The Writing Genius and his Publisher: The Concept of European Authorship as the Global Standard?

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RESÜMEE

Ein Grund für die kontroverse Diskussion geistiger Eigentumsrechte im Kontext existierender und geplanter Handelsabkommen ist das diesen Rechten zugrunde liegende Verständnis von Autor- und Urheberschaft. Diese internationalen Abkommen reden einer exklusiven Urheberschaft das Wort, die individuelle Kreativität als treibende Kraft für technische oder kulturelle Neuerungen sieht und entsprechend starke Ausschlussrechte gegenüber Dritten gewährt. Der Aufsatz beschäftigt sich mit den Gründen für dieses Rechtsverständnis. Beginnend mit den ersten modernen Urheberrechtsgesetzen in Großbritannien, Frankreich und Deutschland wird argumentiert, dass diese im Verlauf des 18. Jahrhunderts entwickelte Rechtsfigur in aufklärerischen Denkweisen und romantischen Vorstellungen von Schöpfertum und Individualität und damit in einem zutiefst europäischem Verständnis von Individuum und Gesellschaft wurzelte. Im Unterschied zu heutigen Abkommen scheiterte zu Beginn des 20. Jahrhunderts allerdings noch der Versuch, diese Rechtsfigur als universalen und weltweit gültigen Standard zu implementieren. Ausschlaggebend hierfür war der Widerstand nord- und südamerikanischer Staaten, die diesem Autorverständnis eigene wirtschaftliche Interessen entgegensetzten und es damit als spezifisch europäische Rechtsfigur auf die Ränge verwiesen.

1 Introduction

In 1759 the English poet Edward Young noted:

> […] *for what, for the most part, mean we by Genius, but the Power of accomplishing great things without the means generally reputed necessary to that end? A Genius differs from a good Understanding, as a Magician from a good Architect; That raises his struc-*

Comparativ | Zeitschrift für Globalgeschichte und vergleichende Gesellschaftsforschung 25 (2015) Heft 5 / 6, S. 147–164.

> *ture by means invisible; This by the skilful use of common tools. Hence Genius has ever been supposed to partake of something Devine.*[1]

Edward Young's "Conjectures on the Original Composition" belonged to the most prominent texts in the controversial discussions on the origins of authorship, which revolves around the question of the economic reward and the cultural acknowledgement an author deserves for his work in eighteenth century Britain. Young strongly advocated the idea that an author stood out against any kind of manual laborer. He described the author as a genius: The genius creates texts or other works of art due to his ingenious skills, which are beyond description but contribute decisively to the progress of culture, education and society.

Young not only confined himself, however, to work out philosophical and aesthetical arguments for his conception of artistic and cultural innovation. His emphasis on the writing genius was also deeply rooted in contemporary debates between authors, publishers and legal experts on the question of who owned a manuscript and who, as a consequence, was entitled to publish a work and to make a profit out of the publication. At the end of the eighteenth century, British authors, publishers and lawyers had worked out the concept of the writing genius as the only legitimate basis to decide on the rights of disposal and handling of cultural goods. By focusing on the author's personal and economic rights the involved groups settled the conditions for the professionalization of the creative branches during the course of the nineteenth and twentieth centuries by underscoring the notion of the author's personality as the only valid standard for explaining and acknowledging creativity.

The paper will argue that a certain esteem for individual creativity that arose in the course of the Enlightenment and early romanticism in Europe served as the starting point for the regulation of the modes to produce, disseminate and receive culture and information, which today are regulated by intellectual property rights regimes on the national and the international level. The idea of the writing genius as the core concept of cultural creativity appeared for the first time in eighteenth century Britain. Initially contested, the figure of the individual author was the outcome of severe disputes between the former publisher's guild, authors and publishers outside London. Subsequently, the individual author made its entrance in the British copyright legislation in the second half of the eighteenth century and, since then, the notion of the individual author significantly shaped the perception and organization of culture as chapter two will show. Following this British development other European countries also focused on the individual author as the nucleus for the question: who is the driving force behind the progress in culture and science?

As chapter three will outline, an idealized notion of the author's outstanding skills, raising him above other kinds of labor, acted as the model for the institutionalization of

1 E. Young, Conjectures on Original Composition in a Letter to the Author of Sir Charles Grandison, Dublin 1759, p. 16.

culture in terms of property and ownership throughout Europe during the nineteenth century. In spite of the claims of legislators, authors, publishers and the public to center on the author's person as the core concept to organize science and culture, a glance on the national paths in Britain, France and Germany will show, however, that there were significant national differences regarding the legally acknowledged scope for action of the individual author towards the cultural industries, the public and the state. Despite the notion of the writing genius serving as a blueprint for the social, cultural and legal organization of the cultural field in Europe and – since the end of the nineteenth century – on a global scale, the Europeanness of this figure was not immediately evident at its inception. Until the beginning of the twentieth century, the writing genius was never perceived as an originally European concept but as a universal one as chapters four and five will show. Taking the international conventions for the protection of author's rights as a starting point, the chapter will analyze the problems the European states faced when they tried to extend their idea of the writing genius to the USA and Latin America. Both regions flatly refused to take over the notion of the individual author because of its social, cultural and economic implications, which in their eyes served European interests best but not Latin or North American ones. Thus, the paper will show how European societies developed a shared idea of the writing genius, which was the outcome of a certain set of cultural and legal practices that they, at the same time, perceived as universal. However, they failed to reproduce this exclusive concept of individuality outside Europe in the uncolonized world. The outcome saw the writing genius regionalized as "European" during the twentieth century when its proponents tried to politically implement their notion of authorship outside the European sphere of influence.

