Signaling Intent to Share Intellectual Property

This Article is about shyness and intellectual property, and how shyness might be overcome to facilitate economic gains through the sharing of intellectual property.

Roughly speaking, there are two reasons copyrighted works are created. The first reason is money. Some copyrighted works are created because of the anticipation of a monetary reward, which can be appropriated thanks to the exclusive rights granted by copyright law. The second reason is "just because." Some copyrighted works - undoubtedly the vast majority - are created as a natural consequence of people doing whatever it is that they otherwise do - writing, taking photos, etc. - and the potential of a monetary reward garnered through copyright law is irrelevant for them. With the rise of digital technologies, the number of "just because" works is growing at a rapidly accelerating pace. For instance, millions of photographs are taken every day. Only a relative handful are taken because of the incentive provided by copyright law. Yet the protection of copyright law adheres automatically to all copyrightable works upon the instant of their creation. Thus, most copyrighted works are "extra" ones - at least from the perspective of the incentive theory of copyright law. These extra-type copyrighted works represent potential economic wealth that is squandered by the overbreadth of monopoly protection created by copyright law.

A regime of increased sharing of intellectual property offers the potential to reverse much this waste. Three economic characteristics shared by many extra-type works combine to create this opportunity. First, copyrighted works are generally non-rivalrous - a person may permit others to use the works without losing the utility of the works for him- or herself. Second, many works exhibit what I call the "outport effect." The outport effect is the economic gain that comes from the fact that many works are simultaneously cheap to produce as a target of opportunity, but expensive to produce as a target of intention. For example, a photograph of a rainbow at sunset over a Hawaiian beach may be nearly effortless to capture for a person who happens to be on the beach with a camera. But for a person in New York who has the need for using the image, undertaking the production of such a photograph by oneself would likely be prohibitively expensive. Third, for many copyrighted works, sharing is likely to be the most economically efficient mode of distribution - as opposed to market transactions or hierarchical coordination - because of specific economic characteristics inherent to such works.

Despite the potential for sharing, there are barriers to sharing transactions. Specifically, potential users of works may be shy about asking permission to use copyrighted works without payment, and potential sharers of works may be reluctant to irrevocably surrender copyright entitlements in advance of knowing how their works might be used. This Article proposes a semiotic solution for overcoming such barriers - a customary way of signaling intent to share intellectual property. The standardized invitation encourages inquiries about gratis permissions, overcoming shyness of potential users, while at the same time allowing sharers to retain copyright entitlements, thus alleviating worries of unfair-advantage taking. The proposed scheme is called "konomark."

Beyond the creation of economic wealth, such a sharing regime may also yield cultural and social gains, increasing the creative power of individuals, and promoting connections among people with intersecting interests.