

## **Fifty shades of fairness: a return to general principles to draw and rationalize the borders of copyright**

Contemporary copyright systems are known to be dysfunctional, “paradoxical”, and incapable of balancing their goals and underlying opposite interests. Traditional tools used to guarantee the equilibrium have progressively lost effectiveness, market arguments have become dominant, and private ordering has substituted public ordering in regulating access and use of creative works. Legislative and judicial responses have been sectorial, with no horizontal doctrines that could ensure their internal consistency. Scholars have advanced countless solutions, touching every corner of the discipline with a panoply of approaches. To date, however, no contribution has focused on the notion of fairness, despite its recurrent use as criterion to help defining the borders of copyright (*e.g.* “fair” use/dealing/balance, “fair” remuneration when defining essential content and scope of exclusive rights, “fair” practices in the interface copyright-competition law, “fairness” when assessing copyright abuses and misuses in contractual and extracontractual relationships).

This article intervenes on this gap, in the belief that a comparative study of the epiphanies of fairness in different areas of copyright law and copyright traditions may lead to results having important normative implications. Part I uses statutory and judicial examples from the most influential national/regional copyright models to sketch analogies and differences between the notions and metrics of fairness used in copyright matters. Part II highlights their intra-systemic homogeneity and supranational convergence, reorganizing the result of the comparative analysis in a unitary definition. Part III exemplifies three potential normative uses of the notion, setting the ground for further research: (i) horizontal principle to ensure a consistent approach to the balance in the various segments of copyright law, and the fulfillment of all its multifaceted goals; (b) systematic platform to smoothen the dialogue between copyright and other fields of law; (iii) initial comparative framework to construct a global general principle, useful in the interpretation and drafting of international copyright norms.