

## **A RESPONSE TO PROF. SHAVELL'S "SHOULD COPYRIGHT OF ACADEMIC WORKS BE ABOLISHED?"**

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**ABSTRACT.** Undoubtedly, the idea of strong property rights is the underlying idea of economics and one of the main sources of economic incentive. In his paper, Prof. Shavell (see Shavell, 2009) seems to question and eventually impugn the idea of the economic efficiency of property rights in the market place of ideas in the academic world. In this regard, I will criticize his paper with the economic methods and will explain how Prof. Shavell's idea of the abolishing copyrights for the academic works might suffer from inconsistencies and also lacks the merits in generating a more economically efficient atmosphere for the academic works.

### 1. INTRODUCTION

In this paper, first I will discuss the most critical role of Copyright Law which in my view is the striking an optimal balance between two contrasting ideas, namely, fostering individuals' incentives for creativity on the one hand, and on the other hand, spread and dissemination of knowledge. I will then turn to the publication fee problem in an academic copyright free world and show how it may adversely affect the motivation of individuals in the market even if borne by the universities or third parties. The third problem with the abolition of copyright may arise from the distinction between academic and non-academic works and also textbooks and non textbooks and its consequences which may cause free riding problem. From an international standpoint, the abolition of copyright for academic works may have some unwanted consequences such as free riding and hold out problem and may produce forum-shopping like phenomenon, i.e., migration of the academic papers from copyright free countries to countries having its protection, it might also raise serious concerns about the copyright of academic derivatives. Abolishing copyright may raise questions of fairness too, because the level of the efforts done by the authors and the positive externalities that they may not be able to recoup may punish and discourage positive externality producing sector of the society instead of encouraging them. At the end, given the voluntary nature of the intellectual property rights, I will propose that the choice here is not between maintaining the copyright for academic works or abolishing it, but the problem lies in striking a proper balance between individuals' incentive and public interest which might be

solved by the better allocation of intellectual property rights through manipulating the concept of originality, fair use defense, duration and so forth to reduce policing and transaction costs. In addition it will be proposed that the ability of the authors and publishers in price discrimination to catch the marginal readers especially in the international level may be helpful for the spread and dissemination of the academic works and hence to achieve a greater readership.

## 2. INDIVIDUAL INCENTIVE VS. PUBLIC INTEREST (SOCIAL WELFARE)

Although there are many arguments against the Intellectual Property Law from many different standpoints,<sup>1</sup> until recently, in American law and jurisprudence on intellectual property rights, which is mostly dominated by the economic approaches and justifications, there were almost no outright attack on the very existence of intellectual property from the standpoint of economic justifications of the copyright. As the economies continually evolve, the economists try to keep pace with them and want to craft new systems to bring about the new analyses and approaches to deal with the emerging problems and Prof. Shavell's "Should Copyright of Academic Works Be Abolished?" (Shavell, 2009) is one of them which proposes new approach and analysis for dealing with the inefficiencies that the current system of copyright law may produce.

In Anglo-American and especially U.S tradition, the intellectual property rights are mostly considered public rather than private and in the context of Copyright Law, balancing the individuals' incentive and the public interest can be translated into striking an optimal balance between fostering incentives for creativity and optimal use and dissemination or availability of the works which I think is the heart of Prof. Shavell's article. It may in turn be translated into the long-fought battle between fairness and economic efficiency which is one of the most controversial issues in Law and Economics. But here because of the limits of this study, I confine myself to the critique of the idea of the public and private interest in the context of intellectual property and see whether it is a good idea to abolish the academic copyright protection in favor of the larger readership and dissemination of knowledge. In his article, Prof. Shavell translates the utility of the author into the (modest) money (in the form of royalty) earned from the copyright and the readership. The copyright protection does this job by providing a limited monopoly over the work done. It seems that the scope and limitations on the copyright, such as originality, fair use, duration and the idea-expression dichotomy are the built-in mechanisms that are crafted to strike such a balance. But what will happen

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<sup>1</sup>For instance, some believe that the term "property" is not an appropriate term for the works under copyright, and they speak of "intellectual policy" instead. See, for instance, Vaidhyathan (2001).

if the copyright protection be totally abolished from the academic works? If it happens, the academic works as seen through the economists' lens will become nonexcludible and non-rivalous in the digital age, the two characteristics that is widely ascribed to the public goods and hence the market failure might be apparent in these situations.<sup>2</sup> In the case of academic works, depending on the kind of the work, we might encounter both the problem of commons and also public goods problem.

