

A Lesson from the History of Italian Opera: Some Copyright Good/More Copyright Useless

Author : Christopher J. Sprigman

Date : January 15, 2016

Michela Giorcelli & Petra Moser, *Copyright and Creativity - Evidence from Italian Opera* (2015), available at [SSRN](#).

Today opera fans in the United States are rich, old, and increasingly rare. But it wasn't always that way. In the Eighteenth Century, opera was the closest thing to mass entertainment, especially in Italy. And that fact provides a platform for economists [Michela Giorcelli](#) and [Petra Moser](#) to say something interesting about the effect of copyright law on creativity. Giorcelli and Moser's *Copyright and Creativity - Evidence from Italian Operas*, is a paper I liked, lots.

Giorcelli and Moser's paper is a natural experiment using historical data surrounding an "external shock" - viz., Napoleon's invasion and occupation of northern Italy between 1796 and 1802. The northern Italian states of Lombardy and Venetia adopted copyright laws in 1801, as a direct consequence of French rule. Six other Italian states studied by Giorcelli and Moser only began adopting copyright laws during a period that began a quarter-century later. Giorcelli and Moser collect historical data on 2,598 operas that premiered across the eight Italian states in question between 1770 and 1900, the most fertile years of Italian opera production, and a period that both precedes and follows the adoption of copyright by Lombardy and Venetia.

Comparisons across the period reveal a statistically significant increase in new operas produced in the states that adopted copyright in 1801. Giorcelli and Moser estimate that Lombardy and Venetia produced an average of 2.12 additional operas per year after 1801. This increase is relative to a baseline of 1.41 operas per state per year before 1801, thus yielding an apparent increase of approximately 150%, versus an increase in production of approximately 54% in the states that had not adopted copyright.

The authors then inquire whether the increase in number was accompanied by an increase in overall quality of the operas produced. Using other historical data sets, Giorcelli and Moser estimate a 4.6-fold increase in the production of historically popular operas in response to the adoption of copyright, and a ten-fold increase in the production of durably popular operas (i.e., those for which full-length recordings continue to be available on Amazon in 2014).

The data also shows that after Lombardy and Venetia adopted copyright, opera composers began to immigrate to those states. "Between 1801 and 1821, 43 composers who were born outside of Lombardy premiered an opera in that state. Another 13 composers born outside of Venetia premiered an opera in Venetia," the study states. "By comparison, all other Italian states together only saw premieres by 5 composers who were born outside the state premiered their first opera in other Italian states without copyrights."

In sum, assuming that the production of operas is a reasonable proxy for artistic and literary production generally - and I'm not so sure it is, but more on that later - the Giorcelli and Moser study suggests that the adoption of some reasonable copyright term provides a incentive that produces more creative output versus an environment in which there is no copyright protection and creative output is

consequently more vulnerable to appropriation.

However, and importantly, the study also suggests that subsequent extension of the copyright terms from life of the author plus 10 years to life plus 40 had no clear effect on either the number or quality of operas produced. This second conclusion is particularly important because our contemporary debate is usually not whether to have copyright at all, but rather whether to extend already very long copyright terms. On that question, Giorcelli and Moser provide evidence that a bit of copyright is enough, and more copyright doesn't necessarily lead to more creative production.

Of course, longer copyright terms do have a cost. They perpetuate monopolies, with all the social costs that monopolies typically produce, plus extra costs that arise when the spread of knowledge goods like books or even operas is restricted by monopoly's high costs and scarcity. Cheap books help spread literacy. Cheap operas help spread cultural literacy. Both forms of learning enrich society. Copyright terms that are too long limit the spread of knowledge while producing little, if any, additional creative output.

I love the Giorcelli/Moser paper, but like any piece of empirical work, it raises methodological and data-quality questions. I want to focus on the latter for a moment.

The paper's conclusions are only as strong as the data on which the researchers rely, and I would have liked to have seen more discussion of why we should trust the completeness of the records listing opera premiers during the period. Giorcelli and Moser consult multiple sources, but these are historical records from a often chaotic time and place in which it is not intuitively obvious that all premiers would have been recorded. If the rate at which the premiers failed to be recorded varied across the Italian states, that variance could cause a significant perturbation in the data, with corresponding effects on the results.

To be fair, Giorcelli and Moser use more modern sources to account for omissions from the historical records, but it is difficult to judge from the paper the confidence one reasonably can place in the amended records.

Let me close with a word on a methodological issue, which is, as I alluded to earlier, whether data suggesting that the adoption of copyright boosted the production of operas is representative of copyright's likely effect on the production of other, more modern and commercially important, forms of creativity. My guess is that the answer depends on how closely the economics of a particular form of creativity resembles the economics of opera production. I would characterize opera as a form of creativity with very high fixed costs - authoring an opera represents a large and sustained creative effort, and the production of an opera is also costly (hiring singers, musicians, and opera halls is expensive, as are the often-lavish sets and costumes). Opera is, in short, a paradigm of the sort of creativity that is unlikely to flourish without some way to prevent copying, because the originator needs an extended period of exclusivity in order to earn back those high fixed costs.

Like opera, some modern forms of creativity feature very high fixed costs. For example, blockbuster movies. But other commercially important forms of creativity - for example, pop music - are produced with relatively low fixed costs. It's cheap these days to write and record pop music. Is the sort of lengthy monopoly created by copyright law necessary to stimulate the production of this lower-cost creativity? On that question, the jury is still out.

Cite as: Christopher J. Sprigman, *A Lesson from the History of Italian Opera: Some Copyright Good/More Copyright Useless*, JOTWELL (January 15, 2016) (reviewing Michela Giorcelli & Petra Moser, *Copyright*

and Creativity – Evidence from Italian Opera (2015), available at SSRN, <https://ip.jotwell.com/a-lesson-from-the-history-of-italian-opera-some-copyright-goodmore-copyright-useless/>.