

Fair Use and the Economy: A Review of CCIA's Estimate

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June 27, 2018

Copyright law provides incentives for creative activity by granting an exclusive property right in creative works, thereby permitting the market for such works to exist.¹ There are, however, some exceptions and limitations to this exclusive right, including the fair use provisions of Section 107 of the U.S. Copyright Act (and similar laws in other countries).² Fair use provides for the limited use of copyrighted works without permission from or compensation to the rightsholder “for purposes such as criticism, comment, news reporting, teaching..., scholarship, or research.”³ In large part, fair use is intended to stimulate the creation of new copyrightable works by borrowing limited portions of existing works and to accommodate the First Amendment right of free speech.⁴

Fair use is an “affirmative defense to a claim of copyright infringement.”⁵ So, a secondary use that fails to qualify as fair use is infringement. A liberal fair use policy, consequently, converts infringing uses into permissible ones at the margin, favoring businesses that exploit copyrighted works for financial gain. Online intermediaries that rely heavily on copyrighted works to attract audiences prefer, for obvious reasons, a highly liberal interpretation of fair use not only in the U.S. but across the globe.

Searching for some economic justification for liberal application of fair use, advocates often claim that highly permissive fair use policies stimulate economic activity. Yet, no evidence exists to support such claims; all attempts to demonstrate such effects have been riddled with numerous and fatal errors.⁶

The claims of the CCIA Report are fantastic—the authors estimate that this narrow exception to copyright is solely responsible for a whopping 16% of total U.S. Gross Domestic Product. To obtain this comically-outsized effect, the CCIA Report requires the reader to believe that entire industries like computer manufacturing, computer and printer repair, architectural and legal services, newspapers, the movie industry, among others, “would not exist, or be much smaller” without liberal fair use.

An excellent example of such advocacy can be found in a recent report from the Computer & Communications Industry Association (“CCIA”) entitled *Fair Use in the U.S. Economy: 2017* (hereinafter the “CCIA Report”—a serial report first released in 2007). CCIA is using its *Report* to encourage the United States Trade Representative (“USTR”) to export the broad fair use policies of the U.S. to Mexico, which has a more limited provision for fair use, in the current on-going NAFTA negotiations.⁷

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16% of total U.S. Gross Domestic Product (“GDP”).⁸ To obtain this comically-outsized effect, the *CCIA Report* requires the reader to believe that entire industries like computer manufacturing, computer and printer repair, architectural and legal services, newspapers, the movie industry, among others, “would not exist, or be much smaller” without liberal fair use.⁹ Unlike most “economic contribution” studies, the *CCIA Report* makes an *explicit causal claim*; all of the jobs, value added, and sales in broad economic sectors are claimed to depend *entirely* on fair use.¹⁰

To see the silliness of CCIA’s claim, we simply need to note that under the logic of *CCIA Report’s* framework the entire U.S. economy (if not the world’s) is attributable to the electric industry, since electricity is essential to the production, distribution and/or consumption of all goods and services. Yet, the electric utility industry lays claim to only 5% of U.S. GDP, less than one third of the contribution claimed in the *CCIA Report*.¹¹ Moreover, if the economic payoff from fair use was as large as CCIA claims (16% of GDP), then fair use would not be necessary since private mechanisms would arise to secure those economic benefits. For instance, theater and music sales is about 0.7% of the claimed \$3 trillion in fair use benefits.¹² Rightsholders would be better off if they could share in just a tiny fraction of the claimed “benefits” of fair use.

Some advocacy claims are so outlandish they effectively rebut themselves; the *CCIA Report* is one. Nonetheless, in this PERSPECTIVE, I offer some evidence on the central assumption of the *CCIA Report*: that is, entire industry sectors—from computer manufacturing to legal, insurance and architectural services—would not exist without broad fair use provisions. Unsurprisingly, the evidence does not support the *CCIA Report’s* assumption. Industries labeled in the *CCIA Report* as “core” fair use sectors thrive in countries without broad fair use provisions, undermining the *Report’s* conclusions.