The term "tragedy of the commons" coined by Garret Hardin in his famous article in 1968 (Hardin, 1968) indicates a source shared by a group of people<sup>3</sup> in which individuals are granted the right to use that given resource without any cost-efficient way of monitoring or limiting each other's use. This will lead to the destruction of that resource. Considering this situation, without any control of the entry or any other regulation, the common resource will be exploited "even at the levels of negative marginal productivity". As Hardin emphasized: "Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in commons brings ruin to all." (Hardin, 1968, p. 1244). This happens because the external effects are not fully internalized within the choice of each individual decision maker. There might be two kinds of externalities in the commons:

- (1) Static or current externalities: in the static externalities simply taking advantage of a given source simultaneously reduces other people's chances to take advantage of that source.
- (2) Dynamic or future externalities in which the uses of a renewable resource today may have destructive effects on the future uses of that given resource.

In the commons because of the lack of conformity between the use and the exclusion rights – one of the inherent characteristics of the ownership in the western tradition – individuals do not use the commons with due care and attention and they do not bear the whole costs of their activities, i.e. the externalities cannot be internalized using the commons (Parisi and Depoorter, 2005, pp. 74-5). On the other hand, anticommons problem may occur when multiple owner, each have the effective right to exclude the other from the common source, this means that all of the owners at last will be prevented from "maximizing his privilege of the use", and the common resource will remain unused and be wasted even if there is net social benefit in using them. In other words, the Commons and anticommons problem are the consequence of "symmetric structural departures from a unified conception of property", and are the consequence of a lack of conformity between

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<sup>2</sup>The commons are those goods which are nonexcludible but rivalrous, but public goods are those which are both nonexcludible and nonrivalrous.

<sup>3</sup>See Hess and Ostrom (2007, p. 4).

use and exclusion rights, i.e., the fragmentation of the property rights (Parisi et al, 2004, pp. 175-6).

Taking the fact that a commons may exist in different levels into account, from a very small group like family and its refrigerator to the community (Sidewalks), national, international and global levels (atmosphere and the place beyond it)<sup>4</sup> it seems that this phenomenon cannot be avoided in the context of copyright free academic works. This problem arise when everybody has the incentive to use the academic resources and nobody has enough incentive to produce them, because in a copyright free world, when you have created a work, the expressed work will become a work in the public domain, and you will not be able to exclude others from copying that work for its marginal cost, the work may or may not be rivalrous, hence the work created by the author may have both commons and public good characteristic. In this case the public can take advantage of that work and no one will be in its charge which may internalize those externalities, and this will cause serious problems to it. On the other hand, if every author has the right to exclude others permanently, the tragedy of anticommons may occur. These two phenomena are two strong defenses in favor of crafting a regulatory system for the academic works to strike the said balance. At first blush, these phenomena will decrease at least the amount of the production of the academic works, in the absence of the subsidy from university and existence of positive fees for publication. I will discuss the academic esteem and also the university subsidy later in this paper. These characters of the academic works, may engage the academics in a public goods game which might not be necessarily result in an economically efficient outcome.

