

The Unattended Consequences of Intellectual Property on the Film
Streaming Industry

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Introduction

In today's economy, intellectual property (IP) plays a large part in how businesses function. Most businesses utilize patents, copyrights, trademarks, and trade secrets as ways to compete. Many entrepreneurs think very highly of IP as if it is the only thing protecting themselves from thieves who want to rob them of their mental labor. However, when it comes to economists, there are many different views on IP. This remains true even in Austrian Economic circles.

There is a lot of literature on IP. Most of the literature is on the theoretical effects of IP or historical accounts of IP in specific markets. With the growing and everchanging internet, it would be a mistake not to look at the effects of IP on a more current market. The film streaming industry (i.e., Netflix, HULU, HBO, Amazon Prime Video) is an industry that thrives on the enforcement of intellectual property rights and yet has not been included in the literature on IP.

In this paper, I summarize different theories of IP and discuss which theory I believe is correct. Then I use that theory as the foundation for analyzing how IP affects the film streaming service. I argue that IP in the film streaming industry creates unforeseen consequences to the film streaming market. These unforeseen consequences are that substitutes become compliments, innovation is impaired, and the means by which companies compete change.

Theories of IP

If one surveys economists on their idea of property rights, you will have a lot of agreement, and maybe some subtle differences. However, when one surveys economists

on their idea of IP, there is quite a lot of variation. Some hold to a natural-rights understanding of IP, while others view IP in a utilitarian way. Murray Rothbard held to a contract theory of IP. Some flat out reject IP in all cases. I will be going into some depth on each of these ideas.

The natural-rights view of IP argues that because a person owns the product of their labor, they also own and have the right to the product of their mental labor, i.e., ideas.¹ Ayn Rand argued that IP was the legal instrument of protecting what is at the base of all property rights, which is the right to products of the mind.² The most obvious flaw in this idea is that there must be arbitrary distinctions on what should be protected by IP, or one must say that all products of the mind should be protected. However, a more significant flaw is that the natural-rights view of IP understands private property as a result of creation rather than scarcity. Most economists agree that it is precisely because tangible goods are scarce that there is a need for property. Ideas, or products of the mind, are not scarce.

The utilitarian view of IP argues that wealth is optimized, or at least increased, by granting copyright and patent monopolies, that encourage authors and inventors, to innovate and create. An issue with the utilitarian view of IP is that it “involves making illegitimate interpersonal utility comparisons, as when the *costs* of IP laws are subtracted from the *benefits* to determine whether such laws are a net benefit.”³ Ludwig von Mises points out that “money is neither a yardstick of value nor of prices. Money does not

¹ Palmer, Tom G., 1990. "Are Patents and Copyrights Morally Justified? The Philosophy Property Rights and Ideal Objects." *Harvard Journal of Law and Public Policy* Vol. 13 (No. 3): 817–65.

² Ayn Rand, Nathaniel Branden, Alan Greenspan, and Robert Hessen. 2008. *Capitalism: The Unknown Ideal*. New York: Signet.

³ N. Stephan Kinsella. 2008. *Against Intellectual Property*. Auburn, Ala.: Ludwig Von Mises Institute.

measure value.”⁴ This points out a glaring flaw in the utilitarian approach. That is, the utilitarian view uses money to measure the value of IP.

David D. Friedman is partially in favor of the utilitarian view of IP. He argues that “property rights serve two related functions: they provide both a way of deciding who gets to use what when and an incentive for creating things.”⁵ He rightfully points out that for IP, the first function is not needed.⁶ He argues that the economic case for the second function is weak but says that “it is hard to read a book if nobody has written it, and authors may choose not to write books if they cannot collect royalties on them.”⁷ This is an argument that many defenders of IP utilize. In this paper, I show that instead of more entrepreneurs entering the market because of the added security of IP, it is IP that makes entry into the market more difficult. As an aside, Michele Boldrin’s and David K. Levine’s book, *Against Intellectual Monopoly*, goes into depth on this specific topic.

