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LAW AND ECONOMICS OF COPYRIGHT IN CORPORATE INNOVATION AND WELFARE ENHANCEMENT

51 Rutgers L. Rec. 187 (2024) | WestLaw | LexisNexis | PDF **I. INTRODUCTION**

?A COPYRIGHT WILL PROTECT YOU FROM PIRATES. And make you a fortune. If you have a PLAY, SKETCH, PHOTO, ACT, SONG or BOOK that is worth anything, you should copyright it. Don't take chances when you can secure our services at small cost . . . .?1 This is an excerpt from an advertisement in 1906 by Columbia Copyright & Patent Co. Inc.2 Economic principles of wealth maximization3, risk aversion4, and cost-benefit analysis5 emanate from this advertisement urging creators to seek copyright protection.

Copyright protects original works of creative expression.6 Copyright owners have the exclusive right to reproduce, publicly perform, or display the copyrighted work, create derivative works from the copyrighted work, and distribute copies of the copyrighted work.7 Edwin C. Hettinger reports that most copyrights are owned by institutions including corporations.8 Without copyright protection, many companies are threatened by competitors who copy the companies' creative works at low cost and sell the copies at reduced prices.9

Economic principles underlie the legal protection of copyright and corporations' strategic plans for innovation. More than a century after Columbia Copyright & Patent Company's advertisement in 1906, with the advent of novel technologies, analysis in law and economics remains vital in the evaluation of copyright policies for public welfare and corporate initiatives for innovation.

This article first analyzes concepts of law and economics in the welfare justification of copyright **(I)**. This article then applies this examination to critique the United States Supreme Court's adjudication of a corporation's initiative to provide the public with copyrighted audiovisual content through innovative technology **(II)**.

1 Advertisement for Columbia Copyright & Patent Company from The New York Clipper, Nov. 3, 1906, Library of Congress, United States of America, https://www.loc.gov/exhibits/bobhope/vaude.html#obj036 (last visited Mar. 29, 2024).

2 Id.

3 Richard A. Posner, Utilitarianism, Economics, and Legal Theory, 8 J. LEGAL STUDS. 103, 119 (1979).

4 8.1 Risk Aversion and the Allocation of Risk, HARV. UNIV., https://cyber.harvard.edu/bridge/LawEconomics/risk.htm (last visited Mar. 29, 2024).

5 PWC, UNDERSTANDING THE COSTS AND BENEFITS OF INTRODUCING A ?FAIR USE' EXCEPTION 14-15 (2016).

6 Edwin C. Hettinger, Justifying Intellectual Property, 18 PHIL. & PUB. AFF. 31, 32 (1989).

7 Id. at 34.

8 See id. at 46.

9 Id. at 47; see also Audio and Video First Sale Doctrine: Hearings on H.R. 1027, H.R. 1029, and S. 32 Before the Subcomm. of Cts., C.L. & the Admin. of Just. of the H. Comm. on the Judiciary, 98th Cong. 720 (1985) (referencing section titled ?Tough to Get Compensation,? discussing movie-producing corporations' difficulty in obtaining compensation in the face of individuals and entities who copy movies on cassettes at low cost).

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