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A PUBLIC CHOICE VIEW OF IP(RIZES)

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Abstract

Interest groups have played an important if unappreciated role in shaping intellectual property rights. As economies are driven by ideas, rather than manufactured goods, there is likely to be a reconfiguration of the incentives granted and withheld from innovators. The paper argues that prizes (rather than intellectual property rights) – including grants, subsidies, and various contractual promises – will increase in importance. The discussion includes prizes as substitutes for both patents and copyrights, and suggests that industries as diverse as pharmaceuticals and newsgathering are likely fields for an "iPrize Revolution." The change is the product of interest group forces and not necessarily efficient.

Keywords

Intellectual property, interest groups, prizes

Intellectual property law is apt to change as economies evolve. Interest groups and other forces have brought about an expansion of property rights over the last century or two, and in similar fashion they can be expected to bring about other changes in economies now dominated by ideas rather than manufactured goods. In particular we can expect prizes—including grants, subsidies, and various contractual promises—to be more attractive than property rights as the means of encouraging innovation. The predicted move toward prizes of all kinds is not necessarily efficient or wise, as various interest groups and other considerations may play too strong a role in legal change.

Introduction

Advanced modern economies depend more on ideas than on manufactured goods. My argument in this paper begins with the notion that the forces that brought about an expansion of property rights, and especially intellectual property rights, weaken as an economy is dominated by services and ideas. As the market share or importance of ideas grows, there is more pressure on the traditional distinction in patent law between “devices,” which gain protection under the law, and “ideas,” which do not. I argue that interest groups will favor “prizes,” by which I mean a variety of direct inducements to innovators, over property rights. The move from property rights to prizes has already begun, but this iPrize Revolution, as we might call it, is likely to gain power. The discussion begins to grapple with the question of whether the revolution is to be welcomed.

I. Do Things or Ideas Require More Protection?

A. The Idea-Device Distinction

Every student of intellectual property knows that ideas are generally available to everyone who comes across them. These valuable assets are in the commons and, absent specific protection, are not easily brought into the domain of private property. Albert Einstein could not have patented $E = mc^2$, and patents are similarly unavailable to one who discovers a natural cure, however much effort or “sweat of the brow,” as it is called in intellectual property circles, might have gone into these discoveries.¹ This limitation regarding patent eligibility extends to copyright law. If the scientist who discovers a natural cure writes a book about the cure she discovered, the copyright monopoly available to her covers only the expression of the idea. Once published, the cure itself will be available to all readers without charge. In patent law, the requirement of a machine, a process tied to a machine, an article of manufacture, or a composition of matter—but in any event of something more than an abstract idea or law of nature—generates an idea-device distinction. Similarly, copyright law can be described as reflecting an idea-expression distinction. In both areas of law, an abstract idea, standing alone, is unprotected.

An innovator or great thinker can try to work around this limitation. If the scientist who discovered the natural cure identified an herb with great medicinal powers, for instance, and were politically well connected, or lived in medieval times, a sympathetic or opportunistic patron might have arranged for an exclusive import license or simply a ban on competitors’ trading in the herb. Indeed, English and other law doled out “patents,” for such things as salt, but these patents were essentially licenses, and either revenue-raisers or strategic favors. In addition, they could be—and sometimes were—terminated without compensation. Some might have had the effect of encouraging other scientists to develop

¹ U.S. law is among the most generous when it comes to patent eligibility, and the distinction sketched here is indeed universal. There are obvious exceptions, such as the protection of fashion designs in Europe or hull designs in the United States, but these can usually be ascribed to interest group pressure, as if in confirmation of the central focus of this paper.

ideas that could lead to state grants of monopolies on items that their ideas identified as valuable.² But few ideas are easily linked to imports or other things that can be monopolized. Moreover, when there is a monopoly to be exploited, the state need not grant it. Even the most grateful government could probably not have turned Einstein's famous equation into a property right, or monopoly, for his benefit. A great thinker and innovator must hope to benefit from an improved reputation, from a first-mover advantage in a market where the idea can be applied, from a tenured position at a university, or from some other, secondary incentive.

But why the idea-device distinction, and might it be obsolete? Concreteness is central to patent eligibility, as is fixation (and expression) to copyright, but it is not clear why this is so. Conventional explanations for the idea-expression distinction in copyright are plentiful, and can inform the idea-device distinction. All appeal to the intuition that there must be some balance between rewarding novelty and enabling innovators to stand on the shoulders of their predecessors, without suggesting how we might find the correct balance.

