Copyright Reform: Promoting Creativity or Corporate Welfare? A Present Value Analysis

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Abstract:

Recent extensions of the term of copyright have been explicitly promoted on the argument that longer terms create additional value to authors and creators, and will therefore incentivize additional creative activity. Critics suggest that the main value of the extensions, however, are to owners of older copyrighted works, who can now exploit them for additional periods.

This paper uses economic arguments to largely demolish proponent’s argument: finding that since the extension is well in the future, the present value of the extension is essentially nil, thus providing no rational basis for believing that it will encourage additional creativity. Further, the paper notes that extending the terms for older works can have no retroactive impact on supply, and actually incentivizes copyright holders to hoard information to protect its future value.

Finally, the paper makes some recommendations regarding how copyright policy should balance the rights of authors and those who create value through the use of intellectual property.
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A Present Value Analysis

With the emergence of what has been termed the Information Economy, there has been a greater emphasis placed on the value of information to both the modern economy and modern society, and thus on policies designed to protect and encourage such value. Copyright, as a key concept for the extension of enforceable legal and property rights to what is essentially an immaterial product (information), has been at the forefront of such policy debates. For most of the history of the United States, the predominant mechanisms for recognizing the value and utility of information as intellectual property, and for encouraging its creation, has been patent and copyright laws (Bettig 1996; Teeter & Le Duc, 1995). The basic rationale behind intellectual property rights was that, in an economically oriented society, the best way to encourage the creation of information is to ensure that those creators benefit economically from the creation and dissemination of their efforts. Both patent and copyright laws attempt to facilitate the return of economic benefits by granting legally enforceable property rights to information products, and providing legal mechanisms for enforcing those rights. Such information policies also took into consideration the idea that it is not only the creation of information that enriches society, but that the dissemination of information is also beneficial. Thus, both copyright and patent legislation initially included the idea that the essential information content of the good must be made available to the public, and that the duration of intellectual property rights was limited and finite.

In the U.S., copyright legislation has been revised substantially over the last quarter century, to extend both the term of the copyright, and to extend copyright protection to materials created and transmitted by newly developed media. While proponents argued that such extensions would benefit both creators and the public by encouraging the creation of new information products, critics argued that the proposed revisions significantly extended the intellectual property rights of copyright holders at the expense of public rights and the public welfare (Fujita, 1996; Litman, 1996; Samuelson, 1998). Some have suggested that the recent revisions reflect a somewhat disturbing general trend towards a greater emphasis on narrow individual property rights to intellectual property, an increasing commodification of information (Babe, 1995; Bettig, 1996; Schiller, 1989), and away from balancing private and social benefits. The central argument was not over whether such revisions benefited copyright owners, but as to the overall social cost of such benefits, for the increase in value to the owners must come at the expense of discouraging use. In essence, supporters made the argument that the benefits of the increased supply of information goods would outweigh any costs, while critics have worried that the combination of the direct costs to consumers and the social cost of reduced availability would outweigh any private gain in benefit.

Thus, most discussions of the appropriateness of copyright revisions as social policy hinged on the issue of the likely impact of the revisions on consumption. One must first question the primary assumption made in policy revision arguments, that the proposed revisions would, in fact, act to encourage the creation of

1 By increasing the value of copyrighted material, by one definition makes it more costly to prospective consumers. This makes it less likely to be acquired and used by consumers with limited resources, resulting in a decline in consumption.
information. If the revisions are not likely to significantly encourage further creative effort, then there can be no argument for the creation of additional social benefit, and the revisions must be viewed primarily as a mechanism for shifting value from users to owners. Second, even if there is an increase in creativity, will the increase yield a net gain in social value? That is, will the social value of the additional information outweigh the social loss in accessibility to existing information? This paper will examine both questions.

