

COPYRIGHT AND ARTISTS: A VIEW FROM CULTURAL ECONOMICS

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Abstract. Most of the standard economic literature on copyright ignores a number of aspects that have considerable significance for cultural production and for artists, the primary creators of copyright works, the supply of which copyright is supposed to stimulate. Specifically, there is little mention in that literature of moral rights, no distinction is made between copyright for authors and neighbouring rights for performers, the distributional effects of copyright are barely referred to, and the question of how much artists earn from copyright is ignored. In this article, I survey work that relates copyright and cultural economics showing that cultural economics offers another view to the 'standard' economics of copyright. Moreover, the case for government intervention in the arts and heritage made by cultural economists has resonance for the economic rationale of copyright.

Keywords. Artists' labour markets; Cultural economics; Economic and moral rights; Economics of copyright

1. Introduction

In this paper, I survey work that relates copyright and cultural economics and I shall show that cultural economics offers another view to the 'standard' economics of copyright. The literature is not large but it throws an interesting light on the economic role of copyright in relation to artists (using that term in a broad way to mean creators and performers in all the various art forms).

Cultural economics¹ is the application of economics to the arts, heritage and the cultural industries and one of the subjects that it deals with is the supply of works of art, music, literature, etc. Copyright is supposed to influence the supply of artistic work in a positive way by providing an incentive through statutory protection but it may also raise the cost of creating new works and so reduce their supply; it also influences the demand for works of art, in part by raising prices; this is considered undesirable for goods like the arts, which are held to offer public good benefits (see Throsby, 2001).² It has also been argued that copyright's effects are asymmetric and that it benefits the distributor rather than the content creator. As cultural policy is concerned with stimulating creativity and with the provision of and access to the arts and culture, it follows that copyright law is important for cultural policy, as well

as for cultural economics. These matters are all grist for the cultural economists' mill and they have a particular contribution to make to the study of the economics of copyright.

Cultural economics can also contribute to the discussion about alternatives to copyright law as a stimulus to creating works of art. One area of cultural economics, the study of artists' labour markets, specifically tries to understand artistic motivation and the likely impact of copyright on the supply of creative work. Moreover, the case for government intervention in the arts and heritage made by cultural economists has resonance for the economic rationale of copyright. As we shall see, copyright sceptics have often advocated a policy of giving grants and awards to artists as an alternative to copyright as the incentive to create works of art.

Most of the standard economic literature on copyright (as reviewed, e.g. by Liebowitz and Watt in this issue) ignores a number of aspects that have considerable significance for cultural production in general and for artists in particular. Specifically, there is little mention in that literature of moral rights, although artists set great store by them and they may also have economic effects; no distinction is made between copyright for authors and neighbouring rights for performers; the distributional effects of copyright are barely referred to and the question of how much artists earn from copyright is ignored. Moreover, most writers assume that the interests of creators and performers are in perfect harmony with those of publishers, sound recording makers, broadcasters and all the other businesses that process and distribute their work as if there were no contractual problems between them over property rights. Caves (2000) has shown that there are economic explanations for the problems of contracting between artists and 'humdrum' enterprises dealing with the commercial side of the arts and culture. There are therefore good reasons to view copyright through the lens of cultural economics.

2. Comparing Cultural Subsidies and Copyright Law as Government Policy

Subsidies or grants to artists are one of the ways to stimulate creativity that have been proposed as an alternative to copyright law. Both are seen as overcoming market failure in cultural production. They were seriously considered by Macaulay in the 1840s (see Hadfield, 1992), by Plant (1934) and again by Hurt and Schuchmann (1966); Macaulay grudgingly found copyright law to be preferable; the other authors opted for subsidies or a system of grants, prizes and awards.³ Subsidy to the arts is one of the topics that have been thoroughly investigated by cultural economics, and much has been written on its benefits and costs. Accordingly, that research forms a basis from which to compare these government policies for the cultural sector.

In the 'high' arts, it is common to find state subsidy, and in some sectors and in some countries, there is also direct state provision. Subsidies typically take the form of direct grants of monetary aid to arts and cultural organizations (theatre and opera companies, orchestras, museums, etc.). In many European countries, museums and heritage buildings are mostly owned and operated by the state.⁴

Subsidies also extend beyond the high arts to broadcasting, film, the press and even pop music as countries seek to maintain their language and national cultural identity. Public finance contributes a very high proportion of total income for the 'high arts' cultural organizations – in the Netherlands, for example, around 85% comes from government grants. Despite these high outlays, however, only a small proportion is typically spent on grants to individual artists, as government bodies tend to prefer to channel funds through cultural organizations, on the one hand, because transaction costs are high and, on the other, because there are moral hazard problems of supporting individuals.