In case of knowledge production, in the course of recent years some theories were developed of which one of the most appealing is the idea of “social production” or “commons-based peer production” with Benkler as its harbinger. He realized that as transaction costs sometimes force the firm to outsource the production of certain commodities to other firms, they may sometimes cause the production occur outside of the proprietary market place. The idea is that some resources might not be produced either within the firm or by outsourcing them, but it might be efficiently produced by altruism and the voluntary contribution of the creative individuals.<sup>5</sup> There are several counterclaims to this idea. The core idea is that the social production might not be totally free of charge. First there exists some opportunity costs for the social production, second, it entails some costs to the society as a whole; as an example, take the U.S. (at least academic) society into account, the level of investment in the U.S. in the promotion of the social networks and pro bono works

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<sup>4</sup>See Hess and Ostrom (2007, p. 4).

<sup>5</sup>For more details, see Benkler (2006). For the seminal idea see: Benkler (2002). See also Strahilevitz (2007).

might not be comparable to any other society especially most of the third world countries. Third, is the fact that social production depends largely on the leisure time of the citizens and having leisure time differs from one society to another and depends largely on the level of the wealth and development of the specific society. One might compare the amount of social production in a developed society with its counterparts in the third world countries like Iran, and also compare it to academic works done in the third world countries which are almost self-centered and one can hardly find an article with coauthors or with many contributors. Then, the academic culture of the society is one of the critical factors in the social production. All in all, it seems that the argument for the social production can also be explained within the framework of the classical microeconomic theory, i.e., the more investment in education and altruism and also the more developed the country, the more the social production, and vice versa.

When Benckler says that the public good characteristic of knowledge can be solved by social cooperation, he means it might be solved by the people having enough resources, wealth and leisure time, but might it happen in the case of academic works which is one of the most difficult tasks that may require a great deal of time and effort? As discussed above, it seems that there should be some limits to the idea of social production (commons-based peer production). And one should have some concerns especially about the academic works in which the actors are almost highly educated and might act rationally in its classical economics sense. The question rises here, wouldn't it be better charge some money for every visit to Wikipedia or make people to contribute some ideas taking advantage of some other ones? And giving the most of the earning to the contributors? Wouldn't it promote the validity and also the quality of such social production?

Prof. Shavell also argues that "Academic authors would still have a strong affirmative motivation to publish in the absence of copyright – to gain scholarly esteem and to advance themselves professionally." p. 20. As for this point, the question that comes into mind is rooted in the some libertarians' and anarchists' reasoning about the abolition of property rights which will not be discussed here. Instead, I just confine the discussion to the question that whether relying on the uncertain grants (the classical "charity") and the fame arising from it provide sufficient incentive to an economy to work properly and provide the public goods and preserve the commons? The answer can be found in the arguments for and against the public/private provision of the public goods. If there would be no public or private provision, who should provide these goods and services and what would be the incentive for their provision? Subsidy? Charity of the grantors? the question that I will return in the next section.

Furthermore, the author argues that in the absence of academic copyright “for example, an individual who is willing to pay \$20 for the work would purchase it at a price of \$2, and this would raise social welfare by \$18 (the \$20 value placed on it by the person minus the \$2 unit cost of providing it to the person).” P. 18. It seems this fact does not necessarily raise social welfare or economic efficiency either in its Pareto or Kaldor-Hicks meaning. That is because the change in the welfare of the reader will cause the author or publisher worth off. In addition, if the consumer does not compensate the producer, it might not be Kaldor-Hicks efficient either. It does not do so because of the fact that it just entails that the money changes hands. Not paying 18 dollars by the reader means depriving 18 dollars from the authors and hence there would be no social gain at all. In other words, in this context, the abolition of copyright will eliminate part of the private costs and not the social cost. As Posner elegantly puts it “A social cost diminishes the wealth of society; a private cost rearranges the wealth.” Hence, on this basis, it is difficult to decide on the abolition of the academic copyright. (Posner, 1988, p. 7). In addition, in an academic copyright free world, one cannot argue that this transaction is completed by the consent of the seller, but the author will have no right and no other way to protect her work, therefore, she eventually will sell at a lower price decreasing her incentive for further publications. While in a world of copyright, because of the fact that the author can waive his/her right, the transaction will be completed by the consent of the author and the reader and hence the book will go to the most valued use. In the absence of the copyright one might be suspect that the book or article might go to the person who values it the most. The discussion about the abolition of the academic copyright has little say in the optimality of allocation of rights.