Additionally, I conduct some empirical analysis to see whether the adoption by South Korea and Singapore of the liberal U.S.-style fair use affected economic outcomes. Certainly, if broad fair use provisions are responsible for 16% of GDP as the *CCIA Report* concludes, then the adoption of perhaps the most liberal of fair use policies should be readily detected in increased GDP. Yet, I find no such beneficial effect. In fact, the evidence suggests that, if anything, economic growth slowed in these countries after incorporating U.S.-style fair use into their copyright laws.

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Assessing the Critical Assumption of the *CCIA Report*

In quantifying the economic contribution of fair use to the U.S. economy, the *CCIA Report* sums the output, value added, and employment from economic sectors claimed to exist *solely* because of fair use.¹³ Within the class of “core industries”—or those claimed to be most reliant on fair use—include such sectors as Computer and Peripheral Equipment Manufacturing; Manufacturing and Reproducing Magnetic and Optical Media; Electronic Shopping; Software Publishers; Insurance Carriers; Architectural; Engineering; and Related Services; Educational Services; among others. Plainly, many of these “core” industries rely on the exclusive rights granted by copyright more than they do on fair use, but the *CCIA Report* ignores this reality.

These core industries might very well exploit fair use to varying degrees, in the same way the

sectors might employ labor, copyright, electricity, and a host of other inputs of production. The alleged purpose of the *CCIA Report* is not, however, to measure the size of industries that may use fair use as an input of production. Instead, the *CCIA Report* makes an explicit causal (indeed *existential*) claim, asserting that the “core” fair use industries “either would not exist, or would be much smaller, but for the limitations and exceptions to copyright law.”¹⁴ This assumption is obviously a strong and ridiculous one, though the entire analysis hinges on its validity. If the *CCIA Report’s* assumption is not supported by the evidence, then the methods to calculate the very large economic contribution of fair use are necessarily invalid.

Assessing the legitimacy of this “would not exist” assumption is facilitated by claims made in CCIA’s comments to USTR for the on-going NAFTA negotiations. CCIA encourages U.S. negotiators to push for a broad fair use provision in Mexico because the nation’s copyright law “lack[s] a similar provision.”¹⁵ While Mexico’s law does not contain a broad exception for fair use, Article 148 of Mexico’s copyright law does list a limited number of exceptions that fall under fair use or fair dealing (quotation, educational, scientific research, personal copies, and so forth), which is not unlike the copyright laws of many nations.¹⁶

The difference between the fair use (or dealing) provisions between Mexico, the U.S. and Canada is very similar to differences in copyright laws across Europe. The U.K., for instance, has a broad “fair dealing” provision very similar to Canada’s copyright law.¹⁷ Like Mexico, many major economies in Europe do not have a broad fair use (or fair dealing) exception to copyright but do have limited exceptions to copyright that are of the fair use sort (e.g., parody, educational use, and so forth).¹⁸ The similarities between North America and Europe are useful for evaluating the “would not exist” assumption underlying the *CCIA Report* and the benefit of exporting U.S.-style fair use to Mexico.

A study by the Canadian Conference on the Arts provides a detailed discussion of the differences in fair use provisions across a number of European countries.¹⁹ This list of countries is not exhaustive but is exogenously chosen, so I use it along with detailed economic data (via Eurostat) to calculate the size of “core” fair use industries — as defined by the *CCIA Report* — across disparate fair use regimes.²⁰ According to the *CCIA Report*, economic sectors “reliant” on fair use “would not exist, or would be much smaller” in countries without broad fair use provisions relative to countries with them, so this comparison is a simple yet potent test of the “would not exist” assumption.

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Economic Activity and Fair Uses in Europe

What does the evidence tell us about CCIA’s claim that nations without broad fair use exceptions will have small or non-existent “core” industries? A cross-country comparison of the sizes of these economic sectors across European nations offers some answers. While the U.K. has a broad fair dealing provision, nations including the Czech Republic, France, Germany, the Netherlands, Spain, Sweden, and Switzerland do not.²¹ If the *CCIA Report’s* assumption is valid, then we would expect to see almost no or very little economic activity in the control countries for the “core” fair use industries, and certainly less activity than in the treated country.

