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Chapter 7

Law and economics of culture markets. Perspectives on incentives, selection, production and marketing

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Abstract

This legal, economic and social analysis of the evolution of copyright regarding cultural expressions highlights the socially constructed nature of the culture markets. The move from local to socially constructed global markets — where cultural expressions can now be consumed beyond the limits imposed by temporal and geographical distance — was made possible by technological innovation (as a necessary but insufficient condition) and by the legal configuration of cultural expressions as goods that could be bought and sold. The construction of global markets raises the problem of how to collect the royalties due from private and public reproduction. Our economic analysis of incentives to creation and access to cultural expressions suggests that the economic rights of creators should be distinguished from the financial rights of producers.

Keywords

Law and economics of markets, music industry, social construction, copyright, Internet, business model.

1. Introduction

Incentives to creation are based on the recognized need to both acknowledge authorship and guarantee authors an income from their work for a certain period (Scotchmer, 2004). Copyright law consequently has moral and economic dimensions. Whereas moral rights have been recognized since time immemorial, economic rights only acquired significance once production commenced on an industrial scale, thereby making works available to more consumers. This development of a market in cultural expressions —previously funded through a system of patronage — made it imperative to regulate economic rights (see White & White, 1993).

Literary, scientific and artistic creations have traditionally been produced collectively. Since reproductions were not feasible, influences could only be exchanged through geographical displacement of the authors themselves, their pupils or apprentices and people who publicized their works by word of mouth. We can take as an example the well-documented case of music (Peterson, 1990, 1997). Before recording became possible, musicians and performers interpreted their own creations, or versions of the creations of others, in their own local market, whose scope was limited by the transport modes available (Peterson & DiMaggio, 1975). Exchanges beyond these geographical limits resulted in creations that were more collective than they were individual. Although the influence of creators on each other was widely accepted, creators were recognized as the authors of their own works, and moral and economic rights were safeguarded by the locality of markets. Since earnings came from live performances at the local level, creators generally had no need for producers, publishers or collecting societies.

Performances were frequently collective works in another way, as they required, inter alia, sheet music, librettos, musicians, a conductor and producers to finance rehearsals and final staging. Indeed, in the case of classical performances, the need to maintain a stable orchestra meant that musicians had a working relationship with producers, as described for opera (McConachie, 1988; DiMaggio, 1982; Storey, 2003) and the early days of radio

(Peterson, 1990). Each performance was a unique collective effort, an experience that could not be canned and sold in markets different to those where production took place. Registered sheet music was, however, a particular case. Composers of classical music scores and librettos generally employed representatives to safeguard their economic rights. In other words, a market existed for these creations with economic value. This sector sowed the seed for subsequent changes in the management of author right, most especially when composers of popular music began to insist on protection for their compositions.

In local markets there were virtually no intermediaries — and therefore no conflicts of interest — between the artist and the consumer. Artists promoted themselves or, perhaps, employed a manager in return for a percentage of revenues. The relationship between performers /creators and consumers changed radically as soon as performances or works could be converted into products that could be enjoyed far from their origins. The printing press was the protagonist of the first major transformation of the market for cultural expressions. The printing industry rendered obsolete the scribes who handcopied original manuscripts as, not only were printed reproductions much more literal, they were also done much more efficiently and more inexpensively, thereby facilitating market expansion. Something similar happened with art works: a reduction in canvas size reflected the interest of painters to expand their markets and so achieve independence from patrons (White & White, 1993).

The reproduction of literary works by means of printing brought the publisher as a new player onto the stage. The publisher performed the functions of promoter, selected the printer and also chose who, what and when to publish. The gallery owner played a similar role in developing art markets (White & White, 1993). A distance was created between creators and their publics, who now transcended local boundaries, although, thanks to distribution networks, consumers were also moved closer to producers and publishers.

Several important changes occurred when the publisher who financed and selected works appeared on the scene, cultural expressions became an object with rights and information could be collected about consumer preferences and behaviour.

Initially publishers were self-regulating and, organized as guilds, they limited competition, reined in the bargaining power of creators and imposed price controls. Guild self-regulation eventually became regulated by law, which had the effect of curbing guild restrictions on competition. In return, however, guilds benefited from legally established copyright terms regarding the economic rights of authors, initially set at 14 years in Britain (Statute of Anne of 1710). Publishers were logically more interested in recouping their investment than in providing incentives to creation and innovation and so acquired powers in terms of selecting works.

