Symposium “Reconstructing Rights”

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Two legal traditions drive the copyright debate (and create tensions)

Continental European emphasis on the moral rights of the author/creator (“droit d’auteur”):

- the right to exploitation and remuneration for all uses of his/her works
- emphasis on the right to **remuneration** for the **creator**

Anglo-US-Scandinavian tradition: copyright as an economic policy instrument to promote innovation:

- copyright = financial incentive for the production of innovation
- emphasis on the **production** of innovation in **society**

In economics these two correspond to the static and dynamic side of the copyright equation:

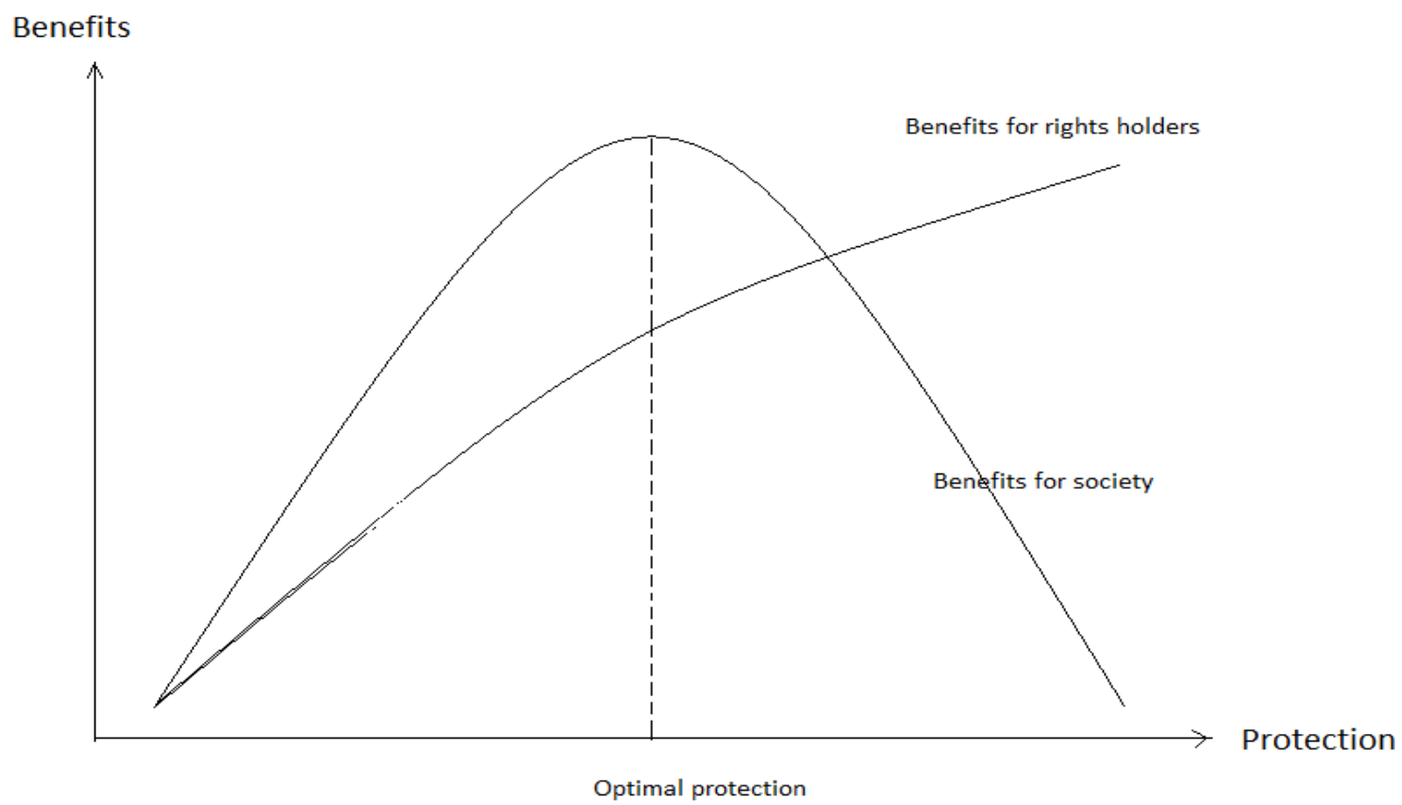
- Static monopoly right for the owners, generates revenue but economically inefficient (deadweight losses)
- Inefficiency is compensated by dynamic gains because it produces more innovation in future

Digital technology has upset the balance between the two:

- Lower production & distribution costs > more innovation for less remuneration (empirical evidence)

The impact of these two legal traditions on economic welfare for society

- Continental remuneration tradition focuses on benefits for rights holders
- Anglo-US tradition focuses on total benefits for all groups in society



Comments on “Borderline exploitation of copyrighted works” (Poort)

- Good start with static (negative) & dynamic (positive) effects of copyright, role of transaction costs
- Omitted: impact of digitisation on cost & volume of production -> changes the innovation balance
- Economic analysis of hyperlinking, resale, private copies, retransmission revolves around transaction costs & revenue substitution effects; no reference to effect on innovation
- The implicit assumption seems to be that production is strongly correlated with revenue
- Only TDM refers to production: windfall profits for publishers will not increase supply of scientific articles
- Available evidence shows that digitisation has a very positive impact on production, despite the increased incidence of illegal copying and, in some cases, revenue losses (substitution)
- Copyright still fulfils its role as incentive for innovation, despite weaker enforcement
- We need to bridge the legitimacy gap between de jure and de facto copyright law

Comments on "Deconstructing copyright" (Bechtold)

- Bring copyright in line with economic theory & evidence = music to economists' ears!
- Shift away from personal exploitation right to purpose of CR = innovation
- Implies move away from unproductive substitution vs complementarity debate to debate on supply side effects
- Risk of protecting the incumbent at the expense of the innovator (innovative downstream uses of CR protected material)
- "Fair use" doctrine already gives US competitive edge over EU in TDM
- The real test of CR: impact on production
- The EC proposed newspaper publishers' rights: will it affect the production of news (in traditional newspapers, across a wider range of news producers)?