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Comment Koleman Strumpf

It is often stated that intellectual property (IP) protection is essential for the production of creative works. The argument is that artists have incentives to produce only if there is an initial period during which they have exclusive control over the sale of their books, music, or similar products. Quantifying how important such incentives are is necessary for setting appropriate IP policy, since the monopoly sale period can potentially result in lower consumer surplus as many potential buyers are priced out of the market (it

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could also result in less output because there are fewer opportunities to build on public domain work). However, measuring the incentive effect is hard to do, since changes in IP protection are infrequent and often involve periods long after the work was created.

It is this challenging empirical topic that the MacGarvie and Moser chapter addresses. The authors focus on the first step in the innovation process, namely whether copyright policy has an impact on remuneration to artists. The answer is not obvious, since such changes can influence the set of competing products (preexisting work, which might receive additional protection) and much of the returns may flow instead to intermediaries (such as publishers and distributors). Greater payments to artists is fundamental to the incentives argument, but it is typically hard to observe such payments because they are governed by nonpublic contracts.

While such information would be virtually impossible to collect in the current period, the authors assemble a rich data set of early nineteenth-century contracts between authors and British publishers. The contracts involve over one hundred authors and nineteen publishers over a thirty-year period. The data include the contract form (whether authors are paid via profit sharing or lump sum), information on the flow of payments to authors from publishers, as well as information about the authors.

These data from the dawn of IP protection are used to investigate how an expansion in the copyright period impacted book authors. In early nineteenth-century Britain, copyright protection was far shorter than in the current day. The 1814 Copyright Act significantly expanded the copyright length; figure 12C.1 summarizes the changes. The increased copyright length was particularly beneficial to younger authors for whom the “rest of life” provision was a significant increase beyond the twenty-eight year copyright period that previously existed. The main result of the chapter is that cumulative payments to authors rose significantly following the implementation of the Act, and that these payments disproportionately went to younger authors.

The empirical results are convincing, and I have little to add to the authors’ excellent exposition. Instead, in the remainder of this commentary I will focus on some additional topics that could be explored with the data here, some puzzles in the results, and some implications and directions for future work.

The unique data that the authors assemble almost provides an embarrassment of riches. The rich level of detail allows the exploration of many questions in addition to the IP-related ones considered. For concreteness I will focus on one, the choice of contract form. Publishers paid authors using either a lump sum (essentially paying for the right to sell the book) or profit sharing (splitting the earnings from book sales). From the author’s perspective profit sharing is riskier, but also involves a greater upside. Clearly the

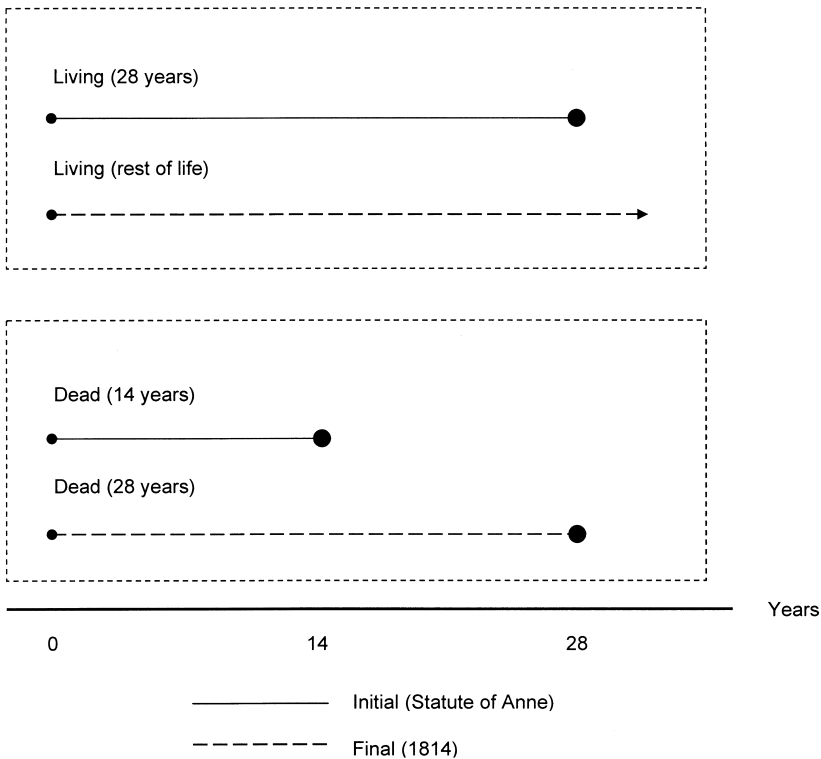


Fig. 12C.1 1814 Copyright Act

contract form will play an important role in the incentives for authors, so it is important to understand under what conditions each type will predominate.