Murray Rothbard argues that copyrights are a legitimate form of IP because of its relation to contracts. He argues that if a seller sells a good to a buyer and stipulates in a contract that the buyer cannot make copies of the product, and the buyer goes on to make copies of it, then the buyer is guilty of thievery.⁸ Most economists would agree with this. Rothbard continues to argue that a third party is also liable if they copy the seller's good because “no one can acquire a greater property title in something than has already been

⁴ Ludwig Von Mises. 2016. *Socialism: An Economic and Sociological Analysis*. Stellar Editions.

⁵ Friedman, David D., 2000. *Law's Order: What Economics Has to Do with Law and Why It Matters*. Princeton, N.J.: Princeton University Press.

⁶ Ibid.

⁷ Friedman, David D., 2000. *Law's Order: What Economics Has to Do with Law and Why It Matters*. Princeton, N.J.: Princeton University Press.

⁸ Murray Newton Rothbard. 2002. *The Ethics of Liberty*. New York: New York Univ. Press.

given away or sold.”⁹ This is where some problems arise. N. Stephan Kinsella refutes this in his book, *Against Intellectual Property*:

Ideas in one’s head are not “owned” any more than labor is owned. Only scarce resources are owned. By losing sight of scarcity as a necessary aspect of a homesteadable thing, and of the first occupancy homesteading rule as the way to own such things, Rothbard and others are sidetracked into the mistaken notion that ideas and labor can be owned. If we recognize that ideas cannot be owned (they are not scarce resources), that creation is neither necessary nor sufficient for ownership (first occupancy is), and that labor need not be “owned” in order to be a homesteader, then the trouble caused by these confused notions disappears.¹⁰

What Kinsella points out is that Rothbard falls into the same trap that Ayn Rand fell into. Which is that creation is the foundation of property rather than the scarcity of tangible goods. Rothbard's claim that third-party actors are bound by a buyer and seller's contracts are weak at best. For Rothbard's argument to be correct, creation would need to be necessary or sufficient for ownership. But that is not the case, so Rothbard’s argument ultimately fails.

In an utterly theoretical sense, IP does not exist. Ideas are not scarce because they are not tangible. Individuals can have the same idea without the knowledge of the other individual’s existence. However, in the real world, IP does exist. This is because of IP law, making it illegal for someone to "violate" another's IP. There have been many consequences to IP law throughout history. For example, during the Industrial Revolution, patents hindered economic progress, and wealth was rarely accumulated for

⁹ Ibid.

¹⁰ N. Stephan Kinsella. 2008. *Against Intellectual Property*. Auburn, Ala.: Ludwig Von Mises Institute.

the patent holders.¹¹ In the 21st century, many industries are digitalized, which causes them to rely heavily on IP law. However, when one looks closer, it looks as if the reliance on IP laws in digitalized industries have hurt the industry instead of paving the way for innovation and competition. As I stated in the introduction, the film streaming industry thrives on the enforcement of IP. Below I hope to show the unattended consequences of the IP law utilized in the film streaming industry.

Copyright Compliments

The primary forms of IP law that the film streaming industry utilizes are patents and copyrights. In this section, I will be arguing that copyrights in the film streaming industry make rival companies compliments rather than substitutes. If Company A owns the exclusive copyright to Film A, then Company B cannot legally stream Film A. Company B then purchases the exclusive copyright to Film B, and now Company A cannot legally stream Film B. If a consumer wants to stream both Film A and Film B, they must purchase subscriptions to both Company A and Company B. Both companies will receive an increase in subscribers, which results in an increase in income. Of course, this does not mean that Company A and Company B are complements. To decide that, we would need to see the prices for each company. I expand on this with real-life examples below.