The advantage of a reward system that directly targets the artist is that it can discriminate quality and the type of art that is perceived to be under-produced. By contrast, copyright is indiscriminate with respect to these features – any work within the scope of copyright attracts its protection and the threshold for originality is pretty low. It is worth noting that one of Plant's very perceptive (and frequently ignored) objections to copyright was that it encourages *over*-production of literary works (by contrast to the usual argument of under-production) and that it enables lower quality work to survive on the market because of the protection of the copyright monopoly than would otherwise be possible: too many artists and not good enough art. That is also the conclusion, however, of Abbing's (2002) review of the Dutch subsidy scheme of a minimum income for visual artists. The snags of public subsidies are that there is a danger of some concept of official state art developing if grants are administered by civil servants or cronyism if the job is delegated to artists themselves. This may also be a problem for prizes and other such awards (Wijnberg, 1994).

In some countries there are long-term grants or stipends to artists as incentives to creativity: in Finland stipends of up to 15 years' duration are awarded by a board of senior 'peer' artists to a select few creative artists, usually writers, visual artists and composers, and in the Netherlands visual artists receive grants under a general government funding scheme. Heikinen (1995) and Rengers and Ploeg (2001) have studied these schemes and concluded that they display a 'winner-takes-all' character, that is, artists who are anyway successful on the open market tend to receive these awards. Thus, such grants are unlikely to provide an incentive to supply more or better quality work and may be mostly economic rent. Indeed, they may even be a disincentive owing to moral hazard (the composer Sibelius is often cited as an example; he is said to have composed less after receiving a lifetime stipend from the state). The possibility of a backward-bending supply curve always has to be considered as a response to higher rewards from whatever source.

The public finance of these two alternative systems is interesting to contrast. As Macaulay famously pointed out in 1841: 'Copyright is a tax on readers for the purposes of a bounty for writers.'⁵ With copyright, it is the consumer who finances the incentive to create works of art (in the broadest sense), whereas with subsidies, taxpayers, who may well not be 'readers', do so. Cultural economists have shown that, at least for 'high arts', which absorb the lion's share of cultural subsidies, subsidy out of general taxation is regressive since arts consumers, who are only a small proportion of the population, generally have above-average incomes. While

that is not the case for popular music or television programmes, it is something that should be taken into consideration in comparing the copyright law and subsidies as an incentive to create works of art. There are other differences: the subsidy or grant is an *ex ante* reward, while prizes and copyright are *ex post*. It may be that these have different incentive effects: the artist may have to satisfy certain criteria to obtain the grant, which could influence the work she plans to produce, and the success of that work (however it is evaluated) may influence her chances of a subsequent award. With copyright, the work gets automatic protection whatever the quality and there is no incentive to produce high quality work.⁶ Subsidy, though, usually involves some evaluation of quality. Another point is that there is a significant difference in the timing of the outcomes: a copyright work involves a considerable inter-generational transfer before it is available in the public domain, depending upon the duration of the copyright term (if an artist creates a work aged 25 and lives to 75, the work is in copyright for 120 years with a term of 70 years *post mortem auctoris*). Of course, most copyright works do not survive on the market for the duration and that raises the costs of access. Without copyright, a subsidized work would be in the public domain from its publication. This discussion is reminiscent of that about the public finance of cultural heritage – how much should we spend on it now for future generations, who will be wealthier and have different tastes? Finally, the copyright system relies heavily upon the market to make works available, thus leaving the choice of which works and which artists to promote in the hands of the commercial enterprises in the cultural industries. These industries are dominated by oligopolistic international corporations that are run in share-holders' interests, not those of the cultural policy of any given country. The Disney Corporation's interests do not necessarily coincide with those of Dutch television audiences! That brings into the discussion the public choice aspects of copyright, which take us too far from the one in hand but they should not be ignored.

In most developed countries, copyright and subsidies to the arts, along with prizes and other such awards, co-exist and are usually complementary. The popular arts rely more on copyright as an incentive while subsidies are used as well to stimulate creativity in the 'high' arts. It might be considered whether some version of works for hire should not be used for works of art that have been financed by taxpayers with the copyright belonging to the government or put in the public domain; such arrangements could be made by contracts between the funding body and the artist. Another variation could be a loan fund for artists established along the lines of a student loan system and artists required to pay a percentage of any royalties into it to pay off the loan (Towse, 2001a). These are details, however; the main point here is to show that there are contrasts and connections between copyright as an incentive system and subsidy to the arts, systems which have been considered in the literature as alternatives.

3. Variations on a Theme: Moral Rights, *Droit de Suite* and Performers' Rights

In this section, aspects of copyright law not usually dealt with in surveys by economists are considered: moral rights, *droit de suite* and performers' rights.

