

Assessing the UK's IP framework for the benefit of the creative sector

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Knowledge goods: The framework

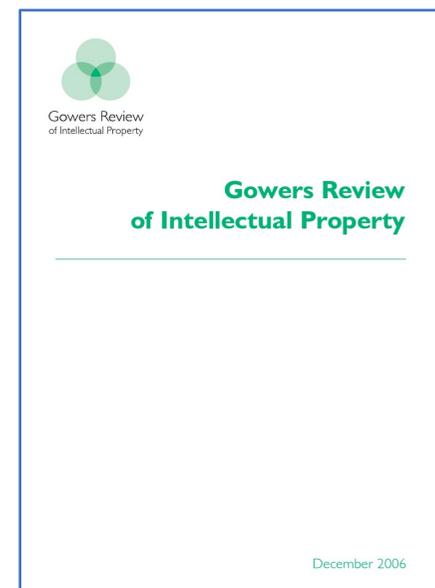
Gowers 1.2 Knowledge is non-rivalrous

Unlike physical property, knowledge, ideas and creations are partial ‘public goods’. That means one person’s possession, use and enjoyment of the good is not diminished by another’s possession, use and enjoyment of the good. As Thomas Jefferson said: “he who receives an idea from me, receives instruction himself without lessening mine ... as he who lights his taper at mine, receives light without darkening me”. [...] IP confers a set of time-limited legal rights over the expression and use of certain ideas. Although the knowledge protected by the IP remains non-rivalrous, the legal force of IP rights prevents others from using it.



Gowers 1.8 IP rights entail a trade-off

The very essence of IP rights entails a trade-off. On the one hand, IP rights provide economic incentives to innovate, but on the other, the exclusive rights that they confer to achieve this allow monopoly prices and associated welfare losses and prevent access by other innovators. [...] So there is a trade-off between incentives on one side and costs to consumers and limited access for follow-on innovators on the other. It is therefore crucial to have the right balance in the system.



Trade-off: Incentives

Hargreaves 1.6 Participants in competitive markets have a strong reason to innovate to create and capture new value, and **competition is the strongest incentive** for firms to innovate. In the words of Ed McCabe: “creativity is one of the last remaining legal ways of gaining an unfair advantage over the competition.” However, creativity and innovation involves private cost, such as **lost earnings** while writing a book or Research and Development (R&D) investment in drug research. It also involves the **risk that new products will fail**. Moreover, once created, innovative output may **cost very little to reproduce**: drugs or books may be cheaply copied by others.

1.7 Where innovation is difficult to copy, or there are large rewards for being first to market with a product, the competitive spur to innovation is effective. In other circumstances, **these risks and costs are a disincentive to innovate**. That is why we need intellectual property rights.

1.8 IPRs (the major rights being patents, copyright, design rights, and trade marks) incentivise innovation through the offer of a time-limited return on innovative investment. This reduces the risk in inventing and creating new products, so stimulating innovation, competition and stronger economic growth.

[emphasis added]

Trade-off: Costs

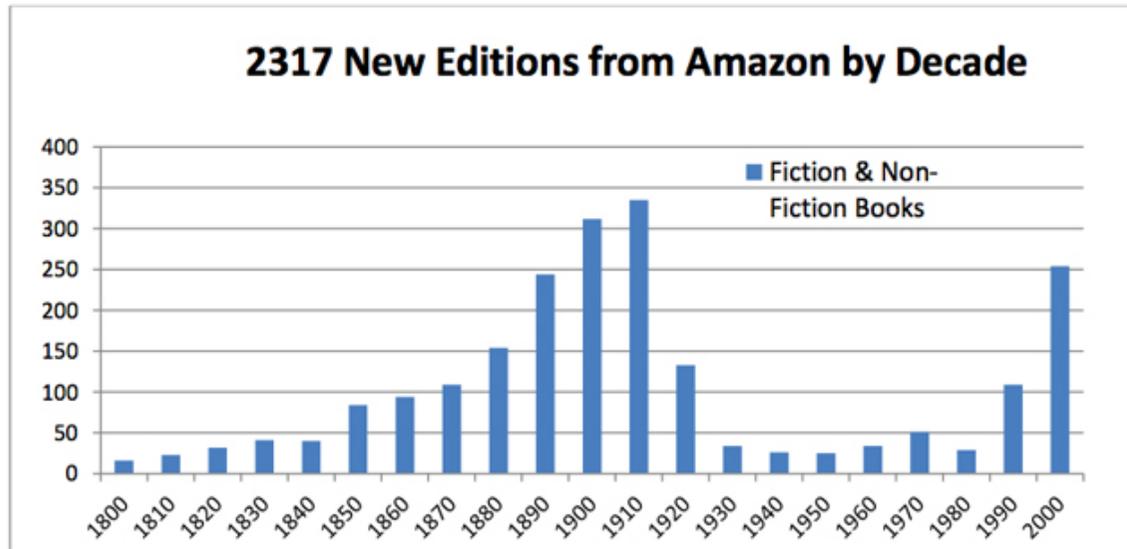
Hargreaves 1.9 Because IPRs grant a form of monopoly, an overly rigid and inflexible IP framework can act as a barrier to innovation. [...] IPRs can **constrain** third parties wishing to **access** or innovate on top of this protected knowledge or content, with potentially serious economic and social costs.