There is much overlap in subscribers for streaming services. The company Realgood, which collects data on film streaming services, published a data set on how many subscribers of one company are subscribed to other companies as well. They found

¹¹ Boldrin, Michele, and David K Levine. 2010. *Against Intellectual Monopoly*. New York: Cambridge University Press.

that 90.33% of Peacock Premium subscribers also subscribe to Netflix, 90.86% of HBO Max subscribers also subscribe to Netflix, 84.23% of Amazon Prime Video subscribers also subscribe to Netflix, 86.02% of Disney Plus subscribers also subscribe to Netflix, and 85.06% of Hulu subscribers also subscribe to Netflix.¹² 67.1% of Netflix subscribers also subscribe to Amazon Prime Video, 92.82% of Peacock Premium subscribers also subscribe to Amazon Prime Video, 90.59% of HBO Max subscribers also subscribe to Amazon Prime Video, 82.48% of Disney Plus subscribers subscribe to Amazon Prime Video, and 81.31% of Hulu subscribers are also subscribed to Amazon Prime Video.¹³

What is shown here is that there is a lot of overlap between consumers. Even Netflix's 67.1%, which seems low compared to the other percentages, is still over half of Netflix's consumers. Considering Netflix made it to the market before any of the other companies did, it makes sense that slightly less of their consumers are subscribed to other services. But this begs the question, if all these other companies are relatively new to the market, did they take away any subscribers from their competitors?

Over time, all film streaming services have increased in subscriber count regardless of a new entry into the market. In 2014 Hulu had 6 million subscribers, and in 2019 they increased to 28 million subscribers.¹⁴ In 2015, Netflix had 70.8 million subscribers, and in 2019 it increased to 167.1 million subscribers.¹⁵ Amazon Prime Video had 50 million subscribers in 2015, and in 2019 it increased to 112 million subscribers.¹⁶

¹² "Share of Consumers with Multiple Subscriptions to Streaming Services U.S. 2017." 2020. Statista. Realgood. 2020.

¹³ Watson, Amy. 2020. "Share of Consumers with Multiple Subscriptions to Streaming Services U.S. 2017." Statista. Realgood. 2020.

¹⁴ "Hulu Statistics and Facts." 2020. Market.Us. September 15, 2020.

¹⁵ Richter, Felix. 2020. "Infographic: Netflix Continues to Grow Internationally." Statista Infographics. Statista. January 24, 2020.

¹⁶ Reisinger, Don. 2020. "Amazon Prime's Numbers (and Influence) Continue to Grow." Fortune. January 16, 2020.

It is a strictly upward trajectory in subscribers for all the streaming services. Even if you look quarter to quarter, there is still only an upward trajectory in subscribers for these services.¹⁷

There is quite a difference in prices for each different streaming service. Netflix is \$12.99, Hulu is \$5.99, Amazon Prime Video is \$8.99, and HBO is \$14.99.¹⁸ Even with price differences, cheaper services, such as Hulu and Amazon Prime Video, are not taking away consumers from the more expensive services, Netflix and HBO. Instead of consumers choosing between the services, they are subscribing to more services. If we hold that all the companies are of, relatively, the same quality and the services were substitutes; then consumers would unsubscribe from Netflix and HBO and subscribe to Hulu instead. But all the streaming services are only increasing in subscriber count, not decreasing. This is the case even with the variation in prices.

So, what makes them compliments and not substitutes? Earlier in this section, I walked through the thought experiment with Company A and Company B with Film A and Film B. This is actually how streaming services operate. The films that companies stream are not owned by them. They purchase an exclusive copyright in order to show the film. When they do that, no other service can stream that film until the copyright expires, or they enter into a co-exclusive copyright agreement (which still binds all third-party companies and consumers).

Consumers were surveyed on why they purchase multiple streaming services. 47% of respondents said it was to expand the content they had access to, and 37% of the

¹⁷ Watson, Amy. 2011. "Netflix Subscribers Count in the U.S. | Statista." Statista. Statista. 2011.

¹⁸ Leonhardt, Megan. 2019. "Hulu Just Cut Prices—Here's How It Compares to Other Popular Streaming Services." CNBC. February 26, 2019.

respondents said it was so they could have access to a show or film that was not available anywhere else.¹⁹ These two top answers are almost identical, and both get at the idea that consumers are interested in expanding the films that they have available. None of the survey answers said anything along the lines of one company is better than the other. Across the board, consumers said they wanted films or show that they did not have access to. More support for the idea that streaming services are complements rather than substitutes is that many of them are sold in bundles. Disney Plus, Hulu, and ESPN can be bundled for \$12.99 a month, and HBO, Amazon Prime Video, and Cinemax can be bundled for \$21.99 a month.²⁰ This shows that even the companies are aware of the relationship they have with their competitors, and they know that consumers are demanding more than one streaming service.

