreme case where the cost to the seller is zero, or zero marginal cost, the market price may be substantially greater than zero.

2. *Scarce resources*

To an economist, scarcity implies that prices are not zero. Every day, consumers purchase at positive prices food, clothing, and an endless array of goods of services. The positive prices paid by consumers reflects the reality that the goods and services are scarce, and the reality that the sellers would not simply give the goods and services away free. Of course, consumers would prefer to pay lower prices, even zero prices, for their purchases, but the prices are not set by consumers alone.

If prices were zero and resources were scarce, demand would likely exhaust the resource. There are of course instances when individuals encounter zero prices where scarcity is absent. We do not pay for the air we breathe because it is not scarce. It is free of charge. Individuals give old unwanted clothes away, implicitly a zero price, because the cost of storing them is greater than their value to the owner. The assessment of scarcity or surplus is made by the owner of the clothes, not by those who will receive them. It does not follow that individuals give away all of their clothes or that the price of all clothes is zero.

B. Property

Since before recorded history, societies around the world have developed an elegant solution to avoid universal zero prices: property. When an individual controls a resource and it has alternative uses at least one of which is valuable, the resource is unlikely to have a zero price. From Adam Smith to contemporary economists, economic thought has consistently found that economic welfare is enhanced by the efficient use of resources and that property and contract are often at the core of that efficiency. The Nobel Laureate Milton Friedman observed that the role of government in a free society is to enforce property and contracts.⁶

Property has specific meanings, and Armen Alchian, another Nobel Laureate, identified three characteristics usually associated with property: (1) authority to determine how an asset is used; (2) right to the benefits of the asset; and (3) authority to delegate, rent, or sell all or a portion of the rights to the asset.⁷ Notice that these are the same three concepts of control over an asset that, as discussed above, are necessary for meaningful economic choices in the definition of economics.

Alchian's concept of property does not require exclusivity. Property is a subtle concept that includes exclusive rights as well as varying degrees of non-exclusive rights from part-ownership of a house to a ticket for the theatrical exhibition of a motion picture to a parking pass in a parking lot to a lottery ticket to a copy of recorded music. In each of these instances, the property is not purely exclusive: a handful of other others, or billions of others, may have similar or even identical property. Also, in each of these instances, despite the absence of pure exclusivity, the market price for the property is usually substantially greater than zero. In each instance, Alchian's three principles apply.

III. Copyright as property

In the previous section, we reviewed the importance of property to a well-functioning economy. Legal scholars have long recognized that intellectual property generally, and copyrights in particular, are part of property.⁸ In this section, we examine how copyrights are part of the economic fabric of property. Consumers choose to purchase copyrighted works even though works without copyrights are often available at lower prices.

2. *Reduction of copyright protection and reduction of property rights*

Property and contract law vary by state and by country. Thus, in the United States, most owners of physical property can substantially limit access to and trespass on the property. In contrast, in the United Kingdom, public footpaths are common on private property. Property owners cannot easily prohibit others from access to at least part of their property. Despite these and many other differences in property law, most observers consider both the United States and the United Kingdom as having strong and enforceable property rights. The same holds true for copyrights.

Obviously, for effective property rights, the corresponding statutes, legal precedents, and enforcement must all be strong. Property has little meaning without clear and predictable

and do choose between works that are copyrighted, often at a higher price, and those that are not. The choice is important. For practically every type of copyrightable work—movies, software, books, music, etc.—American consumers and businesses choose some that are copyrighted and some that are not, and even some that volunteer to lesser forms of copyright protection.²¹

Many Americans choose some works without copyright protection. There are many reasons for such choices.

