

# Why has cultural economics ignored copyright?

Ruth Towse

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**Abstract** My stance is that copyright policy should be viewed as part of cultural policy; cultural economists have had a great deal to say about subsidy and cultural policy but very little about copyright, though cultural economics is well placed to analyse copyright as an incentive to creativity in the creative industries because of its understanding of cultural policy and of artists' labour markets. The article contrasts subsidy and copyright as policy tools and briefly discusses two current policy problems in relation to copyright—regulating copyright collection societies and the so-called 'copyright levy'—arguing that these are the sort of issues cultural economists could (and should) be dealing with.

**Keywords** Cultural economics · Copyright · Cultural policy

**JEL classification** Z11 · K11 · O34 · O38

## 1 Introduction

My theme for this talk is that cultural economics has by and largely ignored one of the most powerful influences on cultural markets, namely copyright law. As a result, cultural economics has lost the initiative it was beginning to gain in relation to cultural policy, and the creative industry 'movement' has got underway with very

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R. Towse (✉)  
Economics of Creative Industries, Erasmus University Rotterdam, Rotterdam, The Netherlands  
e-mail: towse@fhk.eur.nl

R. Towse  
CIPPM, The Business School, Bournemouth University, Fern Barrow, Talbot Campus, Poole,  
Dorset BH12 5BB, UK

little input from cultural economics. Ironically, when a colleague from the world of the economics of copyright was commissioned by the World Intellectual Property Organisation (WIPO—the UN agency for Intellectual Property) to write a survey of empirical studies of what in that world are called the ‘copyright industries’, it turned out that almost all the relevant work—on the music, film and book publishing industries and on artists’ earnings—was to be found in the literature of cultural economics but without acknowledgment of the role of copyright! (Watt 2007). The exception was a considerable body of work on unauthorised use of copyright material (aka piracy), especially in the music industry, which was mostly published in other publications. Nor is it only WIPO that is looking for research on these industries: the impact of copyright law and particularly on changes to it are on the agendas of many of the international organizations (for instance, UNESCO, WTO, UNCTAD), on that of the European Union and of almost every developed and even of less developed countries as well.

Copyright law, though national law, has undergone a process of harmonisation on a worldwide basis through the Berne and Rome Conventions; that process is now coordinated by WIPO, which negotiates international treaties on copyright law on behalf of signatory countries, such as the 1996 WCT (WIPO Copyright Treaty) and WPPT (WIPO Performances and Phonograms Treaty)—the so-called WIPO Internet Treaties that address Internet distribution using digital technologies. Within Europe, copyright and authors’ rights are harmonised within the European Union as part of internal market policy. Copyright has also been a significant feature of the TRIPS and GATS treaties in relation to international trade of copyright works, making copyright a factor in trade policy. What I wish to argue here is that copyright is also a significant aspect of cultural policy and its economic effects are increasingly being recognised in the context of economic policy for the creative industries.

Digitalisation and the Internet (it is hard to separate the two and there is no need to do so for the purposes of this talk<sup>1</sup>) have caused a social and economic upheaval of consumption and production in almost every area of the cultural sector and copyright law struggles, probably in vain, to cope. In the mean time, even elementary school children are receiving instruction in class from the police on copyright law and the evils of illegal copying! This upheaval—this gale of creative destruction—has engaged the attention of lawyers, sociologists and economists, but not of the bulk of the cultural economics profession. Cultural economists have always been policy-oriented and continue to debate the role of subsidy and regulation—so why not the impact of copyright law?

Before I overstate my case, I should pay tribute to those cultural economists who have written on copyright—Keith Acheson and Christopher Maule, Françoise Benhamou, Andrew Burke, Sam Cameron, Joëlle Farchy, Victor Ginsburgh, Michael O’Hare, Alan Peacock, Fabrice Rochelandet, Michael Rushton, David Throsby.<sup>2</sup> Moreover, several leading copyright scholars—William Landes, whose work with

<sup>1</sup> See further Küng et al. (2008).

<sup>2</sup> See, for example, Acheson and Maule (1999), Benhamou and Sagot-Duvaurox (2006–2007), Benhamou and Farchy (2007), Burke (1996), Cameron and Collins (2007), Farchy and Rochelandet (2000), Ginsburgh (2008), O’Hare (1985), Peacock and Weir (1975), Peacock (1993), Rochelandet (2003), Rushton (1998, 2001), and Throsby (2001).

Richard Posner (Landes and Posner 1989, 2003) is regarded as the pinnacle of the law and economics literature of copyright, Pamela Samuelson and Henry Hansmann have addressed ACEI conferences and had their papers published in this *Journal*.<sup>3</sup> But my point is that despite these important contributions, the fundamental role of copyright throughout the cultural economy (by which I mean the performing arts, heritage and cultural industries) does not seem to have become widely recognised.

### 1.1 What do I mean by cultural economics?<sup>4</sup>

Throughout the talk I referred to cultural economists and cultural economics and it has been pointed out that I should explain what I mean by it, especially as it is my view that cultural economics has a distinct voice in the discussions about copyright law. There is, of course, a recognised field of the economics of copyright with its own professional society and journal (the Society for Economic Research in Copyright Issues with its *Review of Economic Research in Copyright Issues*). In addition, journals in law and economics as well as ‘regular’ economics journals publish articles on copyright and sub-disciplines, such as industrial organisation, also show interest in copyright, though they are more likely to focus on patents. All these are sources of economic literature on copyright and as copyright law obviously applies to the arts and culture, why should we not regard all work on the economics of copyright as falling in the domain of cultural economics—always supposing that they can be identified?

