

Research Agenda
Peter DiCola
University of Michigan

I think of my research agenda for the next five years in terms of three rough categories: (1) copyright law and music-industry economics; (2) media and telecommunications regulation; and (3) the intersection of the first two categories. I aim to use quantitative methods whenever possible, but I also employ qualitative methods like surveys or interviews. My ultimate goal in researching a given topic is to assemble as much institutional detail as possible for the sake of addressing important policy questions.

Copyright

My current projects on copyright law involve the legal and economic problems presented by digital sampling, musical collage, “mash-ups,” and other musical practices that involve using fragments of preexisting recordings in new works. I have completed an essay, “An Economic View of Legal Restrictions on Musical Borrowing and Appropriation,” that will be published in a forthcoming conference volume, *Con/Texts of Invention*. I also have a full draft of a dissertation chapter, called “Sequential Musical Creation and Sample Licensing,” which develops an economic model of bargaining in the context of sequential innovation. I will continue to revise the chapter for eventual submission to one of the peer-reviewed law-and-economics journals. These papers focus on inefficiencies that arise in the context of downstream creators compensating (or not compensating) upstream creators. My underlying policy concern is the implicit burden that copyright places on some musical genres but not others, based on unconvincing distinctions between different modes of using preexisting works.

In the course of writing the essay and dissertation chapter, I also drafted “An Economic Model of Sampling, Cover Versions, and Musical Collage.” This is a working paper using simple simulations to illustrate that musicians with different characteristics will choose different business models, that is, ways of distributing their music to the public. It brings realistic, calibrated numbers to the abstract economic models, allowing a different, perhaps more tangible exploration of the consequences of various copyright policies. Ideally, I would collect quantitative data to give this paper a statistical component as well.

Creative License: Digital Sampling and the Law is a book co-authored with Kembrew McLeod of the University of Iowa and Jenny Toomey and Kristin Thomson of the Future of Music Coalition. Our team developed a survey about sample licensing and interviewed roughly 70 to 100 musicians, producers, music lawyers, industry executives, journalists, and other experts on the private system that has developed around copyright law’s rules governing sampling. From those interview results, Kembrew and I wrote a long report which has become a manuscript (which is under review at Duke University Press). The book reports the fascinating responses we collected and allows our interviewees to engage in a multifaceted discourse about when licensing should be required, what transaction costs arise, what inefficiencies are most burdensome in practice, and so on. But the book also uses those findings to go up a level from the interview data and take a position on the complex issues presented. For example, there is a tension—among the musicians and producers themselves—about whether the burden of

licensing samples from other musicians is worth the prerogative to deny licenses to other musicians whose collages or sample-based works seem morally offensive or otherwise objectionable. We seek to analyze that and other similarly thorny issues using a number of disciplinary approaches. The book thus tackles some of the major difficulties for copyright reform in this area. By August 2008, Kembrew and I will revise the manuscript into an scholarly book that some music professionals (and music fans) will also find accessible and useful.

After completing these projects related to sampling, I plan to pursue further projects that deal with copyright law and private licensing in the context of other genres. Jazz, for instance, involves practices of musical borrowing that copyright treats differently than sampling. Many jazz recordings are cover versions of previous compositions, involving new interpretations of preexisting melodies and harmonies and adding the jazz musician's own improvisations. Both the original composer and the improviser have some rights under copyright. But the licensing agreements and royalty payments do not necessarily reflect the same balancing. In future work, I will explore this divergence between law and business practice through qualitative and quantitative research that examines jazz musicians' incentives to record cover versions as opposed to their own compositions. In the longer term, I will also consider other areas of copyright licensing, including areas outside the music industry.

Media and Telecommunications

Much of my graduate work has involved studying what happened to radio in the U.S. in the wake of the Telecommunications Act of 1996. The main empirical chapter from my dissertation, "FCC Regulation and Increased Consolidation in the Radio Industry," uses a geographic data set on radio stations' signal coverage areas. Only with these unique data can one understand the FCC's method of defining local markets and, in turn, the FCC's limits on radio-station ownership within each local market. My next efforts in this research area will be to prepare the chapter for submission to an economics journal such as the *American Economic Review* or the *Journal of Political Economy*. In addition, I have recently started work on a law review article that discusses the FCC's local radio ownership regulations from the perspective of administrative law.