Let’s look at a few business sectors from those listed as “core industries” in the *CCIA Report*. First, consider two statistics from the Computer,

Electronic and Optical Product Manufacturing (NACE 26) sector. In Table 1, statistics on the Employment Share (sector employment divided by the total labor force) and the Share Value Added (sector value added divided by total manufacturing value added) are provided.²² The U.K. has an Employment Share in this “core” sector of 0.42%. If the *CCIA Report’s* assumption is correct, then we should see much lower (or near zero) levels of this statistic in the other countries. Yet, five of the seven members of this group have higher Employment Shares than does the United Kingdom.

Table 1.
Computer, Electronic and Optical Product (NACE 26)

Nation	Broad Fair Dealing	Emp. Share	Share Value Added
U.K.	Yes	0.42	6.3
Czech Rep.	No	0.75	2.70
France	No	0.46	5.0
Germany	No	0.72	5.0
Netherlands	No	0.31	6.0
Spain	No	0.14	1.8
Sweden	No	0.82	9.5
Switzerland	No	2.45	18.6

Similarly, the Share of Value Added in the U.K.’s is 6.3%, but we see values nearly as large and larger for many of the other European countries. These data indicate that the “core” industries are not meaningfully impacted by a lack of a broad fair use provision. The *CCIA Report’s* critical assumption is not supported by the evidence.

Table 2 provides the Employment Share for two service sectors listed in the *CCIA Report* as “core” fair use industries: (1) Software Publishing (NACE 582) and (2) Architectural and Engineering Activities and Related Technical Consultancy (NACE 711). The table shows that the sizes of these sectors in European nations without broad exceptions to copyright vary but are comparable to if not larger than the United Kingdom. In Sweden, for instance, NACE 582 (Software Publishing) has an employment share

of 0.22% relative to the U.K.’s 0.03%, a huge difference. Germany’s share is a bit smaller than in the U.K. (0.02%), but France’s is much higher (0.18%) and Spain’s share is identical (0.03%).

Table 2.
Employment Share of Service Industries

Nation	Broad Fair Dealing	NACE 582	NACE 711
U.K.	Yes	0.03	1.13
Czech Rep.	No	0.04	0.77
France	No	0.18	0.90
Germany	No	0.02	0.82
Netherlands	No	...	1.02
Spain	No	0.03	0.67
Sweden	No	0.22	1.40
Switzerland	No

For NACE 711 (architectural and engineering services), Sweden has a higher Employment Share (1.4%) than does the U.K. (1.13%) and France (0.9%) and the Netherlands share is comparable (1.02%). Again, these data do not support the assumption that these sectors “either would not exist, or would be much smaller, but for the limitations and exceptions to copyright law,” as the *CCIA Report* supposes.²³

...the evidence suggests that, if anything, economic growth slowed [in South Korea and Singapore] after incorporating U.S.-style fair use into their copyright laws.

Caveats

It is not my position that these “core” sectors do not exploit fair use to some extent. They do. The problem with the *CCIA Report’s* approach is that it assumes the entire economic activity of these sectors exists *because* of fair use. The *CCIA Report* makes a causal claim that is plainly a stretch of logic. There are alternatives to fair use, including licensing and avoiding the use of copyrighted

materials altogether, that permit these industries to operate without impediment. In some countries, for instance, there are specific licenses available for educational uses. Also, while lacking a broad fair use provision, the laws of many nations include exceptions for things like news reporting and research.

And, of course, economic outcomes such as employment and value added in distinct business sectors vary across countries for a variety of reasons. Different nations play to their comparative advantages and have different internal requirements and production capabilities across goods and services.

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Are There Broad Economic Impacts from U.S.-style Fair Use?

While the *CCIA Report* focuses on particular economic sectors as being impacted by broad fair use provisions, the *Report’s* very large estimate of the contribution of fair use on the U.S. economy (a whopping 16% of GDP) suggests that a nation’s move to a broader fair use regime will have a sizable effect on the economy. After all,

the *CCIA Report* makes a causal claim regarding the effect of fair use when it asserts industries “would not exist” without it. Consequently, the economic impact of broad fair use provisions might be detectable in aggregate economic outcomes.