My conception of cultural economics is to be found in the inside page of this *Journal*—its Aims and Scope, which I as Editor wrote in 1993 when the ‘new style’ *Journal* first appeared!—and which later editors have not chosen to alter: ‘Cultural economics is the application of economic analysis to all of the creative and performing arts, the heritage and cultural industries, whether publicly or privately owned. It is concerned with the economic organization of the cultural sector and with the behaviour of producers, consumers and governments in that sector. The subject includes a range of approaches, mainstream and radical, neoclassical, welfare economics, public policy and institutional economics’. Today, I would add to that a more specific reference to cultural concerns, such as diversity of supply (though it could also be argued that maximum choice is always present as a basic economic credo) and quality issues. One could, of course, just say that ‘cultural economics is what cultural economists do’ and that they are people who attend cultural economics conferences and read and write in the *Journal of Cultural Economics*!

But to address the question further, we could ask what delineates any sub-discipline in economics? Is it the field of study or particular theoretical concepts? The fields nearest to cultural economics, I suggest, are environmental economics, economics of education and economics of health; it is well understood that they deal with specific areas of the economy in a specific way while using economic tools that

<sup>3</sup> Samuelson (1999) and Hansmann and Santilli (2001). There have, intermittently, been papers at ACEI conferences on copyright and related rights; my first paper on copyright was at the ACEI Witten conference in 1992.

<sup>4</sup> This section has been added at the suggestion of Michael Rushton; I thank him for the prompt and for the opportunity to explore the question here. I hope he agrees with me!

are common to other areas of economic enquiry, such as welfare economics, cost benefit analysis, contingent valuation techniques, human capital theory and present value discounting. Cultural economics, like the economics of education, has made considerable use of consumption externalities of one sort or another as the justification for public finance and government intervention of the arts and heritage, for example, just as environmental economics used production externalities to justify taxes and regulation. But we can see them as separate areas of enquiry. However, this does not explain the case for a cultural economics approach to copyright law.

In fact, there are several distinct approaches in the economics of copyright (the economics of copying, property rights and transaction costs and welfare economics approaches—see Towse et al. 2008); they can be distinguished from the law and economics of copyright, which explicitly uses economic analysis to provide the rationale for particular legal doctrines of copyright, such as its term and scope, fair use, works-for-hire and so on (see Landes and Posner 1989). Cultural economics adds the dimension of commitment to specifically cultural issues—I previously mentioned quality and diversity, which are part of nearly every statement of national cultural policy. In order to give an example of the difference that a cultural economic approach makes: the ‘general’ economist might consider the effect on a market of global monopolisation of trade and see advantages in national specialisation protected by copyright law, but ignore the effect on national culture of concentration on one language—at present typically English (but who knows, maybe Chinese in the future?). Studies by cultural economics of artists’ labour market have also led to insights into the way artists respond to pecuniary and non-pecuniary incentives and these are relevant to the ability of copyright to stimulate creativity (Towse 2001). So, there is justification for a cultural economics treatment of copyright.

## 1.2 Why has cultural economics by and large ignored copyright?

So to return to the main topic of this Keynote Address: why cultural economics by and large has ignored copyright. I believe it is because cultural economics developed at a time when subsidy to the arts was the main policy issue and it has got stuck there; moreover, the view that technology does not change much in the arts has probably also inhibited recognition of the huge developments brought in by digitisation. The emphasis in cultural economics on subsidy to the high arts for so long has apparently diverted attention from copyright as the oldest instrument of the state for supporting the arts and artists: after all, copyright predates by far the policy of subsidy to the arts—the 1710 Statute of Anne in England was the first formal copyright law and copyright law/authors’ rights laws were later adopted in France and USA and then in almost all European countries and spread from there (often by conquest) around the world. Two traditions coexist: Anglo Saxon copyright law with its emphasis on economic rights and the civil law authors’ rights tradition that has moral rights as an integral feature.<sup>5</sup> However, the difference between these

<sup>5</sup> The English copyright tradition is to be found in its former colonies in N. America, Africa, Asia and Australia and New Zealand and authors’ rights tradition in former French, Spanish and Portuguese colonies, as well as in Russia, China and Japan.

traditions is being eroded by deliberate policies of harmonisation and by the globalisation of trade in cultural goods and services. Nevertheless, national differences persist in the law and in its administration and enforcement. So, while copyright had spread around the world by the early twentieth century, subsidy to the arts as a national policy essentially only began after the Second World War. However, the major concerns about copyright infringement that now dominate policy did not really appear until the late 1990s, and it is surely that it has caused such a growth of interest in the economic aspects of copyright. But I would argue, cultural economists are still lagging behind—the *Journal of Cultural Economics* is not full of articles on the subject nor do papers on copyright or any other intellectual property rights dominate ACEI conferences (though there are a few more than there used to be).

In this talk, I draw some comparisons between these two prongs of cultural policy—copyright and cultural policy. It is my belief that cultural economists have a special contribution to make to the economic analysis of copyright: we have a cumulated experience in understanding both the economics and the cultural aspects of the arts and creative industries and in analysing cultural policy, and we have a particular understanding of artists' labour markets, which I believe to be vital for researching incentives to creativity.

## 2 Copyright and subsidy as cultural policies<sup>6</sup>

What copyright and subsidy for the arts have in common is that they both offer incentives to increase cultural production beyond the level the market would accomplish.<sup>7</sup> It is in that sense that they are both tools of cultural policy. Subsidy offers a direct incentive through financial grants to arts organisations and individual creators; copyright is a grant of monopoly to the creator (the individual or entrepreneur) that works indirectly via the market. It enables the copyright owner to appropriate the reward of creating through a higher price (higher than the marginal cost or 'competitive' price, that is, to allow the creator to cover the fixed or sunk cost of creating the work). The exclusive right granted to the creator by copyright law is, therefore, the incentive. Notice that while both finance creation, they differ from the public finance point of view: taxpayers pay for subsidy, but consumers of the copyright products pay for the copyright incentive.