**Extending the scope of Copyright**

The extension to new forms of intellectual creativity and expressions may clearly fit in with the old emphasis on copyrights serving both the private and public interest. As these new forms and formats develop, there can be a valid state interest in encouraging their use and development, particularly under the argument that the production, dissemination, and utilization of information creates a general social benefit. The recognition of the social value of information, knowledge, and creative works underlay much of the early arguments for the creation of intellectual property rights. Thus, copyright and patent legislation emerged not merely to determine which group got to benefit from creative and inventive work, but because there was a general recognition that innovation and creation benefited society as a whole, and that intellectual property created value through its dissemination and use.

However, it soon became clear that information was not a typical economic good, and that it needed to be treated in a distinctive manner (Babe, 1995; Bates, 1988; Bettig, 1996; Laffont, 1989; Rescher, 1989). Trade in information products, unlike many physical products, was not a zero-sum transfer. The transfer of information does not deprive the seller of its value. Further, knowledge builds upon knowledge synergistically, and information aids the efficient functioning of markets and societies. The dissemination and utilization of information thus clearly creates value beyond the simple exchange, forming what could be called an ancillary aspect of value for information (Bates, 1988). Such ancillary value, which could accrue to both individuals and to society at large, occurred in ways beyond and outside of the standard market analysis. As such value largely accrues outside the market, it normally does not figure in many individual exchanges in the marketplace. Such ancillary values are, in the economist’s terms, externalities, and they are abundant in the information marketplace. While such externalities may not have been explicitly recognized in many information exchanges, there has long been an implicit recognition of the social value of knowledge, information, and creative works. The argument is made explicit in the U.S. constitution’s argument for the federal role in setting copyright and patent policy, and is implicit in state support for education and the arts. Intellectual property rights can be viewed as an attempt to deal with some of those externalities, to correct what might be market imperfections. Extending the scope of copyright coverage to new markets can be seen as an attempt to correct likely imperfections in emerging markets.

The extension of copyright protection to new media is likely to encourage the creation of new information products through those media. The granting of enforceable rights over a period of time allows copyright holders to extract value. If measured against a total lack of such rights, the added value is obvious and significant. However, in many cases, creators have sought to enforce rights in older media in newer formats. While this may have provided them with some expectation of value, and contributed to their decision to create the material originally, there was likely to be higher enforcement costs involved with the attempt to extend, judicially,
such rights, rather than those rights being explicitly granted legislatively. That is, a clear statement of extended rights is likely to be easier and cheaper to enforce than an inferred set of rights. Even if there could be a pre-existing expectation of value by arguing that property rights extended from one medium into another, the net value of those rights is enhanced by the explicit extension to new media. Thus, to the extent that there is value to such information, the extension of copyright to new forms of expression should act to encourage the creation of information goods in those forms.

There are two key presumptions in policy extensions of this type. First is that you are correcting rather than exacerbating market imperfections. Second is that the new emerging markets will be subject to the same type of market imperfections. Both presumptions may be problematic when applied to recent efforts at copyright extension. It has been widely argued that the emphasis on extension reflects more of an emphasis on extracting maximum private value than on a concern over maximizing social welfare. That is, that there is an emphasis on correcting only one form of market imperfection, perhaps while exacerbating another (Bates, 1999). To the extent that copyright revisions may tend to downplay or ignore the role of social value, and the benefits of information dissemination as well as information creation, they begin to further distort information markets. The combination of extensions of scope with extensions in length and stronger mechanisms for enforcement, two distorting mechanisms, does raise doubts as to the overall impact of attempts to extend the scope of copyright.

The overall efficacy of any policy extension will also depend on whether the policy will have the same impact in different contexts, i.e., whether the markets are the same. In the case of copyright, part of the argument in favor of extending the scope of copyright to digital media is based on the position that such media and media markets are in fact distinctly different from more traditional formats. It is, in fact, the fact that digital information products are even more ethereal or immaterial than traditional media (which while had immaterial information content, had to place that content in a physical format for dissemination) has triggered many of the copyright concerns in recent years. Because the new digital media can duplicate and disseminate information quickly and easily, copyright owners have argued for stronger legal rights and for the imposition of mechanisms to prohibit unlicensed copying and transmission. It is, in fact, the different market structure of new media that seems to be driving much of the concern for copyright extensions.