Because publishers managed the economic rights of authors regarding (re)production for the period determined by law, a conflict of interest arose that produced asymmetry between parties with different negotiating capacities. Publishers, then as now, are obviously interested in maximizing revenues from their backlist overall, while authors are interested in maximizing revenues for their own works. To avoid this conflict, publishers would need to maximize revenues for each author they manage. However, this cannot be, as publishers have fixed resources and opportunity costs, so their resources need to be invested in works they expect to generate more revenues — typically new editions rather than reeditions.

Works that have remained in the public domain (off the publisher's backlist) are consequently reissued more frequently (Burrows, 1994). And this happens even though, for publishers who publish a work for the first time, the incremental cost of reedition is less than the incremental cost of a first edition for other publishers of works already published. Some economic researchers have consequently concluded that publishers should not have economic rights assigned to them for more than two years (Burrows, 1994), leaving other publishers to negotiate a reprint with authors without having to first obtain permission from the first-time publisher. What this amounts to is a separation of the economic entitlement of publishers from the intellectual property rights of authors. This perspective is especially important for governments interested in fostering creativity and innovation and broadening access to culture.

Another publisher issue is that of selecting works. It was hardly surprising that, until US legislation finally protected the rights of foreign authors, US publishers preferred to publish the literary works of English authors, not because they were better, but because they were guaranteed sellers (Griswold, 1981). This is the rationale behind publisher fairs held around the world (e.g., LIBER in Spain), namely to capitalize on books that have been successful in other markets. Language, unlike music (as we shall see below), has resulted in differentiated national markets for books.

2. Creation as an Individual Undertaking: National and Transnational Markets

The market for cultural expressions is socially constructed, as illustrated by Peterson (1997) in his excellent analysis of the country music market. Markets are constructed, moreover, on the basis of process innovations (in the past, printing, gramophone recording, etc) that have the effect of expanding sales.

However, innovation was not a sufficient condition in itself for the expansion of markets. The transformation of local into national markets required a legal framework to protect intellectual property and also the development of instruments and means for protection, copyright registration and fee collection. Furthermore, to transform cultural expressions into tradeable goods it was necessary to transform collective works into individual works invested with private rights. On transfer to publishers and producers, these private rights of creators were subordinated to the interest of publishers.

How the music market evolved is very illustrative (Peterson & Berger, 1971, 1975; Pererson, 1982). Local markets could only first be transformed into regional markets and then into national markets once producers decided to only issue works for which performers held copyright. Two important consequences were that it was necessary to create companies to register the rights of authors and it was necessary to limit access to the market (as had been done in the past by guilds).

The American Society of Composers, Authors and Publishers (ASCAP), founded in 1914 in the USA, was instrumental in converting artistic creations into goods (Peterson, 1990). Although ASCAP's creation — and new copyright legislation — was driven by successful authors and composers of the day as a reaction to potential revenue losses from gramophone records, ASCAP ultimately came to play a major role in restricting competition in the music markets (Peterson, 1990). Since none of its members would cut a master recording unless the performer owned the rights to their interpretation, other performers were prevented from achieving musical success with copies or alternative versions.

Since ASCAP had the capacity to decide which creations could be recorded and so be converted into a tradeable good, it had the effect of limiting variety, as it typically excluded newer genres from the regional and then national markets. As had happened some centuries previously with publishers, the major labels, and also the legislation, tended to favour the interests of intermediaries in the music markets of the day.

The consequences of the restriction of competition were multiple (Peterson & Berger, 1971, 1975; Lopes, 1992). Innovation was discouraged and newer musical genres were unable to access the market. These new genres, in fact, had to await a new process innovation — radio — to prise loose the restriction on competition, which came about also as a consequence of ASCAP's defensive reaction to the new radio stations (Peterson, 1985, 1990) acquiring prominence as an alternative source of musical entertainment. ASCAP's response was to impose abusive conditions and this led to a conflict with the National Association of Radio Broadcasters (NARB). To digress briefly, history seems to be repeating itself in Spain with the collecting society for music rights. Revelations regarding SGAE (which had already been brought before the courts on numerous occasions) and irregularities associated with its dominant position culminated in 2011 with a police inspection at its headquarters and destitution of Teddy Bautista as president (Flores, 2014).

ASCAP's abuse of its position and conflict with the NARB inspired the creation of a new performing rights company, Broadcast Music Inc (BMI). Its immediate impact was to reduce the royalties to be paid by US radio stations. However, its most important impact was that it enabled new musical genres to finally enter the market and so meet the demand of a new set of consumers avid for novel musical rhythms.

