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Intellectual property and the organization of information production

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Abstract

This paper analyzes an area that economic analysis of intellectual property has generally ignored, namely, the effects of intellectual property rights on the relative desirability of various strategies for organizing information production. I suggest that changes in intellectual property rules alter the payoffs to information production in systematic and predictable ways that differ as among different strategies. My conclusion is that an institutional environment highly protective of intellectual property rights will (a) have less beneficial impact, at an aggregate level, than one would predict without considering these effects, and (b) fosters commercialization, concentration, and homogenization of information production, and thus entails normative implications that may be more salient than its quantitative effects. © 2002 Published by Elsevier Science Inc.

Keywords: Economic analysis; Intellectual property; Information production

1. Introduction

As information production has become more central to our economy, we have seen a Cambrian Explosion of exclusive private rights in information. The past half decade has seen the term of copyright extended, patents granted in business methods, property rights sought for compilations of raw data, trademark morph from a confusion-prevention law to a goodwill-retention law, and a vast increase in the legal effect of privately created and enforced exclusion—created by contract and enforced by technology. In this article I explain

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Nomenclature

| | |
|-------------------|---|
| I | information |
| I_{pd} | information in the public domain |
| $I_{intrafirm}$ | information owned by the firm making a production decision |
| I_m | owned information available from the market |
| I_b | owned information available in barter |
| C | costs of information production |
| C_h | human capital costs |
| C_i | information input costs |
| C_m | cost of information available from markets |
| C_{m} | cost of information available from public domain or intrafirm sources |
| C_b | cost of information available in barter |
| C_{comm} | cost of communicating information |
| B_i | benefits of information production |
| B_d | benefits acquired by direct appropriation |
| B_{d} | benefits acquired by indirect appropriation |

why strong intellectual property rights such as these are systematically less beneficial in terms of increasing aggregate information production than usually thought, and why they are likely to lead to commercialization, concentration, and homogenization of information production.

Economic analysis of intellectual property falls, broadly speaking, into two main clusters: welfare economics¹ and neo-Schumpeterian economics of innovation.²

The neo-Schumpeterian literature focuses on the relationship between market structure and investment in innovation.³ This literature typically treats the market structure in which an information producer operates as the primary determinant of information production activity, rather than focusing on the incentive effects of legal rights. This paper shares with this literature a concern for the relationship between information production and the organization of production, but looks not at the relationships between market structure at the macro level and innovation, but at the relationship between legal rules and the organization of production at the micro level.

Welfare economics of intellectual property has three primary sub-clusters. The first sub-cluster, rooted in the work of Arrow⁴ and Nordhaus,⁵ focuses on the welfare tradeoffs between the incentives created by property rights and the social cost of enforcing rights—both the costs of administering the system and, more importantly, the cost of losing access to information—a non-rival public good—at its marginal cost of zero.⁶ This tradeoff is often seen as involving static losses (in consumption of existing information offered at an above-marginal cost price sufficient to compensate producers) and dynamic gains (through incentives to invest in production), but the effects on second generation producers who use information as an input into their own productive enterprise adds a dynamic loss as well.⁷ This paper is largely situated in this sub-cluster.

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