Here, I use per-capita GDP to measure economic outcomes. All analysis is on the natural log of per-capita GDP (in constant U.S. dollars). Data is obtained from the World Bank’s World Development Indicators database and spans the period 1968 through 2016 (for most countries).²⁴

In the mid-2000s, a few countries added U.S.-style fair use provisions to their copyright laws including, most notably, South Korea and Singapore in 2005.²⁵ In search of an economic effect of the introduction of U.S.-style fair use in these countries, I apply the method of the Synthetic Counterfactual, a somewhat new and increasingly popular means by which to estimate the effects of policy interventions, to determine whether per-capita GDP in these countries increased materially after the amendments to their respective copyright laws.²⁶

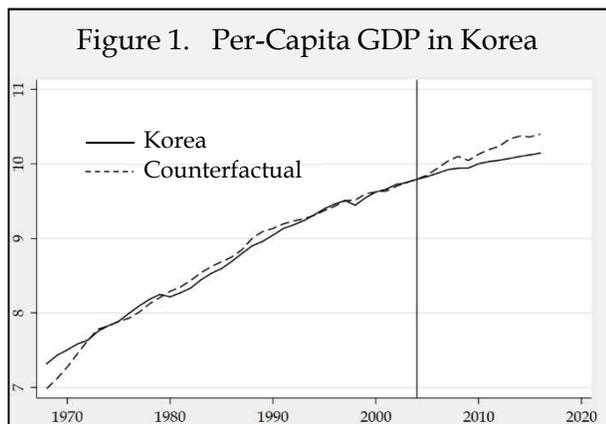
The Synthetic Counterfactual method constructs a counterfactual outcome by using statistical procedures to find the best fitting counterfactual for the treatment group in the pre-treatment period. Specifically, each member of the control group is assigned a non-negative weight (which may be zero and all must sum to one), and these weights are selected to minimize the “distance” between the synthetic control and the treated sector in the pre-treatment period.²⁷ In effect, the method produces an optimally-weighted average of the control group’s outcomes to serve as a counterfactual during the treatment period.²⁸

Experience suggests the method performs best when the control pool is selected with comparability in trends between control pool members and the treated series. For the two countries, I form a control group based on observed similarities in trends, which is done mechanically to avoid complaints of researcher

influence. For each country in the sample (of which there are 100), the dependent variable of potential control pool members is regressed on the treatment country's dependent variable through year 2000. Any country with a coefficient near unity and a large R^2 is included in the control pool. The benchmark band around the coefficient is 1.0 ± 0.20 and the cutoff R^2 is 0.90.

South Korea

South Korea incorporated U.S.-style fair use in its copyright law in 2005, slightly amending it again in 2011.²⁹ Korea's growth was exceptional over the few decades prior to the change, so only two countries are in the control group (Botswana and China). Loosening the constraints of the selection mechanism (within reason) did not help expand the control pool. Figure 1 illustrates the Synthetic Counterfactual. The pre-treatment fit is quite satisfactory.

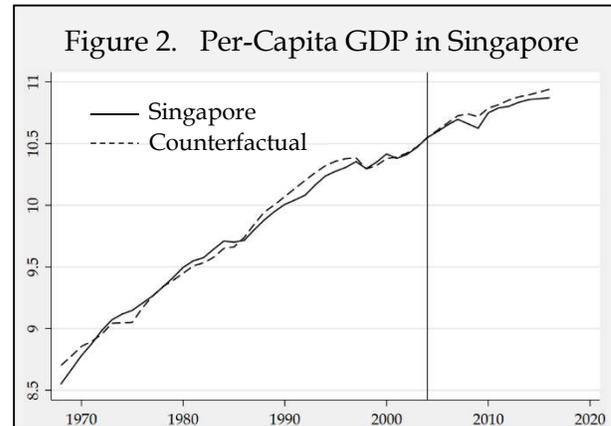


Rather than experiencing a surge in economic growth following the implementation of U.S.-style fair use in 2005, South Korea's economy grew slower than expectations after the change in copyright law. This analysis does not suggest implementation of U.S.-style fair use is economically beneficial, at least at the aggregate level.