Both copyright and subsidy are responses to perceived market failure; both evoke welfare economics justifications for their intervention in the market; both are second best policies; both evoke rent-seeking; both produce moral hazard; and both are controversial with the public, with economists and even with artists. Moreover,

<sup>6</sup> I am using the terms copyright and cultural policies in very broad brush terms here: obviously, there are considerable nuances to both. The point is that they are juxtaposed, for example, the British government makes much of how it uses copyright to promote the creative economy so that the cultural industries (music, publishing, fashion etc.) can rely on the market and not on grants.

<sup>7</sup> Using the phrase 'subsidy to the arts' ignores the very considerable subsidies that exist, especially in Europe, for the so-called cultural industries: film, TV programme production, broadcasting, literary and music publishing, newspapers in some countries, and even pop music.

copyright and subsidy have been juxtaposed as alternatives: already in the nineteenth century, during what were called the Great Patent Debates in the UK, the undesirable effects of copyright were noted and the alternative policy of grants, prizes and awards as a stimulus to creativity was mooted. Even Plant (1934) saw no economic case for copyright but suggested grants to authors as the alternative; so did Hurt and Schuchman (1966). More recently, Boldrin and Levine (2002) and Shavell and van Ypserle (2001) have made similar suggestions, while Varian (2005) sees no case at all for copyright, simply arguing that, at least for digital products, that business models, such as adopting price discrimination, will suffice.<sup>8</sup> In other words, they argue that there is no market failure. Nevertheless, copyright law not only persists but also seems to get ever stronger in scope and duration. Copyright and subsidy coexist, not only as policies but also in practice: creators have copyright for works that have been produced with a subsidy and subsidy to arts organisations often goes to paying royalties for the use of copyright works in theatrical and orchestral performances, contemporary art exhibitions and so on (by the way, something on which I have never seen research).

## 2.1 Policy on copyright: should it be weaker or stronger?

Though economists continue to question the case for copyright, much of the current debate about copyright policy is about the ‘strength’ of copyright protection. Without going into any detail on the law, we can mention the main elements of copyright. Copyright has three dimensions: scope (what types of works are protected), duration (the term it lasts for) and implementation (how well it is defended). Each may be altered by policy: however, ‘altered’ inevitably means in practice, ‘extended’. Copyright law has been repeatedly strengthened by adding to the scope (for example, by the introduction of rights in digital works and of musical performers’ rights), by extending the term (lately from 50 to 70 years after the death of the author, and to 95 years for works for hire—the Sonny Bono extension in the USA, now to be followed in Europe) and increasing the implementation by the introduction of sanctions against tampering with technological protection measures (TPMs) that protect digital rights management. While some lawyers argue that TPMs have done no more than extend the law to meet the requirements of the digital era, others believe they go beyond that and control legal use of copyright works, that is, they per se strengthen copyright. However, it is also the case that digitalisation itself, without the added effect of Internet distribution, has blurred legal rights of ownership.<sup>9</sup> Each of these changes carries its own transaction costs of

<sup>8</sup> Neither of these authors would claim to be cultural economists and their work does not take into account the cultural side of copyright, even implicitly. They show no understanding of arts subsidy and simply pose it as the alternative; their interest is mostly in the moral hazard aspects of copyright and its costs and in the case of Varian, are more interested in business software than in specifically cultural products.

<sup>9</sup> I am indebted to Sam Cameron for this observation. He points out that digitalisation has caused lack of resolution in the legal rights of ownership especially in popular music, with sampling and digital mimicry now being used. The production process has become exceedingly complex and attribution difficult to identify or even perceive. The concept of authorship is certainly a topic that is fundamental to cultural economics as it is to copyright.

administration and alters the distribution of rewards and costs among creators, intermediate and end users. Policy-makers wish to know the relative costs and benefits of these but when such measures are introduced simultaneously, as they have been (because law-makers do not like frequent tinkering with a law), it is virtually impossible to sort out one from the other, especially as the changes are themselves responses to technological developments.

### 3 How effective is copyright at encouraging artistic creation?

It is widely assumed that a ‘stronger’ copyright regime is more effective than a ‘weaker’ copyright one at encouraging creativity. However, this is difficult to verify, both as a principle and in relation to the facts. We might also ask is it *better* at encouraging creativity than alternative policies, such as subsidy? In cultural economics, we are very familiar with the pros and cons of subsidy (and of other regulations relating to culture): here, I compare them with those of copyright.

#### 3.1 Copyright as an incentive

There are essentially three drawbacks to copyright as an incentive to artistic creation from the point of view of cultural policy: one is that, it is indiscriminate and does not attempt to encourage or reward higher quality or innovative work. Copyright is automatically conferred on a ‘qualifying work’, that is, one that conforms to the scope of the law and in some contexts that has a very broad interpretation indeed (so literary works include anything from a list of instructions to a prize-winning novel). The second drawback is, to use the language of Landes and Posner (1989), that the ‘cost of creation’ imposed by a stronger copyright regime, which may increase the incentive to one creator, acts as a disincentive to other, later creators.

