

ROUTLEDGE RESEARCH IN INTELLECTUAL PROPERTY

# Copyright Industries and the Impact of Creative Destruction

Copyright expansion and the publishing  
industry

Jiabo Liu

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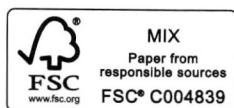
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# Copyright Industries and the Impact of Creative Destruction

This book examines the relationship between the legal extension of copyright duration as an enduring means of copyright protection and the growth of the UK book publishing industry as a typical creative industry reliant on copyright. The book draws on Schumpeter's theory of creative destruction to analyse the implications of copyright law and policy on the book industry, in order to illustrate the dynamic interaction between copyright expansion and the growth of the creative industries. The book reviews the historical development of UK copyright expansion as well as considering copyright in the digital age. It explores the legal and economic concerns about copyright protection in general, and the expansion of copyright duration in particular. Using an innovative empirical method it explores whether the expansion of the duration of copyright promotes or precludes the growth of the book publishing industry. It goes on to suggest changes to copyright policy that would have an impact on the economics of innovation in the creative industries.

This book will be of particular interest to scholars and students of Intellectual Property Law.

**Jiabo Liu** is Assistant Professor at Mississippi Valley State University, USA.

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Copyright expansion and the publishing industry

*Jiabo Liu*

To my mother and father, who give me strength and confidence

And Xinyan, my wife, who loves and directs me in all aspects of my life

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# Foreword

This book has been many years in preparation. It is the fruit of several years of discussion between Jiabo and me during his studies for his PhD in Law at the LSE. It is a book that for many reasons I imagined may never quite come to fruition and thus I am extremely pleased to be writing this foreword to the published edition. My doubts about this project never related to Jiabo's talents or drive, they were related instead to the unique nature of Jiabo's thesis and the investigation of it. The study of the nexus of law and economics is driven by a few basic assumptions and schools. Dominant among them is, of course, the Chicago School of neoclassical law and economics and at its heart the Coase Theorem as applied to legal transactions: the pursuit of efficiency becomes the root of legal foundations. Particularly badly served from within this School is the Law of Intellectual Property, and in particular Copyright Law. It is not the place of a foreword to disagree with the standing of classic works such as *The Economic Structure of Intellectual Property Law* by William M. Landes and Richard A. Posner but if I may point out a weakness of this work, common to almost all works in the field, the authors start from some basic principles, primarily that intellectual property law does encourage investment in innovation and the arts, and then examine how to make it most efficiently serve those ends through the application of secondary resources and available statistics. This I may term is the Chicago Orthodox approach to the study of the economics of intellectual property law. Alternate approaches are developing, including Lawrence Lessig's 'New Chicago School' and Neil Netanel's critical approach. This text departs from the traditional legal analysis by taking questioning these underlying assumptions, in the style of Lessig and Netanel, but by reference to original data analysis. By removing assumptions about the efficiency or otherwise of copyright law the author allows himself to critically examine both the role of copyright and copyright law to one sector of the copyright industries, the book publishing industry, using the experiences of the UK book publishing industry during a thirty year period 1976-2006. In so doing Jiabo gives us a unique insight into how major changes in copyright law affect the industry which is so reliant upon it for its business models. The period studied includes at least two major disruptive events in UK copyright law – the passing of the Copyright, Designs

and Patents Act 1988 and the extension of the period of copyright protection via the Duration of Copyright and Rights in Performances Regulations 1995. These are seen as major disruptive events, events of natural copyright expansion and are generally seen in the orthodox literature as being of benefit to the copyright industries, including the book publishing industry

Jiabo's work though starts with few assumptions. He assumes, by taking a Schumpeterian approach that the copyright industries will develop through processes of development and destruction. From this viewpoint a new perspective on the efficiency of copyright law develops – is it a tool to encourage investment in creative outputs, or is it a defence mechanism which inefficiently is used to protect entrenched interests against the march of technology or markets through continual expansion of the portfolio of rights possessed by the entrenched industry representatives? Jiabo analyses the development of the UK book publishing industry throughout the thirty years of his survey sample, and though key events such as those mentioned above to test these opposing thesis. Do the established players of the industry invest further following periods of copyright expansion? Does copyright expansion prevent (or at least delay) innovation or 'creative destruction'? For the first time full industry data is examined to divine an answer to these questions. This is research led thinking not orthodoxy clothed in the data which best establishes the author's point of view. This to me is the key contribution of this work. I have sat for several hours discussing with Jiabo what he expected to find. He did have expectations, but he clearly was not bound by them. What, I asked, if the data departs from your expectations – 'then clearly I need to refocus' was the answer. I'm not going to give away the final results of his investigations but I will say the data told a story different from the one Jiabo first discussed in my office in London in autumn 2005.

This book should be the first of a new body of literature: one where lawyers discussing the economics of any area of law are held by the same standards of rigorous independent data analysis as economists. Further, it is time lawyers and economists talked about this more freely between the disciplines. This is a book which will appeal to both.

The book is a testament to Jiabo's drive and commitment to the project. We spent several years working on this jointly as supervisor and supervisee. Commitments at home meant Jiabo was often several thousands of miles (and several time zones) away not only from me but from the sources of his data. Despite challenges which would have led other candidates to reconsider the project Jiabo remained positive and committed. This book is the fruition of his energy and commitment.