Singapore

Singapore also incorporated U.S.-style fair use in its copyright law in 2005.³⁰ As with Korea, Singapore's growth was somewhat unique in the

global economy, so the control pool is again small and includes only three members (Botswana, Hong Kong, and Thailand). Figure 2 illustrates the Synthetic Counterfactual.



Per-capita GDP in Singapore is slightly below the counterfactual. Rather than experiencing a surge in economic growth following the implementation of U.S.-style fair use, Singapore's economy grew slightly slower than expectations after the change in copyright law.

Caveats

There are a number of caveats applicable to this analysis. In each instance, the "treatment" period is affected by a global recession. While the Synthetic Counterfactual is constructed using countries experiencing (to varying degrees) that same recession, there may be different responses among the controls. Also, when copyright laws change, many changes are often part of the reform. So, there is a multiple treatment problem that is largely unavoidable, both from a statistical analysis and policy change perspective.³¹ Moreover, the magnitude of a switch to a U.S.-style fair use regime depends on how different it is from the regime being replaced and the strength of copyright protections, which differs across countries.

As such, these results are not determinative; at best, they represent a preliminary if not crude analysis. Nevertheless, if broad fair use provisions are as impactful as the *CCIA Report*

claims, then it is not unreasonable to expect even a very simple analysis to detect an effect. Yet, I find nothing. The claim that a switch to U.S.-style fair use will result in sizable economic gains, which has sometimes been claimed, cannot be supported by the data.³² I am not surprised by this result as fair use is a narrow exception to exclusive rights and most countries permit many “fair uses” without explicit broad fair use provisions.

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My analysis is not intended to be a general indictment against fair use or “economic contribution” studies. The validity of the estimates from these studies depend on how they are described. It is often feasible to quantify employment or value-added shares and so forth for particular industries. Counting employment figures for the mining or agricultural sectors is one thing—assigning responsibility for all employment in a broad economic sector to a point of law is another. The *CCIA Report* makes an explicit causal claim, and therein lies its primary error. In sum, “fair use” is not an industry, and summing up economic output statistics is not a causal analysis.

Conclusion

What is the economic contribution of fair use provisions in copyright laws? This question remains unanswered. In this PERSPECTIVE, I review a recent report by the Computer & Communications Industry Association claiming that fair use is the *cause* of 16% of U.S. Gross Domestic Product. On the face of it, the claimed effect is laughably oversized. Nonetheless, using publicly-available data, I demonstrate the core assumption of that study—that entire economic

sectors would not exist if not for broad fair use laws—is unsupported. Economic sectors claimed to be existentially dependent on broad fair use provisions are as healthy in countries without broad fair use provisions as those with them.

The CCIA Report makes an explicit causal claim, and therein lies its primary error. In sum, “fair use” is not an industry, and summing up economic output statistics is not a causal analysis.

Additionally, the claimed, outsized effects of fair use suggest that even simple statistical methods would detect an economic impact from the adoption of U.S.-style fair use, perhaps the most generous fair use policy in the world. Yet, no such effect is found. In fact, if anything, those countries adopting the U.S. framework had slower growth after doing so.

Limited exceptions and limitations are arguably a sensible component to copyright laws, and many creative works rely on it. Still, much of the advocacy for the expansion of fair use aims more to increase the profits of distributors of copyright works than create new works, robbing rightsholders of income and subsidizing secondary users.³³ These consequences are not the intent of fair use or copyright law more generally. U.S.-style fair use is not necessarily the ideal policy framework for stimulating creative works, protecting rights, or serving other public interest goals such as education and free speech. In the U.S., where the boundaries of fair use depend heavily on judicial decisions, fair use seems to have exceeded statutory bounds. Recent court decisions have admitted as much and are retreating.³⁴ Fair use provisions may take many forms that do not threaten the income of creators yet provide sufficient flexibility to serve the various social purposes fair use is intended to satisfy.