On the first point, the requirement of ‘originality’ in copyright law makes no demands on either quality or creativity in artistic terms, and simply means more or less that the work originated with a person; moreover, as copyright works through the market, rewards depend on the reception in the market, initially by the ‘gate-keeper’ who adopts the copyright work to exploit it, and then by consumers who pay the price for the product on which the creator’s royalty is based. Thus, the drive for revenues on the part of the gate-keeper and the tastes of consumers determine rewards to creators. While this route could produce rewards commensurate with the time and effort used in creating popular works, it is unlikely to sufficiently reward difficult new art. As regards the cost of creation, what this means is that a later creator, say, a producer of a derivative work (such as a translation, an arrangement, or a work based on sampled music or appropriation art) has to take out time and bear the expense of searching out copyright owners and obtaining permissions. Transaction costs are likely to increase disproportionately with, for example, the length of the copyright term as the longer it is, the more difficult it is to trace rights holders (especially heirs) and the less likely it is that a copy of the work is available (since the vast majority of works in copyright are no longer in the catalogue). Thus, the stronger copyright is, the greater the cost of creation for subsequent creators.

This leads to a significant conclusion: strengthening copyright seems to always benefit incumbents, whether artists or the corporations who exploit their work, and therefore is likely to inhibit creativity and diversity. Copyright has always been seen as a trade-off between the monopoly price paid by the consumer and the incentive it offers to the creator, but as Landes and Posner have argued, that trade-off is really between present and later creation. This has significant implications for cultural policy.

By contrast to copyright, however, subsidies to artists have the advantage in being able to steer the direction of grants towards the production of certain sorts of work by artists who are judged capable of originality. In addition, the cultural policy-maker can offer *ex ante* a certain amount of money as a grant, while copyright is an *ex post* reward of uncertain value to the artist. Therefore, subsidy can achieve cultural policy objectives and offer incentives that copyright cannot. This, however, begs the question whether artists anyway respond to financial incentives but that applies equally to subsidy and copyright. And while it is argued that it is not just the money that is the motivation for artists because a grant offers recognition by peer group assessors, it is also the case that there are equivalent ‘psychic’ rewards in copyright law in the form of moral rights that also act as an incentive to artistic endeavour.<sup>10</sup>

### 3.2 What do we know about how effective copyright is at encouraging artistic creation?

Copyright applies to both primary content creators—people we call artists in cultural economics—and to the businesses that use their work in producing and marketing a good or service—the literary and music publishers, record labels, film companies, broadcasters, multimedia and games producers and so on. ‘Neighbouring’ rights or ‘rights related to copyright’ apply to sound recording and broadcasting, and also to musical performers but are weaker than authors’ rights. Artists typically get their work to market via a for-profit or non-profit firm in the creative industries, and we know from Caves (2000) that the ‘humdrum’ entrepreneurs will require the transfer of property rights from the creators as they invest in production and marketing activities (though he does not go into details about the nature of the property rights that are transferred). In the case of primary content creation (authorship of a book, film script, song etc.), the author transfers some of the bundle of copyrights (reproduction, distribution, public performance, making available rights and so on) as required to the publisher in exchange for a royalty. But when the artist is employed and directed to create copyrightable works as part of the employment, the copyright belongs to the employer as a ‘work-for hire’.

These remarks are preliminary to answering to the question how effective copyright is at encouraging artistic creation and several other points need to be taken into consideration. First of all, what type of rights—authors’ rights or neighbouring rights? Second, which of the bundle of rights? Though it is common to speak of copyright as a single entity, it consists of many different rights of which

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<sup>10</sup> See Towse (2006).



some rights are clearly more valuable than others in varied markets. Third, whose rights are they anyway—are they retained by the initial creator, were they works for hire copyrights or were they assigned to the business end? Despite all the to-do about copyright, we know nothing about the proportion of authors who are able to retain their copyright, compared having to relinquish them to a publisher or works-for-hire copyrights and we know very little about the value of the various rights. These are all points that require detailed research, which has not yet been done. However, what has been done is some analysis of authors' and performer's earnings from royalties and other copyright-based remuneration.

There have only been a few such studies, a very partial one by myself (with Millie Taylor) of musical performers' remuneration from the public performance right in Denmark, Sweden and the UK (Towse 2001), showing that over half the performers received less than £90 per annum from that right. Similar findings for musical performers, from those and other related rights, are reported for Japan (Matsumoto 2002). A report by Hansen et al. (2003) presenting the results of a thorough investigation of the economic situation of composers, lyric writers and arrangers of music in Finland, showed that copyright earnings were an important source of income only for a minority of music creators, with the exception of performance remunerations. Throsby and Hollister (2003) found that copyright earnings were a minor or negligible source of income for even creative artists in Australia (23% for composers and 18% for writers). More recently, Kretschmer and Hardwick (2007) published the first a large-scale survey of the earnings of writers from both copyright and non-copyright sources in Britain and Germany. They found that writing is the main source of income for less than half of the 25,000 authors in their survey: typical earnings of professional writers were less than half of the national median wage in Germany, and one-third below the national median wage in the UK. They found, moreover, that copyright earnings were riskier and the distribution was more skewed than non-copyright earnings. In other words, the superstars do well out of copyright but other artists do not—hardly surprising, but worth establishing by independent, scientific research.

But this research, little as it is (and difficult as it is because you have to persuade organisations to provide the data or collaborate with a survey), does not answer the question about how effective copyright is at encouraging creativity. In order to do that, you would need to know the elasticity of supply of creative work with respect to these copyright earnings (and them alone) and not only has that not been measured, it is obviously very difficult to measure. Although such research is possible with patents, since an inventor can choose whether or not to patent, copyright is automatic and requires no registration; every work is protected, even if it never reaches the market (and most do not). All we have to go on in this is the important work by Throsby (1994) measuring the elasticity of supply of artists' labour time with respect to earnings.