An easy explanation for the idea-device distinction, especially where abstract ideas are concerned, is that concreteness facilitates enforcement. Another is that geniuses, or even educated citizens with lively imaginations, can be counted on to generate ideas even in the absence of rewards; fertile minds may be irrepressible and require little encouragement. Third, and perhaps most convincingly is the intuition that while all incentives for innovation in the form of monopoly grants threaten subsequent innovation—except to the extent that they encourage the disclosure of innovations and thus help subsequent innovators—the tradeoff is more favorable where concrete applications rather than abstract ideas are concerned.

Yet another explanation for the idea-device distinction brushes up against the historical or evolutionary question of how and why societies developed intellectual property rights, if not all property rights. As it turns out, both the leading explanation and its iconoclastic rival require some evolutionary move, or legal transition, in which intellectual property rights attached to innovations while pre-existing ideas, on which these innovations drew, were left in the commons. If a legal system announces that new inventions are recognized as private property, through the grant of a monopoly or other means, there is the immediate question of the treatment of previous inventions. The requirement of novelty is one way to overcome this transition problem when starting a new legal regime; it promises rewards to innovators going forward without giving windfalls to those who produced inventions that are already known. But there remains the problem that virtually every innovation exploits earlier ideas. A convenient means of solving this transition problem, especially when it is difficult to register and date new ideas, is to do everything possible to set aside pure, or abstract, ideas.

It is likely that there are circumstances in which the grant of property rights does more harm than good, and that the idea-device distinction is a means of withholding property rights where this is so. Thus, it is well known that patents can block innovation, and we might expect predictable blockers to be labeled as ideas, and in this way disabled by their patent ineligibility. There is something of an historical pattern. There was an early phase of economic development, in which our ancestors developed things like the wheel and the alphabet. Had property rights attached, it is likely that economic progress would have been stifled. There was a middle period where intellectual property rights, ranging from political rewards (like a viceroyship for one who discovers a new colony) to various monopoly assignments, including patents and copyrights, seem to have worked well. Perhaps this was so because concrete applications required capital investments, or perhaps interest groups simply protected their investments, or entered into partnerships with governments. We do not need to be sure about the origin of property rights in order to advance the conjecture that the rules that worked well for two hundred years might not be those that will triumph in the next two hundred. There is no

² E. Wyndham Hulme, *The History of the Patent System under the Prerogative and at Common Law*, 12 L. Q. Rev. 141, 143, 148-9 (1896) (noting English patents issued in 1440 for a method of manufacturing salt, in 1565 to an artisan for making "white salt," and again in 1566 for "the making of salt").

reason to be sure that an “advanced” age, with very low information and transaction costs, requires the same property rights as The Industrial Revolution. On the other hand, our legal system makes it difficult to change the rules.

B. Contrasting Intuitions about Property Rights in the Idea Economy

What should be expected of property rights in an era when ideas rather than devices dominate the landscape? The related, prescriptive question asks how the legal system ought to encourage innovation in an age of ideas.

The argument for expanding property rights to include ideas need not apologize for the idea-device distinction, but could simply build on the strong intuition that secure property rights encourage owners. It might even be combined with the unsettling perspective that describes property rights as the product of interest-group activity, rather than as the handmaiden of efficiency.³ Under this iconoclastic view, interest groups champion the development of private property rights when they can benefit from these rights; the beneficiaries of a commons are normally dispersed and without influence. It is plausible, for example, that the distinction between devices and mere ideas in patent law developed because manufacturers supported a patent system in order to protect monopolies in various products, but then resisted protections for abstract ideas because these were the very innovations developed by workers or outsiders who had little in the way of physical capital but who could contribute improvements to benefit the manufacturing process. In any event, under this view current property rights arrangements require some defending, but at least there is no reason to rely on the evolution of legal rights as a reason not to provide property right protection for mere ideas.

C. Maintaining the Idea-Device Distinction

The opposing intuition is more respectful of the idea-device distinction. If there is genius behind this distinction, and its origins or maintenance cannot be attributed to the dark side of interest group politics, then it almost follows that an economy dominated by ideas is one that has *little* need for intellectual property rights. This perspective suggests that legislative or judicial steps to expand intellectual property rights in an idea-intensive era should be viewed skeptically. As the fraction of ideas to all innovations grows, it is likely that interest groups eager to push for expanded intellectual property rights will gain influence. Following this view, the pressure for expanded property rights is not much different from the push for protective tariffs or railroad monopolies in the U.S. and elsewhere in the 1800s.