There is, therefore, an implicit recognition that the marketplaces differ, yet most intellectual property policy proposals seek to treat all forms of expression in an identical manner. Rather than correcting market imperfections, this will tend to create discrepancies between markets, and create a new type of market distortion and imperfection. As current policy reform efforts seem to be focussed on protecting copyright owner value, there has not been as much discussion of the possible differential impact of new media forms on the creation of ancillary and social value. Some work on the impact of new media forms, though, has emphasized

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2 Specifically, legislation aimed at increasing penalties for copyright infringement, or requiring anti-copying provisions in new media.

3 Digital electronic media, in particular, are seen as a particular “threat” to copyright holders because of its global nature, and because of the different cost structures of duplication and distribution. The Internet, for example, can make and distribute perfect copies of digital information at virtually no cost. The Web, in fact, uses that property as the basis for its operation. This differs significantly from older media forms, where the cost of duplication and distribution were barriers that fostered the ability to control the flow of information.
that they provide greater opportunity for knowledge dissemination and value creation, suggesting that the social value implications of information access in these media may be greater than those of traditional media. This would indicate that social policy for such new media should focus on encouraging information use rather than discouraging it by raising price and technical boundaries.

This raises an additional issue with extension of scope, as the added enforcement mechanisms contribute a new cost to the distribution of information, making it more costly to the consumer and thus less likely to be utilized. In extreme cases, the concern over protecting copyright in an electronic age by attempting to make it difficult to copy materials can delay the introduction of new media forms, and increase the costs of media and products, both of which will tend to slow down distribution and consumption, and the attendant creation of social value.

**Extending Copyright Length**

The fundamental argument behind extending the length of term of copyrights is that the value of the copyrighted material is enhanced, and by making it more valuable, encourages its production. Conceptually, this is simple and straightforward — basic economics indicates that more profitable goods are more likely to be produced. There is a downside to this argument, however. For the same basic economics tells us that increasing the value to the producer is the same as increasing the cost to the consumer, and that should decrease demand for (use of) the good. So in these simple terms, a copyright extension in time should increase the supply of information while reducing its use. From a political economic perspective, the extension of the term of copyright is simply a transfer of value from the public, who otherwise would benefit from being able to freely use material, to the copyright owner, who would continue to be able to extract value from its use. There are, of course ramifications to this transfer of value that make the consideration of impact more complex. One of the important ramifications is that the economics of information may not be a zero-sum game. In fact, the essential social policy basis of copyright is predicated on the presumption that it is not — that there is an additional, ancillary social value and benefit accruing from information exchange and use.

That is, of course, the central quandary behind the social policy perspective, for there is social value in both increasing supply and increasing demand for (use of) information products. Thus, a true social policy approach for copyright must balance between these contrasting values. Of course, a commercial (some would say corporate welfare) policy can ignore one side or the other of this equation, by placing its emphasis not on general social welfare, but on the welfare of one group over the other. This gets into a somewhat hazier grounds for public policy. The public argument used by proponents of the extension is that by extending the ability to extract further value, by increasing the returns to copyright holders, they are encouraging creativity. They tend not to speak much of the added costs that such added value incurs. They tend to ignore both the other side of the exchange as well as the impacts of the policy on overall social value.

A fair economic policy would need to consider the impacts of proposed policy changes on both sides, and see if the benefits outweigh the costs. A truly social policy would also be sure to consider the social benefits and costs, and perhaps even give them greater weight that private benefits. Of course, the uncertain nature of the value of information would make any precise cost-benefit analysis problematic. Still, while the concept of value for information may be imprecise and uncertain, one can acknowledge
general trends and components, and thus impacts, without having to
generate precise measures.

