

Copyright, Neuroscience, and Creativity

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It is said that copyright law's primary purpose is to encourage creativity by providing economic incentives to create. Accepting this premise, the primary disagreement among copyright stakeholders today concerns to what extent strong copyrights in fact provide efficient economic incentives. This focus on economic incentives obscures what is perhaps copyright doctrine's greatest weakness – although the primary purpose of copyright law is to encourage creativity, copyright doctrine lacks even a rudimentary understanding of how creativity functions on a neurobiological level. The absence of a cohesive understanding of the science of creativity means that much of copyright theory is premised on antiquated assumptions regarding the creative process that have no basis in cognitive neuroscience or psychology and therefore do not in fact encourage creativity effectively from a scientific perspective.

This Article fills that void by developing a coherent narrative of how creativity functions on a neurobiological level and demonstrating how copyright law specifically and information policy generally play a largely unexplored role in determining how effectively the brain's creative process – what I term the cognitive architecture of creativity – functions both internally and when interacting with the Internet and other informational environments. Relying on this narrative, the Article argues that creativity is not an isolated singular moment of genius as theorized by contemporary copyright doctrine, but rather the product of complex interactions between individuals within a larger cultural environment that, in turn, can trigger the brain's creative process in the right circumstances. Copyright's goal of encouraging creativity should therefore be understood as an environmental design question, with the brain's creative process as that environment's hub, and copyright law and information policy as design levers in engineering that environment. Relying on this framework, the Article concludes by suggesting modifications to copyright law and policy that foster a system where the brain's cognitive architecture interfaces effectively with the Internet to achieve copyright's core goal of encouraging creativity.