- Some works are simply of a vintage beyond copyright protection and have entered the public domain. The written works of Shakespeare fall in this category. So too are those of Beethoven and Mozart. But for every well known classic beyond copyright protection, countless thousands of works beyond the vintage of copyright protection languish in obscurity. They are little known to American consumers not because of the cost of copyright royalties—there are none, but because no one sees value in promoting those works and making them available to consumers.
- Other works are in the public domain not as a result of their vintage but because of the studied efforts of their creators. Thus, open source software is written to be in the public domain.²² It is widely available, and sometimes widely in use. Some music, videos, and other works of art are created with an intent of placing them in the public domain. These works are widely available.
- Some works are in the public domain because they were created by or for a government agency which stipulates that these works are in the public domain.
- Still other works are available without the full benefit of copyright protection, often the result of piracy.

The many works outside of the copyright system are widely available in America. Their prices range from free to a price at or near that of a fully copyright-protected work. Despite the price and availability of uncopyrighted works, American consumers and businesses, more often than not, choose the more expensive alternative of copyrighted works, almost entirely from private businesses.

American consumers and businesses are not coerced into choosing or purchasing copyrighted works. They are free to choose the un-copyrighted works as well as copyrighted works, and they choose a combination of the two, but primarily copyrighted works.

The availability of this choice in America stands in contrast with the absence of such a choice in much of the world. To billions of people around the world, the choice is either

copyrighted works or pirated works that are copyrighted in other countries but unprotected in the country of sale. In international comparisons of intellectual property protection, the United States, Western Europe, and a few Pacific Rim countries have more protections than other countries in the world.²³

IV. Copyrights contribute to economic growth and employment

Copyrights are important partly because they are part of property and thus to the efficient functioning of a market. Not surprisingly, copyrights also contribute to the economic growth of countries.

A. Economic growth and copyright industries

The World Intellectual Property Organization developed a template to measure the economic contribution of copyright industries in a country.²⁴ Economists have conducted studies for many countries and find growing copyright industries with contributions to

ourselves on our smartphones to manipulate and enjoy information often with the help of copyrighted tools and copyrighted information.

We Americans consume licensed copyrighted works in our daily lives not out of necessity but out of choice. We often have a choice of products with or without licensed copyrighted works, and we often choose those with copyrighted works. Why? The copyrighted images appeal to us. They are familiar, and the familiarity gives many consumers comfort in making a purchasing decision. In signaling product quality, copyrighted images and works are helpful.

4. *Copyrights accompany American works around the world*

“Made in America” once was the norm for the vast majority of products sold in our country. Imports were the exception rather than the rule. Today, imported products are available for practically every consumer need, from clothes to home furnishing to electronic equipment. In today’s competitive global market, American consumers can choose products from around the world, or at least from those countries with markets in place to enable those goods to be produced and distributed to America.

Goods and services from approximately 200 countries compete in the global market. Some American goods and services are competitive globally; others are not. American goods and services tend not to dominate global markets. There are a few exceptions. The most notable are copyrighted works: the motion pictures, the computer software, the websites, the music, and countless other works that people around the world seek. One might even call it American exceptionalism.

Consumers everywhere employ computer software licensed by American companies, rely on search engines licensed by American companies, watch movies licensed by American studios, listen to music licensed by American record labels, and in countless other ways rely on American copyrighted works. People see, hear, and understand the world around them through the medium of American copyrighted works. American industries creating copyrighted works contribute disproportionately to the American economy. In international markets for intellectual property ranging from motion pictures to packaged software, from recorded music to live performances, American copyrighted works lead world markets.

Sadly, not everyone pays for the privilege of using American copyrighted works. Copyright piracy is rampant. It is aimed primarily at American copyrighted works because American copyrighted works are strong in most global markets.

To reduce costs, many American businesses have moved a wide variety of activities to other countries, such as manufacturing, call centers, and contract software. Less common is moving the development of creative works to other countries. Works with copyright protection are still heavily concentrated in the United States.

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The United States is the global center of much of the commercial use of the internet, from online search engines to online business-to-business activities, to retail outlets for consumers to financial institutions. America's centrality to commercial activities is partly attributable to a range of laws, including copyright laws, that give both buyers and sellers some comfort and security for using the Internet for various commercial activities.