The Impact of Copyright Term Extensions on Creativity

In the sections above, this paper has raised questions regarding
the degree to which copyright revision proposals have considered all
of the implications of the extension of intellectual property rights.
Accepting the argument that extensions can provide additional
incentives to create and disseminate information goods and services,
we have raised questions as to whether the social value of those
additional goods and services outweigh the concomitant social costs
of decreased demand and consumption. In this section, we take the
analysis to the even more fundamental question of whether the
recent and proposed extensions of the length of copyright does, in
fact, significantly contribute to the incentive to produce additional
information goods and services.

There are several issues that can be raised with the simple
argument that increased long-term value necessarily equates with
increase incentive to produce. First, is that the recent copyright
extensions have been granted retroactively. That is, the new terms
are applied to both materials previously created and for those
created after the change. For such extensions, the argument that the
increased value encouraged creation retroactively is patently absurd.
Since the longer term, and supposed higher value, was not known at
the time of creation, those factors could not have affected the
decision to create information goods. Thus, the retroactive
extension to previously copyrighted material can only result in a
transfer of wealth from users to copyright holders.

Second, the argument presumes that the direct financial returns to
be garnered from an effective enforcement of property rights is the
only, or at least the main, motivation behind the creation of
information goods. While this may clearly be the case for some
goods, it may clearly not be the case for other information products.
For many forms of information, including much scholarly
information and almost all promotional and advertising information,
the indirect value of having that information used by others greatly
outweighs the any direct value coming from sales. In fact,
advertising and promotional information generally has a negative
revenue, as individuals and firms often pay to have that information
distributed. To the extent that copyright extensions may act to
reduce dissemination and use of such information, they are actually
reducing the value of the information to the creator. Further, it is
precisely that kind of information product that is most likely to also
have the greatest social value accruing from its utilization, and if the
extensions have the impact of reducing use, it will have a negative
impact on social value.

Third, it must be noted that current copyright law grants the
intellectual property rights to the copyright owner, which may or
may not be the actual creator of the information goods. For ease of
discussion, let us use the term “author” to refer to a creator, and
“publisher” to refer to an owner who has acquired rights from an
author. The question of whether an author will be able to extract
greater value from a publisher for extended copyright terms is
rendered moot when one realizes that the author can terminate any
transfer of copyright after a period of 35 years. Thus no publisher
can afford to consider, at the time of acquiring the copyright, any
potential value accruing after that time.

Fourth, the extension of terms encourages a shift in perspective
from creativity to the enforcement of existing rights. Let us start
from the point of a fixed, limited, term for intellectual property.

Because the copyright holder knows that there is only a limited period to extract value, it is in the copyright holder’s interest to attempt to maximize value over that period by maximizing the dissemination of the product. This incentive is reinforced by the tendency of the value of most information products to decline over time. Another reinforcing factor is the presence of “first sale” rights, which allow original consumers to resell information goods, possibly pre-empting later sales by the copyright holder. To get the most direct value from their creative efforts, copyright holders thus have an incentive to disseminate their products in a timely manner. To continue to generate value over time, the creator must continue to create. Limited short terms for intellectual property rights provide strong incentives to both produce and disseminate information products.

From that starting point, each extension in the term of intellectual property rights shifts the incentives from extracting value to protecting future value. Since there is a longer period, copyright owners become more concerned about protecting the value of their property, on the chance that new markets may arise, or that the product may develop a new higher value in the marketplace, providing them with new opportunities to extract value.\(^5\)