Innovation and Competition

Patents have played a large role in how streaming services compete since the conception of the film streaming industry. Before streaming services were dominant in the film market, movie rental stores like Blockbuster were on top. Most people assume that Netflix put Blockbuster out of business simply because they had a better business model: online movie rentals without a late fee. This was a system that was improving on some of the flaws of the Blockbuster model. When Blockbuster began losing revenue because all their customers were moving to Netflix, they began using a similar business model that included no late fees. It was not long before Netflix filed a lawsuit against

¹⁹ Watson, Amy. 2020. "Factors for Subscribing to Additional Paid Video Streaming Services in the U.S. 2020." Statista. July 13, 2020.

²⁰ Briones, Isis. 2020. "The Best Streaming Bundle Deals Available in 2020." Slickdeals. September 26, 2020.

Blockbuster for patent infringement.²¹ Netflix filed a patent for its business model, claiming that their business model of no late fees on mail-order films was their intellectual property.²² It is common knowledge now that Blockbuster is no longer a company and Netflix is.

One could posit that if there was no lawsuit, Blockbuster and Netflix would have gone back and forth, improving and trying to make the mailed movie service as efficient and cheap as possible. But obviously, that did not happen. Patents are the foundation for the film streaming service. Netflix and other companies file patents for every aspect of their business model or any innovations of any kind. Netflix recently patented the way they add subtitles to movie trailers.²³ Hulu patented the process of how they choose ads to show viewers.²⁴ These might seem like small things, but those two examples are just a look at the kind of things that streaming companies are patenting. The problem is that patents lead to innovation gridlock. Because Netflix patented the way they add subtitles to movie trailers, all other streaming services must find a way to do it differently, even if Netflix's process was the most efficient.

In the book *Against Intellectual Monopoly*, Boldrin and Levine state:

[IP] makes innovation more costly. Innovations generally build on existing innovations. While each individual innovator may earn more revenue from innovating if he has an intellectual monopoly, he also faces a higher cost of innovating: he must pay off all those other monopolists owning rights to existing innovations.²⁵

²¹ Sanders, Monica. 2014. "Why Is Netflix Suing Blockbuster?" www.Legalzoom.com. June 24, 2014.

²² Ibid.

²³ Parthasarathi, Murthy. 2018. Techniques for Generating Subtitles for Trailers, issued January 19, 2018.

²⁴ Mak, Wing Chit. 2012. User Control of Ad Selection for Subsequent Ad Break of a Video, issued October 23, 2012.

²⁵ Boldrin, Michele, and David K Levine. 2010. *Against Intellectual Monopoly*. New York: Cambridge University Press.

Boldrin and Levine are pointing out the patent problem above. Because of the patents, innovation is not building off innovation. Rather, if Hulu wants to utilize an innovation from Netflix, they must pay a large sum of money in order to use it. The costliness of innovation will push entrepreneurs and businesses away from trying to innovate. Not only does this make it harder for businesses to innovate, but it also makes it harder for a new entry into the market (which gets at a reason why the utilitarian approach to IP is flawed). IP discourages competitors from entering the market, which, in turn, reduces the incentive for monopolists to innovate because there is no competition pushing the innovation.²⁶ Boldrin and Levine report the findings of many empirical studies on this topic. A study by Adam B. Jaffe reports that "there is widespread unease that the costs of stronger patent protection may exceed the benefits."²⁷ Patents are not being used to protect or increase innovation. It is being used to keep out competitors and reduce innovation.

Even though all major streaming services are increasing in subscriber count and revenue, they still view each other as competitors. But the way in which they compete is different. In their 2019 Annual Report, Netflix writes, "We compete against streaming entertainment providers and content producers in obtaining content for our service, for licensed streaming content."²⁸ Netflix understands that consumers are not interested in subscribing to Netflix because they view Netflix as the company with the better product.

²⁶ Ibid.

