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Patent Law's Neglect of the Ordinary User's Role in Disseminating Technologies

Overview

- Patent law fails to promote dissemination because it largely ignores the ordinary user
- Taxonomy of reasons for user resistance
- Systematic guidelines for government action to encourage user adoption



Patent Law's Narrow Conception of Dissemination

- Patent law treats competition as a proxy for dissemination, focusing on:
 - The patentee
 - The patentee's competitors
- Patent law has a simplistic view of the ordinary user

Compulsory Licenses

- When are compulsory licenses granted:
 - Anti-competitive behavior
 - Non-use
 - To allow exploitation of a dependent patent
 - Public interest – mostly drugs

Patent Misuse

- Discriminatory licensing
- Re-sale restrictions
- Payment of royalties beyond patented invention
- Tying provisions

The Ordinary User

- The importance of the couch potato

User Resistance to New Technologies

- Novelty
 - Novelty of hardware or process
 - Complexity
- Perceived consequences
 - Practical consequences
 - Economic consequences
 - Non-economic consequences
 - Effects on moral and religious values

Market Governance and Technological Adoption

- Objections to relying solely on market governance
 - The costs of delay and non-intervention
 - The illusion of market governance
 - The electronic health records example



Coordinating Governmental Action regarding User Adoption

- Systematic guidelines
- Gentle nudges v. harsh shoves

Preliminary Framework for Guidelines Regarding User Adoption

Market failures:

- Network effects
- Urgency

Conclusion

- The technology regulating regime fails to encourage dissemination partly because it ignores the complexity of the ordinary user
- There is a need to coordinate governmental action regarding user adoption