There are two implications arising from such a shift. First, if the copyright owners have a high expectation of future value, and the intellectual property system includes first sale rights\(^6\), then there may be a disincentive to distribute the good too widely and thus dilute value. Keeping the good relatively scarce can maximize per unit profitability. This incentive is reinforced by the high degree of uncertainty in the valuation of information goods. Since distribution may be costly, and the amount of demand uncertain, there is an incentive to initially under produce copies of information goods. (If successful, more can be produced later, yet if unsuccessful, there may be unrecoverable costs.) The second implication is that if the good does become valuable over time, that value provides incentives for the copyright holder to divert scarce resources into protecting that value through increased enforcement of property rights. Enforcement of legal rights is not costless—there is a real, and potentially substantial, cost involving in enforcing pricing and enforcement mechanisms. These costs must be born by someone, either by the copyright holder (reducing the net value of the product) or the consumer (increasing price and reducing demand). Enforcement costs are not likely to factor into consumer valuations, though, and thus demand for information products is likely to remain unchanged by such increases. Thus, enforcement costs are best seen as an added production cost. Since decisions whether to produce goods are based on total costs, and demand is likely to be unaffected, that means that fewer information goods are likely to be produced.

The implications are even more dire for intellectual property with lower or declining values. Here, there is even more incentive for the copyright holder to hold out for potential new revenue opportunities, rather than attempting to extract the last bit of value out of expiring rights. Perceptions of potential great future value, fed by the occasional anecdote of the re-discovered hit, may place undue emphasis on protecting and preserving hoped-for long-term property rights. Works whose value to consumers fails near or below production costs (including enforcement costs) are likely to be withdrawn from the market, to protect potential future value.

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\(^5\) The longer the term of the copyright, the greater the likelihood that there may be additional opportunities to extract value.

\(^6\) First sales rights refer to the rights of purchasers of information products to resell their copies at a later time.
Thus, the longer the life of intellectual property rights, the greater the incentive to delay or limit the dissemination of the information, in order to keep prices high and to maximize potential value. But keeping prices high and limiting dissemination both have negative impacts on the consumption and utilization of intellectual property that drives the creation of social value.

Finally, even if a case could be made that the decision to create information products is based on a rational consideration of the financial value of that good over a period of time, it must be recognized that there are, from an economic perspective, two further limitations to consider. First, there is the question of determining the value of information. As discussed below, it is particularly difficult to predict the value of information products in advance. Second, it must be recognized that the argument behind term extensions is the ability to continue to extract value over time, and thus any increase in value occurs at some future date. Not only is future value more uncertain (tastes can change), but it occurs in the future, and its impact on present perceptions of value (the decision to create) must be discounted. These limitations are at the heart of any policy argument, for increasing value is the foundation on which the argument for promoting creativity is based.

Determining Economic Value of Intellectual Property
First is the principle of uncertainty. In part due to the distinctive nature of information goods, it is extremely difficult to know or predict what the actual value of information is. Value may also accrue in a variety of ways, and a number of approaches to thinking about value have emerged over time; however, the most generally useful is the notion of utility. The utility value of a good or service is based on the concept that what makes a good valuable is its usefulness.

This raises the question of what makes information useful. Information is useful when it is used; when it entertains us, or provides information that influences decisions or actions. This emphasis on utility value also places an emphasis on making information available, on distributing content to consumers. For only by making information available for use can value be created. But as noted earlier (Bates, 1988; Noll, 1991; Rescher, 1989), the use of information can also impact others outside the direct exchange. The dissemination of information can create not only private value, but also can impact social value and social welfare.

The usefulness of a product can only be finally determined after its use. Now if a good has a consistent value over a variety of uses, or across time, then a fairly accurate estimation of its value can be made. If we know with a fair degree of certainty what it is, and how it is useful, then we can accurately predict its utility value. However, it is difficult to know what an information good is, or how it might be useful, without knowing what the specific information is, and one only knows that after the exchange. The utility and impact of information is too uncertain, and too variable across contexts, to make reasonably reliable predictions of value. The value of information must remain fuzzy. This makes it very difficult to argue for a fully rational determination of value in any precise manner. Small changes in perceived value are likely to fall well within the natural margin of error in rational estimations, and thus should not have a significant impact on motivating production.

