How Effective Are International Copyright Conventions in the Music Industry?

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Abstract. The paper is concerned with the issue of whether international copyright legislation is effective in curbing audio software counterfeiting. The paper finds that copyright conventions have not been effective in reducing audio counterfeiting to comparatively low levels. This result holds even when allowances are made for the duration of copyright convention membership and the specificity of the articles of the convention. Economic development is found to be the main determinant of low counterfeit levels. This would tend to support anecdotal evidence which indicates that economic development is a necessary condition for the active recognition of audio property rights by the general public, judiciary and police. It is also consistent with a view that pirate audio software, being an inferior good, has a more buoyant market in less developed economies. From a policy perspective the research would seem to suggest that the extensive efforts and copious attention to detail by legal experts has made little impact on counterfeiting activity and is secondary in importance to the socio-economic environment in which these laws are being applied.

Key words: music industry, law and economics, property rights, copyright

1. Introduction

In the music industry it is widely believed that the creation of intellectual property rights across international boundaries is a crucial cornerstone in the "fight" against audio piracy (i.e., the sale of counterfeit audio software). This being most effective when defined in legal articles relating specifically to the use of intellectual property in the audio software market. This paper aims to test the empirical validity of this view and in so doing attempts to assess how effective international copyright conventions have been in terms of eradicating counterfeiting. In particular, does an increase in the relevancy of the articles of a convention to the audio software market, increase the effectiveness of the convention? If the legal criteria are so important, then the empirical evidence should not only support this, but also assign secondary importance (if any at all) to other socio-economic factors.

The remainder of the paper is divided into two sections. Section 2 conducts a brief history of international copyright legislation in the music industry. This is followed in Section 3 with an empirical analysis of the effectiveness of copyright conventions.
2. A Brief History of International Copyright Legislation Relating to Audio Software

In 1933, a group of international record companies met in Rome to found the International Federation of Phonogram Producers (IFPI). The aims of the organisation, as stated in Article 2 of its statutes, were:

"... the defence in the international domain of the interests of the members by preserving their rights, statutory or otherwise, by the promotion of new legislation to extend such rights or to create them in those countries where they do not already exist and generally by safeguarding the present and future welfare of member by means or representation as a federated body in negotiations with and representations to governments and other interested and representative bodies." (Alloway, 1983, p. 9)

In the absence of governmental activity to protect the intellectual property rights relating to music, record companies perceived a need to intervene in this domain in order to control the reproduction and performance of their audio software output. This was the main stimulus for the foundation of the IFPI. At this time the industry was dominated by the gramophone in the 78 rpm format. The initial desire for such copyright protection was prompted by two developments, namely the growth of the size of the international market for records and innovation by audio hardware companies.

The former development was the result of a proliferation of new music compositions and their successful diffusion across national boundaries. Initially record companies had been content to rely on domestic copyright legislation (which was not originally drafted with music recordings in mind and only implicitly protected the owner's rights), when little international trade occurred. However, by the 1930s record companies had become concerned that the lack of parallel and uniform copyright legislation in other countries facilitated foreign production of records containing their original recordings. This presented three problems: (1) it reduced the incentive for companies to export their recordings; (2) it reduced the incentive for a domestic firm to set up a subsidiary in a foreign market in order to sell its music repertoire; and (3) it resulted in a practice known as "parallel imports" which occurred when two companies operating in separate countries bought the rights to a recording, allowing them the right to produce pre-recorded software containing these recordings. The problem of "parallel imports" arose when one company exported its audio software to another company's market thereby reducing the demand for the latter firm's output. Thus a degree of co-ordination and co-operation of property right licensing at an international level was necessary in order to maintain the incentive to sign artists.

However, a more worrying threat to the viability of commercial record companies was manifested by "pirate" record companies who violated property rights by producing unlicensed pre-recorded software. Such companies were not only spared the expense of musicians' royalties, but by solely selling recordings of