Thus, while record labels focused on record sales and on live concerts in regional markets, radio eventually had the effect of transforming those regional markets into national markets — with innovation again paving the way. Up to this point, the major labels were favoured by the fact that support media for records were very fragile and distribution channels had high fixed costs. The advent of radio combined with the invention of vinyl records (33 rpm and 45 rpm) — and later the CD — changed the distribution mode and enabled new labels representing newer music genres to acquire a foothold in the market.

Another innovation was television, which would later drive similar changes in the film industry. Since new legislation reproduced the market structure of radio stations — a few channels but nationwide — television ultimately played a liberalizing role. Large radio stations moved into the television sector with their technical and artistic teams (presenters, orchestras, etc). The reasons for restrictions on radio stations evaporated and the market was opened up, with many of the new radio stations specializing in music of different genres.

Again it was the law which, given an innovation, helped build a new market reflecting the interests of the most influential business sectors. And again we see the important role played by legal monopolies. Rather than produce content, television channels and radio stations distribute intangible cultural expressions, although they may do both. Spanish legislation requires television channels to produce films by Spanish directors; hence, television has been one of the main producers of content, including series — although series have more recently tended to be produced by private companies (López-Sintas, García-Álvarez, & Rojas de Francisco, 2013).

From an economic point of view, restrictions on competition are only justified when fixed and sunk costs of production are high and revenues are uncertain, as happens with book publishing (Caves, 2000). Legislation to restrict competition in markets has an impact on fixed costs (Seaman, 1981); thus, when market entry was restricted for radio stations, many activities were internalized, resulting in high fixed costs (Caves, 2000). However, once the main radio stations moved into television, the market for licences opened up and fixed costs were reduced. This is yet more evidence of how cultural organizations are both socially and legally constructed.

Publishers, record labels, radio stations, television channels, art galleries, etc, coordinate — albeit spontaneously — at different levels in the selection of cultural expressions (López-Sintas et al., 2013). Local and regional radio stations and television channels, the most innovative galleries, the smaller labels, etc, focus on newer, more avant-garde cultural expressions (see Hirsch, 1972), whereas their national corollaries choose from cultural expressions already pre-selected in niche markets. This process is entirely efficient from an economic point of view.

Nowadays, however, the hegemonic power of the major record labels and film producers transcends borders. For this to be possible, it was again necessary to transform legislation, this time through free trade agreements (under the auspices of the World Intellectual Property Organization, WIPO). New European legislation, too, effectively protected international rather than national production (Drahos, 2004). The problem, however, was how to collect royalties when public reproduction crossed borders. Since transnational strategies have the effect of increasing the fixed costs of organization, production and marketing, they are accompanied by demands for longer copyright terms. This was the case with lobbying efforts in the USA led by Disney, which resulted in the Copyright Term Extension Act, aka as the Sonny Bono Act or, more derisively, as the Mickey Mouse Protection Act (Lessig, 2001).

However, just when publishers, record labels and movie studios had created their transnational markets, along came the dematerialization of cultural expressions. The publishing industry had a trial run with the market for photocopies, which — although not resulting in immaterial expressions — did make possible the private copying of a public (library book) or private (friend's book) good. The typical response, in such cases, has been to defend continuance of the traditional business model while pocketing the extra revenues from private copying. Imposing a levy on any equipment or support medium capable of making or containing copies of cultural expressions was one solution — essentially little different from how collecting societies operate (in Spain, for instance, CEDRO for the book industry and SGAE for the music industry). With photocopying, as one example, the rights of consumers to make private copies clashed with the interests of producers. Despite the fact that Spanish legislation recognized that private copying caused minimal damage to the author (producer), all photocopies, digital players, CDs, etc, were required to bear a levy.

Collecting societies in Spain have become controversial, despite acting on behalf of their members and with government authorization. If there is no real control (whether administrative or market-derived), once they acquire a particular dimension organizations tend to take on a life of their own, defending interests which do not necessarily reflect their statutory powers or the ruling legislation. In Spain, poor government control over bodies that have accumulated vast resources over the years has led to behaviour and acts that can be described, at best, as irregular (Flores, 2014). These societies are not effectively monitored by the government (see Chapter 4) and their monopolistic control of the market affects public reproduction but also cultural expressions with potential to be converted into tradeable goods. As Padrós notes (see chapter 3), monopolistic collecting societies need to be suitably monitored and controlled by the administration in terms of negotiations regarding fees, mandatory mediation in conflicts and annual performance.