Second, the extension of copyright terms over time only permits the copyright holder to continue to extract value over some future period. Thus, it increases future earnings, and what needs to be considered is what those future earnings are worth at the time the decision is made. That is, the rational decision on whether to expend resources to create information products, as opposed to some
other use of those resources, is based on the relative attractiveness of
alternatives at that time, on the embodied value of the choices
offered. There is a commonly accepted financial concept designed
to deal with this: present value. It is, like most economic concepts, a
bit of simplification.

Present value analysis recognizes that future financial returns
(money) are not as valuable today, because they haven’t happened
yet. There is a discounting applied, based on the argument that there
are alternatives to gaining that future return. Present value
calculations make the argument that the present value of future
money is basically the amount you would have to invest today to
have it be worth that amount at that point in the future. In other
words, the present value of $100 five years from now is equal to
how much money you’d have to invest today, to have it be worth
$100 in five years at a normal rate of return. In terms of the
motivation of creativity argument, it’s a question of the investment
of resources. As an author, I am spending time and money now to
create an information product, in the hopes that I will receive some
value in the future from that product. I could just as easily spend
that time and money investing in the stock market or in government
bonds. And if the return from the creative activity is less than the
return from the alternative, then the rational argument would be for
the alternative.

Thus, for future returns to have an impact on the rational decision
to produce information goods and services, not only must there be
some future returns, but those future returns must be greater than
could be easily achieved through alternative investments. Thus,
they must be based on the discounted present value of the future
returns. And that figure will depend both on the expected rate of
inflation, the cost of money or the rate of return of alternative
investments (combined, they are termed the discount rate), and the
amount of time in the future. And as one might expect, the further
in the future the return, the less the current present value.
Commonly, present value projections for financial purposes rarely
exceed 15-20 years for two reasons. First, projections about both
the future financial returns and the future cost of money become
increasingly unreliable over time. Second, the present value of
future returns declines in an exponential manner, and over a long
period often becomes inconsequential, particularly with high
discount rates.

This should raise a cautionary note among policy-makers to
begin with. How can they ascribe to individuals a course of action
which their own financial and tax agencies would consider
imprudent or excessive. Yet, in essence, that is the argument being
made in the recent extension proposals, where the extension occurs
some 75 years in the future.

Calculating Present Value

The impact of an extension in the life of enforceable intellectual
property rights (a copyright), in a rational analysis, can be defined as
the present value of the additional revenue generated over the term
of the extension. As discussed above, there is a great deal of
uncertainty over the value of information products, and the
reliability of the predictions of value and rates of return used in
long-term present value analysis. One serious shortcoming is that
recent revisions have shifted the term of a copyright from a definite
time period to an unknown length (lifetime plus 95 years). Another
is the indeterminacy of future value and the fact that for many
information goods, there is value in novelty (that is, the tendency
that value will decline over time and/or with use). Finally, there is
uncertainty over the rate of return to be used.
We can, however, perform some general analyses using a set of simplified presumptions, a sort of best-case scenario. To resolve the indefinite term issue, we can use the fixed length term used for works for hire. To resolve the issue of indeterminate value, we will make the simplifying assumption of a constant return over the term, and examine the changes as a proportion of total value. Because of the novelty factor, most information goods will decline in value over time; thus the assumption of constant returns should provide an optimistic estimate of present value. To resolve the issue of rate of return, we will use a low-end estimate of 5% (fair market valuations tend to use the current prime lending rate, which has rarely dropped below 5% in recent years, as a basis for determining the discount rate). The use of such a low projected rate will tend to maximize present value calculations. We will also compute at a more typical discount rate of 10% for comparison.

