

IP: A natural experiment

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Author: James Boyle

Title: "A natural experiment"

In *_Financial Times_*, 2004-11-22

Excerpts:

"So how do we decide the ground-rules of the information age? Representatives of interested industries come to regulators and ask for another heaping slice of monopoly rent in the form of an intellectual property right."

"Extensions of rights can help or hurt, but without economic evidence beforehand and review afterwards, we will never know. In the absence of evidence on either side, the presumption should obviously still be against creating a new legalised monopoly, but still the empirical emptiness of the debates is frustrating."

"What we really need is a test case where one country adopts the proposed new intellectual property right and another does not, and we can assess how they are both doing after a number of years."

"There is such a case. It is the 'database right.' Europe adopted a Database Directive in 1996 which both gave a high level of copyright protection to databases, and conferred a new "sui generis" database right even on unoriginal compilations of facts. In the United States, by contrast, in a 1991 case called Feist, the Supreme Court made it clear that unoriginal compilations of facts are not copyrightable."

"Bottom line? Europe's industry did get a one-time boost, and some of those firms have stayed in the market; that is a benefit, though a costly one. But database growth rates have gone back to pre-Directive levels, while the anti-competitive costs of database protection are now a permanent fixture of the European landscape. The US, by contrast, gets a nice steady growth rate in databases without paying the monopoly cost. (Second rule of thumb for regulators: Do no harm! Do not create rights without strong evidence that the incentive effect is worth the anti-competitive cost.)"