1.10 Furthermore, IP systems impose **transaction costs** on the creator, on innovators and on society. The costs of search, administration and enforcement, which fall on creators and innovators, directly offset the incentives they receive through exclusivity. [...] The optimal balance between these factors varies by industry and technology – in complex markets requiring multiple rights transaction costs can be especially onerous. And the expertise required to deal with IPRs is largely a fixed cost: it falls harder on smaller firms trying to establish rights than on large incumbents.

1.11 The costs imposed by IP systems on society are wider. They include the “deadweight” costs which flow from **limiting competition and sustaining higher prices**. A classic example is the effect of extending the duration of copyright, which boosts the income of rights holders, but increases costs to consumers not only by the additional payment but also by its costs of collection.

[emphasis added]

Cost Example: Copyright and Non-Use

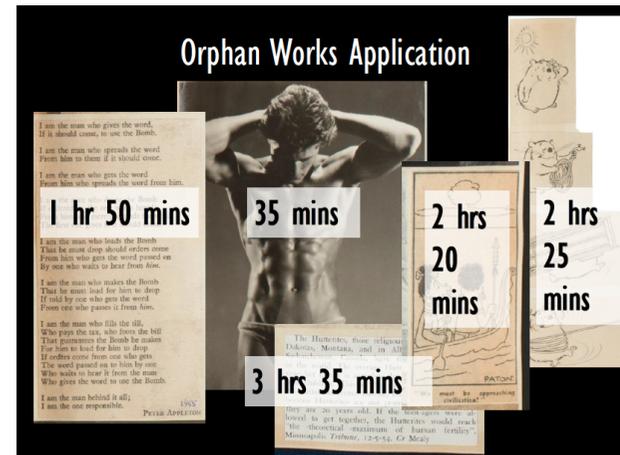
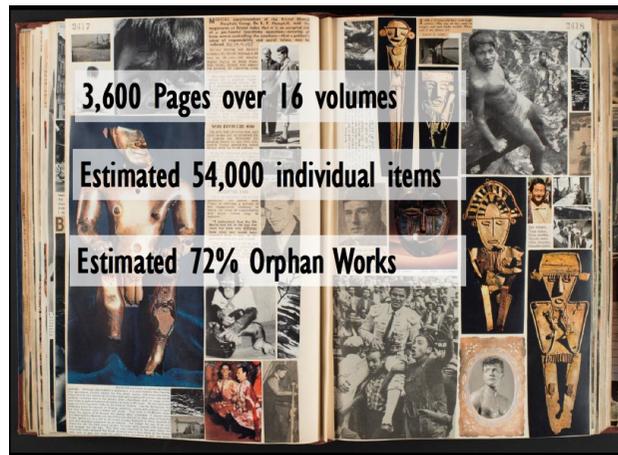


Source: Heald (2014).

Many more new books originally published in the 1890s are commercially available than from the 1950s.

- Only 2.3% of in-copyright books and 6.8% of in-copyright films released pre-1946 remain commercially available (Mulligan & Schultz 2002).
- Book Trade Almanac for 1872–1957: of 10,027 books published in the US in 1930, only 174 (1.7%) were still in print in 2001 (Landes and Posner 2003).
- Reissues of US sound recordings: random sample of 1521 records issued between 1890 and 1964, only 14 percent were available from rights owners (Brooks 2005).
- Is it going to get better digitally? Sample of books from the New York Times best seller list 1923-32: only 27% are available today as e-book (Heald 2014).