²⁷ Jaffe, Adam B., 1999. "The U.S. Patent System in Transition: Policy Innovation and the Innovation Process."

²⁸ Netflix Inc., 2019. "Netflix Annual Report 2019."

Netflix provides the same service as all the other streaming services. The difference between Netflix and Hulu is simply what films they have the exclusive copyright to. The amount of money Netflix spends on acquiring content helps show this point. In 2019, Netflix spent \$24.5 billion on securing licensing agreements. This was an increase of \$4 billion from the previous year and is estimated to only increase in the following years.²⁹

Netflix is also aware of the patent caused innovation gridlock. In their annual report, they admit that IP is part of every facet of their business. Netflix states that its IP extends to its technology, business models, and content.³⁰ They go on to say, “Many companies are devoting significant resources to developing patents that could potentially affect many aspects of our business.”³¹ They view IP as a defense from competitors while also viewing other companies' patents as an affront against their business. Filing a patent is like digging a trench. All the streaming services are digging their patent trenches in order to protect the business models that they already have. The consequence of this is that no one is pushing innovation. Or rather, no one legally is pushing innovation.

Piracy and Innovation

It would be remiss not to mention piracy in the film streaming industry. If my argument that innovation is hampered by IP law is correct, then there should be examples of innovation where IP law is lacking, and this is the case. There are many examples of innovation in the pirate streaming service market. But before we get into those examples, let's first look at if legal streaming services view pirate sites as competitors.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

Netflix states that piracy sites are a major threat to their business, and in the Netflix 2019 annual report, they write, “piracy threatens to damage our business, as its fundamental proposition to consumers is so compelling and difficult to compete against: virtually all content for free. Furthermore, in light of the compelling consumer proposition, piracy services are subject to rapid global growth.”³² It is not only Netflix that has said this, but Disney Plus and Hulu have said that they devote a substantial amount of resources to protecting their IP from unlicensed use.³³ Netflix believes they are losing millions of dollars because of piracy websites, and a study was done by The Hollywood Reporter on the effects of piracy sites, and illegal streaming stated that in 2019, companies lost about \$9.1 billion.³⁴ Streaming services take piracy very seriously and pour lots of time and money into enforcing their IP. As stated earlier, Netflix said it is hard to compete with services that are providing unlimited content for free.

One of the big innovations of the piracy streaming industry is that it bypasses the need to acquire exclusive copyrights for the films they are streaming. Company A and Company B can show the exact same film, and the consumer can choose which site to choose based on their consumer preferences. The dilemma for the consumer earlier is solved. They can choose one site to watch both films they wanted to watch. This leaves room for the different piracy sites to compete based on innovation and efficiency rather than what content they have the rights to.

³² Netflix Inc., 2019. "Netflix Annual Report 2019."

³³ The Walt Disney Company. 2019. "Fiscal Year 2019 Annual Financial Report."

³⁴ Weprin, Alex. 2020. "Streaming Services Reckon with Password-Sharing 'Havoc' | Hollywood Reporter." www.hollywoodreporter.com. January 8, 2020.

According to Muso, a digital piracy analytic company, illegal platforms built on piracy models are pushing forward innovation.³⁵ There were 190 billion visits to piracy streaming sites, in 2018 and most of them were for films unavailable on legal sites.³⁶ Many of the piracy sites look like legal sites, with smooth, efficient interfaces and user-friendly search functions. According to Muso, many of the sites give consumers better and easier viewing experiences than any paid site.³⁷ In 2015, Netflix CEO Reed Hastings, claimed that the piracy site Popcorn Time was Netflix's main competitor.³⁸ It was not long before Popcorn Time was blocked shut down by the government for patent and copyright infringement.³⁹ This resulted in consumers losing out on the innovations that Popcorn Time had implemented.