### 3. PUBLICATION FEE PROBLEM

The author claims that “if academics would not have to bear publication fees – on the assumption that universities or grantors would subsidize them – the incentive of academics to write and to publish articles would not fall and could rise. The reason that the elimination of copyright could, perhaps paradoxically, augment incentives to publish articles is that readership of articles would grow in the absence of copyright, and thus the esteem that authors would derive from publication would tend to increase”. p. 3 The problem with this statement is multifold. The core idea is the abolition of academic copyright and hence the royalties and instead replacing the subsidies from universities as an incentive. There are a couple of problems with this proposition.

The first problem is that it replaces the relatively certain revenues or royalties with an uncertain financial support accompanied by uncertain criteria in granting

those resources. This uncertainty will reduce the incentives and efforts done in the academic arena to create more academic works.

Second, universities may require certain qualifications for those works that they tend to support. And this will increase the selective and discretionary power of the universities. The universities might voluntarily give certain financial support for the scholars like scholarships to academics because they expect the recipient to do something in return for their cause or have some contribution for a specific purpose. In this respect, certain questions of accountability might arise. At least one can mention several drawbacks:

- (1) Those fields with higher economic profit for the private universities may make progress and the fields in which there exists the commons or the public goods problem may be left alone without any research fund or financial support.
- (2) Competition for having these kinds of –often modest- grants may discourage the motivation of individuals and researchers in engaging the very research project. In this respect, competition means a higher transaction cost for publishing a paper.
- (3) Universities might have some stakes in the production of certain academic works and they might practice “shaping”. As author certifies they might also exercise control over the content. In addition, the professors themselves might have incentive in reviewing the content of the papers or subject-matter of proposals for research to see to whom the publication fee be granted. Although these flaws exist in the current system of education, the abolition of copyright might intensify them. The above mentioned problems might not be so serious in the United States with the system of private universities, but how about countries with a very weak private sector and also almost no private universities? Some political interests should be added to the calculus. No one knows how much deviation will it make from a free market of ideas? In a world with copyright, the free market of ideas is almost guaranteed, but abolishing it and making the writers dependent upon the money from the university will challenge this market. One should not be so optimistic to the universities, they might be biased anyway. The story of John Maynard Keynes was one of the salient examples. Biased and outdated minds of old faculties of universities may deter many innovations and how much adverse effect it will have on the academic integrity, freedom and independence should be left to the further studies.

Third, it is not clear in the paper whether it makes any difference for universities to pay the “publication fee” or pay the charges for the membership of certain

websites and databases that provide them with the papers and academic articles. Clarification of this subject should be left to the empirical studies.

Fourth, the other problem with this source is that it is a step forward toward the subjectification of the public sphere, in a time we need more objectification. In the modern world with relatively rational individuals, who can rely on charity for the public defense? Will individuals contribute or they tend to free ride? Proposals of this kind make the social life a function of subjective criteria which might not be quantifiable and hence might not enter the utility function in economics.

Fifth, as author himself recognizes “those universities whose faculties are relatively productive researchers would tend to pay more in publication fees than they would save on subscriptions and book purchases.” (p. 30). This is another problem with the abolishing of copyright of the academic works. It seems that it would indirectly punish productivity and hence distorts the economic incentives.

