

*Cognitive Calibration for the Reasonably Biased Man: Objective Tests, Jury Effects, and the Copyright Dilemma*

**Irina D. Manta**

This article will begin by examining and critiquing the “reasonable man” standard prevalent across legal doctrines. It will then assess the specific problems with using the concept of reasonableness in an inherently fuzzy area of the law such as copyright, where the test for infringement is whether a “reasonable observer” would find that two works – often drawn from subject areas that inherently elude precise measurement – are substantially similar. The paper will ask a number of questions in this context. Are judges and juries truly able to determine what an abstract reasonable actor would find? What types of cognitive biases are likely to cloud this determination, and are biases likely to have a stronger or weaker effect when infringement questions are subjected to the group deliberations of juries as opposed to the individual decision-making of judges? The article will investigate some possible solutions to the issues raised in the copyright context. It will examine the proposal to eliminate juries in copyright infringement cases. Next, it will probe whether a subjective standard should replace the “objective” reasonable observer standard through the adoption of analyses and tests comparable to the ones used in the trademark context. Further, this article will study what debiasing devices could allow for the cognitive fine-tuning of judicial decision-makers. Implementing solutions such as these would be at least a partial acknowledgement that we are dealing not with purely reasonable but rather “reasonably biased” actors, from copyright owners and infringers to judges and juries. As a final point, the paper will seek to apply the knowledge gained in the copyright context to other legal settings by exploring ways in which judges and juries could better understand the implications of cognitive biases and their effects on both 1) the behavior of plaintiffs and defendants and 2) the typical decision-making processes of judges and juries themselves.