Global reuse & adaptation in creative industries

Three further arguments against intellectual property based on lessons from China

Lucy Montgomery & Jason Potts
CCi (London)
General theme of this talk…

IP is broken

• So let’s now think about some useful ways we might help break it further
• Knowledge growth in CI is an evolutionary process

• IP as an environmental factor in evolution of industries

• If evolutionary, then an open system model likely

• China as an interesting case study
China

1. Weak CR in China, but still developing CI
2. Music: structural differences:
   1. less physical product
   2. more services
3. Blurry definitions of sectors: music vs. telcos vs. ISP vs. broadcast vs. advertising
Some debates in IP law

- IP in general vs. copyright in particular
- van Schijndel & Smiers (2005): ‘imagine a world without copyright…’
- Vaidhainathan (2003): ‘cultural diversity and artistic practice…’
- Ongoing problems with Western-style copyright systems in the developing world & critiques of cultural imperialism

ARTS, CULTURE, IDENTITY, DIVERSITY, LOCAL & GLOBAL
Economics of intellectual property

• nonrivalrous ideas under PC = 0 supply

• Boldrin and Levine (2008): intellectual property vs. *intellectual monopoly*

INCENTIVES, MARKET FAILURE, MONOPOLY
The problem with IP in CIs

- Restrictive nature of copyright in a digital world
- Instead: GPL, CC, FLOSS, etc…
- All weaker … but still lawyerly solutions
- Separation of amateur & commercial activity…?
- Moral campaigns really no better

- Problem of reuse & systematic violation & transaction costs & ‘just stop me’ & why not …
- Law does not relate to how we actually create & protect…
However…

Three further aspects of the practical weakness of IP as exemplified by CIs

1. Global
2. Reuse
3. Business model adaptation

(in China)
IP in the CIs is a global game

• CIs are global, yet law is national
• Leads to game of ‘play’ cooperate locally, but defect globally
• Dominant strategy is to act ‘as if’ IP weak everywhere
• Thus IP may not matter in global business strategy
Credibility signalling in international treaties: Is IP all just a game?

- IP is an effective gambit to signal commitment to other global treaties (trade, security, etc)
- Observable, politically labile, lobby friendly, bilateral
- The higher the **cost** to law & economy, the better it works **as a gambit**
- Yet CIs pay the price. This is reckless in ‘growth of knowledge’ context
Creativity & value from re-use

- new ideas vs. re-use of ideas: which creates most value?
- IP vs. intellectual monopoly
- $H_0$: Value of re-use dominant in the CIs

<table>
<thead>
<tr>
<th>Public &amp; private gains</th>
<th>Other industry gains</th>
</tr>
</thead>
<tbody>
<tr>
<td>Entrepreneurial gains</td>
<td>Consumer gains</td>
</tr>
</tbody>
</table>
Business models adapt to legal systems

- IP is weak in China, so business models adapt
  ‘IP rights and industry evolution’ Lampel, Bhalla & Pushkar (yesterday)

- China - are alternative models for industry development possible?

- … Creative Industries may just look different

  & that may mean evolution, not regression
Conclusion

1. Importance of these 3 further factors in IP law debate & especially copyright

2. CIs as special, but illustrative case

3. China as bellwether?

A broken IP system might be improved by breaking it further
Along that path lies business adaptation & institutional co-evolution
**disclaimer**

- All ideas are provisionally tentative (awaiting filing) and speculative (under EU law of regular speculative content) and probably wrong (not for legal purposes) and certainly not someone else’s, even though they probably are. Although we assert that they are not. Yet they are.
- All arguments only apply to copyright in specific and not IP in general, including, in particular, Patents or Patents Pending in the US, any US Territories, or in EU nations, although not in the Solomon Islands or in Las Vegas. We respect that no animals should hold a patent.
- No business were deliberately harmed in the making of this research. Some were deliberately targeted. Although by ‘targeted’ we mean that in a statistical way. By statistical way we do not infringe upon the recognised religion ‘The Statistical Way’ but refer only to common usage.
- All rights to broadcast, film and TV relating to this paper are sole ownership of the PowerPoint medium and PowerPoint affiliates. All respective responsibility of PowerPoint and MS are hereby categorically denied with respect to any speculative ideas and William Gates did not personally authorise this production, although he does have nice hair for a 53 year old.
- We acknowledge that by the phrase ‘China’ we refer only to a small number of businesses an certainly not to every business in ‘China’™ but only to an improbably small statistical sample.
- Any accusations to ‘political or lawyer activity in pursuit of rent seeking’ were not meant to refer to any actual, past of future lawyers or politicians, both of whom practise a fine and valuable profession, but only to the ‘idea’ of a hypothetical activity which may or may not exist in any known space-time continuum, and certainly not here on this fine earth where we really can figure things out for ourselves eventually and where we all hope things should not be this complex.