

Copyright's Mercantilist Turn

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Over the last twenty years, justifications for broader copyright protection have taken an increasingly mercantilist turn. In the recent debates over the Protect Intellectual Property Act ("PIPA") and the Stop Online Piracy Act ("SOPA"), proponents did not seriously argue that these measures would enhance welfare by encouraging the production of more and better works of authorship. Rather, they argued that these bills would increase revenues to domestic copyright owners, and thereby create jobs and enhance the balance of trade. This shift from neoclassical welfare economics to mercantilist justifications for policy is not unique to PIPA and SOPA, however. Rather, it has become a defining feature of United States trade policy with respect to copyright and intellectual property, more generally, over the last two decades. Moving away from the tenets of free trade, trade policy in the intellectual property arena has sought increasingly to protect domestic industries from foreign competition, and to ensure thereby more revenue for, and more jobs in, those industries and a better balance of trade for the United States.

While more revenue, more jobs, and a better balance of trade may all sound like good things, this mercantilist approach to trade remains as empty today as it was in 1776 when Adam Smith famously refuted it. Because we seem to have forgotten the lessons Adam Smith so patiently taught us, this article explores whether more revenue, more jobs, and a better balance of trade can provide a sensible basis for a copyright-protective trade policy. Through a simple model, it demonstrates that extending an overbroad domestic copyright protection regime into international trade only exacerbates the domestic welfare losses such a regime generates. It then demonstrates why such a policy may nonetheless prove politically attractive, despite the welfare losses it generates.