The other aspect of the question about the effectiveness of copyright in stimulating creativity by artists is the incentive it gives to firms in the creative industries. Judging from the fact that copyright has been hijacked by the creative industries enterprise and is lobbied for incessantly, it is very valuable indeed (remember the Tullock rule that firms will lobby for rents up to the value of the

producer's surplus). Bettig (1996) is a study of the value of copyright assets to firms (most in the USA), but it has not been followed up; far more research is needed on this topic and it is probably best done in a business school. There are several hypotheses to be tested here: one is that copyright is probably more valuable to some industries than others and within an industry, more valuable to larger than smaller firms; another is that different rights have differential values (as also the case for the creators); and, my own unproven hobby horse, that copyright creates assets for firms, which make them amenable to mergers and acquisitions, thus enabling the build up of the giant international oligopolies that we know control the record, film, publishing and broadcasting industries. This domination makes the bargaining position of the individual artist very weak and copyright has had this unintended consequence.<sup>11</sup> Though recent changes to copyright law, which manifestly favour these industrial interests, also make apparent improvements to authors' and performers' rights, they do not effectively redress this imbalance because the vast majority of individual creators are not able to exercise them.<sup>12</sup>

In order to sum up this section: the answer is we do not know very much about how effective copyright is as an incentive to artists and there is a great deal of research to be done. Cultural economists would seem to have a head start here.

#### 4 Costs of copyright

The literature on the 'economics of copying' (as contrasted to the economics of copyright law) focussed on the higher price of cultural products due to the copyright monopoly, even though that is more a case of Chamberlinian monopolistic competition.<sup>13</sup> Undoubtedly, prices are higher than in competition—that is how copyright works! (Macaulay's famous observation that copyright is a 'tax on readers for the purpose of providing a bounty for writers'<sup>14</sup>). The question is: how much of the price of copyright-based products is down to copyright and what is the responsiveness of consumers to that extra price—the other side of the coin from the question about the elasticity of supply due to the extra revenue from the copyright monopoly? This is what we really need to know in order to assess the costs and benefits of the copyright system.

But in addition to the higher price, copyright unsurprisingly, given the complexity of the different rights and markets, gives rise to high transaction costs in addition to those identified by Landes and Posner (1989) as costs of creation, as well as to costs of administration. For a range of purposes, copyright is administered by the collective rights management organisations, usually known as collecting societies, which are typically regulated by the courts or a copyright Board or Tribunal. The best known collecting societies are those in the music industry that

<sup>11</sup> However, it was anticipated by the leading authors of the day even when the 1709 Statute of Anne was passed in England following lobbying by the printers (see Rose 1993). See also Towse (2001).

<sup>12</sup> See Towse (2007a).

<sup>13</sup> See Towse et al. (2008).

<sup>14</sup> For an account of early economists' views on copyright law, see Hadfield (1992).

deal with composers' and authors' performing rights (ASCAP in the USA, Performing Right Society (PRS) in UK, GEMA in Germany and so on) but here are many more dealing with specific rights and with specific economic activities (broadcasting, photocopying, public performance of sound recordings, videos etc.). They are co-operative membership organisations which act on behalf of members to collect royalties and other remuneration and administer their rights. Collective rights management (CRM) reduces transaction costs for both rights holders and users because collecting societies issue a so-called blanket licence that enables the licensee to use all the works of all the members of the society and in fact, of sister societies in other countries with which they have mutual agreements.<sup>15</sup> The transaction costs associated with CRM consist of charges for administration (that are borne by members) and, users, besides payment of the licence fee, have to go to the trouble of obtaining licences (though that is now done online very quickly). The rate that is set for the licence fee is, however, often contested and either goes to a court or tribunal or is set by a court or ministry and hearings for disputes are time-consuming and costly. Collecting societies also have costs of monitoring use of their members' works and prosecuting in the event of unauthorised use.

Altogether, therefore, the copyright system has high transaction costs and these are increasing with the complexity of the law; but whether the 'deadweight loss' of copyright system is greater than that of administering subsidies is anyone's guess. However, the costs of administering copyright, including its effect on prices, are a matter of concern for legislators and that takes me to the next point in my talk—recent policy issues relating to copyright.

## 5 Recent policy issues on copyright—two examples in Europe

Policy issues concerning copyright have to do with both changing the law (mostly done to accommodate new types of works and technologies or the copyright term), the potential effects of changes on the so-called stakeholders (the various rights holders and users) and with how well the system works, that is, its social and administrative efficiency. For some considerable time, these questions have been dealt with only by lawyers and civil servants but lately, there has been recognition of the economic and social impact that copyright has and that has opened the way for involving social scientists in policy decisions. Undoubtedly, the current emphasis on the creative industries as engines of economic growth has fuelled interest in the economics of copyright because copyright is regarded as the *sine qua non* of their success. Digitisation has caused a huge upheaval in these industries, and in the viability of copyright government is struggling to know how to react. The WIPO and also national governments are increasingly conscious of the economic aspects of copyright and economics studies are being used as part of the law-making process—the UK Gowers Report is a case in point (Gowers 2006).

Two policy issues that are currently in the European Union (EU), regulation of national collecting societies and the so-called copyright levy, serve as cases in point.

<sup>15</sup> For details, see Handke and Towse (2007).