3.1 *Moral Rights*⁷

The economic analysis of copyright, being strongly influenced by American authors, is almost exclusively concerned with what are called ‘economic’ rights, as contrasted to the ‘moral’ right. The European tradition of authors’ rights (*droit d’auteur*) stresses what have come to be called in English moral rights (*droit moral*) – rights of attribution, integrity, disclosure and withdrawal. In the European Union, the moral right is inalienable and unwaivable. With the globalization of the cultural industries and increasing standardization of copyright worldwide, the distinction between the civil law countries’ emphasis on moral rights and copyright in the common law tradition is eroding. As part of this trend, a form of moral rights has been incorporated in both UK and US law, in the former as part of the 1988 Copyright Act and in the latter in the 1990 Visual Arts Rights Act (VARA).⁸

The moral right may also have been ignored because it was thought to have no economic value and to exist for equity reasons without efficiency implications. The literature in cultural economics on moral rights shows this is not the case. Rushton (1998) argues that there is pecuniary benefit from the moral right and therefore they must be regarded as having efficiency effects: the moral right has an incentive effect for artistic production because it encourages artistic recognition of status and professionalism. It can also have significant hold-up power and so be used in bargaining situations. Hansmann and Santilli (1997) consider both equity and efficiency arguments for artists’ moral rights. As an example, they present an economic perspective on the right of integrity; knowing who the artist is, and therefore the stock of works on which her reputation is based, is important market information. Landes (2001) and Landes and Posner (2003), though, are dismissive of this argument in the light of VARA. It would be interesting to see an economic analysis of moral rights in a country, such as France, where the rights are stronger and fully established and the moral rights may not be waived as they can be in the USA.

It seems likely that there are relatively high transaction costs in connection with moral rights, for while it is a fairly simple matter to identify the creator of a work of visual art, such as a painting or sculpture, it will be more difficult or even impossible to do so in other areas of the cultural industries, such as multimedia and sound recording. This is also an issue with performers’ rights, where costly arrangements have to be made to identify their contribution to works. The World Intellectual Property Organisation (WIPO), the UN agency responsible for IP treaties, in 1996 negotiated the WIPO Performers and Phonograms Treaty (WPPT), which required the recognition of performers’ moral rights for the first time (this treaty has now been translated into national law by most European countries, in the USA through the Digital Millennium Copyright Act, and by a considerable number of other countries). This is discussed in relation to performers’ rights in Section 3.3 below.

3.2 *Droit de Suite or Artists’ Resale Right*

Although not part of the copyright proper, *droit de suite* (known in English as the artist’s resale right) is linked closely to it. It is an *ad valorem* levy on the resale of

paintings over a certain price in public sales which has existed for many years in most European countries⁹ and in the state of California; more often than not, it is not exercised by artists, as predicted when it was introduced (Rottenberg, 1975). In Europe, it is an inalienable and unwaivable right designed, with the best will in the world, to assist artists in obtaining their share of any increase in the price of their work once it has passed out of their hands, but is generally believed by economists to reduce prices for the work of young artists and thus have unintended adverse incentive effects. As with other incomes of artists, it seems that *droit de suite* royalties, where they are collected, for example in France, are a significant source of income for the top artists but pay little to, or even harm, young artists by depressing prices (Perloff, 1998; Ginsburgh, forthcoming). Moreover, *droit de suite* is likely to act as a disincentive to dealers etc. to promote artists' work (Perloff, 1998). The effect of *droit de suite* on the art market should be testable empirically. Although there is now a considerable literature of econometric work on art as an investment, almost no one has tested the impact of *droit de suite* on art prices.

However, Solow (1998) introduces a new approach that challenges the negative view of *droit de suite*. He analyzes its dynamic external effect on an artist's work over her lifetime. By having a claim on resale prices of past works, the artist has an interest in the future value of her early work, creating an incentive to maintain her reputation. Thus resale prices are 'endogenized'. The question of complementarity and substitutability between early and late works of a still-producing artist is an interesting one in other areas too, such as in sound recordings and literature where the value of back catalogue can be enhanced by present activities, such as going on tour, being interviewed by the media and so on. Cheung (1986) is relevant to this question; he has argued that unless both parties, licensor and licensee (e.g. author and publisher), share revenues, the licensee will obtain market information on the value of the invention, which is not signalled directly to the licensor (and authors have the incentive to overstate the value of their work and publishers to understate it).

An alternative to *droit de suite* that has been suggested is to give artists an exhibition payment right, a share of the entrance charge to public exhibitions of their work (Santagata, 1995). An interesting question that could be analyzed in this context is the different values of the bundle of rights that are sold with a painting or the work of art; although the buyer acquires the painting, the copyright remains with the artist, who then has reproduction and other secondary use rights. An objection to a scheme for exhibition payments, however, is that it would have high costs of tracing artists; any royalty scheme necessitates keeping in touch with copyright owners and that is also the case to a lesser extent for *droit de suite*. A similar proposal for a display right is discussed in Hansmann and Santilli (2001).

