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Paper Title: Developing a tool for defining and measuring Fairness and Morality in Intellectual Property rights

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Abstract:

Developing and least developed countries' (DLCs) ability to create and use intellectual property (IP) is impacted by the form of IP at issue, the rules governing how IP functions, and the resource capacity of their economies. For several DLCs, there is a relationship between the fairness and morality of IP laws and their ability to influence developmental objectives locally. This paper offers an intervention into the notion of fairness and morality in IP laws and governance and contends that there should be no difference in how these concepts are defined as between developed and DLCs. The paper suggests that a tiered system of defining the fairness and morality of IP rules is not the issue, but instead, how these concepts are measured globally, and the absence of solid and timely resolutions when inconsistencies are found.

The same level of fairness warranted in the use and governance of IP in DLCs may at times be justified as relevant in developed economies. On this premise, the paper develops a tool for defining fairness and morality in IP rules, suitable to diverse economies, and policies which should guide how these principles are measured in the operation of IP rights in all jurisdictions. In discussing morality, the paper uses critical constructivist perspectives on the concept, which holds that the internal morality of law should be informed by how well it is grounded in social reality. Therefore, IP laws' morality should be assessed based on the relationship between the stated objectives of international IP rules, the reasons behind their enactment, and balanced by the promotion of beneficial societal interests. The paper's arguments are developed by using concepts such as legal reciprocity, inclusiveness of IP frameworks, and the conduciveness of jurisdictions to innovate and generate economic growth.