In a competitive setup, however, government oversight would not be necessary other than to regulate the activities of the various associations. This setup would require, however, effective dispute resolution mechanisms and the freedom for authors to choose between different collecting societies.

It is economically efficient for public performance rights to be handled by collecting societies so as to reduce overall transaction costs (Towse, 2001). However, yielding rights to collecting societies gives rise to certain agency costs, given that managers may not share the interests of their individual members — as happens in corporations where capital is widely dispersed (Jensen & Meckling, 1976). However, it would also be necessary to define exactly what is meant by public reproduction. Private copies may not be used for public reproduction purposes, yet they may be levied, as happens with the digital levy collected by collecting societies in Spain (see Chapter 4). Thus, although radio stations pay the corresponding reproduction rights, consumers pay again when they record broadcasts for private use.

As demonstrated by several studies (Liebowitz, 2005; Rob & Waldfogel, 2006), copying works held by libraries or friends do not all represent lost sales to publishers, labels or artists. These consumers, predisposed to pay less than the retail selling price, will not purchase a good at any price they perceive as too high or beyond their means. The evidence shows — regarding Internet downloads of music, books or films — that if, in a particular country, average income is half and prices are double those of the country of origin of the cultural expression, then it is only to be expected that consumers in that country will have a fourfold predisposition to copy (see López-Sintas, Cebollada, Filimon & Gharhaman, 2014). In all markets there will inevitably be people who copy because they want a good but are not willing or able to pay the market price (Rob & Waldfogel, 2006). The same logic even applies to markets selling alegal copies (e.g., *top manta* in Spain); indeed, producers can even manage the actual size of these markets by setting prices at a sufficiently low level to increase sales while leaving room for private copying or the purchase of copies (Dolan & Simon 1996: Ch. 6).

3. Creation as a Collective Undertaking: Global Markets

Rights collecting societies are experiencing a boom from the immaterialization of cultural expressions. Immaterialization, much more than just a change in support, implies changes in the production, organization and marketing of cultural expressions, as reflected in changes in market size and in the fixed and incremental costs of producing an additional unit.

With globalization, transnational markets have become global markets. Immaterialization means that a good can be made available immediately to a consumer anywhere in the entire world. Commercial platforms such as Apple's iTunes, Amazon, etc, sell and despatch digital goods anywhere in the world in less than a minute. The major producers and publishers of cultural expressions have lost control and influence over what consumers hear, view or read and over consumer tastes in general.

These changes have had a destructive effect on the star system so characteristic of the film, music and literary sectors. Commercial streaming platforms like Spotify, the outcome of initiatives to share cultural expressions, have aggravated this trend. Spotify's streaming business, based on thousands or millions of interpretations, is, in fact, a distributor and collecting society rolled into one, but more efficient than traditional models — at least in terms of collecting and distributing fees, in regard to which they also compete with producers and collecting societies. Streaming is likely to negatively affect music sales, whether in physical (Amazon) or digital (iTunes) formats (Aguilar & Waldfogel, 2015) — just as radio affected gramophone sales almost a century earlier.

Another change has occurred in terms of information. Producers and publishers in transnational and national markets were able to collect detailed information on market behaviour through their large networks of independent distribution outlets, whereas the outlets themselves had only a partial (local) vision of the market. Full information nowadays is in the hands of enormous corporations like iTunes, Amazon and Spotify. Producers, like the distribution outlets of before, have only partial information: they can know the volume sold but not its geographical and social distribution.

Significant changes are also evident in relation to creation and innovation. Since many cultural expressions are available online and many creators allow non-commercial use of their work provided the source is cited (Creative Commons licensing; see Elkin-Koren, 2005), cultural expressions are frequently collective endeavours. One such example is R, a language and environment for statistical computing and graphics (R Development Core Team, 2015) licensed under a Creative Commons licence. Many data analysis books that explain R are based on other books published either under Creative Commons licences or according to a marketing model whereby users pay what they feel the book is worth to them.

The digitization of production has also transformed production and marketing costs in the publishing, music and audiovisual sectors by reducing the cost of producing the first unit. Obviously there will always be blockbusters with high fixed costs, but, overall, fixed costs have fallen compared with the situation in the past (Shaw, 2013). The case of distribution and marketing platforms is slightly different, given the high fixed costs of the infrastructure needed to meet peak demand; sunk coats, however, can be met by selling spare capacity in times of low demand (e.g., Amazon's AWS service). It is also becoming increasingly common for musicians and writers (via, for instance, Amazon) to finance the production of new creations, either directly or through crowdfunding platforms.