3.3 Performers' Rights¹⁰

Performers did not become vulnerable to having their performances copied until the advent of home-taping and later CD burning and downloading. However, in the first half of the 20th century, they suffered considerable loss of work owing to the

substitution of records and radio play for live performance. Performers do not have copyright proper but property rights related to copyright or neighbouring rights. The conventional justification given in law books and the like is that copyright and authors' rights are the reward and stimulus for creativity but performers do not create works, they just 'execute' the performance of existing works and that does not merit the grant of the exclusive right as for the author. I have argued (Towse, forthcoming) that this does not make economic sense, as explained below. There has been no other economic analysis of performers' rights of which I am aware.

The recognition of the case for performers' rights began with the onset of commercial sound recording and early on performers acquired some rights; to give the example of the UK, in 1925 performers acquired the right to control the fixation and use of their performances (mainly in sound recordings). The full establishment of performers' rights really began with the 1961 Rome Convention on neighbouring rights, which forms the basis of national laws and also forms the basis for the WPPT. In 1992, the so-called EC Rental Directive¹¹ was drawn up, which basically enforced the Rome Convention for all European Union countries. Musical performers¹² acquired the right to control the recording of live performances, fully assignable property rights and individual rights to equitable remuneration for public performances of sound recordings, for which protection lasts 50 years from the date of fixation. Rights to remuneration are essentially compensation for compulsory licences that override the general copyright principle that the author/creator has the exclusive right to control exploitation of his or her work (Gallagher, 2002). In the case of sound recordings, what this means in practice is that once a performer has contracted with a record label to make a sound recording, she has no further control over its exploitation (e.g. by public performance) but she receives payment for these uses. (The same applies in this case to composers as well.)¹³

The apparent intention of the Rental Directive was to correct the weaker bargaining position of non-featured performers, and that was done by laying down the requirement that equitable remuneration could only be administered by a collecting society set up for that purpose. This is one of perhaps many examples where the law has been used in the attempt to 'correct' a perceived market failure for equity rather than efficiency reasons.¹⁴ Non-featured performers were targeted in this way because they do not have a royalty contract with, in the case of the music industry, a record label, and are typically paid a standard fee, for example, for a studio recording.

As mentioned earlier, the WIPO Performances and Phonograms Treaty (WPPT) has made important changes to performers' rights introducing a new exclusive right in favour of performers, who make their works available on-line to the public (known as the 'making available right'). It also mandates the prohibition of the circumvention of copyright protection (TPMs – technological protection measures) and of tampering with rights management information (DRM – digital rights management). Thus, with the WPPT, performers now have an individual exclusive right (though not a full copyright) more or less equivalent to that of authors. The USA has not signed the Rome Convention and performers there have rights only in digital works.

Turning to the economics of performers' rights, we note that as the economic aim of copyright law is to offer an incentive to create works of art, literature, music and so on, we may reasonably assume that this aim applies to the creation of performances by performers. Performers are identified in UK copyright law as persons who have rights in their performances. A performance is formed by talent, years of training and investment in human capital and involves considerable risk of how it will be received by audiences. A performance is a work in the sense of copyright law and so the same economic logic should apply to it as it does to the work of an author. However, the difference is that the performance, while a work in its own right, cannot be separated from the work being performed. The received view is that when performers perform a work created by an author – say an existing song already written by a composer – their performance is already 'propertized' by copyright law so there is no need to intervene further by granting other property rights on the same work: the performer is only able to produce her performance on licence from the composer. Thus the law favours the creator over the performer. I dispute this rationale, however, because it fails to take into account how value is added to the author's work by the performer. When a singer makes a song famous, thus adding value to the song due to her talent, the singer should be awarded the value added but, instead, the benefit accrues to the composer, who cannot have anticipated (in most cases) that the singer would perform the work. The composer therefore 'free-rides' on the singer's performance. Coasean logic would suggest that well-known singers should commission songs from a lesser known composer and therefore own the song and, indeed, that did happen historically (Towse, forthcoming).

Until the introduction of legislation following the WPPT, non-featured performers, such as backing singers and instrumentalists, received only collective remuneration but now they also have individual exclusive rights. It is frequently argued that these performers have already been paid for their work and therefore a royalty on top of that would just be paying them twice for the same thing. However, even if the performer were already on salary with an orchestra or chorus, economic efficiency requires that their pay reflect the revenues received by the organization employing them; if they receive payment through other means, for example, royalties, then economists would expect that the 'spot' pay for work (fees or salary) would be reduced to take into account the future royalty or remuneration payment. That principle raises an issue that has only been touched on (Towse, 2001a) – 'Who pays' for extended rights for performers (or any other claimant, in fact)? And when a new claimant is introduced, where is the money to come from – higher consumer prices, less for authors or lower profits for (in the case of music) sound recording makers?

