

# **Absence of copyright has its own economic value, social benefits**

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New research co-written by Paul Heald, the Richard W. and Marie L. Corman Research Professor of Law at Illinois, explores the cost of excessive copyright law and the value of the public domain. Credit: College of Law

A new study co-written by a University of Illinois expert in intellectual property law demonstrates that the value of creative works in the public domain such as books, images and music can be estimated at least as precisely as the value of commercially available copyrighted works.

The implications of the study for both [copyright](#) term extension and orphan works legislation are substantial, says law professor Paul Heald.

"Copyright owners frequently talk about the private value of copyrights, which isn't difficult to see: If you have a monopoly on something, you get to make a lot more money," said Heald, the Richard W. and Marie L. Corman Research Professor of Law at Illinois. "What they conveniently ignore is that the absence of copyright creates value, and that creative industries rely on [public domain](#) works as building blocks for many valuable new creations."

The paper, co-written by Kristofer Erickson and Martin Kretschmer, both of the University of Glasgow, is one of the first attempts to quantify in monetary terms a portion of the public domain.

"Calculating the entire value of all public domain works would be overly ambitious, so we attempted to calculate the value of a small slice of it," Heald said.

To put a monetary value on how much creative works in the public domain contribute to the creation of new works, the authors used Wikipedia pages as an example of new authors creating new works that rely on the public domain in the authorship process.

"We studied the biographical Wikipedia pages of a large data set of authors, composers and lyricists to determine whether the public domain status of available images leads to a higher rate of inclusion of illustrated supplementary material, and whether such inclusion increased visits to

individual pages," Heald said.

The authors found that the most historically remote subjects were more likely to have images on their Wikipedia pages, most likely because their lives predate the existence of in-copyright imagery. They also discovered that the vast majority of photos and illustrations used on subject pages were obtained from the public domain.

By estimating their value in terms of costs saved to Wikipedia page builders and increased traffic corresponding to the inclusion of an image, and then extrapolating from a random sample to a further 300 Wikipedia pages, the paper concludes that the total value of public domain photographs on Wikipedia is between \$246 million to \$270 million per year.

"That really highlights the cost of excessive [copyright law](#)," Heald said. "As we show in the paper, it's not just a net win for everybody when we extend copyright. There are clear, measurable and palpable losses. And we believe that the empirical example we provide can demonstrate to policymakers how the absence of copyright can add economic value to a discrete set of works."

Even though the estimates make use of several proxies, the implications are considerable and significant, according to Heald.

"As long as lobbyists for copyright expansionists assert that royalty checks going to private owners is a proper measure of public welfare, then policymakers will need to be confronted with dollar figures on the monetary value of the public domain," Heald said. "There's no reason why the public should want to see income streams created through copyright law continue. It increases the private wealth of individual and corporations, but outside of that it's nothing but a drag on consumer surplus and social welfare. As long as the copyright term is long enough

to stimulate the creation of the work in the first place, then society actually has no interest in seeing copyright law enforced at all."

According to Heald, the most convincing policy implications of the paper concern photographs.

"We show that photographs have significant value in the Wikipedia context, and that photographs pose a particular problem that other copyrighted works don't," he said. "And that's because it's very difficult to find out who owns a photograph."

Photographs from magazines or newspapers from the 1940s, 1950s, 1960s or 1970s could still be protected by copyright – if they were properly registered and published with the proper notice, Heald said.

"But you can't easily find out if a copyright was renewed or registered properly in the first place, or who owns it, because there's no easily searchable database at the copyright office," he said. "Chances are, many if not most of the photos from that period are in the public domain and could be used for free, but there's no system for people to make that determination with any confidence."

The study also provides a strong justification for the enactment of orphan works legislation that has languished in Congress for years.

"Orphan works are creations that are technically protected by copyright, but their owners are unknown or can't be found," Heald said. "That type of legislation was proposed by the Library of Congress a couple of years ago. Then the economic crisis hit, and it got buried. But I think our paper provides a nice argument for resurrecting it. It doesn't strip copyright; essentially, you get a compulsory license to use the photograph and have to pay fair market value for it if the owner steps forward. So it doesn't hurt copyright owners because they get a fee, and it would really be a

boon to those who find a photograph they want to use and, in good faith, try to track down the its rightful owner. It's really a win-win situation."

**More information:** "The Valuation of Unprotected Works: A Case Study of Public Domain Photographs on Wikipedia":

[papers.ssrn.com/sol3/papers.cfm ... ?abstract\\_id=2560572](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2560572)

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