A canonical observation about interest groups is that they are more likely to organize and to be effective when threatened with a loss. The notion is not only one of an endowment effect, but also that potential losers are identifiable, while potential winners are normally dispersed and less identifiable. As such, a contraction of property rights will likely arouse interest group opposition more than would an expansion be fueled by support. There is also the skeptical view of law and of the two competing stories of the evolution of property rights; powerful interests manage to be endowed with property rights, and it is simply difficult to unseat such interests.

³ The theory includes the notion that governments might advance property rights, in coordination with interest groups, if these serve its purposes, including the collection of tax revenues. See Saul Levmore, *Two Stories about the Evolution of Property Rights*, 31 J. Legal Stud. 421 (2002); Saul Levmore, *Property's Uneasy Path and Expanding Future*, 70 U. Chi. L. Rev. 181 (2003).

D. Normative and Positive Conclusions

As a positive matter, reasonable people could surely disagree as to how best to describe the evolution of property rights. We have come to associate secure rights with private investment, but we also associate royal grants and licenses with the development and assignment of property rights by governments—which benefit from some arrangements of rights. In short, there is an optimistic view of the evolution of property rights, but there is also a skeptical one. It is plausible that the truth involves some mixture of these views and, in any event, there is no reason why one view must be correct for all property rights.

The normative debate is yet more complicated. Anyone who believes in a strong connection between property rights and growth, and thus argues for an expansion of intellectual property rights in the idea economy, must be tempted to argue that in the ancient age of ideas, when such things as the wheel and the alphabet were developed, progress would have been faster if property rights had been available. The contrary view, of course, is that these developments might well have been stifled with secure rights, because transaction costs would have interfered with the process of improvement in which thousands of innovators contributed to the development of these things over the course of many years.

For present purposes it is useful to understand these perspectives but it is unnecessary to decide between them. If the iPrize Revolution, discussed presently in Part II, comes about because of interest-group activity, as the skeptical view of legal evolution holds, it might nevertheless be beneficial. Indeed, if property rights emerged because of interest groups, it is troubling that these rights support monopolies and generate deadweight loss, and likely something of a relief to find that they might be supplanted by payments which are less likely to bring on the costs of monopoly. And even if the revolution is not to be celebrated, it will need to be understood.

II. The iPrize Revolution

A. Prizes and other Non-Monopolistic Incentives

Patents and copyrights create monopolies, and thus come with well-known costs. They may encourage innovation, but they do so at the cost of monopolization and the deadweight loss accompanying it. There is a way to encourage ideas, if not all innovation, without creating monopolies and without blocking subsequent innovations. I refer, of course, to subsidies. Promised payments can surely be thought of as property rights, but for clarity the term is limited here to something that includes the right to exclude, as does ownership of real property, personal property, patents, or copyrights. This is not the place to explore the healthy literature on prizes versus patents. The point is not that subsidies or other prizes are superior to property rights, for each has its drawbacks, but rather that they are an alternative. There is, for example, the difficulty of calculating the optimal subsidy, for the wrong subsidy can easily do worse than a patent or other property right. There is also the need to finance the subsidy. Subsidies, and prizes quite generally, can be linked to observed usage, so that the innovator is rewarded in proportion to the widespread use of, and likely utility associated with, the innovation. Payments can be designed and distributed *ex ante*, or calculated and awarded *ex post*, with innovators learning that they can rely on receiving rewards commensurate with the social value of their innovations. A prize might be in the form of “a million dollars for the development of a vaccine to immunize against flu strain x,” or it might be in the form of “the defense department promises to buy 500,000 doses of a vaccine that protects against x.” It might be a promise or even expectation of employment. My claim is not that prizes are always superior, and indeed they are likely inferior when the prize giver cannot obtain information that would be useful for calibrating the prize. It is instead that prizes, broadly defined, are an alternative that is at least occasionally superior. It is likely that a mix of property rights and prizes is desirable. A different mix might be preferred where successful

innovation requires a breakthrough followed by substantial investment in distribution or “commercialization,” from that appropriate where there is only the need for a large capital investment.