Of course, it is too costly for film streaming companies to take every piracy site to court, and because of that, there are still a lot of piracy sites fulfilling the demand of the consumer. The innovations from piracy sites have increased brand loyalty. Instead of searching for piracy sites through a search engine, many consumers are using direct links to go to their preferred piracy site, which suggests they are loyal customers of those sites.⁴⁰ From 2018 to 2019, there was a 10% increase in direct visits to piracy sites, rather than using search engines.⁴¹ By looking at specific sites Alexa ranking—a company that collects data on individual visitors to site, we can see where some of these piracy sites rank among their legal competitors. Many piracy streaming services such as Openload,

³⁵ Walker, Chris Stokel. 2019. "To Compete with Netflix, Streaming Video Online Piracy."

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Twentieth Century Fox Film Corporation & Ors v Sky UK Ltd & Ors [2015] EWHC 1082 (Ch)

⁴⁰ Walker, Chris Stokel. 2019. "To Compete with Netflix, Streaming Video Online Piracy."
Www.Muso.com. March 26, 2019.

⁴¹ Ibid.

The Pirate Bay, and Kinogo.club are in the 200s rank.⁴² Which compared to legal streaming sites is not that far behind, considering Netflix and Amazon Prime Video are the only legal streaming sites that break the top 50.⁴³ VK, a Russian piracy site that is half streaming service half social media, has an Alexa rank of 22, which is not far behind Netflix's rank of 20.⁴⁴ This show's that there is fierce competition between piracy sites and legal sites, and many consumers are choosing the piracy sites over the legal sites.

The consumer can go to a single site that offers them all the movies and TV shows that they want to view without having to subscribe to multiple services in order to access the content. It is cheaper, and many of the sites are more user-friendly and efficient than the legal sites.⁴⁵ Because of this, it seems that the battle between piracy sites and legal sites will ultimately leave piracy sites as the victor. It is simply too costly to enforce IP laws for every case of patent and copyright infringement. This is especially the case when the legal sites are already tied up financially in legal battles with themselves and other legal alternatives—such as cable television.⁴⁶ Unless legal film streaming services find an alternative for the way they do business, it seems like the future is very bleak. Innovation will stall as it has already, and entry into the market will be discouraged because of the likelihood of some form of a patent or copyright infringement.

The Public Domain Alternative

⁴² Alexa Rank. n.d. "Alexa Top 500 Global Sites." Alexa.com. <https://www.alexa.com/topsites>.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Walker, Chris Stokel. 2019. "To Compete with Netflix, Streaming Video Online Piracy."

⁴⁶ Brodtkin, Jon. 2020. "Cities Sue Netflix, Hulu, Disney+, Claim They Owe Cable 'Franchise Fees.'" Ars Technica. August 17, 2020.

A legal alternative to the patent and copyright business model is the public domain. In *Against Intellectual Monopoly*, Boldrin and Levine lay out an example of public domain books competing with copyrighted books in the contemporary market. Most books written today are copyrighted, but ironically, the exception to this is government documents. Government documents fall into the public domain. Many of the government documents have been published as books and have ended up as best sellers. One of those books was *The Final Report of the National Commission on Terrorist Attacks Upon the United States*.⁴⁷ Boldrin and Levine write that the publisher

received... the right to publish first, and the right to use the word *authorized* in the title. What it did not get was the usual copyright, the right to exclusively publish the book. Because it is a U.S. government document, the moment it was released, other individuals, and more important, publishing houses, had the right to buy or download copies and to make and resell additional copies—electronically or in print, at a price of their choosing, in direct competition with [the original publisher].⁴⁸

This could work well in the film streaming industry. Instead of a film company purchasing the exclusive copyright to a movie, they could bid for the right to stream first, but as soon as they stream the movie, other competitors could download copies and resell it or restream it however they wanted to. This would force streaming services to compete based upon who has the better service rather than what content they have the right to. The different streaming services would become substitutes instead of compliments because they would be offering each other a different viewing experience with different

⁴⁷ Boldrin, Michele, and David K Levine. 2010. *Against Intellectual Monopoly*. New York: Cambridge University Press.

⁴⁸*Ibid.*

innovations. Also, the publisher that first published the government document did turn a profit. It is estimated that after printing costs, they earned about \$1 million profit.⁴⁹ This pales in comparison to many other New York Times bestsellers, but there were no added costs of filing and purchasing IP and no future cost of defending the IP in court.

