

Knockoffs can spark innovation, boost economy, law professor argues

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(Phys.org)—Conventional wisdom holds that strong copyright and patent laws are necessary to encourage creativity. Without such protections, the thinking goes, competitors are free to steal ideas, create knockoffs and drain profits from innovators.

Yet a number of major industries – fashion, cuisine, open-source software, finance, font design, stand-up comedy and more – manage to thrive and innovate in the absence of legal protections for intellectual property.

In many of these industries, copying is widespread. And, in many cases, that's actually a good thing, according to University of Virginia [law professor](#) Christopher Sprigman.

Sprigman is the co-author of "The Knockoff Economy: How Imitation Sparks Innovation," a new book that explores how certain industries prosper without [copyright](#) and [patent law](#), even amidst pervasive imitation.

"I'm not interested in intellectual property law. I'm interested in innovation. I'm interested in creativity," Sprigman said. "The typical story about IP law is that it's the handmaiden of innovation and creativity. That it's the way we incentivize people to engage in creative labor.

"But there's a whole world of creativity out there that is motivated by

different things. The question is, can you sustain creativity at high levels without intellectual property, or with less IP than we have now? The answer for the book is 'Yes.'"

The book's inspiration arose from a conversation several years ago between Sprigman and co-author Kal Raustiala, a law professor at the University of California, Los Angeles, about how the fashion industry manages to thrive despite the prevalence of knockoffs.

"Copyright doesn't cover fashion designs," Sprigman said. "And so fashion designers are free to copy and take inspiration from their rivals' designs. And there is lots of copying in the fashion industry, but there's lots of innovation and there's lots of profits. We wanted to understand how that was possible."

Sprigman and Raustiala figured out that copying actually allows the [fashion industry](#) to set trends and motivate consumers to buy more clothes.

"We don't know a trend until there are lots of copies. That's what makes a trend," Sprigman said. "Copying helps spread a trend and then it helps kill it when there's too much copying. The early adopters flee the trend and they adopt the next trend. So the trend cycle is fueled, in a sense, by copying, and this helps the industry as a whole, though it might in some instances hurt individual designers."

Other industries, such as cuisine, also thrive despite wide freedom to copy.

"You can't really copyright a recipe," he said. "You can't really copyright a dish as prepared, or patent it for that matter. But there's lots and lots of copying. Also lots and lots of innovation in cuisine."

A similar situation can be found in professional football, he said.

There's "lots of innovation in football offenses and defenses – wide freedom to copy," he said. "In fact, these offenses and defenses are knocked off all the time. But that doesn't stop coaches from innovating, and we explore why."

The book also delves into the world of stand-up comedy, building on [an earlier article](#) written by Sprigman and U.Va. colleague Dotan Oliar. Without [intellectual property law](#) to prevent joke theft, comedians police themselves.

"In stand-up comedy, copyright doesn't really provide effective protection for jokes or comedic routines," Sprigman said. "But comedians have developed a system of social norms that discourages joke stealing."

Sprigman cited a 2007 incident at a Los Angeles comedy club in which comedian Joe Rogan publicly accused Carlos Mencia of stealing material from other comics. A video of the confrontation went viral.

"That is a rather public example of what comedians do a lot, which is, they confront each other when they think a joke has been stolen," Sprigman said. "It effectively reduces joke stealing to a level low enough that there is no market failure and comedians feel secure enough in their rights that they will author new material all the time."

One of the biggest proponents of copyright law has been the music industry, which Sprigman says has witnessed a "collapse of social norms against stealing" in little over a decade, with the rise of Napster in 1999 and its successor peer-to-peer networks in subsequent years.

"This has hurt the record companies tremendously. I have no doubt

about that," Sprigman said. "The question is, has it hurt music? There's a huge amount of music these days, of very high quality, available to people at a relatively low price. So in some ways we're living in a very fertile period for music even as the record industry is declining."

The book suggests a path forward for the music industry that relies less on tough copyright law and more on some of the strategies employed by other industries covered in the book. One possibility, Sprigman said, would be to rely more on social norms. There is a model for this in the music industry, one pioneered by the Grateful Dead.

The Grateful Dead allowed fans to record their concerts and trade the recordings for free. In return, fans agreed not to share the studio recordings. Other jam bands and their fans followed this model.

"When fans share live recordings on peer-to-peer networks, they actually police the sharing of recordings – typically studio recordings – that the band has reserved for themselves for sale."

As a result, fans enforce a social norm that the bands would have a difficult time enforcing through copyright, Sprigman said.

"The music community, as a whole, as it changes, might become more like the jam-band community," he said. "The record label executives would certainly be wise to start looking into that."

While some, including the [music industry](#), argue that more copyright laws are needed, Sprigman said the "world is shifting against them."

As evidence, he pointed to the recent defeat of the Stop Online Piracy Act and the Protect IP Act in the United States and the European Union Parliament's rejection last month of an international treaty to crack down on digital piracy and counterfeiting.

"There's a growing awareness around the world that copyright and patent aren't a one-way street, that more copyright and patent aren't always good for society, that there are costs associated with copyright and patent," he said. "There are those who argue that more copyright and patent are necessary. I'm open to these arguments. If I see empirical evidence of it, I'm open to it. I just haven't seen it."

Provided by University of Virginia

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