UCLA ENTERTAINMENT LAW REVIEW

VOLUME 20 ISSUE 1 WINTER 2013

ARTICLES

Introducing Price Competition at the Box Office

Why is it that movie ticket prices do not vary between films that cost vastly different amounts to make? It is because the current model for the production, distribution, and theatrical exhibition of feature films is deeply flawed. Despite long-awaited federal action designed to curb anticompetitive behavior, film distributors have continued to exert inappropriate control over pricing at the box office. The result is an insufficiently competitive—and hence inefficient—market for theatrical exhibition. Previous scholarship has discussed some of the root causes of this behavior and has called for ticket price differentiation based upon the context of a screening (such as the time of day, the day of the week, the season, or the seating). Some scholars have also suggested pricing based on film genre. Unfortunately, these proposed solutions fall short of the mark, and there has been a glaring absence of discussion or scholarship about the market problems resulting from a lack of price differentiation between individual films. This article analyzes anticompetitive behavior in film exhibition, focuses on the resulting market inefficiencies that ultimately harm the consumer, and calls for a pricing system primarily influenced by film-specific costs.

Labor Pains on the Playing Field: Why Taking a Page from Europe's Playbook Could Help the United States

Work stoppages have become commonplace in American professional sports. Whether it takes the form of a strike or a lockout, a work stoppage, or the threat thereof, accompanies nearly every labor dispute between owners and players. This is hardly surprising, though, because the current system for resolving labor disputes—the National Labor Relations Act and its implementing body, the National Labor Relations Board—is ill-fitted to the unique challenges posed by sports labor issues. Additionally, there is no institution tasked with directly overseeing professional sports in America.

The same is not true in Europe. Oversight bodies are common throughout Europe and help to resolve sports labor disputes before they turn into full-blown work stoppages. As this Article discusses, American professional sports need this type of oversight.

Therefore, this Article advocates a two-tiered approach to solving American professional sports' culture of frequent work stoppages. First, the United States should enact new legislation to govern the resolution of sports labor disputes, as it has already done to regulate labor disputes in other American industries. Second, the United States should create a body charged with overseeing professional sports and implementing this newly-created legislation. By taking these two steps, the United States can end the pattern of work stoppages that plagues professional sports labor disputes and provide stability to this critical American industry.

Drawing Lines: Addressing Cognitive Bias in Art Appropriation Cases

For centuries, artists ranging from Renaissance painter Raphael to surrealist Salvador Dali have embraced the concept of originality through imitation, drawing heavily from the works of their

predecessors to create new and original works of art. Despite the role that appropriation has historically played in artistic culture, art that borrows substantially from other works is more likely to be punished than praised under our current copyright system.

Following the decisions against appropriation artists in *Cariou v. Prince* and *Rogers v. Koons*, the future of art appropriation is increasingly unclear. Although the Supreme Court has warned that judges should not employ aesthetic reasoning in assessing works protected by copyright, recent copyright cases suggest that judges are doing exactly that. After showing how the open-ended nature of the copyright and fair use inquiries can make judges particularly vulnerable to various cognitive biases, this Article relies on *Rogers v. Koons* and *Cariou v. Prince* to illustrate how fact finders can be improperly influenced by known cognitive biases such as anchoring, hindsight, and confirmation bias and could be tempted to substitute their own value judgments when assessing an appropriator's work.

COMMENTS

Creating Sustainable Regulation of the Open Internet

Every day, new innovations move us toward a mobile, always-accessible Internet. In this time of rapid technological change, the challenge for any new regulation of the Internet is sustainability: to craft rules that can adapt to and withstand the constant evolution in technology and network structure. This comment analyzes the Open Internet Order, the latest attempt by the FCC to protect Internet neutrality and openness, through the lens of regulatory sustainability. In the Order, the FCC has decided to regulate "mobile" ISPs less than their "fixed" ISP counterparts. Critics worry that this lesser regulation of mobile Internet will create a foundation of discriminatory practices by mobile broadband providers who could take advantage of the lax regulation and block specific content and applications. Missing from these critiques, however, is a clear understanding of the repercussions on the sustainability of these regulations caused by dividing Internet providers into separate categories.

This comment argues that in using the categories of "fixed" and "mobile," the FCC continues its flawed tradition of placing communications technologies into distinct regulatory silos that become unwieldy when new hybrid technologies erode the differences between those silos. We are heading towards a convergence of networks, where wireless and fixed-line networks will combine to form one overarching network that caters to all endpoints, stationary or moving. This convergence of networks will result in the Order's distinctions between "fixed" and "mobile" becoming obsolete. This comment argues that the FCC should reject its ex-ante fixed category-based approach in the Order and rely on a more flexible, ex-post adjudicatory system to create sustainable regulations for the future. This comment proposes one such solution to ensure that the Order remains sustainable.

Are Copyright Firms Incentive Intermediaries?

Copyright scholarship has long condemned the Copyright Term Extension Act for failing to significantly increase authors' incentive to create. Economic and psychological data combine to suggest that the increased reward supplied by the twenty-year term extension is too temporally distant to have any effect on individuals' decisions in the present. However, a small body of empirical research suggests that term extensions do lead directly to some increases in creative production. This Comment explores one possible explanation for the discrepancy between theory and practice by distinguishing individual authors from creative firms. Individuals are subject to heuristics that diminish their ability to forecast the future and reduce their valuation of the term extension's reward. Corporate decisions are not necessarily guided by such heuristics; consequently, creative firms may be influenced to produce works of art by different incentives than those that influence individuals.

Term extensions may thus provide an incentive for corporate producers even if their incentive effect for individuals is negligible. This Comment argues that firms, which are more responsive to term extensions, may be able to act as incentive intermediaries by passing along the greater value of a longer-term copyright. Faced with a more valuable copyright term, firms may either pay more for works up-front

or use the increased profitability to offer additional opportunities for individuals to sell their works. There is limited evidence showing that firms do act this way; instead, it appears that they keep any additional profits as windfalls. As a result, society must decide whether incentivizing firm authors is as valuable a benefit of legislation as incentivizing individual authors.