#### 4. INTERNATIONAL EFFECTS OF ABOLISHING COPYRIGHT OF ACADEMIC WORKS

International or global nature of intellectual property rights may cause some other problems to the proposal of the abolition of the academic copyright. One of the critical concerns with this regard is the international implications of academic copyrights abolition in the United States. Let’s suppose for now that the abolition of the academic copyright is economically efficient. The question is that whether the so-called international society/community will join the movement or will hold-out? It is virtually clear that there is no first-mover advantage in joining the abolitionist movement, then no country will have sufficient incentive to abolish the academic copyright voluntarily in the international level. On the other hand, there is a good deal of incentive to free ride on the efforts of other countries’ scientific outcomes. One of the major sources of free riding in this regard is the different rates of production costs in different countries. As we know, free riders are those who consume more than the fair share of their use and also shoulder less than the costs they should do. In other words, free riders are those who receive the benefits of the goods without paying for them (Gwartney et al. (2006, p. 118). The public goods, having two distinct characteristics in comparison to the private property, i.e., nonexcludibility and nonrivalry, are most likely vulnerable to free riding. In this case, the abolition of copyrights, will render most of the academic private property to public goods or commons and hence vulnerable to free riding. If so, this might discourage the countries from investing in R&D and hence there will not be enough funds for the countries that are harmed with the free riding practice of other countries. Although the costs of R&D are one of the factors in the healthiness of the economy, how about the countries who do not care about



it? In a world without copyright, might some countries bear the huge burden of R&D and some free ride and how sustainable will be this situation? This has some implications for the proposal of the abolition of academic copyright in the U.S. Copyright Law and that is at least the United States should make an exception to abolishing it, i.e., not abolishing it internationally or by making it conditional to the principle of reciprocity.

The potential for free riding in the international level may have some other implications for the international movement toward a copyright free world. There is an incentive which may cause hold-out problem. There seems to be no incentive or a paved way for ripple effect; maybe it is because of the absence of first mover advantage. If so, no one will join this movement because from the game theory stand point, the classic rationality of individual states with asymmetric information may cause no Nash equilibrium be achieved.

The second question which might arise from an international perspective is that some people in foreign countries may take the academic works produced in academic copyright free countries and publish and copyright it under their own name. What would happen in this case? If the abolition of copyright means that it become free for the people all over the world, then why do not citizens of other countries mutilate the works of others and possibly publish them under their own names? It seems that this movement needs an international consensus. And if done nationally, should everyone be forced to agree to distribute any improvements or modifications they may make to the original work freely? What are the mechanisms for enforcing it? If he or she does not agree, what would happen to the derivatives?

## 5. PERSONAL RIGHTS

It appears that the abolition of the academic copyright may have many other effects that rise from the international/global nature of intellectual property rights. The difference with the before mentioned idea is in the level of protection of the property rights which may cause additional problems. The salient example is the example of the personal rights on the academic works and the rights of the authors to prevent others from mutilation of their academic works. In Anglo-American tradition, “The predominant philosophical framework undergirding [...] copyright law, however, is utilitarian. The Constitution grants Congress the power to enact copyright laws in order to “promote the Progress of Science and useful Arts.” Art. I § 8, cl. 8.” (Merges et al., 2006, p. 390). “The term “copyright” [as opposed to *droit d’auteur* in French tradition and almost all civil law traditions] reflects the underlying philosophy of the Anglo-American regime for protecting literary and artistic works – regulation of the right to make *copies* for the purpose of promoting progress in the arts and literature. The emphasis is on the benefit of the public,

not the benefits or rights of *authors*.” (Merges et al., 2006, p. 392). Unlike U.S copyright system; there exists a considerable emphasis on the personal rights of the author and the concept of authorship in the European and many other copyright systems (Spinello and Bottis, 2009, p. 69 and pp. 81-2). In case of infringement of the copyright in the sense of *droit d’auteur* or in its natural rights view (see, for instance, Kinsella, 2008, p. 17), what remedies and incentives the copyright owners may have if they knew *ex ante* that their works might be mutilated? Even their name might not appear on the papers or books. There might be answers to these types of questions, like the NASA’s Clickworkers project (Benkler, 2002, p. 318), but the question is whether the network wealth arising from the cooperative creativity of the networked individuals<sup>6</sup> (sort of social production) is enough for the academic and scientific progress? Will it be enough for the promotion of the progress in the arts and literature? Or will it encounter the commons problem?