Andrew Murray, Professor of Law, LSE

# Preface

This book originated with my doctoral study in law at the London School of Economics. Even before the central topic of my PhD thesis was finalised, I was already excited about what I was pursuing. In an institute where Schumpeter, Popper, and Coase studied or taught (or both), I felt fortunate to trace their paths and to enhance their perspectives for exploring the present world of intellectual property rights in general, and copyright in particular. Eventually, when adapting my PhD thesis into a book, I felt relaxed in explaining the features of the book.

This book addresses the broad issues regarding (but not limited to) the relationship between copyright expansion and the growth of copyright or creative industries under the forces of creative destruction. A variety of audiences, such as professors, postgraduate students, entrepreneurs, practitioners, or policy-makers in the copyright or creative industries, or whoever may develop stakes in copyright, intellectual property rights, or 'law and economics' in general, may find their concerns being explored in one way or another in the book. Of course, facing such a diverse readership, this book cannot examine their wide concerns in a way that suits everyone. What the author can do is to place the issues or concerns, from promising research devices to practical policy advice, into perspective and to represent the meanings and insights behind these specific issues or concerns.

The research in this book is designed as a classic econometric analysis of the relationship between copyright expansion in duration and the growth of the UK book publishing industry as a typical copyright industry and as the cradle of modern copyright law under Schumpeter's framework. The research sticks to Popper's scheme of scientific discovery.<sup>1</sup> Certainly, scientific research had advanced before Popper's scheme. Nevertheless, it was Popper who redefined the classical process of scientific discovery and reinforced the vitality of theoretical construction and clarification for empirical assessment as the key component of scientific research. Following Popper's path, unlike many existing empirical researches that focus heavily on the quantitative section, this book instead accentuates theoretical construction and clarification before conducting empirical assessment. To rephrase Schumpeter's words, this book is 'a theoretical, historical and statistical analysis'<sup>2</sup> of the central subject.

Perhaps I should appreciate the British-style doctoral thesis for its advantage in systematically endorsing a theoretical exploration, historical enquiry, and empirical assessment of these specific issues.

As the 'spirit of informationalism', which analogises Max Weber's vision of the 'spirit of capitalism',<sup>3</sup> Schumpeter's vision of creative destruction is more relevant than ever in the new economy of the twenty-first century.<sup>4</sup> Without Schumpeter's direction, the studies of legal issues, growth issues, and business strategies in all information industries reliant on intellectual property rights would lose more inspiring perspectives and visionary prospects. Once upon a time, Schumpeter categorised the role he played in his academic world was to 'open doors'.<sup>5</sup> This book not only draws on Schumpeter's theory of creative destruction to analyse the implications of copyright law and policy on the book publishing industry, but also models Schumpeter's role to 'open doors' for future empirical research and policy analysis in the large field of intellectual property rights from more diverse perspectives of law and economics.

## Notes

- 1 K. Popper, *The Logic of Scientific Discovery*, London: Hutchinson, 1959. *Conjectures and Refutations: The Growth of Scientific Knowledge*, London: Routledge & Kegan Paul, 1963.
- 2 The subtitle of Joseph Schumpeter's *Business Cycles: A Theoretical, Historical, and Statistical Analysis of the Capitalist Process* 2 volumes, New York: McGraw-Hill, 1939.
- 3 M. Castells, *The Rising of the Network Society* 2nd edn, Malden, MA: Blackwell, 2000, p. 215.
- 4 T. McCraw, *Prophet of Innovation: Joseph Schumpeter and Creative Destruction*, Harvard University Press, 2007, pp. 495–503.
- 5 Ibid, p. 203.

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This book is adapted from my PhD thesis. I should like to express my profound gratitude to all who supported, encouraged, advised, and assisted me in the whole process of my researching and writing. First and foremost, I would like to thank my doctoral supervisor, Professor Andrew Murray at the London School of Economics, who generously offered me his cerebral suggestions, comments, and advice for researching my thesis and writing this book. His professional supervision directed and challenged me to engage in an ever-improving research project. Without his instructions, my thesis and this book would not have been possible.

When proposing the research design for my PhD thesis, many exceptional faculty members at the London School of Economics provided their valuable advice and comments. Colin Scott, Anne Barron, and Dev Gangjee in the Law Department offered their generous suggestions and comments. They upgraded my research design to a higher and more practical level. Meanwhile, at the early stage of my research, when I still felt somewhat uncertain about the research topic and design, the endorsement and advice of Professor Danny Quah in the Economics Department encouraged me to continue my efforts.

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My infinite debt is to my wife, Xinyan Jiang. Her intelligence, care, and love inspire me to think deeply and encourage me to accomplish everything I would not have thought possible myself. Without her inspiration, encouragement, and support, I would not find my way in all aspects of my life.

I remember with appreciation Professor Baoyinhuriyakeqi (Baoyin Chen), my former supervisor at Peking University Law School, who guided me into law's empire. His long list of readings was my first roadmap for exploring the field of law. His legacy of sincerity and talent still heartens me.

No matter how many people I may still fail to mention when expressing my thanks, my gratitude to my parents can never be forgotten. During my early years, when China was still isolated from the West, my parents told me that, besides Beijing, there were other large cities in the world such as Moscow, Paris, New York, and London. They rarely provided me with formal knowledge but always gave me confidence and encouraged me to do the right and best thing all the time. Today they are watching me doing my best abroad.

Of course, I am fully responsible for all errors or deficiencies. All the feedback, encouragement, suggestions, comments, and advice from others can only reduce those errors or deficiencies.

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