Yet another change has taken place in sources of revenues for creators. Whereas before music performers went on tour to promote their albums, nowadays the Internet is used to access consumers and promote live performances. Evidence regarding revenue sources is revealing (Connolly & Krueger, 2005): US record sales fell substantially in the twilight years of the 20th century and the early years of this century, yet attendance at live concerts increased, despite the higher cost of tickets. This transformation in revenue sources has had two effects. One has been the response of record labels, which now offer 360-degree deals (see Chapter 3). The second was the decline of the superstar system and the resulting decline in income asymmetries for different artists. In other words, the most famous performers in the transnational model were not necessarily the best, but heavy marketing meant they eclipsed others who may have been as good or better. Nowadays, however, record labels have little control over consumer tastes and so cannot maintain the superstar system. There are now far more artists with income streams but, since they are less differentiated in terms of popularity, income asymmetries have been reduced. This paradigm shift has been the best test possible of two alternative theories — by Rosen (1981) and Adler (1985) — explaining the stardom system and popularity.

The fall in fixed production costs not only suggests that copyright terms for cultural expressions should be reduced, but also that the circumstances for efficient allocation of resources have changed. We no longer achieve better allocation of resources by excluding consumers who are less willing to pay, even though this previously was the case, illustrated as follows: if the market size was $n+k$, where n represented the consumers willing to pay a sum p_n, and where k represented the consumers willing to pay a sum p_k, then, if $p_k<p_n$, assigning production to n rather than to k ensured efficient allocation. Nowadays, however, since incremental costs are close to zero, efficient allocation is determined by that price at which the sum of all incomes is equal to or greater than total incremental costs.

The response of traditional producers and publishers has been so reactionary that the new models for marketing digital cultural expressions have come from companies outside the music, publishing and audiovisual worlds, namely iTunes, Amazon and Netflix. We have witnessed this phenomenon before: the earliest innovations in discography came from manufacturers of gramophones and recording media (e.g., the United States Gramophone Company, which eventually became part of EMI). Although later transformations within the same model were led by the labels, the switch from material to immaterial supports was again led by digital technology companies outside the music sector with an innate ability to understand trends.

The strategies used by companies to deal with unauthorized sales are varied. Powerful US corporations and rights management monopolists lobby for legislative changes to protect their revenues and business model and thereafter make changes to their pricing strategies. Once markets are no longer naturally segmented (e.g., once free movement of goods was allowed within Europe), given interdependencies between segments, companies have to maximize revenues overall (see Dolan & Simon, 1996) and not just for each market separately. A variant on the market segmentation problem is the existence of unauthorized, or grey, markets. On acknowledging the existence of a grey market, we also acknowledge segmentation. Thus, price-sensitive consumers buy in the unauthorized market, whereas the remaining consumers buy in the authorized market. In such cases, companies can design a pricing strategy that determines the size of each segment and so maximize the respective contributions to profits. In the case of music, books and film, a reduction in the selling price will reduce revenues from existing customers but will increase revenues from new customers. The question is whether the loss in overall revenues from existing customers is offset by the increase in revenues attributable to new customers.

The evidence indicates that illegal downloading of books, music and movies represents minimal to no revenue losses (Liebowitz, 2005; Rob & Waldfogel, 2006). The question is whether downloading is interpreted as a problem of financial incapacity to pay or as an ethical issue whereby people download because they will not be punished (Moores, 2008; Rasch & Wenzel, 2013). In the first case, reduced prices and improved incomes are the solution (Aguilar & Waldfogel, 2015), whereas legislation is the solution in the second case. However, if the problem is genuinely the first one, punitive laws like Lassalle in Spain and Hadopi in France will have no significant impact on either the number of downloads or on company revenues.

4. Incentives for Creating, Selecting and Accessing Cultural Expressions

From the above it can be deduced that the cultural industries have several problems related to incentives to creativity, selection of ideas and of productions, marketing and financing.

The protection of intellectual property rights, at least theoretically, has been aimed at encouraging creativity However, those who finance ideas have to invest capital in producing a good that entails the risk of being a market failure. Not all music albums produce the same market return, nor do all ideas have the same fixed cost of development.

