Regulating the Creators-Distributors Relationship
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Individuals often come up with intellectual creations. Many of those creations grant their creators intellectual property rights, primarily copyright or patents. But commercializing those rights typically requires another entity, a distributor. Authors of books typically need publishers, visual artists need gallerists, music performers need label companies, and inventors of new drugs need pharmaceutical companies. Indeed, the economic systems that IP laws envision and support rely on the cooperation between creators and distributors. Contracts play a crucial role in these ecosystems.

But this cooperation might be tainted by a disparity in bargaining power. In many cases, the creators are individuals, sometimes with limited resources, while the distributors are large and experienced companies. Therefore, creators can arguably be exploited by distributors. Such exploitation, if it occurs, raises significant concerns whether one perceives intellectual property rights as human rights that are rooted in notions of fairness and equity or as just instruments to incentivize the production of information goods.

The exploitation concerns led certain legal systems to intervene and trump the freedom of contract by creating certain legal rules that cannot be overridden by agreements. This work explores several such mechanisms, including the rules concerning the termination of copyright transfers under U.S. law, which allow authors to terminate their relationship with their distributors after several decades and get full control of their works; the principles of resale royalties under E.U. law (and the law of dozens other countries), which require resellers of visual artworks to pay royalties to the works’ creators; and the law, existing in Japan and elsewhere, which requires employer to give reasonable compensation to their employees intellectual creation.

The work will provide a critical look at the effectiveness of those legal tools, casting doubts on whether they can and do effectively address the exploitation concerns. The work will conclude by inquiring a possibly more controversial proposition: maybe the notion of exploitation of creators (especially authors) is just an illusion or a myth. Maybe those legal tools fail to change a reality that is actually not as troubling as it first seems.

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