Table 1 provides these optimal calculations for the range of copyright extensions provided in various copyright revisions over the years. The numbers reflect the present value of a constant return of $1000 per year. Calculations were made based on the original 14 year life for copyrights, the addition of a 14 year extension (28 years total), the 1909 extension for a total of 56 years, the 1976 Act’s corporate author 75 year limit, and the 1998 extension to 95 years for corporate authors. Calculations were made using the Present Value function in Microsoft Excel. As the table shows, there was the potential for considerable gain (under this favorable set of circumstances) in the present value with earlier extensions of the length of copyright. However, even under such favorable conditions, the most recent extensions showed only modest and minimal gains in present value.

Interpretation
This paper has demonstrated that the arguments for copyright reform by extension are problematic at best. Regardless of whether proponents wish to address intellectual property rights policy as social policy, copyright and patent law clearly is social policy. The presence of social value in information and knowledge means that any policy impacting on the production and distribution of intellectual policy will have clear and important social impacts. Thus, one must examine such policy, and policy proposals from a social perspective. There are several arguments used by proponents, most of which were made in terms of protecting and enhancing the ability to extract value for intellectual property through a variety of extensions of intellectual property rights. To the extent that proponents addressed social aspects, it was largely done either through an argument of “fairness” or that such increases in value would lead to increased production and dissemination of intellectual property.

The “fairness” argument is based largely on comparisons with other countries, or with the appeal that it is only fair for creators to be able to extract every penny of value for themselves and their...
heirs. Neither considers the impact of such “fairness” on other parties or on society. A similar argument might be that since some television stations earn a 50% profit margin, that every media outlet should be made to make that kind of profit. Or that since some countries cut off the hands of thieves, or allow men to divorce their wives by acclamation, that its “only fair” that we do the same. The fairness appeal is not an appeal for social policy, but for corrective redistribution of value. And that redistribution can come only at the expense of the consuming public.

The only social policy argument generally made was that this increase in value would serve the public interest because it would lead to the creation of more intellectual property. If looked at simply, this is somewhat self-evident. However, it does also ignore the question of at what cost does this greater creativity come. An equally simplistic consequence is that this would come at the cost of a decline in consumption of information goods and services. If increasing value increases production, then increasing cost (the increase in value must come from somewhere) will decrease consumption. In such an argument, we get more information, but are likely to use it less. What is the net social impact? Since social value comes not from creation, but from the use of information, policy should favor use over creation, but the impact on use has generally been ignored.

Further, if you go beyond the simple argument to look at the impact of specific types of copyright reform proposals, as was done in this paper, you see that questions arise as to the validity of even that basic argument. Even the most generally socially favorable reforms, the extension of intellectual property rights to new media, may be problematic in that the drive to protect value has ignored some important distinctions of different media marketplaces. Worse, in driving to protect and enforce those rights, some policy has slowed the development of new media forms, and imposed high enforcement costs that can only further reduce utilization and consumption of information products.

The attempts to extend the length of copyright protection are even more problematic. In the above analysis, we showed that even if the extensions encouraged the production of more intellectual property, such extensions were also likely to discourage dissemination and utilization of the information. It was likely that the decrease would be even larger, because the additional costs of enforcement would need to be added in, and copyright owners might well reduce availability to protect the potential of future returns. Thus, even if the basic argument of increased production was valid, policymakers, if they are truly concerned with social policy, need to weigh those arguments against the potential costs and negative impacts.

Yet the argument that extensions enhance creativity can not be taken at face value in these cases. We showed above that there were several factors which might limit the degree to which adding value might encourage productivity. In particular, the arguments and the present value analysis showed that very long-term extensions had little viable impact on the decision to create intellectual property. Because the most recent efforts to extend the length of enforceable property rights to information through copyright essentially failed in their own arguments that the extensions are socially beneficial, they must be seen as a cynical attempt to benefit one specific group, copyright holders, at the expense of another, the users of copyrighted materials.