One argument against royalties for non-featured performers is that the transaction costs of tracing, contracting and maintaining contact with many performers would be high for the sound recording maker; however, a composers' collecting society incurs similar costs. Apparently, this objection to performers' rights is now deemed to be outdated by the possibility of DRM as the WPPT has caused individual exclusive rights to be introduced. It remains to be seen how effectively 'ordinary'

non-star performers are able to exercise these rights. So far, DRM is not standardized and it is not clear who will bear the associated costs. There is scope for a great deal more work on the economics of performers' rights, both analytical and empirical, the more so as the European Commission is currently pursuing collecting societies for anticompetitive behaviour.

4. Distributional Aspects of Copyright for Artists

Economists' concentration on the efficiency aspects of copyright has meant that its distributional effects have received little attention. Several topics are considered under this heading: analysis of contracting between 'art and commerce', the economic analysis of copyright collectives and empirical studies of artists' earnings from royalties and other copyright remuneration.

4.1 Contracting Between 'Art and Commerce'

Caves (2000) analyzes the economic organization of creative industries by applying the insights of contract theory to deals between artists and the firm in the cultural industry over the control of rights. He shows that the firm always has the incentive to acquire control over the creator's copyrights when it has to incur an outlay on sunk costs, the typical situation, say, with an advance to an author or the costs of publication or marketing. It does so in part to avoid hold-up problems, which may arise in the creative industries because of the author's or artist's particular concern over her reputation and care for artistic content, and in part because of the inherent radical uncertainty (Caves' 'nobody knows') surrounding the fruition and reception of creative work. A royalty contract is a typical incentive contract that forces the creator or performer to share with the publisher in the success or failure of the final product and the associated risk. Caves' focus is on industrial organization in the creative industries rather than on the distribution of the share of rewards for the artist, although, along the way, he demonstrates very well the weak bargaining position in which most artists find themselves. Alonso and Watt (2003) provide a formal model of the contract for sharing revenues, showing that the barrier to an efficient contract lies in the differing attitudes to risk on the part of the parties involved – the creator likely being more risk averse than the publishing firm that markets the product.

Artists are typically at a disadvantage in relation to firms in the cultural industries for several reasons: as individuals, artists have poor access to the capital market and therefore need to contract with a firm to get their work distributed, whereas the firm, often a multinational giant corporation in an oligopolized industry, has easy access to capital. With little capital reserves, artists have to sell their work within a short time of its creation; thus their time preference rate is much shorter than a firm's; and artists have a relatively small portfolio of work and cannot pool risks, unlike a large firm with a huge portfolio of copyrighted work, which it can exploit when market conditions are favourable. Another source of asymmetry is in relation to market information; artists have considerably less experience of market

conditions than do firms. Moreover, individual artists cannot afford the legal costs of defending their rights in court, whereas firms can.

Transaction costs of contracting often lead to standardization of contracts as a means of reducing the costs. Standard contracts, of course, are not tailored to the specific work of its creator and therefore do not provide an individual incentive. Towse (1999) observes that different combinations of the incentive to produce high quality work, willingness to share risk and transaction costs that are to be found in different types of contracts and payment methods. The incentive to do high quality work depends on whether the payment is a flat-rate single-spot payment or a royalty on sales. The former offers little incentive to improve quality and therefore is more likely to result in, or be more commonly associated with, routine work and a standard contract. However, with a flat-rate fee the artist bears no risk. Under the royalty system, the contract ties author and publisher in a longer term relationship and the artist shares risk with entrepreneur. That gives the artist the motive to do good quality work now and in the future since it provides a feedback for the present work to increase the sales of earlier work. A pure royalty deal has a stronger incentive than if an advance on the royalty is paid because it is a combination of spot and future payments.¹⁵ The outcome turns on the response of the artist not only to the amount and type of the payment but also to her attitude to risk-taking and ability to sustain risk.

4.2 *Economic Analysis of Copyright Collectives*

The above, of course, assumes that contracting is possible between the artist and the user of her work; that is the case in the primary market for copyright works – the author contracts with the publisher, the song writer and the performer with the record company and so on. That is not feasible with secondary users of their work, such as photocopying of books and public performance of sound recordings. The same type of contracting problems is faced by copyright-collecting societies, which act collectively on behalf of authors and performers with secondary users. The need to economize on transaction costs of contracting and monitoring usage leads to ‘blanket licensing’ of the whole repertoire of the society (Hollander, 1984; Besen *et al.*, 1992; Watt, 2000; Liebowitz, 2005). This minimizes transaction costs but has the disadvantage from the economic point of view that the individual creator’s contribution to the demand for the licence is not distinguished. Transaction costs are further reduced by the natural monopoly of collecting societies, which often specialize in administering one or a closely related bundle of rights. Kretschmer (2003), however, finds fault with the economic explanation of transaction cost minimization and argues instead that collective rights management is a form of unionization or ‘solidarity’. In a paper whose title says it all, ‘Copyright Societies Do Not Administer Individual Property Rights: the Incoherence of Institutional Traditions in Germany and the UK’ (Kretschmer, 2003), he argues that the joint membership of publishers with authors or performers in collecting societies reduces their ability to concentrate on the interests of the creator members because the economically stronger publishers dominate the societies.

