

Personalizing Copyright Law Using Consumer Demographics

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Adi Libson & Gideon Parchomovsky. [Toward the Personalization of Copyright Law](#), 86 **U. Chi. L. Rev.** 527 (2019).

Most people assume, if implicitly, that there is a substantial element of uniformity in our IP system. At first blush, our copyright and patent laws extend a (presumably) uniform set of rights to (presumably) uniform authors and inventors, who can then sue (presumably) uniform unauthorized users. Scholarship for some time now has already noted that the bundle of rights is not actually uniform, and has theorized on the optimal tailoring of rights to particular [industries](#) and [subject-matters](#). More recently the literature has started to unpack the implicit assumption of creator uniformity using data on the demographics of [authors](#) and [inventors](#). Statistically speaking, the data has shown that creators of different races, genders and ages diverge in the rate and direction of their creative efforts. In this new and exciting article, Libson and Parchomovsky begin to unpack the assumption of user uniformity using user demographics.

Legal enforcement of copyrights entails benefits and costs. On the benefit side, it provides authors with an incentive to create, by securing to them the exclusive exploitation of their works. On the cost side, it reduces access to creative works, by endowing the author with a monopoly-like power. Optimally, copyrights would only be enforced against high value consumers (thus achieving the incentive rationale), but not against those with valuations lower than the market price (thus achieving the access rationale). In theory, allowing free access to those who cannot afford the market price would be efficient, as it would allow them access without sacrificing the author's incentive. In practice, however, this cannot be done because many who are willing and able to pay would masquerade as ones who are not, and authors have no crystal ball to reveal consumer valuation. Copyright enforcement thus makes sure that those who can pay would, realizing that the access cost is borne as a necessary evil.

Not necessarily so anymore, say Libson & Parchomovsky. Using data on the demographics of consumers of audio and video content, they show that certain cross-sections of users never enter the market. With regards to these users, it does not make a lot of sense to harshly enforce copyright law. Rather, treating infringement by these users leniently would have the benefit of increasing access to content without sacrificing incentives to the author, namely without the risk that otherwise paying users would masquerade as low-value ones.

To illustrate how this can be done, Libson and Parchomovsky use two data sets. First, they use data from the *Consumer Expenditure Survey* of the Bureau of Labor Statistics that give a general view of household consumption patterns. For example, they note that average household spending on online audio and video consumption varies considerably with household demographics, including income, age, race, education, marital status and geographical location. Second, they use panel data on online purchases of music and video of over 80,000 households. Various household demographics correlate with purchase decisions, including, most prominently, race and age. They report that about 1500 of the 80,000 households did not buy music and about 4500 did not buy video online.

Together, these datasets give a sense of certain user cross-sections that are highly unlikely to ever

purchase copyrighted content. For example, none of the 176 households that are southern, without a college degree, aged 24 years-old or younger, with income less than \$100,000, and are not African American purchased copyrighted audio content online in 2016. Also, none of the 72 households that are southern, without a college degree, aged 29 years-old or younger, with income less than \$100,000, and who are not African American purchased copyrighted video content online in 2016. Accordingly, under certain assumptions and caveats, the authors maintain that it would make sense to reduce the copyright liability of such households, and even exempt them from liability, because doing so would not disincentivize authors but would increase household—and so social—welfare.

Libson and Parchomovsky present their data as a proof of concept and suggest that much more could be done to optimize copyright policy if and when better data became available. But even with their data, the authors spell out three policy implications: the use of personalized consumption data can reduce the deadweight loss associated with copyright protection, copyright enforcement should be limited with regards to consumer demographics that are unlikely to purchase content, and that sanctions can be varied based upon user characteristics. This paper thus makes a novel contribution on its own, and opens up the way for further empirical investigation of users in IP.

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