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The Audience in Intellectual Property Infringement

Patent, copyright, trademark, and trade secrecy law each use different audiences against which to measure if infringement has occurred. For example, patent law measures whether a hypothetical person having skill in the relevant technology of the patent would understand there to be infringement. By contrast, copyright law assesses substantial similarity between 2 works through the lens of an ordinary consumer of the copyrighted work. Trademark law measures whether consumers are confused as to the source of an allegedly infringing mark. Trade secrecy looks to reasonableness of actions taken from the vantage point of competitors. This project seeks to taxonomize the different dimensions on which these audiences might differ and analyzes when it might make sense to pick certain audiences over others for assessing infringement.