Utilitarian View of Copyright

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- utilitarian view:
  To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries

- this does not say “balance the rights of creators with consumers”

- economists are in favor of property, capitalism and profit – I am not an exception

- suppose government granted an exclusive franchise to produce and sell soap, as England did in the 1630s

- the “property” this is a right to is the “right” to “own” buyers of soap

- we usually call this a monopoly
• the failure of Eastern Europe shows the advantage of property and capitalism
• it equally shows the disadvantage of government enforced monopolies
• copyright is a government enforced monopoly
• yet economists generally favor copyright and intellectual property
• why? the market may provide too little incentive to create
• if the moment I release my great new music CD it is copied by every one all over the internet, how am I the poor starving artist to make a living?
Consequences of Intellectual Monopoly

- more revenue for creator
- creations are less useful
- rent-seeking – DMCA, retroactive extension of copyright now life + 70 years, lawsuits
- but maybe OK if it leads to a lot more creation
- Lessig: more costly for others to create
- David Friedman: imagine copyright on every word in the language
- net theoretical effect on creation ambiguous
- what does the evidence show?
- there is NO EVIDENCE that copyright increases creative output
• Scherer: 18th-19th Century Classical Music
  o introduction of copyright didn't have much effect on earnings of composers
  o the one clear case is Verdi who produced less on account of getting copyright

• Plant: 19th Century earning by English authors who were not allowed copyright in the U.S.
  o English authors were paid by American publishers even though the publishers didn't have to – in some cases more than they earned in royalties on English sales

• 9-11 Commission report not copyrighted because government document; sold about ¼ as many copies as the latest Harry Potter
  o freely available on internet
  o authorized edition by Norton, St. Martins version two weeks later
  o Norton admits making $600,000 profit from going first
- is music threatened by digital downloads?
  - what has computer technology brought?
  - at most 10-15% decline in sales
  - costs have gone down by a factor of 1,000
- software produced without copyright
  - open source not Al Gore or Microsoft invented the internet
  - you use open source every day – Google runs on open source
  - how much is Linus Torvalds worth?