The first work on the economics of copyright collectives was by Peacock and Weir (1975) on the UK Performing Rights Society (PRS). The PRS was formed in 1914 as a private co-operative society to administer musical copyrights and it is a monopoly because it requires the exclusive assignment of copyrights in order to license use. For the distribution of income to members, it holds a large database of information about its members and their works, as well as lists of music users and work-by-work use and it is this database that makes it a natural monopoly. There are economies of scale in royalty administration and duplication of this information would increase costs. The PRS had several concerns at the time of Peacock's research: one was the low earnings of many of their composer members and the unequal distribution of distributed income; a second was the increasing use of home taping devices; and the third was the fact that their biggest single customer was the BBC (British Broadcasting Corporation) with its monopoly on music broadcasts of live concerts and recorded music. Peacock and Weir therefore undertook a three-pronged research into composers' earnings (from all sources, not just from royalties), ways of compensating copyright holders for private home-taping (for which they recommended the introduction of a 'blank tape' levy) and analysis of the de facto bilateral monopoly between the PRS and the BBC (Peacock, 1993). This analysis has proved to be prototypical of the problems facing collecting societies.

This was pioneering work and it established the basic economic analysis of copyright collectives as natural monopolies operating blanket licensing and dealing with other monopolies in the form of trade associations that collectively negotiate licence fees for their members, thus reducing the transaction costs for the composer and for the user. Other work on the economics of collecting societies is by Hollander (1984), Besen *et al.* (1992), MacQueen and Peacock (1995), Watt (2000), Einhorn (2002), Liebowitz (2005) and Snow and Watt (2005). These authors have all investigated a range of efficiency questions about the optimal size of the membership, the effect of competition on the natural monopoly, blanket licensing, setting the tariff and, lately, the effect of digital delivery on the collective administration of copyrights. Watt (2000) points out, in addition to these questions, that collecting societies' practice of distributing the revenues from blanket licensing on an individual basis according to use increases the costs of administration that the blanket licence saves. Snow and Watt (2005) add another dimension by arguing that collecting societies could pool risks and thus reduce the risk bearing of their members.

4.3 *Empirical Studies of Artists' Earnings from Royalties and Other Copyright Remuneration*

The points discussed above are efficiency questions and they ignore both equity matters and the actual distribution of revenues to individual artists. For that, we have to look at empirical evidence on the distribution of earnings of collecting society members. It is important to stress that such data do not show what artists earn from all their copyright works, just what they earn from one right or a limited

number of rights that the collecting society exercises on their behalf. Towse (1999) found evidence of the value of remuneration for the public performance of sound recordings resulting from performers' rights that were newly introduced in the UK following the EU Rental Directive and compared the figures for those of similar Swedish and Danish societies, which had been in existence for some 20 years (the figures and distributions were all similar). Kretschmer (2005) uses figures submitted by the PRS in its evidence to the Monopolies and Mergers Commission enquiry into its operation and in addition provides data for the German performing rights society GEMA and the Künstlersozialkasse (social insurance fund for artists) on the distribution of remuneration. Matsumoto (2002) presents detailed figures on performers' remuneration earnings for sound recordings in Japan. These figures all follow what has come to be seen as a familiar pattern in artists' labour markets – the so-called winner-takes-all phenomenon, whereby by the top earners, the few superstar singers, bands, authors, film directors and suchlike who dominate the markets in the cultural industries, also earn the highest royalties. The available evidence (and there is very little of it made public) shows that the top few receive highly disproportionate shares of the total revenues, while many members (sometimes 50% or so) earn less than the minimum that is distributed.

Another issue that has not been deeply investigated is the distribution of the costs of administering the copyright system. While there has been some interest on the part of regulatory bodies (and now by the European Competition authorities) in the often-considerable charges made by collecting societies for the services of administering their members' rights, these are not the only costs of administration. Maintaining databases of the use of copyright material is costly and there is a strong incentive to push the costs onto others. As mentioned above in relation to performers, it is not yet clear who will pay the costs of DRM administration or how much it will cost. In some countries, collecting societies are state or quasi-official bodies and the state bears some of the costs. The state usually bears the cost of protection and also for conflict resolution through a copyright board or tribunal.

To sum up on this section, then: there is more than a strong suspicion to be found in these economic studies that the main benefits of copyright are enjoyed by the 'humdrum' side of the cultural industries rather than the creators and, while it may well be the case that collecting societies have considerable revenues, the distributions of royalties to artists other than the top few stars show how relatively little they get through the copyright system.