Perhaps the most telling argument against the proponents of copyright extensions is their unwillingness to apply the same arguments to the other intellectual property policy—patents. In the case of patents, there seems to be a greater recognition that the
greatest contribution of information to social value comes from the ability to build upon prior knowledge in creating new knowledge, and not in the extracting of maximum value from existing knowledge.

**Recommendations**

Policy makers should recognize and separate the notion of authorship from the ability to extract value. The moral rights of creators should be protected in terms of permanently recognizing and acknowledging authorship, and providing mechanisms for creators to have some say with what is done with their work, at least during their lifetime. On the other hand, policy makers should rethink the current focus on protecting and maximizing private property rights to information. Such property rights should be extended to the degree that they encourage creativity and enhance distribution of information goods. But it should be recognized that there are attendant costs to such policy. First, that those private benefits (plus enforcement costs) are a true cost of information to its users. Second, that there is a public and social benefit to the use and distribution of information goods. Copyright policy in the public interest (as opposed to corporate or private interests) must seek to balance the contributions of a property rights system to the encouragement of the creation and distribution of information, with the public and social benefits to be gained from the use of such information.

Intellectual property rights must also be considered to exist in the intellectual property itself, and not in its means of distribution. This will avoid some of the concerns about new media. A novel’s intellectual property rights should apply to all forms of dissemination, whether through printed book or electrons on a screen.

Policy should, however, be careful to distinguish between the truly new, and the manipulated. The social value component of information comes primarily from the continuing efforts to create and disseminate new knowledge and art, and not from re-packaging existing information in new ways. The pressure to spread the copyright umbrella over types of information not previously protected (collections of facts, government documents) should be resisted. The extension of full intellectual property rights to new versions of existing information will act to shift resources from creativity to manipulation.

Policy will need to recognize the social benefit of continued dissemination of information that is no longer commercially viable. Access to such information has been disrupted as the flow of materials into the public domain has been temporarily brought to a halt. Since knowledge builds on knowledge, even marginally used information may have significant social benefits.

From the above analysis, it would seem that our founding fathers got it right when they created a fixed and limited term for exclusive intellectual property rights. There can be debate over what is the proper length of that term. The present value analysis suggests that for most information goods, there is not likely to be a significant contribution to present value for terms longer than about 50 years, even under the most optimistic projections. Further, for information goods of modest value, it would seem likely that long terms would keep them out of the marketplace for extended periods. It would be worth reconsidering a return to shorter, but renewable terms as the basic policy. Those copyrighted materials which do prove valuable could be renewed, while works of more marginal commercial value would be made available at an earlier date.
Policy makers should seek to restore the delicate balance between the social value of information and the incentives for its creation and dissemination.

References


Table 1. Present Value under Favorable conditions

<table>
<thead>
<tr>
<th>Length</th>
<th>14 yrs</th>
<th>28 yrs</th>
<th>56 yrs</th>
<th>75 yrs</th>
<th>95 yrs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Present Value</td>
<td>9898.64</td>
<td>14898.12</td>
<td>18698.54</td>
<td>19484.97</td>
<td>19805.89</td>
</tr>
<tr>
<td>Gain from Extension</td>
<td>50.1%</td>
<td>25.5%</td>
<td>4.2%</td>
<td>1.6%</td>
<td></td>
</tr>
</tbody>
</table>

Table 2. Present Value under constant return and normal discount

<table>
<thead>
<tr>
<th>Length</th>
<th>14 yrs</th>
<th>28 yrs</th>
<th>56 yrs</th>
<th>75 yrs</th>
<th>95 yrs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Present Value</td>
<td>7366.69</td>
<td>9306.57</td>
<td>9951.91</td>
<td>9992.14</td>
<td>9998.83</td>
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<tr>
<td>Gain from Extension</td>
<td>26.3%</td>
<td>6.9%</td>
<td>0.4%</td>
<td>0.006%</td>
<td></td>
</tr>
</tbody>
</table>