Copyright’s Topography: An Empirical Study of Infringement Litigation

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ABSTRACT

One of the most important ways to measure the impact of copyright law is through empirical examination of infringement lawsuits that are actually filed, copyright claims that are actually made, and the results of those disputes. Yet scholars have inexplicably overlooked this rich source of data. This study fills that gap through a comprehensive empirical analysis of copyright infringement litigation. It examines the actual pleadings and dockets from four hundred copyright lawsuits filed from 2005 through 2008. The data we collect allow us to examine a wide variety of copyright issues, such as: the rate of settlements versus judgments, the incidence of litigation between long-standing copyright industries and start-ups, the degree to which digitized works are litigated more frequently than analog works, the extent to which multiple copyright holders join together as plaintiffs, the success of various claims and defenses, the degree of reliance on traditional versus more recently established rights, the nature of the alleged infringement, the degree to which claims are made against secondary intermediaries, and the nature of remedies sought and awarded. After exploring these and other topics, we will suggest avenues for future empirical research in the copyright area.