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Il diritto d'autore nell'era digitale: verso il declino dell'originalità dell'opera?

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Abstract in English

At the heart of copyright is the idea of the individual genius, which copyright law describes as the author. But who is this figure of the author? We have become used to the idea that words that we use in normal life mean something different when they are used as technical legal expressions. However, it is worth remembering every now and again that between these two systems of meaning there is a margin of conceptual blurring that can interfere in unpredictable ways with our understanding of the impact of technical legal expressions. And it is also the case that we tend to underestimate the difficulty that law has in understanding certain concepts.

When we talk about the “author” of musical works protected by copyright we could say that we have both these problems. What does copyright law mean when it talks about the author of a musical work? What is a protected musical work? When someone who is not a copyright lawyer or scholar talks about musical works usually they talk about composers rather than authors. But in the world of copyright law everyone that has copyright protection as a result of creating or generating a protected work is referred to as its author: composers are authors; artists are authors; sculptors are authors; architects are authors; writers are authors.

But, of course, a normal person would think that writers are authors. In fact, writers are the paradigmatic authors of copyright law. This is not just because, in its origins, copyright law is based upon works capable of being reproduced through printing, it is also because the form of the law itself is writing. Judges and lawyers understand the nature of writing as a form of expression; they

understand the way rights in relation to it are exercised; they understand the subtleties of the distinction between an idea (not protected by copyright law) and its expression (protected by copyright) in relation to the written form; they understand what it means to “copy” a written work and so on. All this is to say that the conventions governing the written form are very well understood by lawyers. But what happens when these experts in the written form, as cultural expression, find themselves face to face with a different expressive form? How does this idea that all authors of cultural and creative works can be understood by reference to the authors of works in a written form play out? This chapter investigates these questions in relation to the fate of composers of copyright-protected musical works. What effect does law’s focus on the written form have on how the law understands the nature of a musical work? And what cultural and legal conditions govern the production and reproduction of musical works?