Cost Example: Copyright and Non-Use



Edwin Morgan (*1920, +2010)

Scrapbooks (1931 to 1966): 16 volumes, 3,600 pages, 51,000 individual cuttings, more than 50% are orphan works. The necessary diligent search would take one person 8 years and cost £185,000. That does not include the cost of clearing rights for cuttings where rightsholders are known (quoted figures range from £15 to \$2,000 for an individual cutting).

<http://www.digitisingmorgan.org/>

Erickson, Deazley, Patterson, Stobo (2018) *Digitising Edwin Morgan's scrapbooks* [Journal of Documentation]

3 Groups of Interventions

Recommendations from IP Reviews tend to come in three groups:

- Lubrication

Make the system easier to operate; Reduce transactions costs; Increase understanding.
Quite a lot has happened here: Small claims track, Copyright education

- Enforcement

Address counterfeiting and piracy; Follow the money
Empirical evidence shows offering convenient services at the right price is an effective strategy at the consumer level

- Innovation

This is poorly understood.
What is the innovation we are looking for?
Quotation in film, conceptual art, digitizing collections, sampling, user-generated content? Market entry?

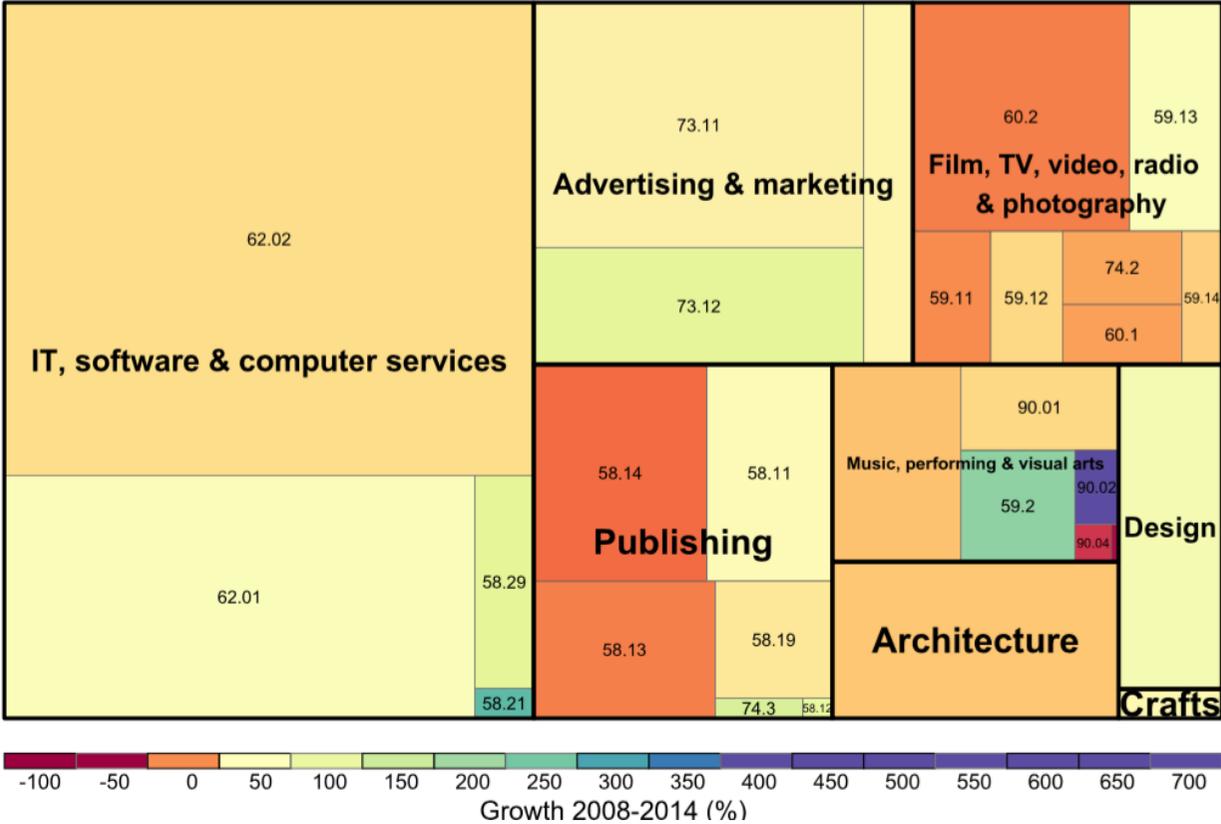
The need for Evidence

Gowers 1.9 Achieving this balance is made more difficult by the vocabulary used to discuss IP policy and practice. Copyright infringement through unauthorised copying and distribution of music and video across the Internet is likened to stealing by some, and to sharing by others. Those who seek to prevent others from using a patented invention without permission are branded ‘trolls’. Those who copy and distribute material illegally are called ‘pirates’. And the problem of ‘orphan’ works, which arises where copyright owners are untraceable, perhaps provokes an easy sympathy.

