

ENFORCING AGAINST NORMS: TRIAL AND ERROR IN COPYRIGHT LAW

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In an effort to combat online copyright infringements, copyright holders have deployed a wide range of strategies over the past two decades.

Content industries have targeted individual infringers by way of an extensive settlement demand campaign, obtained statutory damage awards in noncommercial file-sharing litigation, and developed a copyright alert system in cooperation with Internet service providers.

This paper conducts an empirical analysis of the effects of these copyright enforcement policies. On the basis of a series of survey studies that span a 10-year period, we measure the effect of various copyright enforcement policies on download behavior and public attitudes towards copyright infringements over time.

The results reveal a bifurcated landscape of regular file-sharers and non-infringers in which (1) copyright infringement actions are relatively unaffected by deterrence considerations; (2) copyright norms remain remarkably stable over time and across enforcement strategies. Moreover, our findings suggest that much of the optimism about the normative advantages of the Copyright Alert System is misplaced. We find no evidence that Copyright Alert System brings about any more positive reactions that might help align personal beliefs about online behavior with existing copyright laws.

Our data provides an opportunity to reflect more broadly on the effectiveness of various deterrence strategies, including the comparative effects of public versus private enforcement, the role of enforcement intermediaries, and the tradeoffs involving the severity and certainty of enforcement.

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