Figure 12C.2 provides a simple conceptual framework for the contract choice for authors and publishers. The author has a book with uncertain future profits. Both publisher and author have expectations about how well it will sell and would like to maximize their own expected payments. Under a lump-sum contract, the Nash bargaining outcome is that the author will receive a payment that is some fraction of the average beliefs about sales. The publisher will keep the future book profits minus the lump sum payments. Under a profit-sharing contract they will again bargain, but here it is to determine what share of the uncertain future profits the author will receive with the publisher keeping the residual.

In this framework, there is no disagreement about the contract choice. If the author is sufficiently more optimistic about the books prospects, they both prefer profit sharing. If the publisher is sufficiently more optimistic, then both prefer a lump sum. The intuition is that when the author is more

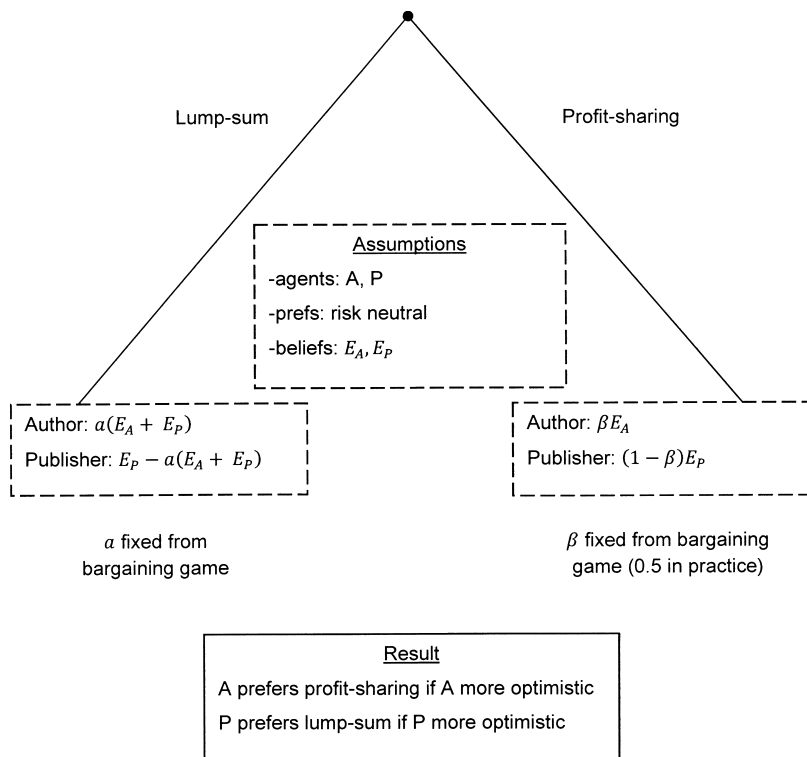


Fig. 12C.2 Contract choice

optimistic, then the upside potential of profit sharing is attractive to him. The publisher, who is less positive about the book, also prefers profit sharing since the author will demand a relatively large payment under the lump sum. The converse reasoning holds when the publisher is more optimistic.

This framework can be used to help better understand the behavior of the agents, but also suggests some puzzles. First, did books tend to be more profitable under profit-sharing contracts? Since these contracts should be used when authors are relatively more optimistic, this could be consistent with the notion that authors are relatively good at forecasting their future bookselling success. Such a condition would seem to be a natural precondition for the pro-IP protection incentives argument. Alternatively, if books are less profitable under profit sharing then a reexamination of this argument might be needed. Second, the copyright expansion of the 1814 Act should have changed the attractiveness of the two contract forms. In addition to increasing the mean profitability (which does not influence the contract choice), it also created more uncertainty (how well would copyrighted books sell long

after their creation?) and disproportionately benefited certain aged authors. As such, one might expect there to be a change in the use of these contracts. But the chapter shows that the share of each contract form was roughly the same in the pre- and post-Act periods. Resolving this puzzle would be important in understanding author behavior and thus to understanding the implications of IP protection in this case.