4. Do the creative industries in countries with substantial copyright protections have poor economic growth?

The world provides a natural economic experiment to test whether strong copyright laws help or hinder the creation and dissemination of intellectual property. Not all countries take copyright law as seriously as does the United States. None of the top 150 licensing companies reflected in Table 1 is based in one of the countries that the United States Trade Representative has designated as a "Priority Foreign Country" or "Priority Foreign

purchased by American consumers and appear to account for less than 1% of imports. In the global market for creative works, Chinese works are not competitive. The same situation holds for every country that is on the USTR “Watch List.”

The intellectual property embodied in creative works gravitates to those countries that will protect those creative works through copyrights. Chief among those countries is the United States.

Finally, are there any credible empirical studies that demonstrate that economic growth increases measurably with lesser copyright protection? I have searched, but I have not found such studies.

5. Copyrights are good for economic growth and the American economy

In sum, I have examined five different questions, a positive answer to each of which would provide a basis to conclude that lesser copyright protection would lead to greater economic growth. The answer to each question is negative.

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copyrighted works. The Internet, or so the story goes, has made information free, copying costless, and copyrights obsolete.

Do copyrights really harm consumers? We can examine this question in several ways:

- If copyrights harmed consumers would they shun copyrighted works. Given a choice, do consumers shun copyrighted works?
- If copyrighted works were valuable to consumers, businesses would focus on distributing non-copyrighted works to consumers. Have businesses developed substantial legitimate channels to distribute non-copyrighted works to consumers?
- If copyrights reduced consumer choices, consumers would have greater choices where there are fewer copyrighted works. Do consumers have more choices where copyrights are less binding?
- If copyrighted works harmed consumers, empirical evidence should reveal that it does not support the conclusion that consumers are better off with less copyright protection?

If copyrights harmed consumers, the answer to each of these questions is “yes.” As it turns out, the answer to each question is actually “no.” Thus, I conclude that copyrights benefit rather than harm consumers.

1. Given a choice, do consumers shun copyrighted works?

Americans can watch homemade videos on the Internet with little copyright protection, or they could watch copyrighted video works on television or in movie theaters.

Americans can obtain information about practically any topic either from web sites with traditional video entertainment and information, Americans tend to watch copyrighted works.

Some software is copyrighted; some is open source software. While complex packages of software tend to contain some of each, American consumers tend to gravitate to software that shun copyright.

4. *Does empirical evidence support the conclusion that consumers are better off with less copyright protection?*

Finally, are there any credible empirical studies that demonstrate that consumer welfare increases measurably with lesser copyright protection? I have searched, but I have not found such studies.

In sum, I have examined four different questions, a positive answer to each of which would provide a basis to conclude that lesser copyright protection would lead to greater consumer welfare. The answer to each question is negative.

V. Conclusion

Clearly defining and enforcing property rights have long been recognized as important to the smooth functioning of an economy and a democracy. Copyrights are an important part of the structure of property in the America, and their enforcement contributes both to broader economic growth and consumer welfare.

Creative artists and authors have a choice. They can choose copyright protection, or they can shun it. Overwhelmingly, those who can obtain copyright protection do so. Securing property rights including copyrights enhances both private and broader public economic interests.

Business models based on the potential to license copyrighted works are part of the fabric of American business and—for many Americans—central to the American dream. Those of us who aspire to be artists or software developers or writers or engage in practically any activity related to works that can be copyrighted are better off because of copyright laws that permit licensed copyrights and their enforcement. !

The abundance of legal choices for copyrighted works, which continues to grow unabated, demonstrates copyright's vital role in facilitating new markets in the digital age as opposed to stifling them. Copyrights contribute substantially to the growth of the American economy. Although limitations and exceptions to copyrights such as "fair use" have a role to play in copyright, they are the exception rather than the rule. It is the copyrights themselves, not their exceptions, that promote growth and innovation.