These policies fall under the Internal Market division of the European Commission (EC) because they have to do with different practices as between the member countries (since copyright law is national law and is only subject to directives by the EC); the EU deals with the freedom to trade across national borders within the EU and acts where there are barriers to internal trade. It has only a restricted mandate for cultural policy (though there are Europe-wide initiatives on film finance, for instance). However, because copyright collecting societies are monopolies, they are also the concern of competition authorities and have been subject to scrutiny in several countries and also in Europe by the EC's competition authority.<sup>16</sup>

### 5.1 Regulating copyright collecting societies

Copyright collecting societies are very interesting organisations from the economic point of view: they are non-profit collectives run on behalf of their members, who typically are both authors and publishers. With the sole exception of ASCAP and BMI in the USA, they have monopoly control in each country of the bundle of rights they manage, in some countries by grant of monopoly from the state. Copyright is territorial and national, making a legal reason for the monopoly, while in economic terms they are natural monopolies. Though this monopoly power has attracted the interest of national regulators, the advantages of the natural monopoly have typically led to acceptance of their monopoly position, subject to regulation. National collecting societies make international agreements and license the catalogue of each others' members' works, which vastly reduce transaction costs and makes possible the globalisation of copyright works. However, each collecting society deducts its administrative costs on licence fees that pass through its books and many European societies also make 'cultural deductions' as mutual societies to support poor members or to help young artists etc. This is not very popular, especially with the publisher members of some societies, as they have no control over what the foreign 'sister' society does, and some societies are more efficient than others.

The varying administrative efficiency of collecting societies and the lack of transparency of their operations are two of the things the EC is concerned about. However, its main objective has been to promote cross-national licensing to promote online distribution, particularly (but not only) of music, by means of a 'one-stop shop' arrangement—a Europe-wide licence administered by one organisation but valid in all European countries. The EC also believes that copyright holders should be able to have their rights administered with a society of their choice (in any country), and that this should be done through digital rights management (DRM). In order to achieve these ends, the EC wants to encourage competition between societies so as to increase efficiency and reduce administration charges by promoting the use of DRM, including (following the WIPO Internet Treaties) by individual right holders operating outside the collecting societies.

<sup>16</sup> For more details see Drexl (2007). This is an ongoing and fast-moving matter and the treatment offered in the text is deliberately general because a more detailed account would certainly be out of date by the time this article is published.

Though there is a body of research on the economics of collecting societies (reviewed in Handke and Towse 2007), to my knowledge, there has been only one comparative study of the administrative and regulatory framework of collecting societies by Rochelandet (2003), which found that it is very difficult to access the type of economic information that is needed for an economic study.<sup>17</sup> Indeed, it is only when regulators, such as competition authorities or tribunals demand information that economists are able to get the necessary inside information. A good economic study of EU collecting societies is clearly needed in order to inform these policies<sup>18</sup>; preliminary work indicates that there is a typical trade-off between efficiency and equity, with greater administrative efficiency being at the expense of universal coverage of all creators and the smaller ones going to the wall.<sup>19</sup> This is clearly a topic that falls in the domain of cultural economics, precisely because it requires the kind of knowledge cultural economists have, for example, of artists' labour markets and non-profit organisations, and also because there are implications for cultural diversity since it is the 'smaller' national cultures and languages that stand to lose if their artists are unable to collect remuneration. Regulating copyright collecting societies is not like regulating just another natural monopoly; it has wider cultural and social aspects (as the EC is discovering).

## 5.2 The copyright levy

Many European countries, as well as Canada and Japan, have a copyright levy—a contemporary successor what used to be called a 'blank tape levy', which as that name suggests, was introduced in the 1970s in the days of cassettes and tapes that enabled people to make copies of music and spoken word from the radio or from an existing recording. The levy applied either to the copying machinery or to the 'software' (the tapes or cassettes) and it has been updated to deal with CDs, CD burners and computers; the revenues from the levy are handed over to the copyright collecting societies for distribution to the creators, performers and other rights holders, such as record labels. It was not adopted in every European country (not by the UK or Ireland, for instance) and the rates of the levy vary throughout the member states of the EU, so this is another task for the EC's internal market policy. Given the extent of unauthorised copying, it is being considered whether to make the 'copyright' levy universal in Europe and to use it to remunerate right holders (presumably via collecting societies). It should be noted that the levy is in fact remuneration for the copyright exception that allows private copying, enshrined in the law of most European countries and mandated by the EU Information Society Directive.

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<sup>17</sup> The 1996 investigation of the PRS by the UK's Monopolies and Mergers Commission provided some information on comparative administration charges; see Towse (1997) where I tried to stimulate international work on this subject. An earlier study by Besen and Kirby (1989) confined itself mainly to descriptions of the rules and activities of different national societies; see also Ficsor (2003) for a description of the legal set-up of European societies.

<sup>18</sup> Fortuitously, just at the time of writing this, the European Parliament, which has been at loggerheads with the European Commission on this issue, has just called for such a study to be done.

<sup>19</sup> See Towse (2007b) for suggestions of appropriate regulatory models. Also Drexl (2007).

However, the levy is subject to objections from economists for the same reasons as those for blanket licensing by the copyright collecting societies; those objections are that the intention of copyright as an individual incentive is not met by a cooperative system that fails to use price signals to inform creators which of their works are more valued by the market and to fully reward them. To some extent, this objection is overcome by the use of play lists and other information about the use made of an individual's work that determines the distribution of revenue to them<sup>20</sup>; however, the fact remains that the licence fee covers all works in the repertoire of every member and there is cross-subsidy between different groups of members (classical and pop composers, for example) within a society.

These problems are exacerbated in the case of a copyright levy, which is an even blunter instrument than the blanket licence, because not all blank media are used for copying and what is copied is not known; so, creators cannot be compensated according to the use made of their works. Be that as it may, the benefits for users as well as for right holders are very significant because, as with the blanket licence, the payment of the levy effectively discharges the obligation on the part of the owner of the copying equipment of the need to obtain permissions from right holders for copying. And, of course, it could hugely reduce transaction costs. At the time of writing, this issue was ongoing with the EU calling for a second round of stakeholder comments.<sup>21</sup> The publication of the responses to the consultation process provides a useful source of qualitative data for research on copyright in general, and for these problems in particular; the challenge is to find relevant quantitative data because these issues are about the costs and benefits.