## 6. POSITIVE EXTERNALITIES

One of the biggest concerns in economics of copyright law is the problem of externalities. It is virtually obvious that the academic works create positive externalities. This fact implies that the creators or producers cannot recoup all of the benefits from their works. Taking into account that the opportunity cost for production of an academic work is extremely high, mostly because of the fact that the authors of these works are mostly qualified and they can do something more beneficial instead, reducing the incentive for the academic works may push some authors to exit from the production of the academic world or at least it will cause them to underproduce. It seems that removing the copyright protection from a sector of a society which produces the positive externalities and just granting them uncertain and random publication fee is putting some pressure on the sector of a society with positive externalities. Then the question here is: Why should we do so? It seems almost clear that the abolition of the academic copyright will thrust authors to pursue more profitable works rather than creating academic works.

## 7. ACADEMIC VS. NON-ACADEMIC WORKS

The other question that the author did ignore in the article is the question concerning the relationship of academic and non-academic works; what would happen to the relationship between academic and non-academic works, should academic copyright be abolished? What drawbacks may it cause and can these drawbacks adversely affect the whole system of copyright? Which types of the above mentioned category the authors will prefer in the absence of the copyright? Will academics be

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<sup>6</sup>For more information see Liebowitz (2002).

encouraged to write academic or non-academic works? And how will it affect the whole system of academic production? Will it increase or decrease it?

There will be another question about the free riders. Under this system, some people may be encouraged to free ride, how? They might take parts or contents of the academic papers and merge it in the non-academic works and sell it under the guise of non-academic copyrightable works and profit at the expense of the others. Or more importantly, using the content of the copyright free works in the textbook? Will it result in free riding and in some instances rent seeking? As mentioned above, this problem may occur in the international level too. This situation may cause some uncertain situations in which the authors may engage in strategic behavior and hence the outcome may be deviated very much with the one we might expect in a market economy, i.e., it may result in less production of the academic works.

#### 8. TEXTBOOKS PROBLEMS

The author believes that the textbooks should not be treated as academic meaning that they should have the copyright protection, because the “textbooks would probably not be written in the absence of the prospect of profit from copyright.” p. 51. What drawbacks might this dual system of copyright have? The quick answer is that no one will attempt to write on the edge of the knowledge. The experience of almost copyright free Iran<sup>7</sup> shows that there is little incentive for academics to write on the edge of the knowledge and creatively, hence any of the authors tend to write textbook-like academic works at least to capture the costs of the production and the efforts and time they have spent.<sup>8</sup> This excessive textbook writing practice might probably have little to contribute to academic progress.

#### 9. PRICE DISCRIMINATION IN THE ACADEMIC COPYRIGHT

One of the concerns which the author attributed a lot of weight is greater readership and the solution that he offers is the abolition of the academic copyright. Although one of the ways of having much more readership is reducing the price, no one doing so waives his or her property rights in order to have more customers.<sup>9</sup>

<sup>7</sup>Although there is copyright law in Iran, there exists a very weak or virtually no enforcement except for some exceptional cases.

<sup>8</sup>In the case of Iran there is almost no incentive for universities to grant professors any publication fee and so forth. I think that the Iranian case should provide a better empirical study before the amendment of the copyright law in the U.S. Unfortunately, there exist almost no empirical studies to measure the economic efficiency of the almost copyright free environment of Iran. But in the non-academic world, the repeatedly signed petitions from the part of filmmakers and some other industries show that the absence of copyright will damage the incentive for production at least in the non-academic world.