There are some examples of public domain films that have done well in the streaming market. Let's take the example of the 1968 film *Night of the Living Dead* by George Romero. Without a copyright, the film, with a budget of \$114,000, grossed \$30 million at the box office.⁵⁰ This public domain film has continued to do well in the streaming market as well. As of right now, there are over 50 different versions of the film available on Amazon Prime Video.⁵¹ Also, the film is available to stream on over 20 different streaming services.⁵² The film is also the most downloaded film on the Internet Archive.⁵³ It might seem foreign to us that companies would try to sell the streaming film but do so in so many different ways, but companies do this regularly with tangible goods. Companies innovate and change aspects of the same product to try to get consumers to purchase the product. It is the same with films in the public domain. They are competing on who can present the film in the way that consumers demand. Consumers will choose to watch the film on Amazon Prime Video over Hulu (or vice versa) based upon which service they prefer, not based upon what content that service has. This was just one example of a public domain film, but there are countless other films—most of them are

⁴⁹ Boldrin, Michele, and David K Levine. 2010. *Against Intellectual Monopoly*. New York: Cambridge University Press.

⁵⁰ Hughes, Mark. 2013. "The Top Ten Best Low-Budget Horror Movies of All Time." *Forbes*. October 30, 2013.

⁵¹ Merchandise for *Night of the Living Dead* at Amazon.com

⁵² "Night of the Living Dead (1968) | Where to Stream and Watch." n.d. Decider. Accessed December 5, 2020.

⁵³ "Most Downloaded Items," Internet Archive, 2015. Web.

from the 1960s or older, but it would be interesting to see how streaming services would react to filmmakers keeping their films in the public domain.

Conclusion

The most logical solution for solving the unattended consequences of IP in the film streaming market (and other markets as well) is to get rid of IP in general. IP does not exist outside of government law. Of course, that will most likely not happen anytime soon. Businesses will continue to use IP to monopolize ideas and content.

Creation is not the foundation of private property, and until that is realized by entrepreneurs, black markets, such as piracy sites, will continue to take away their customers and compete with them on a different playing field. Patents and copyrights do not increase innovation and increase entry into the market. The opposite occurs. Innovation becomes stagnant because of the legal costs of patents and potential legal battles, as well as the fees for trying to legally use other businesses' innovations. Boldrin and Levine show wonderfully that throughout history, a lack of copyrights and patents had no effect on how many entrepreneurs enter the market.⁵⁴ Copyrights are not simply contracts between buyers and sellers because they bind all third parties. Not only is there an enforcement problem with copyrights because binding all third parties is a tall order, but it also hurts entry into the market. Pirate streaming services will continue to innovate and expand. To convince consumers to break the law, they must fill a gap in the market that the legal services are not providing. Which in this case, it is simply more content for

⁵⁴ Boldrin, Michele, and David K Levine. 2010. *Against Intellectual Monopoly*. New York: Cambridge University Press.

cheaper, as well as an increase in user-friendly interfaces and adapting to the consumer's demand.

N. Stephan Kinsella points out from a theoretical standpoint that IP cannot be justified⁵⁵ and Boldrin and Levine show the negative empirical effects of such IP laws.⁵⁶ I applied their theory to the film streaming industry to show that these negative effects are not something that exists only in historical counts of IP but continues today and is even more rampant in the digitalized markets that rely solely on IP to compete in the market. Yet, some will still say that patents and copyrights are needed, and to them, I leave the words of Eugen Von Böhm-Bawerk, “the conception of authors’ copyrights as intellectual property bears so plainly the stamp of a fiction, resorted to in order to evade the burden of explanation, that it could not possibly prove satisfactory.”⁵⁷

⁵⁵ N. Stephan Kinsella. 2008. *Against Intellectual Property*. Auburn, Ala.: Ludwig Von Mises Institute.

⁵⁶ Boldrin, Michele, and David K Levine. 2010. *Against Intellectual Monopoly*. New York: Cambridge University Press.

⁵⁷ Eugen Von Böhm-Bawerk. 1962. *Shorter Classics*. South Holland, Ill.: Libertarian Press.

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