Fair use (or fair dealing) is an important component of copyright law, allowing for the expansion of creative works that are then covered by copyright protections or other socially-valuable activities that do not shrink the market for the original good. How fair use expands knowledge and the stock and flow of creative works is an interesting empirical question. That said, preposterous claims of colossal economic

payoffs from a narrow exception to copyright does little to ensure sound policies for an otherwise sensible provision of law. Further analysis (of a plausible sort) on this important topic is, as always, encouraged.

NOTES:

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1 See, e.g., W.M. Landes and R.A. Posner, *THE ECONOMIC STRUCTURE OF INTELLECTUAL PROPERTY LAW* (2003) at Ch. 3.

2 17 U.S.C. § 107.

3 *Id.*

4 See *Oracle America Inc. v. Google, LLC*, 886 F.3d 1179, 1190-91 (Fed. Cir. 2018). As the Federal Circuit explained:

The question is whether that copying was fair. “From the infancy of copyright protection, some opportunity for fair use of copyrighted materials has been thought necessary to fulfill copyright’s very purpose, ‘to promote the Progress of Science and useful Arts.’” *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 575, 114 S.Ct. 1164, 127 L.Ed.2d 500 (1994) (quoting U.S. Const., art. I, § 8, cl. 8). As the Supreme Court noted in *Campbell*, “[i]n truth, in literature, in science and in art, there are, and can be, few, if any, things, which in an abstract sense, are strictly new and original throughout. Every book in literature, science and art, borrows, and must necessarily borrow, and use much which was well known and used before.” *Id.* (quoting *Emerson v. Davies*, 8 F. Cas. 615, 619 (C.C.D. Mass. 1845)).

Thus, reasoned the court, “fair use is appropriate where a ‘reasonable copyright owner’ would have consented to the use, i.e., where the ‘custom or public policy’ at the time would have defined the use as reasonable.” (citing *Wall Data Inc. v. L.A. Cty. Sheriff’s Dep’t*, 447 F.3d 769, 778 (9th Cir. 2006)).

5 *Campbell, id.*, 510 U.S. at 590, 114 S.Ct. 1177.

6 See, e.g., G.S. Ford, *The Vanishing Benefits of Fair Use: A Review of the Flynn-Palmedo Study on “User Rights” in Copyright Law*, PHOENIX CENTER POLICY PERSPECTIVE No. 17-12 (December 18, 2017) (available at: <https://ssrn.com/abstract=3138855>); G.S. Ford, *The Lisbon Council’s 2015 Intellectual Property and Economic Growth Index: A Showcase of Methodological Blunder*, PHOENIX CENTER POLICY PERSPECTIVES No. 15-03 (June 29, 2015) (available at: <https://ssrn.com/abstract=2837319>); G.S. Ford, *The Economic Impact of Expanding Fair Use in Singapore: More Junk Science for Copyright Reform*, PHOENIX CENTER POLICY PERSPECTIVES No. 16-01 (February 16, 2016) (available at: <https://ssrn.com/abstract=2837315>).

7 Comments of Computer & Communications Industry Association, *In re: Request for Comments on Negotiating Objectives Regarding Modernization of the North American Free Trade Agreement With Canada and Mexico*, Office of the United States Trade Representative Docket No. 2017-0006 (June 12, 2017) (available at: <http://www.cciagnet.org/wp-content/uploads/2017/06/CCIA-USTR-NAFTA-Comments.pdf>).

8 *Fair Use in the U.S. Economy: Economic Contribution of Industries Relying on Fair Use* (2017), Computer & Communications Industry Association (2017) (available at: <http://www.cciagnet.org/fairusestudy>).

9 CCIA Report, *id.* at p. 11. For a critique of the CCIA’s methods, see another CCIA-funded document: R. van der Noll and J. Poort, *Assessing the Economic Contribution of the Copyright-Based Industries: Remarks and Alternatives*, Commissioned by the Computer & Communications Industry Association (January 25, 2011) (available at: <http://www.cciagnet.org/wp-content/uploads/2015/03/SEO-Economic-Research-Assessing-the-Economic-Contribution-of-the-Copyright-Based-Industries.pdf>).