<sup>9</sup>This is a simple way but not necessarily the efficient way. There should be more sophisticated ways of increasing the readership, without eliminating the property rights. The most common of them is the price discrimination. Needless to say, to price discriminate three conditions should be met: 1) the producer should be the monopolist, 2) the monopolist should identify and separate

Having the advantages of price discrimination in mind, one may argue that the author or publisher of a book or the copyright holder of the academic work can price discriminate, he or she has the (limited) monopoly over the academic work by the copyright protection, the copyright holder can easily separate and classify the buyers (libraries, universities, academic, non academic institutions, laymen, bulk buyers and unit buyers also he or she can classify the buyers by country). On the other hand, he or she can differentiate the units of the good (hardcover and paperback). In the case of books or articles, there is an obstacle for price discrimination and that is the fact that the books may be resold. But this does not mean that the owner of a copyright cannot price discriminate. He or she cannot just do so perfectly. In doing so, lower price might be charged for libraries so the readers might increase and also lower price might be charged in the international market for countries that have average lower income. So the readership within the target communities will increase and with that the utility of the authors. Having this in mind, there will be no room to the abolition of the copyright. In addition, the fact that the books can be resold serves in favor of the utility function of the author and not against it, because the author wants more readership and resaleability serves that end. Although it might be in the interest of some sectors of society that the academic copyright be abolished, it is not necessarily desirable to the author to waive his or her right, and as stated above, the most critical end of the copyright is to strike the proper balance between these ends.

The other point is that the availability does not necessarily mean readership. The abolition of the copyright may increase availability of the work, but not necessarily the readership, then we can craft another policy i.e., price discrimination by which we can increase the readership (for those who want to read the work (target community) and not just availability of the works for the disinterested general public). This is mainly because of the fact that the weight of this readership is not equal; some readers or customers are preferred from the standpoint of author, especially universities which are able to pay royalties. This fact has some implications with regard to price discrimination of the academic works.

## 10. CONCLUDING REMARKS: ABOLITION OR ALLOCATION

Although there are extremely hot debates and arguments among lawyers, economists and philosophers on the subject of the copyright and whether those rights

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different types of buyers, and 3) the product should be a product that cannot be resold. The other important note about price discrimination is the point that price discrimination exists because of differences in the buyers' willingness to pay and not because of differences in production costs, and price discrimination is a method for capturing marginal readers. If one can price discriminate he or she would be able to convert the consumer surplus to economic profit. In practice, firms discriminate in two ways: among units of a good and among groups of buyers.

should exist or not, and also there are other authors who prefer not to speak of property rights in the realm of the intellectual creations (Vaidhyanathan, 2001, p. 11), I think the proper question to ask with regard to the academic copyright is: What is the optimal degree of academic copyright protection? It means that the choice is not between restoring and abolishing copyright, but between the optimal and suboptimal protection of the copyright. The author proposes that “[V]arious fixed costs of publishing would be avoided if academic copyright were eliminated. There would obviously be no need for legal protection of copyright; thus publishers would not have to ensure that authors properly granted them copyright, to negotiate licensing arrangements, or to police for copyright infringement.” p. 25. It seems that the policy proposed for dealing with the problem of costs of policing (including litigation costs and so forth) i.e., elimination of the academic copyright is not so appropriate for the problem. It seems allocation of the right and the guarantees for that should be set in a way that promote the social welfare and at the same time the individuals’ interests. As Coase’s theorem implies, the existence of the transaction costs (policing costs might be included in a broad sense of transaction costs) would cause the assignment of the rights matter (see, for instance, Coase, 1960), it does not imply that the rights be eliminated. In the real world, there exists virtually no transaction without costs. What is obvious is that the mere existence of transaction costs will not imply the elimination of the rights or interests in question. But instead it might imply that the rights be assigned in a way that one who values it the most, can get it easier i.e., with less transaction costs. Then, the argument for abolition of academic copyright because of the transaction or policing costs would not be justifiable. As discussed above, our main purpose in the intellectual property law and policy should be designing a copyright system in a way that strikes a delicate balance between social welfare and interests and individual incentives. In so doing, we might take advantage of the doctrines of originality, fair use, time limits for the copyright or duration (see, for instance, Landes and Posner, 2003, pp. 210-53) and the idea-expression dichotomy (Landes and Posner, 1989). It seems that the current system of copyright which is sort of voluntary (that he who wants, can withdraw his rights or simply does not enforce it) and gives the opportunity to the individuals to have or not to have the copyright for their works, might best serve the purposes of copyright law.

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