

Mental Illness and the Legal Concept of Authorship

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Abstract

Mental illness occupies a paradoxical position in copyright law. Continental European copyright systems traditionally justify protection through the close relationship between a work and the personality of its author. Yet they have devoted remarkably little attention to whether severe mental illness or cognitive disability affects either the subsistence of copyright.

The Court of Justice of the European Union has consistently held that copyright protects only original subject matter. Most recently, in *Mio/Konektra*, the Court explained that originality exists where the subject matter reflects the personality of its author as an expression of that author's free and creative choices (para. 61), while making clear that the author's subjective intention is not decisive for the assessment of originality (para. 82). This formulation raises a neglected but fundamental question: can a person suffering from psychosis, dementia, severe intellectual disability or another condition affecting cognition be said to make "free and creative choices" and to express his or her personality through a work? If originality is understood in psychological terms, one might conclude that severe mental disorders undermine the very basis of copyright protection.

The proposed paper argues that this conclusion rests on a mistaken understanding of the Court's originality test. The notions of "free and creative choices" and "personality" should be understood as normative rather than psychological concepts. Their function is to distinguish human intellectual creation from expression that is mechanically determined by technical constraints, functional considerations or mere reproduction -- not to assess the author's psychiatric condition or degree of cognitive autonomy. Copyright law has neither the institutional competence nor the doctrinal tools to determine whether a creator's mental state permitted genuinely autonomous decision-making. Nor does the Court's case law suggest that originality depends on psychological normality or rational deliberation.

This interpretation finds support by analogy in *Cummins v Bond* [1927] 1 Ch 167, in which a spiritual medium claimed that literary works had been dictated by a deceased spirit. Refusing to resolve metaphysical questions, the High Court of Justice of England and Wales held that "so far as this world is concerned there can be no doubt who is the author here," recognising the medium as the legal author because she embodied the expression in writing. The decision illustrates a broader principle: copyright law attributes authorship without adjudicating contested states of consciousness or the perceived source of creative inspiration. Likewise, copyright law need not determine whether hallucinations, delusions or other psychiatric experiences deprived a creator of genuine autonomy. The legally relevant inquiry is whether the protected expression is attributable to the human author, not whether the mental processes that produced it conform to a standard of psychological normality.

The proposed paper has practical implications for researchers and healthcare institutions dealing with language data produced by persons with mental illness or cognitive disabilities. Such data may contain copyright-protected subject matter notwithstanding the author's psychiatric condition, while the legal effectiveness of permissions or licences for their use depends on the rules governing legal capacity rather than on copyright law itself. The paper aims to clarify the relationship between originality, personality and legal capacity.