

What Drives IP without IP?

A Study of the Online Adult Entertainment Industry

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Research question:

What factors outside of intellectual property protection are sustaining content production in the online adult entertainment industry?

The common argument for copyright protection is the utilitarian theory of incentivizing artistic production. Existing copyright policy has so far been based largely on abstract economic theory. Currently, there is a trend of industry-specific studies that assess the relationship between intellectual property (IP) and creation incentives in individual markets in practice. Many of these derive results that deviate from the predictions of traditional theory, indicating that a bottom-up approach could prove useful in helping to optimize IP and innovation policy. Generally, these studies focus on creation incentives in areas where formal IP-protection is not available (or undesirable) to innovators.¹ This project aims to make an important contribution to this literature by analyzing an industry where IP protection has been available, yet nearly unenforceable over the past two decades.

Although no reliable data exists on its exact size, it is fair to say that the online adult entertainment industry (OAEI) is of considerable economic and social importance. Just like in other entertainment sectors, the digital age has posed an increasing problem for the traditional business models of content producers. Copyright enforcement for adult material has been especially direly affected by unauthorized distribution of digital content. One reason is that users are induced by privacy concerns to choose free, pirated content over using traceable payment methods. Also, litigation is often too difficult and costly for producers. However, while some traditional industry participants are financially struggling, there is also indication that content production will continue to thrive, in one form or another.

The past decade has seen a number of innovative new business models in the OAEI, many of which effectively change the purchased product into an ‘experience

¹ Medical research, open-source software, fashion, culinary art, stage performance, etc.

good' that cannot be copied as easily as digital photos or video. Examples include live chat, high-quality streaming technology, "interactive porn", and service-based subscription packages. Interestingly, many continue to produce traditional content and then exploit the piracy thereof for marketing purposes, using it to increase traffic to their site and attract new customers.² The OAEI also began delving into online advertisement techniques as early as two decades ago, successfully generating additional sources of income. Major players in the non-adult entertainment industries have argued that advertisement revenue could never cover the production costs of quality movies and music. But these costs have always been comparatively lower for adult entertainment production, even at times when IP was protected. Consumers appear to value a high turnout of cheap products more than expensively produced material. Indication of 'socially optimal' low production costs can also be found in the current OAEI phenomenon of "Gonzo pornography" - professionally produced content that is made to look (and is) cheap on purpose. Its driver appears to be consumer preferences: Amateur-style content is appealing to many because it is more 'authentic'. The past decade has also seen a massive increase in user-generated content, as the costs of home-producing video material have declined. Users create content for a number of reasons: indirect monetary incentives, desire for non-monetary prestige and peer recognition, creation for own use, or simply intrinsic joy. This produced content is nearly costless to distribute.

The project will build on a (currently in progress) study about the extent to which the OAEI relies on formal IP protection. The study comprises a small sample of explorative, qualitative interviews with producers and will provide some initial insight. However, further work is necessary to understand the innovation incentives in this under-researched industry. Anecdotal evidence of consumer preferences should be substantiated by data from content providers, both from sellers of adult content, and from suppliers of free material (such as video-streaming site hosts). It would also be greatly interesting to get data on file-sharing downloads. A deeper analysis of the relationship between IP and innovation in the OAEI could prove a valuable extension to a growing stream of literature. Gathered insights may even apply to other entertainment industries. Yet even if they remain industry-specific, determining such limits brings us toward a better understanding of innovation mechanisms.

² *Playboy* adopted this approach over a decade ago, recognizing that it could strengthen its brand and function as advertisement for subscriptions. They watermarked their material and contacted pirates with a proposition: add a link back to the *Playboy* website, and get \$25 for any directed subscriber. They even offered help improving the distributor websites.