My next project on media will examine the rise of noncommercial radio, which has occurred amidst increasing commercial consolidation, declining listenership to commercial stations, and brisk technological change. National Public Radio (NPR) has doubled its listenership over the past five years. Stations offering religious programming (including religious music like the "Christian Contemporary" format) have proliferated, benefiting greatly from the 1996 changes in station-licensing procedures. On the other hand, low-power FM radio has grown slowly, due in part to regulatory barriers—restrictions on low-power licensing that NPR has lobbied for alongside the National Association of Broadcasters. I have recently begun to obtain ratings data on noncommercial stations, which I can combine with other data on the radio industry I have already used. My research questions in this area include: What explains NPR's economic success? How should the political economy of NPR inform critiques of FCC regulation? Does the commercial–noncommercial distinction benefit the public? How should a revised Telecommunications Act handle noncommercial media?

In the future I also plan to study the impact of new technologies like satellite radio, internet radio (or “webcasting”), and so-called “HD radio” (high-definition radio, also known as digital audio broadcasting). But research in media and telecommunications depends on proprietary data sources, which can present major roadblocks. For example, the satellite-radio duopoly has not released data that allow measurement of its effect on traditional radio. In contrast to the established (however imperfect) data sources on traditional radio, television, and newspapers, new media still lack standardized data sets that are available for purchase, let alone available to the public. And the price of existing sources can make it prohibitively expensive to study, say, the relationship between two or more media, like television and newspapers. Part of my research agenda, then, will involve acquiring or collecting whatever data I can regarding these new technologies. It will also involve working with the Social Science Research Council’s Necessary Knowledge for the Public Sphere initiative, which aims to form a “data consortium” for academic researchers and to explore other initiatives to expand access to data on media and telecommunications.

Intersection of Copyright and Communications

In recent years, scholars have begun to analyze telecommunications law in conjunction with copyright law, connecting the regulation of media with the intellectual property regime for information distributed over those media. I see a need for both theoretical and empirical work that simultaneously considers the economics of both telecommunications and entertainment companies and the largely separate legal regimes that govern them. Reform of either the Telecommunications Act or the Copyright Code should take into account how the changes will interact with the other body of law.

My near-term project in this area is to assess the music community’s recent push for a general public performance right in sound recordings under copyright law—in the context of the recurring controversy over webcasting royalties. In the past, radio companies successfully lobbied to deny this right to sound recording copyright holders, meaning that songwriters currently receive royalties for airplay on traditional radio while recording artists do not. With respect to webcasting, however, sound recording copyright holders enjoy a digital performance right, governed by provisions for royalty arbitration between the record companies and webcasters of various types and sizes. Both the lack of royalties for traditional radio airplay and the increase in royalties and reporting requirements for small webcasters have spawned controversy in recent years. Add in the recent payola scandal—resulting from an investigation by the New York State Attorney General’s Office—and it becomes evident that the issue of distributing money generated by (various kinds of) radio play has reached a boiling point. I would like to develop a model that captures the competing media and music copyright holders’ position with respect to them. More importantly, I would like to contribute to a small but growing quantitative literature in this area.

My longer-term project in this area is to develop a holistic model to analyze the increasing number of ways that consumers receive audio content. Technologies ranging in age from plastic disks and radio receivers to iPods and cell phones now deliver music, news, and other programming to consumers. Occasionally, new technology supplants an old one. Yet some very old technologies have survived; for instance, 95 percent of the public still listens to

radio every week. One explanation of the coexistence of an increasing number of media is that each medium has different features and different costs. Traditional radio, to continue with the example, features low costs and potentially long-range communication capability, both of which contribute to its ability to survive. I am interested in studying the role of law and legally influenced institutions in shaping medias' attributes and relative costs. For music, these differences may shape the success of different genres or musical practices. For news and information in an audio format, these differences may affect the content and direction of public discourse. With a theoretical economic framework in place, I plan to generate new questions for quantitative research that addresses the problem of disparities in the regulation of different media.

Post-Script: After Five Years

For the next five years, as this agenda suggests, my research will center on copyright and telecommunications issues. But I also have strong interests in administrative law, antitrust, and law and economics. To lay the foundations for branching out, I would look for opportunities to work with my colleagues to bring my quantitative skills to bear on new topics in those areas. Some of the less common research methods I have used—such as using geographic information systems (GIS) software to analyze an industry, or developing knowledge of institutional detail through interviews—have broader applicability. I have strong experience in grant-writing, data acquisition, and working in interdisciplinary teams. While I am focused on doing rigorous empirical research on copyright and telecommunications, and I understand the amount of time it takes to know an industry and a regulatory regime well, I look forward to developing new areas of expertise and to participating in the analysis of new policy problems.