Copyright Extremophiles: Do Creative Industries Thrive or Just Survive in China’s High Piracy Environment?

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Abstract

Does copyright piracy actually benefit creators and the creative industries in China? Recent scholarship suggests that rampant piracy might result in no net social loss in China or might even produce net social benefits. This trend tracks a broader trend in intellectual property scholarship expressing skepticism about the benefits of exclusive intellectual property rights and emphasizing the importance of public access to knowledge and the cumulative nature of innovation.

Some scholars point to China’s creative industries as an example of how creativity persists and can even flourish in a notoriously weak copyright enforcement environment. Although China is rife with copyright piracy, it has become the second largest box office in the world with film production quantitatively on par with Hollywood. China’s music industry is disproportionately small given the large population and enormous popularity of online music, but the industry has not collapsed. People still write and produce music, and some superstars even earn millions of dollars from alternative revenue streams such as concerts, corporate events, and sponsorships. All of this has significant implications for copyright theory and policy, even beyond China. If creative industries can survive in China’s high piracy environment, perhaps copyright is unnecessary to stimulate the production of new works or to sustain creative industries.

This Article tests five hypotheses about favorable effects of piracy on China’s creators, creative industries, and Chinese society. It concludes that the evidence from China’s creative industries shows each of these hypotheses to be lacking. To the extent that China is used to make a general point about the value of copyright, this Article should provide some counterweight to the argument that weak copyright enforcement does not result in substantial harms.