It may well be that despite its drawbacks, the copyright levy is the only practicable solution to the problem of rewarding artists and other copyright holders for the use of their work. It behoves us to remember that copyright is already a second best solution and, once in a second best world, there is no hierarchy of better solutions—each has to be judged on its merits market by market, not by some global notion of Pareto Optimality.

These two current policy debates are briefly touched on here to demonstrate that there is a great deal of scope for important and challenging research in cultural economics. Why *cultural* economics? Since these matters call for economic analysis, but of subjects that are fundamental to achieving cultural diversity, preserving national cultures and stimulating creativity.

## 6 Conclusion

The conclusion to this hortatory talk is quite simply that there is a world out there that cultural economists would do well to explore! It does not require a detailed knowledge of law to understand the impact that copyright has on cultural markets and I argue that the understanding cultural economists have of cultural markets,

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<sup>20</sup> But see on this Snow and Watt (2005); also Liebowitz and Watt (2006).

<sup>21</sup> See [http://ec.europa.eu/internal\\_market/copyright/levy\\_reform/index\\_en.htm](http://ec.europa.eu/internal_market/copyright/levy_reform/index_en.htm) for the responses to the first round of the consultation process.

cultural policy, public finance and subsidies, regulation, artists' labour markets and the concerns of artists make them well prepared for the task. In the talk, I have concentrated on copyright as an incentive to artists but of course, like subsidy to artists, it has wider implications for consumers as well as producers of cultural works. Again, the understanding cultural economists have of the welfare aspects of policy stand them in good stead.

I contrasted subsidy and copyright as incentives to creativity and those incentives are different: subsidy has the possibility of directing creativity in a positive way towards certain goals, especially long term ones; with subsidy, the creator can ignore market pressures. With copyright, the reward to right holders depends entirely on success in the marketplace. In practice, subsidised artists and arts organisations also have the benefits of copyright; however, when grants are given to individual creators, it could be considered whether the grant giver should obtain the copyright as a work for hire right as an incentive to exploit the work; alternatively, the grant could be a loan to the creator that is repaid out of any royalties she obtains from the copyright. That is a topic that calls for research.

In terms of the difficulties of researching copyright as an incentive, several fundamental imponderables come to mind: most of the creative industries developed with the protection of copyright and so the counterfactual question, what would the world look like without copyright? cannot be researched directly as every work that falls in the scope of copyright law is protected. However, that protection is costly to maintain and the proposal by Landes and Posner (2003) for perpetual copyright with renewals would enable at least valueless and so-called 'orphan works' to enter the public domain without having to wait for the full term to expire. Another imponderable is this: even though we know that copyright does not add considerably to most artists' incomes, is their bargaining power nevertheless increased just by having copyright? Many observers would say that if it is, it is only so because of the agency of collective action and that function, at least in many countries is fulfilled by copyright collecting societies that increase their bargaining power. As I said, these are challenging problems and it is my hope that cultural economists will rise to the challenge.

So why has cultural economics for the most part ignored this—to me—fascinating topic? I hope this talk has stimulated greater interest in the subject.

## References

- Acheson, K., & Maule, C. (1999). *Much ado about culture North American trade disputes*. Ann Arbor: University of Michigan.
- Benhamou, F., & Farchy, J. (2007). *Droit d'auteur et copyright*. Paris: La Découverte (Repères).
- Benhamou, F. & Sagot-Duvaouroux, D. (2006–2007). Économies des droits d'auteur. Place et rôle de la propriété littéraire et artistique dans le fonctionnement économique des filières d'industries culturelles. *Culture Etudes*, May.
- Besen, S. & Kirby, S. (1989). Compensating creators of intellectual property: Collectives that collect. RAND Report N° R S. -3751-MF.
- Bettig, R. (1996). *Copyrighting culture: The political economy of intellectual property*. Boulder, CO: Westview Press.