5. Artists' Labour Markets and Artists' Motivation

The economics of artists' labour markets is a well-researched area of cultural economics. It has established some by now stylized facts about the economic life of the artist through empirical evidence in a number of countries. These are as follows: artists' median annual earnings are below the national average, given their age and level of education; there is a highly skewed distribution of income within

artistic professions, with many earning very little, while the few superstars have very high earnings; most artists have frequent and prolonged periods of unemployment and experience high search costs as they frequently change jobs; most artists are multiple-job-holders because they earn insufficient income from their chosen arts occupation and so must do other sorts of work to make ends meet; and most artists work on standard contracts and at standard fees. Even so, there is an excess supply of artistic services at all levels of payment, something that is exacerbated by subsidy to training and grants to artists. It is believed by most cultural economists that this excess supply is the main reason not only for low earnings but also for their weak bargaining position leading to poor contracts, frequent spells of unemployment and no set career structure (Towse, 2001a).

These disadvantages raise questions about the motivation of artists, whether they are rational maximizers and if so what is it they seek? Research has shown that artists' labour supply is responsive to the (imputed) wage rate: the higher the rate of payment for arts work, the more hours artists spend on art work. There is also positive cross elasticity – when they earn more from *non-arts* work, they devote more time to *arts* work (Throsby, 1997, 2001). Abbing (2002) argues that when artists obtain an increase in earnings, whether from arts work, non-arts work or a grant, they reinvest it in equipment, etc. in order to improve their production of art, rather than raise their material standard of living. Other writers have pointed to the risky nature of work in the arts and, given the absence of information on the artist's chances of success, the only way to find out one's chances are to 'have a go' (MacDonald, 1988). Caves (2000) sees this as applicable to all markets in the cultural sector, dubbing it the 'nobody knows' characteristic of the creative industries.

Bruno Frey, in his book *Not Just for the Money* (Frey, 1997), has developed an economic analysis of intrinsic and extrinsic motivation, applying the study of artistic motivation developed in social psychology. Creative artists are said to have 'intrinsic' motivation, inner drive, which is motivated by intrinsic reward – inner satisfaction, fame, recognition, etc. Extrinsic motivation and reward refers to the 'normal' assumption in economics that financial reward is a motivation to effort. The particular contribution of Frey is his 'crowding out' theory – that an inappropriate type of reward could have the opposite of the desired effect. In particular, intrinsic motivation may be crowded out by extrinsic reward.¹⁶ Moreover, financial payment (extrinsic reward) could even inhibit intrinsically motivated people by stifling their inner drive. This led Frey to distinguish two kinds of creativity, institutional and personal. Arts organizations of necessity have to be institutionally motivated to be creative by extrinsic reward in the form of financial grants; personal creativity, however, is only motivated by intrinsic reward (Frey, 2000). Frey believes that cultural policy, with its reliance on financial payments, may all too easily crowd out true artistic creation. In Towse (2001b), I argue that the combination of the economic and moral rights in copyright/authors' rights satisfies Frey's requirement for intrinsic as well as extrinsic reward for creativity. Over and above its role as establishing property rights so that authors can obtain their economic reward, copyright intrinsically rewards creativity through moral rights. It is therefore an

instrument of cultural policy that may be more significant to artists than the extrinsic financial incentive of a subsidy.

As a final observation on this topic, it should be said that the dearth of empirical studies on artists' response to copyright and their motivation to supply works of art in general is a real criticism not only of cultural economics but of all those international and national bodies as well that so strongly advocate copyright as a stimulus to creativity. We have to stop simply assuming that stronger copyright means higher earnings for artists and that this therefore leads to greater and better creative output. It is not an easy task to test these relationships – indeed, cultural economists who have worked in this area know how difficult it is to research artists' labour markets – but lack of information on the subject does not strengthen the case for copyright; it weakens it.

6. New Technologies and New Arts

The effect of digitalization on the music industry has by now been well researched by economists and well documented by Liebowitz and Watt in this volume. Digitalization has its effects on other of the cultural industries too, especially broadcasting, the press and journalism, publishing and film production (although the full effect of movie downloading has yet to impact on the industry). Media economists, whom one could call close cousins of cultural economists, have a significant research programme in this area, particularly looking at the impact of the Internet on these industries and the new business models it calls for (Küng, 2004; Picard, 2004). However, there is little that specifically deals with copyright. In cultural economics, there has been some interest in the effect of digitalization on artists' work and on new types of art and the implications this has for copyright. Farchy and Rochelandet (2002) discuss the protection of copyright holders with private copying using digital technologies, Einhorn (2002) discusses the effect of digitalization on licensing musical copyrights in different platforms and Liebowitz (2005) deals with different ways of collecting licence fees with music downloads. Farchy (2003) deals with a question that has been on many people's lips – does digitalization enable the artist (creator or performer) to break loose from the intermediaries (the 'publishers') in the cultural industries and go it alone using the Internet for publicity and marketing? So far, there is little evidence of this and Farchy suggests that it is unlikely to develop to any great extent. This is another topic that calls for detailed empirical research.

