

Summary

Intellectual Property (IP) is one of the most contentious areas in international economic law, and an area naturally conducive to the methodologies of Law and Economics. This thesis analyses the niche IP area of 'Broadcasters' Rights' - a form of 'Related Rights'. The relevance of this analysis to wider field of Law and Economics is its treatment of property rights in media distribution, particularly where the result is an overlapping system of different rights.

Part I of the thesis outlines the motivation for this research project, and the fact that the topic has attracted little attention from academia compared to the attention given at the international policy level (particularly at the World Intellectual Property Organisation). It argues that the very notion of 'related rights' is often erroneously subsumed into wider discussions on copyright, making meaningful debate difficult.

Part II goes on to find that the concept of broadcasters' rights – a mechanism to incentivise content distribution rather than content production – has a generally uneasy fit within the wider framework of the theoretical foundations of the intellectual property system. This part argues that the public good problems of broadcast content distribution are likely overstated. Furthermore, given the unique socio-cultural characteristics of broadcasting markets, such rights must be understood as one element of a dynamic set of policy tools for regulating the sector.

Much of the thesis analyses the relationship between 'primary' copyright and broadcasters' rights. In this regard, Part III attempts at modelling the 'optimal scope' of protection, and finds that broadcasting organisations should be offered a scope of protection below that which is offered for authors of copyright-protected works. However, due to the specific nature of the protected subject matter, there is a more restricted range of policy levers to affect the scope of protection for broadcast transmissions, as compared to other areas of intellectual property. In this regard, the thesis argues that liberal limitations and exceptions are critical in constructing an appropriate scope of protection for signal transmissions. This Part also models the relationship between the enforcement actions of copyright holders and broadcasters. It argues that the existence of broadcasters' rights can create social costs such as anti-commons effects and public domain enclosure. Hence, a possible alternative policy strategy might be to grant broadcasters the standing to enforce against infringement on behalf of their copyright licensees.

Part IV, dedicates a large portion of the thesis to analysing the notion of 'retransmission rights'. These are the intellectual property rights invoked when a broadcast signal is re-broadcast by a second broadcaster. During this activity, the rights of both copyright holders and initial broadcasters are invoked. This Part analyses the framework of the European Union for regulating retransmission activities, and finds that it is characterised by a patchwork of various legal instruments. As a response to the deficiencies of existing policies, a new EU Regulation has been proposed for online transmissions. However, the thesis argues that this Proposal still fails to bring overall coherence to the broader framework. In this regard, the thesis argues that the regulation of broadcast transmission should be based on a technologically-neutral policy approach. The final substantive chapter then attempts to draw lessons from the European case study and formulate a basic understanding of the theoretical relationship between the related rights of broadcasters, and

that of copyright holders. The main finding is that limitations to retransmission rights are justified due to the transaction cost-intensive nature of such activities.

The thesis concludes with Part V, which attempts to generalise the discussions and findings of the entire research project, and considers how they can inform the current international policy debate on the topic.