Unplanned Coauthorship

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Unplanned coauthorship refers to the process by which contributors to a creative work are treated by copyright law as coauthors of the work based entirely on their observable behavior during its creation. The process entails a court imputing the status of coauthors to the parties ex post, usually during a claim for copyright infringement. For years now, courts and scholars have struggled to identify a coherent rationale for unplanned coauthorship and situate it within copyright's set of goals and objectives. This Article offers a novel framework for understanding the rules of unplanned coauthorship using insights from theories of shared intentionality. Unplanned coauthorship enables courts to balance copyright's commitment to authorial autonomy and individual ownership against the demands of cooperation, collaboration, and information sharing that the creative process invariably entails. Through these rules, copyright law recognizes that certain forms of creativity depend entirely on mechanisms of collaboration for their continuing existence. In such instances of collaborative creativity, the very process of collaboration provides creators with additional and independent reasons for their creative endeavor, a motivation referred to as the "collaborative impulse." Characteristic of all joint activities undertaken with a shared intention, the collaborative impulse derives from a motivational commitment to the joint task that collaborating creators develop, causing them to pay equal attention to both the means and the ends of their creativity. The Article shows how the rules of unplanned coauthorship allow copyright law to nurture these domains of collaborative creativity by protecting the collaborative impulse and simultaneously rendering it fully compatible with copyright's utilitarian goal of promoting creativity through exclusive rights.

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