Independent selection mechanisms are at thus work in the market through independent producers — whether labels, publishers, galleries, etc (Hirsch, 1972; López-Sintas et al., 2013). These producers, who perform the initial selection of new ideas in local or circumscribed markets, can expect greater variability in income but have lower fixed costs. In contrast, the major producers operating in the global market have high organization, production and marketing fixed costs.

The central issue is the transfer and length of copyright terms. The evidence suggests that the rights of the creator should legislatively be separated from the rights of the producer. Economic analyses indicate that producers should have shorter periods of protection because they will always have a comparative advantage in terms of reeditions (Seaman, 1981). But because of the opportunity costs of production, many works are not reedited even when they have a market.

The marketing problem is a closely related issue. In the national and transnational model based on physical support (CD) sales, the marketing and selection problems were resolved by converting just a few performers into superstars through touring and heavy media exposure, including, most importantly, radio air play — often involving the bribing of disc jockeys (see Chapter 3; also Coase 1979; Hirsch 1972; Tschmuck, 2006). However, this approach was logically limited by the financial resources available. Although, according to Rosen (1981), hits corresponded to the best performers and composers, according to Adler (1985), they were fabricated on the basis of popularity built through radio air play. The new model of marketing digital cultural expressions reveals that the star-system business model was, in fact, grounded in popularity, with at best a nebulous link to quality.

Nowadays fixed costs associated with entering the market have been greatly reduced — and can even be funded by consumers (for instance, through crowdfunding platforms) — and promotion of music through the Internet is inexpensive or even free. Now it is the consumers and not the producers or disc jockeys who choose the hits (which might even mean that quality and popularity may be more closely linked; see Shrum, 1991). This fact rankles with producers, as they have lost control over a market that they configured to mirror their own interests.

As we have seen above, there has also been an impact on revenues. Nowadays, the CD is, for many interpreters, simply a promotion and marketing accessory, used to make them known and to build demand — so that they can go on tour, where the real money is to be made (Krueger, 2005). Before, the system worked in the opposite way: tours were the means of promotion and record sales were the main source of revenues. This paradigm shift explains the advent of the 360-degree deals by producers.

Among the different instruments available to encourage creation is public funding (Towse, 2001), which is efficient when creation implies a high risk. However, we are left with the problem of how to share economic rights between creator and financer. Public funding of films in particular also has a selection problem, whereas public funding of music faces a market access problem.

However, we can take a page from television, which functions as an audiovisual distribution channel funded by advertising or fees (López-Sintas et al., 2013). As intermediaries with different levels of quality and demand, according to whether they are local, regional or national, they can operate as selector mechanisms that screen works as follows: first through local channels, with lower average but more variable quality and serving smaller markets, next through regional channels, with less variability in quality and serving larger markets, and, finally through national channels offering higher and less variable quality and serving a very large market. Audience research would pinpoint the best works for broadcasting on regional and subsequently national television. Hence, the most innovative publicly funded works would ultimately gain access to the market, which would select and determine the economic value of works. This selection process is very similar to how record labels select new performers, whether groups or soloists, with collecting societies distributing fees among creators.

5. Conclusion

The market for cultural expressions (books, music, films, audiovisual productions, etc) is socially constructed, with process innovations (printing, radio, Internet, etc) and legislation together acting to transform unique cultural expressions into goods that can be reproduced and sold through technological platforms.

Innovations in this socially constructed market create problems of selection, financing, reproduction, distribution and marketing, all of which must be resolved in a balancing act between social wellbeing objectives and the interests of creators, producers, distributors and consumers. This reflects the need to balance incentives to creativity (restrictions on competition) with access to cultural expressions.

We have seen that it is desirable to distinguish between the intellectual property rights of creators and the economic rights of producers; specifically, copyright terms should be higher for creators and lower for producers. Terms should be fixed taking into account the fixed costs of creating the first unit so as to encourage the creation, production and reproduction of works, guarantee adequate revenues for creators and ensure broader access for consumers.

Selection for financing purposes and market access are other fundamental problems associated with cultural expressions, given that their value for each consumer cannot be determined until the good is consumed. Guaranteeing market access is as important as protecting intellectual property rights, since the latter are worthless without the former.

Markets are in constant motion, with each new technological innovation shifting the balance achieved after the previous innovation. These changes force new configurations of existing business models, which, by trial and error, are adapted to the new equilibrium — until the next innovation. Law and economics therefore need to cooperate closely in order to ensure that the socially constructed markets of culture maintain a balance between private and societal interests.

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