

In order to determine a sensible approach to copyright and other intellectual monopolies, we must first understand the arguments that were used to create them and the arguments that are used to maintain them.

Copyright was originally established in England as a countermeasure to the Stationer's company's longstanding monopoly of the printing industry. The Statute of Anne suggests that copyright should be an act for the promotion of education and innovation; that by creating a short term monopoly for the author of a work, there would be more incentive to create new works while allowing older works to exist in a commons available to all for reprinting.

Copyright was not an establishment of property rights, but a short term exception to the rule that in a civil society we do not allow monopolies. Therefore it would be a very good beginning to any discussion about copyright to reject the term “intellectual property” as vacuous and false; it is a type of doublespeak that democratic societies should not permit.

This also brings into question copyright term extensions. Due to the fact that copyright is increasingly treated as a property right, it becomes difficult to reduce copyright terms, as this would be understood as a violation of private property, and it becomes easy for industries that take advantage of intellectual monopolies to justify term extensions.

The main arguments for upholding copyright and using increasingly draconian measures to enforce it are that the ability to extract economic value is required in order for people to be creative. This is of course argument that can be refuted on various premises. For example, the average share of income from record sales for a musician signed to a record company is a little under 2% of the total profit. As shown in the Free Culture Forum's report on sustainable business models for creativity, the vast majority of the income goes to the record label, who acts as a middle man in all transactions between the musician and the consumers, siphoning off income. Due to this, increasingly bands are turning to free culture schemes whereby they share their creations freely online and earn their income from premium purchases, merchandise and concerts.

Therein lies the crux of the problem. The companies which have vested interests in creative industries complain that their pockets are being lined slightly less thickly on account of fans sharing their favorite cultural artifacts online, and claim to be spending in the realm of 2 billion euros annually on what they call “new talent”, but in reality that investment represents economic value extracted from the consumer base and distributed to few artists regardless of their real merit, while thousands of other artists have to struggle to get basic income for survival.

The model for the last decade has been to extend and enhance copyright terms while inventing new ways to enforce copyright, which, in the case of the French HADOPI law and the Spanish Ley Sinde, infringe on users privacy and freedom of expression and grant extra-judicial enforcement rights to copyright holders, entirely apart from being realistically ineffective and technically unrealistic.

The model for the next decade should be a reversal. We should bring copyright back to its roots as an act for the promotion of learning and innovation, while developing new ways to ensure fair and effective distribution of income in the cultural sector.