

Local Language Limitations: Copyright and the Commons

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Copyright's system of financial incentives is working well to encourage publishing in some languages, such as English and French, but not in all languages. The law should recognize this reality, and adjust the rules of copyright protection accordingly, creating different regulatory structures for different languages. Smaller markets will require different regulatory structures to unleash their publishing potential—particularly in those languages where the readers are very poor. This article suggests that this tailoring can be achieved through the use of "local language limitations" to copyright protection. According to this proposal, a national legislature identifies one or more specific local languages as underserved by the publishing industry. It then enacts a statutory limitation on copyright protection, which creates a bounded commons for material in those languages. By enabling permissionless translation, adaptation, and reproduction, local language limitations will drive down the cost of works in those languages to prices that are affordable to the very poor, while creating legal room for lower-cost translation and distribution models. This approach has four novel virtues. First, it takes advantage of language barriers to promote access for disadvantaged readers, without reducing the protection afforded to authors and publishers in more profitable markets. Second, it illustrates the potential of innovative, syncretic approaches that leverage virtues of both commons-based and copyright-based production. Third, it promotes reform of copyright law at the domestic level, rather than at the international level, where developing countries have power. Fourth, it enables "copyright experimentalism," making it possible for researchers and policy makers to draw empirical lessons about the impact of copyright law on creativity based on real-world experience. The Article first introduces the problem of neglected languages of publishing and explains why there are good reasons to believe that loosening copyright rules will, in certain contexts, result in greater creativity as well as broader access. It then explains the proposal for local language limitations, exploring variations on the approach, identifying potential pitfalls, responding to objections, and recommending best practices. Finally, the article discusses the compatibility of local language limitations with international treaties on intellectual property and human rights.

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