- Boldrin, M., & Levine, D. (2002). The case against intellectual property. *American Economic Review, Papers and Proceedings*, 9(2), 209–212.
- Burke, A. (1996). How effective are the international copyright conventions in the music industry? *Journal of Cultural Economics*, 20(1), 51–66.
- Cameron, S., & Collins, A. (1997). Transaction costs and partnerships: The case of rock bands. *Journal of Economic Behavior and Organisation*, 32(2), 171–183.
- Caves, R. (2000). *Creative industries: Contracts between art and commerce*. Cambridge, MA and London: Harvard University Press.
- Drexler, J. (2007). Competition in the field of collecting management: Preferring 'creative competition' to allocative efficiency in European copyright law. In P. Torremans (Ed.), *Copyright law: A handbook of contemporary research* (pp. 255–282). Cheltenham, UK and Northampton, MA, USA: Edward Elgar.
- Farchy, J., & Rochelandet, F. (2000). Protection of authors and dissemination of works in the digital universe. The case of the French film industry. *Communications & Strategies*, 39, 37–58.
- Ficsor, M. (2003). *Collective management of copyright and related rights*. Geneva: World Intellectual Property Organisation.
- Ginsburgh, V. (2008). The economic consequences of the droit de suite in the European Union. In R. Towse (Ed.), *Recent developments in cultural economics* (pp. 384–393). Cheltenham, UK and Northampton, MA, USA: Edward Elgar.
- Gowers, A. (2006). *Review of intellectual property*. London: HMSO, UK Treasury.
- Hadfield, G. (1992). The economics of copyright: An historical perspective. *Copyright Law Symposium*, 38, 1–46.
- Handke, C., & Towse, R. (2007). Economics of copyright collecting societies. *International Review of Intellectual Property and Competition Law*, 38(8), 937–957.
- Hansen, A., Ponnii V., & Picard, R. (2003). Economics of composition in a small nation: The situation of composers, lyric writers and arrangers in Finland. Working paper, Business Research and Development Centre, Turku School of Economics and Business Administration.
- Hansmann, H., & Santilli, M. (2001). Royalties for artists versus royalties for authors and composers. *Journal of Cultural Economics*, 25(4), 259–281.
- Hurt, R., & Schuchman, R. (1966). The economic rationale of copyright. *American Economic Review*, 56, 421–432.
- Kretschmer, M. & Hardwick, P. (2007). Authors' earnings from copyright and non-copyright sources: A Survey of 25,000 British and German writers. Bournemouth University, Poole: CIPPM and ALCS. [www.cippm.org.uk/publications/index.html](http://www.cippm.org.uk/publications/index.html).
- Küng, L., Picard, R., & Towse, R. (eds) (2008). The internet and the mass media. London: Sage.
- Landes, W., & Posner, R. (1989). An economic analysis of copyright law. *Journal of Legal Studies*, XVIII, 325–363.
- Landes, W., & Posner, R. (2003). *The economic structure of intellectual property law*. Cambridge, MA: Belknap Press.
- Liebowitz, S., & Watt, R. (2006). How to best ensure remuneration for creators in the market for music? Copyright and its alternatives. *Journal of Economic Surveys*, 20(4), 513–545.
- Matsumoto, S. (2002). Performers in the digital era: Empirical evidence from Japan. In R. Towse (Ed.), *Copyright in the cultural industries* (pp. 196–209). Cheltenham, UK, and Northampton, MA, USA: Edward Elgar.
- O'Hare, M. (1985). Copyright: When is monopoly efficient? *Journal of Policy Analysis and Management*, 4, 407–418.
- Peacock, A. (1993). *Paying the piper: Culture, music, money*. Edinburgh: Edinburgh University Press.
- Peacock, A., & Weir, R. (1975). *The composer in the market place*. London: Faber Music.
- Plant, Arnold. (1934). The economic aspects of copyright in books. *Economica*, 1(2), 167–195.
- Rochelandet, F. (2003). Are copyright collecting societies efficient organisations? An evaluation of collective administration of copyright in Europe. In W. Gordon & R. Watt (Eds.), *The economics of copyright: Developments in research and analysis* (pp. 176–197). Cheltenham UK and Northampton MA, USA: Edward Elgar.
- Rose, M. (1993). *Authors and owners: The invention of copyright*. Cambridge, MA: Harvard University Press.
- Rushton, M. (1998). The moral rights of artists: Droit moral or droite pecunaire? *Journal of Cultural Economics*, 22(1), 1–13.



- Rushton, M. (2001). The law and economics of artists' inalienable rights. *Journal of Cultural Economics*, 25(4), 243–257.
- Samuelson, P. (1999). Implications of the agreement on trade related aspects of intellectual property rights for cultural dimensions of national copyright laws. *Journal of Cultural Economics*, 23(1–2), 95–107.
- Shavell, S., & van Ypersele, T. (2001). Rewards versus intellectual property rights. *Journal of Law and Economics*, 44, 525–548.
- Snow, A., & Watt, R. (2005). Risk sharing and the distribution of copyright collective income. In L. Takeyama, W. Gordon & R. Towse (Eds.), *Developments in the economics of copyright: Research and analysis* (pp. 23–36). Cheltenham, UK and Northampton, MA: Edward Elgar.
- Throsby, D. (1994). A work-preference model of artist labour supply. In A. Peacock & I. Rizzo (Eds.), *Cultural economics and cultural policies*. Boston MA and Dordrecht: Kluwer.
- Throsby, D. (2001). *Economics and culture*. Cambridge, UK and New York: Cambridge University Press.
- Throsby, D. & Hollister, V. (2003). Don't give up your day job yet. Sydney: Australia Council for the Arts. [http://www.australiacouncil.gov.au/\\_data/assets/pdf\\_file/0017/2906/00\\_contents.pdf](http://www.australiacouncil.gov.au/_data/assets/pdf_file/0017/2906/00_contents.pdf).
- Towse, R. (1997). Communication: The monopolies and Mergers Commission's investigation of the UK music market. *Journal of Cultural Economics*, 21(2), 147–151.
- Towse, R. (2001). Partly for the money: Rewards and incentives to artists. *KYKLOS*, 54(2/3), 473–490.
- Towse, R. (2006). Copyright and artists: A view from cultural economics. *Journal of Economic Surveys*, 20(4), 567–585.
- Towse, R. (2007a). The singer or the song? Developments in performers' rights from the perspective of a cultural economist'. *Review of Law & Economics*, 3(3), Article 6. <http://www.bepress.com/rle/vol3/iss3/art6>.
- Towse, R. (2007b). Regulating copyright collecting societies. Keynote talk. Poole, Dorset: Centre for Intellectual Property Policy and Management, Bournemouth University. <http://www.cippm.org.uk/symposia/Bournemouth%20Keynote%20talk%203%20December.pdf>.
- Towse, R., Handke, C., & Stepan, P. (2008). The economics of copyright law: A stocktake of the literature. *Review of Economic Research in Copyright Issues*, 5(1), 1–22.
- Varian, H. (2005). Copying and copyright. *Journal of Economic Perspectives*, 19(2), 121–138.
- Watt, R. (2007). An empirical analysis of the economics of copyright: How valid are the results of studies in developed countries for developing countries? In World Intellectual Property Organisation (WIPO) (Ed.), *The economics of intellectual property—Suggestions for further research in developing countries and countries with economies in transition*. Geneva: WIPO.