An iPrize Revolution would use familiar tools. For one thing, prizes have been discussed as replacements for patents in order to encourage lower-cost pharmaceuticals, and medical innovations more generally. It is apparent that the research and development costs associated with new drugs are substantial, and one well-known drawback of the patent system is that it leads to pricing that precludes the deployment of important drugs in developing countries. Moreover, the social benefit of some drugs is often regarded as greater than that signaled by market prices, while such things as cosmetic surgery and hair loss attract substantial attention from for-profit firms. Of course, governments and non-profit organizations are free to offer greater subsidies for outcomes they deem more socially beneficial. In the U.S., the Medical Innovation Prize Acts of 2005 and 2007 had little chance of enactment in Congress, but they reflected such sentiment. The Acts proposed to set aside funds, amounting to less than 1% of GDP, that would allow prizes to be substituted for patents, and that would encourage medical innovations.⁴ Proponents believed that a prize system on this scale could better the condition of patients, without harming the fisc or making innovators worse off. Critics argued for less ambitious and more incremental change.

Prizes have at least as good a lineage as property rights. Columbus and other explorers of that age of exploration frequently invested much of their own wealth in their expeditions, and then received shares in the goods shipped home, as well as hereditary or lesser titles.⁵ It was much less common to receive a monopoly, or property right, in the form of land or to be rewarded with complete control over trade. In 1474, Venice enacted an early patent statute, the terms of which encouraged foreign innovators to migrate to Venice where their “contrivances” would be made known but also protected against imitation for ten years.⁶ One explanation, or rationalization, for the different strategies can also be applied to the Medical Innovation Prize Act, and it goes a long way toward explaining why interest groups have often pushed for property rights rather than prizes. If Venice had promised prizes to innovators, it would have needed not only to find a means of judging deserts but also a means of financing the promised payments. New taxes, earmarked for prizes, will impose deadweight losses. One could raise the income tax, though it is hardly an optimal tax, in order to avoid the monopolies associated with pharmaceutical patents. In practice, however, this adds administrative costs and brings about combat with interests that do not want to see their taxes raised. In contrast, Columbus and his cohorts were self-financing in the sense that their patrons could pay the stipulated prizes out of the new revenues generated by successful explorers. Present day copyright holders urge extended lives for their property rights as if they know that the losers have trouble self-identifying and organizing in opposition.

Prizes should be understood to include *ex ante* grants as well as *ex post* rewards. This is especially appropriate when grants are based not only on research plans but also on the applicant’s history of success, as is the case for most government-financed grants in the sciences. American science, as well as literature and arts, is also significantly financed through employment, and access to facilities, at public and private universities and comparable institutions. Inasmuch as these are also government supported, the overall picture is one of prizes—in the broad sense of grants, prizes for

⁴ Medical Innovation Prize Act of 2005, H.R. 417, 109th Cong. § 16 (2005); Medical Innovation Prize Act of 2007, S. 2210, 110th Cong. § 15 (2007).

⁵ Samuel Eliot Morison, *Admiral of the Ocean Sea: A Life of Christopher Columbus* (1943) (describing norms with respect to titles and trade).

⁶ While Venice created the first comprehensive system of patent law, Ancient Greece gave patents (for one year) as early as 2500 years ago for confectioners or cooks who invented new dishes, and some 800 years later the Roman Empire exempted artisans of certain trades residing in cities from civil duties. For a discussion of the Venetian system and early patent grants, see Roman A Klitzke, *Historical Background of the English Patent Law*, J. Pat. Off. Soc’y 615, 617-620 (1959).

accomplishments or for superior performance, tenured positions, and so forth—in addition to patents. It is easy to imagine that if the prize component increased, the patent (and copyright), or property right, component could decrease. It could do so proportionally, by a legislative change accompanied by a variety of transition rules, and even by contract, in the sense that grants might be distributed only to recipients who turned over their extant property rights to the government or other grantor.

B. The Timing of the iPrize Revolution

Four significant developments suggest the timing of the iPrize Revolution. The dominant one is the emergence of the idea economy. The reasoning here is fairly straightforward. Ideas are increasingly important, and manufactured goods less so. In turn, innovators are stymied by the idea-device distinction; if they want surer payments for ideas, they must either effect serious change in existing law or they must influence the political process in the direction of more prizes. Even in the absence of legal change, the relative growth of the idea sector means the relative growth in importance of prizes, because property rights are few and far between where mere ideas are concerned. One ready insight to be gleaned from this depiction of our changing economy and its legal apparatus is the growth of universities. Private and public universities specialize in ideas and rarely deal in manufactured goods. Some of these ideas are amenable to property right protection, of course, but it is apparent that grants and other prizes are much more important to university finances than income from copyrights and patents.

