

INDIRECT FREE RIDING ON THE WHEELS OF COMMERCE: DUAL-USE TECHNOLOGIES AND COPYRIGHT LIABILITY

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Recent years have witnessed explosion in copyright literature on potential indirect liability of providers of dual-use technologies—technologies that are capable of infringing and noninfringing uses. The existing literature, however, fails to identify several important characteristics of copyright disputes over dual-use technologies. This Article finds that attempts to impose indirect liability on providers of dual-use technologies tend to appear in multisided markets, which are business environments in which market intermediaries connect members of different, distinct groups. The Article shows that indirect network externalities that multisided markets generate are the value that stirs up disputes over dual-use technologies. The Article explains the nature of indirect network externalities and their significance to copyright law. It characterizes the properties of markets in which disputes over dual-use technologies tend to arise, offers criteria to differentiate among dual-use technologies, and examines the desirability of present copyright liability rules. The analytical framework advanced in this Article offers courts, policymakers, and scholars practical guidelines for distinguishing between socially desirable and undesirable dual-use technologies. The framework also exposes some limitations of present copyright law in addressing the problem of dual-use technologies.

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