Hargreaves 2.13 There are three main practical obstacles to using evidence on the economic impacts of IP:

- There are areas of IPRs on which data is simply difficult to assemble. While patents are well documented, and traceable to their owners, unregistered design rights and copyright use are not.
- The most controversial policy questions usually arise in areas (such as computer programs, digital communication and biosciences) which are new and inherently uncertain because they involve new technologies or new markets whose characteristics are not well understood or measured.
- Much of the data needed to develop empirical evidence on copyright and designs is privately held. It enters the public domain chiefly in the form of “evidence” supporting the arguments of lobbyists (“lobbynamics”) rather than as independently verified research conclusions.

The Creative Industries



Proportions of the economy that compose the Creative Industries by group and SIC code (Source: Creative Industries Economic Estimates January 2016, p. 8, Dept. of Culture Media & Sport)

Research Example: Consumer behaviour

Determinants and Welfare Implications of Unlawful File Sharing: A Scoping Review.

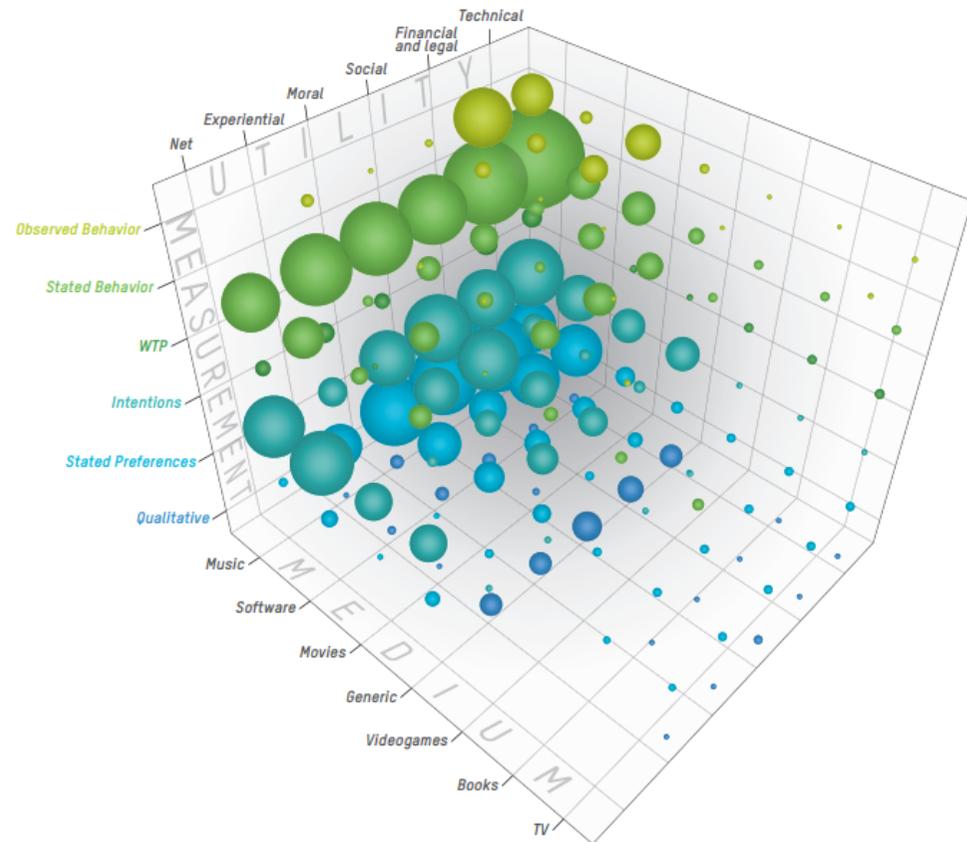
Steven James Watson, Daniel John Zizzo and Piers Fleming

Behavioural economics analysis of all available empirical studies on file-sharing and unauthorized use.

What is the evidence i) on the welfare implications of unlawful sharing of copyrighted media online; ii) on the proposed causes?

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Current knowledge of consumer behaviour is dramatically skewed by method and sector.

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