10 Compare this to the economic contribution study of the copyright industries, which makes no causal claim and observes: “The core copyright industries are those industries whose primary purpose is to create, produce, distribute or exhibit copyright materials.” S.E. Siwek, *Copyright Industries in the U.S. Economy: The 2003-2007 Report*, International Intellectual Property Alliance (July 2009) (available at: <http://ei.com/wp-content/uploads/downloadables/IIPASiwekReport2003-07.pdf>).

11 J. Anderson, *US Electric Sector Provides 5% of GDP, Supports 7 Million Jobs, Study Finds*, American Public Power Association (August 2, 2017) (available at: <https://www.publicpower.org/periodical/article/us-electric-sector-provides-5-gdp-supports-7-million-jobs-study-finds>); *Powering America: The Economic And Workforce Contributions Of The U.S. Electric Power Industry*, M.J. Bradley & Associates, LLC (2017) (available at: <https://mjbradley.com/sites/default/files/PoweringAmerica.pdf>).

NOTES CONTINUED:

- ¹² GDP in 2017 was \$19.4 trillion (<https://fred.stlouisfed.org/series/GDPA>). Revenues for musical recordings and movie theater sales was about \$21.5 billion (<https://www.riaa.com/riaa-releases-2017-year-end-music-industry-revenue-report>; <https://www.the-numbers.com/market>).
- ¹³ The *CCIA Report*, *supra* n. 8 at p. 12, claims the authors employ the guidelines set forth by the World Intellectual Property Organization (“WIPO”) to quantify the effect of fair use on an economy. Yet, WIPO offers no program for estimating the unique economic contribution of fair use; the WIPO study describes a method to quantify the effect of copyright law generally. In fact, the term “fair use” and “fair dealing” appear only once each in the document cited by the *CCIA Report* and only then to recognize fair use as a component of copyright law. *Guide on Surveying the Economic Contribution of the Copyright Industries: 2015 Revised Edition*, World Intellectual Property Organization (2015) at p. 27 (available at: http://www.wipo.int/edocs/pubdocs/en/copyright/893/wipo_pub_893.pdf).
- ¹⁴ *CCIA Report*, *id.* at p. 11.
- ¹⁵ *CCIA Comments*, *supra* n. 7 at p. 7.
- ¹⁶ Federal Law on Copyright, Article 148 (English version of amended act available at: [http://www.indautor.gob.mx/documentos/marco-juridico/L_Fed_Derecho_de_Autor_\(English\).pdf](http://www.indautor.gob.mx/documentos/marco-juridico/L_Fed_Derecho_de_Autor_(English).pdf)). See also, e.g., C. Trujillo and K. Alatraste, *Copyright*, Uthhoff, Gómez Vega & Uthhoff (July 2017) (available at: <https://gettingthedealthrough.com/area/6/jurisdiction/16/copyright-mexico>); L.C. Schmidt, *Mexico’s Fair Use Balancing Act*, Olivares Sponsored Editorial (May 2009) (available at: <http://www.olivares.mx/mexicos-fair-use-balancing-act>).
- ¹⁷ G. D’Agostin, *Healing Fair Dealing? A Comparative Copyright Analysis of Canadian Fair Dealing to UK Fair Dealing and US Fair Use*, CLPE Research Paper No. 28 (2007) (available at: <https://ssrn.com/abstract=1014404>); J. Ihalainen, *Retrospective: Fair Dealing in Modern Canada*, IP IUSTITIA (May 3, 2014) (available at: <http://www.ipiustitia.com/2013/05/retrospective-fair-dealing-in-modern.html>; <http://www.copyrightlaws.com/wp-content/uploads/2010/04/Comparing-fair-dealing-and-use-NL-2006-4.pdf>); J.J. Hua, *TOWARD A MORE BALANCED APPROACH: RETHINKING AND READJUSTING COPYRIGHT SYSTEMS IN THE DIGITAL NETWORK ERA* (2014).
- ¹⁸ See, e.g., *Fair Use and Fair Dealing in Foreign Countries*, Canadian Conference of the Arts (October 22, 2010) (available at: <http://ccarts.ca/wp-content/uploads/2011/07/FairUseandFairDealinginForeignCountries.pdf>); <http://www.ipglossary.com/glossary/fair-use>); F. Pötzlberger, *Google and the Thumbnail Dilemma – “Fair Use” in German Copyright Law?*, 9 I/S: A JOURNAL OF LAW AND POLICY FOR THE INFORMATION SOCIETY 139-169 (2013) (available at: <http://moritzlaw.osu.edu/students/groups/is/files/2013/08/8-Potzlberger.pdf>).
- ¹⁹ *Id.*
- ²⁰ Available at: <http://ec.europa.eu/eurostat/web/structural-business-statistics/data/database>.
- ²¹ *Fair Use and Fair Dealing in Foreign Countries*, *supra* n. 18. Other European countries likewise do not have broad fair use exceptions, but I limit my attention to those countries listed in the study by the Canadian Conference of the Arts.
- ²² Sector employment data is from *Manufacture of Computer, Electronic and Optical Products Statistics – NACE Rev. 2*, Eurostat Statistics Explained (April 2013) (available at: http://ec.europa.eu/eurostat/statistics-explained/index.php/Archive:Manufacture_of_computer,_electronic_and_optical_products_statistics_-_NACE_Rev._2#Country_analysis) and Eurostat’s Structural Business Statistics & Global Business Activities Database (available at: <http://ec.europa.eu/eurostat/web/structural-business-statistics/data/database>). Labor Force data is provided by World Development Indicators, World Bank (available at: <http://databank.worldbank.org>).
- ²³ *CCIA Report*, *supra* n. 8 at p. 11.
- ²⁴ World Bank, World Development Indicators Database (available at: <http://databank.worldbank.org>).
- ²⁵ J. Hughes, *Fair Use and Its Politics – at Home and Abroad*, in R. Okediji (Ed.), *COPYRIGHT LAW IN AN AGE OF LIMITATIONS AND EXCEPTIONS 2017* at 234-274. Israel adopted U.S.-style fair use in 2007, but an economic downturn in that country in the years before the change made it difficult to find a suitable counterfactual.
- ²⁶ A. Abadie and J. Gardeazabal, *Economic Costs of Conflict: A Case Study of the Basque Country*, 93 AMERICAN ECONOMIC REVIEW 113-132 (2003); A. Abadie, A. Diamond, and J. Hainmueller, *Synthetic Control Methods for Comparative Case Studies: Estimating the Effect of California’s Tobacco Control Program*, 105 JOURNAL OF THE AMERICAN STATISTICAL ASSOCIATION 493-505

