

Fairness Towards Authors: Does It Necessarily Mean Caring for the Weak?

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Abstract: According to a common narrative in recent copyright scholarship, authors deserve fairness in their relationship with commercial entities, such as publishers and producers. This narrative is reflected most conspicuously in a growing trend all over the world to adopt mandatory rules designed to provide authors with a larger share of the profits generated by exploitation of their work.

The most common normative argument in favor of mandatory rules rests on considerations of distributive justice, according to which authors are poor and suffer from low bargaining power. Framing the issue as a conflict between weak, starving authors and large capitalist conglomerates has a broad intuitive appeal; in all likelihood explaining why the issue has been the subject of little critical discussion.

By contrast, this article offers a novel explanation for these mandatory rules in copyright law. Relying on empirical findings from the discipline of social psychology, concerning how individuals judge fairness in the allocation of resources, it argues that society disapproves of the typical transaction between authors and commercial entities not due to any desire to balance the power differences between the parties; rather this stems from our psychological aversion to certain patterns of profit division. Accordingly, it claims that mandatory rules in copyright law are arbitrary legislation which should not enjoy the normative importance attributed to caring for the weak.