A second reason to expect a shift toward prizes, writ large, is the growing evidence of patent thickets. The patent system is in something of a mess because of uncertainty about patents and the high transactions costs of negotiating with possible patent holders. Software companies and smartphone makers are, for instance, involved in numerous lawsuits with one another, where a given company is both challenging and defending a host of patents. An obvious means of escape from these thickets, is a move to subsidies and away from monopoly-property rights. Such a scheme might not require much change in law. If the shift comes about in a way that is financed by taxpayers, then it will be more difficult to assess whether this is something desirable.

The third reason to expect the iPrize Revolution to be impending, focuses on copyrights rather than patents. As copying technology has improved, and the marginal cost of distribution descended toward zero, piracy has become a problem at the local and global levels. The low marginal cost also means that monopoly rights are less efficient because in theory we want to satisfy the demand of everyone who would pay more than marginal cost. It is apparent that a prize system could solve many problems at once. Creators of eligible works could be awarded prizes, not on the basis of the subjective view of some committee, for this raises fears of government intrusion, but rather on the basis of estimates of usage. The problem is funding; copyrights are self-financing even if inefficient, while prizes require a source of revenue. Small-scale systems meant to compensate for library borrowing in some countries or for audio recording in the U.S. (by taxing devices or audio tape) have not raised much revenue. On the other hand, the large number of persons who download music and other works might be willing and eager to force taxpayers at large to subsidize the creators and performers of the music they enjoy. If this group joins forces with the music industry, it is easy to imagine a legislated prize system emerging for music, books, movies, television programs, and possibly software. Again, this is a prediction about the coming iPrize Revolution, and not a claim that it is necessarily something to be desired.

Finally, the pharmaceutical industry might spur the iPrize Revolution. It is an industry well known for the high costs of entry and product development, but then low marginal costs when it comes to producing most drugs. Politicians and various interest groups seem well aware of the efficiency, or problem, of selling a drug at a price above marginal cost but much below average cost (including development costs) and then having the pharmaceutical imported into other markets where it threaten to undo the innovator's reward. The social costs and private problems with the property rights system

are thus clear, so that a prize system of some sort would be well received. Occasionally, as with vaccines, governments intervene as large purchasers, but likely sales amount to just one kind of prize. It is easy to imagine that a large-scale prize system, political attention to price differentials among countries, or the unavailability of important drugs in developing countries will lead to a significant change in this industry in many jurisdictions. Politically potent pharmaceutical companies have not worked for such change because the opportunity for very high returns is greater with a property rights regime than with a prize system.

C. The Dark Side of an iPrize Revolution

A system of grants or other rewards is not necessarily something to be celebrated. Each of the triggers discussed in the previous section has an interest-group component, but it is also possible to imagine a large-scale political effort.⁷ Politicians and interest groups influence the budgetary process, and no government can be expected to fund research without making some political decisions about what to fund.

In the normal course of politics, a large budget might be entrusted to a committee, with that body asked to award prizes to innovators based on the social good these innovators had created. But even this sort of system depends on financing, and interest groups will threaten this budgetary allocation with higher or lower funding levels depending on the prizes that are awarded. Nor will the problem be solved if the budget could somehow be insulated from politics, perhaps by being linked to a specified source of revenue; there will be pressure from innovators or industries that threaten to go out of business or to work on different projects unless they are well rewarded.

III. iPrizes to Rescue Newspapers

It is perhaps relatively easy to see how the development and supply of pharmaceuticals might be disentangled from property rights and instead made dependent on government grants, contracts, and other rewards. But this is a claim of possibility and not probability or necessity. For that, I turn to something with low marginal costs *and* a dysfunctional system of property rights.

Our present idea economy incorporates and is fueled by information in digital form, and it is therefore an era in which some industries must reinvent themselves to accommodate new technologies with lower marginal costs than previously experienced. Consider, for example, the quintessential information-age business of news reporting, and the question of how newsgathering and intelligent news analysis will be financed. Many news organizations reflect elements of natural monopolies and, indeed, the industry as a whole comes close to a natural monopoly, as new readers or viewers can be accommodated at very low, if not zero, marginal cost. At present, relatively few publishers have switched to a model in which readers pay for online subscriptions, and advertising revenue has been reduced by competition from free online sites. Even before the digital age, newspapers needed some help from courts because “facts,” like ideas, do not generate copyright protection, so that freeriding is a problem where factfinding is expensive. The law responded to this issue by protecting time-sensitive news with a misappropriation doctrine just outside of copyright law.

