

Abstract

Selective Reinforcement of the Unfair Competition Prevention Act in Gaps of Copyright Protection — An Empirical Jurimetric Study Using OER Analysis

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This study examines, through a jurimetric methodology, whether the invocation of the Unfair Competition Prevention Act (UCPA) in copyright infringement litigation functions as a norm that compensates for the limits of copyright protection. Drawing on copyright infringement case law from the past ten years, the study employs Observed-Expected Ratio (OER) analysis, setting three independent variables—denial of copyrightability, denial of infringement, and type of work—and two dependent variables—invocation and adoption of the UCPA—to test four hypotheses.

The analysis found that the direction of the OER was consistent with theoretical predictions across all hypotheses. In both cases where copyrightability was denied and where infringement was denied, the OER exceeded 1, indicating that the UCPA is invoked more frequently in situations where the requirements for copyright protection are not met. Notably, in cases where copyrightability was denied, the OER for actual adoption of the UCPA exceeded the OER for mere invocation, suggesting that courts tend to actively grant relief under the UCPA for works that fall outside copyright's protective net. Furthermore, the analysis by type of work revealed that the OER exceeded 1 for functional/informational works while falling below 1 for traditional works, showing that the UCPA is selectively reinforced depending on the type of work involved.

The fact that the direction of the OER remained consistent across

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all four hypotheses suggests a structural tendency not readily explained by random variation. These findings indicate that the UCPA functions not as an incidental joinder of claims but as a supplementary norm that is structurally selected, and that a functional division of roles between the two statutes is emerging in practice.

Keywords

Copyright Law, Unfair Competition Prevention Act, Quantitative Jurisprudence, Observed-Expected Ratio(OER), Copyrightability, Protection Gap, Functional Works