NOTES CONTINUED:

(2010); A. Abadie, A. Diamond, A. and J. Hainmueller, *Comparative Politics and the Synthetic Control Method*, 59 AMERICAN JOURNAL OF POLITICAL SCIENCE 495-510 (2015).

²⁷ Abadie and Gardeazabal (2005), *id.*

²⁸ While the method permits additional determinants of the outcome, only lagged values of per-capita GDP are used here (every five years between 1970 and 2000). Additional determinants are excluded because the broad scope of CCIA's claimed effects makes it difficult to find other variables that would not be considered an "outcome."

²⁹ Hughes, *supra* n. 25.

³⁰ *Id.*

³¹ See, e.g., *The Economic Impact of Expanding Fair Use in Singapore*, *supra* n. 6.

³² See *supra* n. 6 and citation therein.

³³ See, e.g., *Fox News Network v. TVEyes, Inc.*, 883 F.3d 169, 180-81 (2d Cir. 2018) ("by selling access to Fox's audiovisual content without a license, TVEyes deprives Fox of revenues to which Fox is entitled as the copyright holder. *** At bottom, TVEyes is unlawfully profiting off the work of others by commercially re-distributing all of that work that a viewer wishes to use, without payment or license."); *Oracle v. Google*, *supra* n 4, 886 F.3d at 1191 ("fair use is appropriate where a 'reasonable copyright owner' would have consented to the use").

³⁴ See, e.g., *id.*; see also G.S. Ford, Putting "Fair" Back in "Fair Use", FEDERALIST SOCIETY BLOG (June 26, 2018) (available at: <https://fedsoc.org/commentary/blog-posts/putting-fair-back-in-fair-use>).