Lunney's Paradox: More Copyright May Lead to Less Creativity

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Glynn Lunney, **Copyright's Excess: Money and Music in the US Recording Industry** (2018).

The title of Glynn Lunney's new book, *Copyright's Excess*, presents a puzzle for those of us who have reflected on the nature and function of copyright law. Copyright is typically justified as a system of incentives. By giving authors (and by contract, publishers) exclusive control over commercially significant reproductions and distributions of their artistic and literary works, copyright helps to ensure that the copyright owner, and not copyists, will capture any profits made from exploiting the work. Copyright, in short, is supposed to help authors make more money. And in a world that works as economists expect, more money for authors should lead to more creative output. The equation seems simple: more copyright = more art and culture. But is this true? Is it possible that copyright protections might backfire, and result in less creative output rather than more?

Lunney's book offers considerable evidence that, at least in the music industry, it is at least an uncomfortably plausible possibility that more copyright has led to *less* creativity. Lunney, a lawyer-economist, takes a painstaking look at music sales data dating back to the early 1960s, including data tracking the rise of recording music revenues up to Napster's debut in 1999, followed by their precipitous decline. The shock to music industry revenues caused by Napster (and what followed) provided the makings for a terrific natural experiment: did increased revenue from the early 1960s to 1999 lead to more new music? And did plummeting revenues after 1999 lead to a dearth of new music?

Assessing this natural experiment correctly presents Lunney with some serious complexities. One is that he must account for changes in the *quality* of recorded music produced over this long period, a task which requires an appraisal of how quality has varied over time. Lunney handles this task with some creative empirical and analytic strategies, the details of which I'll omit here. Suffice to say that the quality adjustment methodology Lunney employs is, at least to my eye, the most contestable element of his project. But if the reader accepts what he's done on that point, then his conclusions follow nicely, and they are beyond startling.

Despite a post-Napster decline in revenue approaching 80% (adjusted for inflation), the number of new albums released in the U.S. nearly doubled between 1999 (38,857) and 2012 (76,882). There is, moreover, no evidence of a decline in the quality of new music during that period. None of the various metrics Lunney uses for measuring quality show a positive correlation with revenue, and indeed for some of the measures, the correlation was statistically significant but *negative* – i.e., more money appears to have led to *lower quality* music.

What's going on here? Lunney's explanation is straightforward. Beyond a certain level of income, paying musicians more doesn't make them work harder; it makes them work less. In other words, the most successful artists – at least in the music industry – are prone to *satisfice* as they get rich. Lunney presents evidence for this proposition. When revenues were high for the recording industry, as they were in the 1990s, top artists produced fewer studio albums and fewer Hot 100 hits in the first ten years of their career, compared with periods when music industry revenues were low (both in the 1960s before the advent of the federal sound recording copyright and in the online piracy era of the 2000s).

During these low-revenue periods, top artists produced more studio albums and more Hot 100 hits.

Copyright may succeed in securing more money for top artists. But more money for those artists is not associated with more music. Nor does more money lead to better quality music. Indeed, there is evidence that the association, if there is one, is negative. This directly challenges the conventional incentive story that is said to justify strong copyright protection.

If Lunney is right, then it appears that strong copyright protections may get us less of precisely the music that fans find most attractive. Lunney admits that, at the same time, strong copyright laws that direct more money to artists are likely to attract more new musicians to enter the music industry. But Lunney argues, based again on data, that the benefits of this new entry are overwhelmed by the loss of productivity on the part of those satisficing popular artists.

The net result is that strong copyright makes a few star musicians richer, but results in a less creative music industry overall. And that last bit is crucial. Copyright is supposed to encourage more creativity. But what we may be getting – at least in the music industry – is exactly the opposite.

Copyright's Excess is foundational work in the economics of intellectual property. It is also accessible to non-economists, and to those who don't work in IP law and who haven't thought much beyond the conventional wisdom. Lunney's explication of the economic theory undergirding his insights is elegant, and persuasive. And the potential impact of the book is seismic. Lunney shows that copyright's incentive effect – at least in the music industry – is complicated. Copyright does, in fact, draw new artists into the market. But it also suppresses the production of new works by established and popular artists. The result, at least by Lunney's calculation, is a net negative for social welfare.

Lunney's book should be widely read, especially by music industry insiders. But so far, there is little evidence that the industry is interested in grappling with Lunney's work. That should not stop academics from closely examining what Lunney has done, but to critique it and, perhaps, to extend it.

The most obvious question that Lunney leaves unaddressed is whether the superstar-satisficing dynamic that he's identified in music extends to other creative industries. Might we find a similar story of overpaid superstars in the movie industry? In publishing? In software? Those papers, and others, are waiting to be written.

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