Mickey Mouse, Big Bird & the Bed Intruder:
Making Space for Diverse Culture through New Distributed
Funding Models

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ABSTRACT

With the advent of the printing press, copyright eclipsed aristocratic
patronage as the funding mechanism for the mass media age. By enabling
authors and publishers to amortize creative investments across the sale of
multiple copies, copyright laws encouraged more democratic forms of
cultural production that catered to broadly distributed audiences. Yet,
cultural patronage regimes did not disappear. Instead, they migrated to
new niches such as public broadcasting and state funding for the arts.

Copyright and patronage operate as very different funding mechanisms.
Patronage regimes provide funding “up front” in advance of creative
investments. Copyright incentives function on the “back-end” allowing
the recovery of investments ex post through market exclusivity. These
rival mechanisms present characteristic tradeoffs and biases in
incentivizing particular forms of cultural production. Copyright regimes
orient investment toward commercially viable works; the result is a focus
on mass-market production that can impair cultural diversity. Patronage
regimes can offset the diversity failures of the copyright system, but suffer
their own selection biases and inefficiencies and are vulnerable to capture
and rent-seeking.

While copyright remains the dominant mechanism for funding commercial
culture, the copyright system has come under increasing strain in the
digital age. Commentators have proposed a variety of alternative
paradigms. This Article contributes to this literature by focusing on the
diversity harms associated with the copyright system. It shows how these
diversity harms can be partly traced to the ex post structure of the
copyright entitlement. This is important because most proposals for
alternative paradigms rely on similar “back-end” funding mechanisms that
could replicate such diversity harms.

This Article argues that the ex ante structure of patronage regimes deserve
a fresh look. Digital technologies enable new distributed funding models
that allow the benefits of “up front” support for cultural production
without the selection biases and inefficiencies associated with traditional
patronage mechanisms. This paper explores three distributed support
strategies: (1) subsidies for crowd-funding; (2) investments in creative
infrastructure; and (3) market-access enhancements. Crowd-funding democratizes artistic patronage, outsourcing allocation decisions to distributed, public-access platforms that allow a diverse array of works to attract support. Infrastructural investments at the grass roots level can similarly democratize access to the means of creative production. This Article proposes a “cultural incubator” model by which governments would provide a range of capabilities-expanding services in a “one-stop-shop” location. Finally, market-access enhancing measures would operate on the demand-side, encouraging markets to become more hospitable to diverse forms of artistic production. Combining these three strategies go a long way toward remedying the shortcomings in existing regimes for cultural support.