The data also present additional puzzles related to the contractual form. One question is related to large increases in author income following copyright expansion. Recall that the 1814 copyright extension primarily benefited young authors whose work would now be protected for the remainder of their lives rather than the next twenty-eight years. While only a very small number of books would sell in marked quantities over twenty-eight years after they are first published, payments to the typical young author more than tripled in real terms following the 1814 Act. Particularly puzzling is that this same pattern also holds for lump sum payments, which presumably were made prior to the book even being published, so it is not just that these books are unexpectedly successful. This suggests other factors may have been in play, such as publishers paying an efficiency wage in the hope of publishing the author's later works. Other contractual solutions, such as multiple book deals, seem like a more direct way of addressing this, so further explanations might be needed.

A second issue relates to the superstar phenomenon. The 1814 Act would seem to be particularly beneficial to the very best-selling authors who would be the only ones to sell a significant number of copies in the additional period of copyright protection. While sales totals are not presented in this chapter, the figures indicate a significant lengthening of the right tail of payments in the post-1814 period. In fact, much of this effect is due to a single author, Sir Walter Scott. But if greater rents will accrue to the work of a smaller number of authors, publishers should have engaged in long-term contracts or devised other ways to ensure a continued relationship with the superstars. No such contractual innovations seem to have occurred.

A final issue is the difference between books published under lump sum and profit-sharing contracts. The copyright extension did not seem to be very beneficial to authors under a profit-sharing contract. The average profit-sharing payments per page actually declined post-1814. It also appears that the disproportionate increase in payments to young authors did not occur with profit sharing. Whether these differences are due to the issues highlighted in the conceptual framework or some other factors is clearly important to understanding the implications of greater IP protection.

The last few sections have highlighted a few topics that can be explored in future work, but this should not distract from the notable contributions of the chapter. It exemplifies how historical data can be employed to shed light on questions of great policy and academic concern. In fact, it would

be extremely difficult to collect data this rich from modern sources, so this may very well be the only way to closely examine how changes in copyright impacts payments to artists (and eventually their creative output).

In future work the data here could be employed to address a variety of other IP-related questions. Just to pick one example, it would be interesting to see the impact of the copyright extension on piracy. In the current day, a spirited debate has centered on to what extent the Internet facilitates illicit consumption of copyrighted material. Critics of this view have argued that much digital piracy is fueled by copyright laws, which give creators control over first sale even decades after their creation. Under this reasoning, an unintended consequence of the 1814 Act could be an increase in book piracy. During this period, there was a thriving business of printers in Ireland and elsewhere reprinting copyrighted books and surreptitiously exporting them back to England. Such reprinting of British books later became a large part of the US book business as IP of noncitizens was not protected until 1891. Whether the copyright expansion studied here played a role in fueling this piracy is an exciting avenue for future research, and the answers would make a significant contribution to both the policy debate and the academic literature.

A final note in conclusion. The authors are careful about limiting the implications one can draw from their results. It is worth emphasizing that readers should do likewise. While it might be tempting to connect the flourishing of literature in the Romance period to the increased IP protection discussed here, the connection is not clear (not the least because some of the most notable Romance authors were German, and there was a near absence of copyright law in German states through the early nineteenth century). The empirical evidence here does not imply that greater copyright length increases creative output, since we do not know how responsive authors are to payments (both on the intensive margin by preexisting authors and the extensive margin involving entry/exit of authors). Also, there is only a relatively short period of data here, and there might be differences in the long term. For example, the growing stock of books with copyright protection might induce entry (through increasing the price of existing books) or hinder it (by decreasing the available public domain to build upon). And, finally, it is worth reemphasizing the differences from current copyright debates that involve extensions long after the art's creation, and so may have very different impacts on payment flows to artists as well as incentives for new production.