Lastly, a topic that has begun to be analyzed is the copyright implications of new art forms, specifically, borrowed images and appropriation art (Landes, 2002) and musical sampling (Thèberge, 2004). Rushton (2001) discusses the economic aspect of artists' rights and moral rights in similar contexts. Not unrelated is the question of copyright and the digitalization of museum images (Aalberts and Beunen, 2002) and archives; here the concern is about the power of digital rights management to cut off works in the public domain or for 'fair use' reasons (for a general discussion, see Schneider and Henten, 2005). These are very specialized subjects, however, even within cultural economics.

7. Conclusion

The purpose of this survey paper has been to show that economists have been concerned with a wider aspect of copyright than with just economic rights. Moreover, economists working specifically in the field of culture tend to look at the economics of copyright from a rather different standpoint than the general welfare economics or property rights approach adopted by economists and law and economists. In this paper, I have put the focus on the artist and selected the issues for review on that basis. I do not think that all of the people whose work is cited here would regard themselves as cultural economists but I hope they would acknowledge that it adds up to a distinct body of work. Cultural economics' main distinction is that it applies economics to the production and consumption of the arts and culture, areas in which copyright supposedly has a strong influence. The insights of cultural economics about cultural policy seem to throw some additional light on the more general questions about the economic and cultural role of copyright in a world that increasingly emphasizes creativity and the creative industries as the source of economic growth in the post-industrial world.¹⁷

'Do artists need copyright?' is a question that many people have asked since its introduction in England in 1710. What this survey shows is that the answer is a complex one. There has been some interesting work in economic history on creation without copyright and on artists' earnings, especially in the case of composers (Scherer, 2001; Tschmuck, 2002) and it is obvious that a great deal of the canon of great Western art (and no doubt of Eastern art too) was created without the intervention of copyright or state subsidy.

There is good reason to believe that copyright is asymmetric in its effects and favours the industry side of the creative industries rather than the creators and performers whose work they exploit. If we are to believe that copyright, or more precisely authors' and performers' rights, are fundamental to cultural production, we need far more evidence than at present exists to demonstrate the case. Moreover, it may be that artistic motivation and the incentive to produce works of art are not just due to financial rewards and economic rights but also to moral rights. Economists may have to venture out of their usual eeries to investigate these things. If they do not, they should be far more careful in following the line that what is good for Sony is good for the world of art.

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Notes

1. For a comprehensive survey of cultural economics, see Blaug (2001). For a general introduction and short chapters on many of the topics mentioned below, see Towse (2003). Towse (2005) traces the development of cultural economics over the last 35 years.

2. The economic arguments for copyright are not rehearsed here – see Liebowitz and Watt in this volume or for a fuller treatment, Landes and Posner (2003).
3. Shavell and van Ypersele's (2003) suggestion for a reward system for innovation does not discuss its application to copyright.
4. In some European countries, there has recently been a programme of déétatization, that is, turning the management over to self-managing non-profit organizations.
5. Cited in Hadfield (1992, pp. 29–31).
6. That is not true of *droit de suite*, the artists' resale right, which does give the incentive to maintain quality and reputation (see Section 3.2).
7. This section draws on Towse (2001a).
8. Boylan (2005) makes it clear that the US version differs considerably from its European origins.
9. The right did not exist in the UK, Ireland or the Netherlands until the recent EU Directive that harmonized its provision throughout Europe.
10. This section draws on Towse (2006).
11. The European Council Directive 'on rental and lending rights and on certain rights related to copyright in the field of intellectual property' (EC Directive, 1992).
12. Audio visual performers, such as film actors, were not included in this legislation. There is now talk of their acquiring copyright protection.
13. Rushton (2003) discusses criticisms of compulsory licensing in the arts.
14. However, in so doing, it risked creating a situation in which the increased transaction costs to users threaten to swamp any benefits (see Towse, 2001a). Burrows (1994) has argued that all copyright is based on equity arguments alone.
15. In practice in the cultural industries there are many different ways of rewarding artists that include prizes, wages, wages plus a bonus and profit-sharing deals besides spot fees and royalties (see Towse, 2004).
16. The 'classic' case is that of blood donorship, where voluntary donation is displaced or 'crowded out' if financial payment is made. Not only that – there is also a moral hazard problem because people who sell blood (i.e. they are extrinsincally motivated) are likely to be less healthy than those who are intrinsically motivated to donate.
17. A topic that has not been discussed in this article is the attempt to measure the effect of copyright in these industries. For a recent review of this topic, see the articles in the Symposium on the Empirical Measurement of the Contribution of Copyright to National Economies, *Review of Economics of Copyright Issues* volume 1, number 1, June 2004.

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