

Fair vs. Optimal Use of Intellectual Property: An Economic Perspective

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Abstract

There are many difficulties in specifying the concept of fair use generally and in particular in the intellectual property field. The academic literature refers to fair use as an exception to the exclusive rights of copyright owners for instance. Most of the laws and regulations worldwide did not put a certain definition of the fair use. We can find this term in many parts through the different laws without a clarification of its boundaries. In the practice, we are facing many difficulties at the courts to precisely explain it. This is from one side, on the other side, the economists deal with the economic problem in terms of how to exploit or use the scarce economic resources in the optimal way to satisfy the unlimited needs. Accordingly, Intellectual property represents one of the main economic resources that we have to use it in the optimal way. Or in other words, we would like to shed light on the optimal use of intellectual property from economic viewpoint. The optimal use of intellectual property means that we will make some sort of equilibrium between the costs and benefits of intellectual property's exploitation. Cost-benefit analysis approach may help us to determine the boundaries of the fair use in terms of different quantitative indicators. Consequently, we can propose some modifications in the intellectual property laws to adopt at least minimum standards of the fair use to decrease the burdens of explaining it at the different courts. This paper will be organized in four sections. The first section draws a portrait on the concepts and definitions of fair use according to the available literature. In the second section, fair use in the different laws will be analyzed with special reference to the Egyptian law. The optimality issue in the economics with application on the intellectual property can be shown in the third section. In the last section, the author will propose some modifications on the law regarding the fair use from an economic viewpoint.