There are several ways for costly newsgathering and analysis to survive. An unlikely one is that reporting will be built around television stations, and this medium will continue to sell sufficient advertising to support the enterprise; online newspapers have not had analogous success with advertising revenues. Another is that newspapers will be transformed into websites that will attract

⁷ The idea is that interest groups—perhaps as the result of the coordinating efforts of a political entrepreneur—will successfully push for prizes. They will exploit the fact that the costs will fall on dispersed and thus disorganized taxpayers. In contrast, when these groups push for expanded property rights they often confront identifiable opponents—though there is no need for government revenue.

paying subscribers—assuming pirating and various freeriding problems can be solved.⁸ Copyright law and technological developments must, of course, prevent subscribers from simply passing on information to freeriders.⁹ But the third and most interesting possibility is that investigative reporters, like many scientists, will be motivated by prizes. “Reporters” might self-identify and simply generate stories on their own, or perhaps intermediaries will filter submissions by certifying reporters or their outputs. Either way, compensation can come from non-profit organizations or from the government itself. It is unlikely that these prizes or other payments could be determined by usage, in a manner suggested by the regulation of electric utilities, because costs are not proportional to use. Similarly, if subsidies for news sources were determined by popular vote, a source that reported Hollywood gossip would garner more support than one that took the trouble of traveling to war zones at considerable expense. Finally, it is apparent that outright government support for news organizations or for individual reporters runs the risk of biasing the information the citizenry receives.

A reader who has been patient with the argument to this point will note the irony of the imagined evolutionary step. When a future observer looks back on the evolutionary path, that observer will be in a position to note an optimistic and a skeptical story. The optimistic one will be that prizes and other subsidies emerged, and took the place of conventional property rights, as the commons proved more fertile than tragic. The skeptical one will be that interest groups preferred prizes—as digital technology made monopoly property rights more difficult to exploit—and sought an increasing share of tax revenues from a dispersed public. The government went along with this suggestion, it might be said, because it was able to reward its friends and starve its detractors.

The prospect of extensive prizes for news reporting would seem less startling if legal systems had more experience with prizes for other copyrightable material, including books. Several legal systems have legislated modest prizes, or ex post rewards, for authors on the basis of readership estimates, and perhaps this model will become more important as electronic books come to dominate the market.¹⁰ The logic of these prizes, or distribution of tax revenues, has been that publicly supported libraries sometimes weaken an author’s “right” of distribution. It should be emphasized that the discussion has now expanded from prizes for ideas to prizes as a substitute *and* supplement for intellectual property rights more generally. News-gatherers, novelists, and inventors have in common the low marginal cost associated with incremental users. They come together in a discussion of intellectual property rights in the idea economy not because of any change in the idea/device or expression/facts ratio, but because the development of technologies that reduce the distribution costs of expressions and facts have made newspapers resemble many scientific discoveries in terms of cost structure.

⁸ It may turn out that technological changes will mitigate the current unwillingness of customers to assent to paywalls, and news will be delivered to subscribers through applications on mobile devices, for example. See *Wikipedia Founder Says Apps, Not Paywalls, Could Save The News*, Samuel Axon, September 4, 2010, online at <http://mashable.com/2010/09/04/jimmy-wales-apps-news/> (suggesting that sales through mobile applications may obviate the need for conventional online paywalls); *Mac App Store Launches With Thousand Apps, Big Discounts*, Charlie Sorrel, January 6, 2011, online at <http://www.wired.com/gadgetlab/2011/01/mac-app-store-launches-with-1000-apps-big-discounts/> (describing intermediary’s strategy for selling news).

⁹ Note an important difference between the music and the news industries. Even as musicians and composers lose revenue because of (sometimes unlawful) downloading, live performances remain an important source of revenue. Pirating may even increase this revenue. News producers lack a comparable source of income.

¹⁰ See Ernest Seemann, *A Look at the Public Lending Right*, 30 Copyright L. Symp. (ASCAP) 71 (1983). The “public lending right” was introduced in the United Kingdom in 1979 and comes in different varieties elsewhere. It has been encouraged by a 1992 European Union directive. See also S.2192, 98th Cong., 1st Sess., preamble, § 4(c)(ii) (1983).

Conclusion

The stage is set for an iPrize Revolution. All interest groups will like to be on the receiving end of prizes and property rights, but many will also prefer prizes over property rights, especially in industries where the digital age or global competition has made the property rights system dysfunctional. Indeed, I have suggested that private parties might on their own design prize systems to replace property rights. I have not insisted that this revolution is necessarily good or bad, just that it will involve significantly more interest-group activity.

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