2 The Birth of the Writing Genius in Legal Theory and Practice in Eighteenth Century Britain

Since the eighteenth century, the rights of authors, musicians, composers or artists to protect the production, dissemination and reception of their works have been part of modern Western societies. Between 1750 and 1850, modern intellectual property law was established as a bundle of individual rights, which has since developed in secular, market economy and liberally organized societies. As with politics, the economy, society and culture became both nationalized and legalized; the intellectual property rights of authors and other artists too became a fundamental institution in national culture. It was meant to guarantee and standardize the rights of artists, publishers, the public and the state to engage in scientific, cultural and social competition and to provide cooperation in the production, dissemination and reception of culture and knowledge for all with a secure contractual foundation.[2] Crucial to the codification and implementation of the

2 L. Bently and B. Sherman, Intellectual Property Law, Oxford 2008; P. E. Geller, Copyright History and the Future: What's Culture Got to do With it?, in: Journal of the Copyright Society of the USA 47 (2000), pp. 209-264; H.

author's rights was the increasing use of books, works of art and music, which rose to ever greater heights especially during the nineteenth century. Due to the alphabetization of broad sections of the population, there were new technical opportunities to produce and reproduce cultural works. Furthermore, due to the emancipation of the middle classes, books, music and works of art became increasingly popular and objects of trade.[3] Thus, modern liberal societies and states had to deal increasingly with questions over who was entitled to publish, exploit and receive literary and artistic works, which were simultaneously cultural, political and mercantile goods.

For the first time, these questions were legally settled with the *Statute of Anne*, the first modern copyright law enacted in 1710 in Britain. The *Statute* was of great importance for the introduction of the writing genius as the principal concept for the legal, economic and social regulation of the cultural field: It fundamentally altered the hierarchy between author and publisher and thus enabled the rise of the writing genius as the superordinate authority for writing and publishing in European societies, even though it. took about half a century until the author's person was generally accepted as the legitimate owner of his text in legal theory, aesthetics, book trade and by the public.[4]

The *Statute of Anne* replaced the common law concerning traditions and the privileges, which until then had legitimized the publisher's claims to own a manuscript after having purchased it from the writer. Instead, the *Statute* introduced statutory law and restricted the publisher's right to own a manuscript for an unlimited period of time in two respects. First, the publisher received the right to copy a work of art for fourteen years only with the option to prolong this time once only for a further fourteen years. As an "act for the encouragement of learning" the *Statute* prescribed the expiry of any property claims after the maximum of twenty-eight years of copyright protection. Thereafter any copyrighted material entered the *public domain*. Second, and the most important for further developments, was the changing hierarchy between authors and publishers. No longer did the publisher independently decide on his own list. Rather, the *Statute* appointed the author to be the original owner of the manuscript so that he was the only person who was able to entrust the publisher with the distribution of the text.[5] The regulations of

Siegrist, Geschichte des geistigen Eigentums und der Urheberrechte. Kulturelle Handlungsrechte in der Moderne, in: J. Hofmann (ed.), Wissen und Eigentum. Geschichte, Recht und Ökonomie stoffloser Güter, Bonn 2006, pp. 64-80.

3 C. M. Cipolla, Literacy and Development in the West, London 1969; P. Burke, A Social History of Knowledge: From Gutenberg to Diderot, Cambridge 2000; D. Vincent, The Rise of Mass Literacy. Reading and Writing in Modern Europe, Cambridge 2000.

4 For the pioneering function of the *Statute of Anne* for the further development of literary property see: G. Boytha, Die historischen Wurzeln der Vielfältigkeit des Schutzes von Rechten an Urheberwerken, in: R. Dittrich (ed.), Die Notwendigkeit des Urheberschutzes im Lichte seiner Geschichte, Wien 1991, p. 78sq.; R. Deazley, What's New About the Statute of Anne? Or Six Observations in Search of an Act, in: L. Bently (ed.), Global Copyright, Three Hundred Years Since the Statute of Anne from 1709 to Cybersapce, Cheltenham 2010, pp. 26-53; S. Ricketson, M. Richardson and M. Davison, Intellectual Property. Cases, Materials and Commentary, Chatswood 2012, pp. 39sq; M. Rose, Authors and Owners. The Invention of Copyright, Cambridge/Mass., London 1993, pp. 31-48.

5 Statute of Anne: An Act for the Encouragement of Learning, by Vesting the Copies of Printed Books in the Authors or Purchasers of such Copies, During the Times Therein Mentioned, 1710, 8 Anne, c.19, in: Primary Sources

the *Statute of Anne* triggered severe discussions among publishers, authors, legal experts and the government about the reasons and aims of writing and publishing. These debates were of major importance for the history of authorship. In the course of the eighteenth century they led to the strengthening of the author's position so that, at the end of the century, the writing genius was generally acknowledged as the main paradigm for the legal, cultural and economic institutionalization of artistic works in terms of property and ownership.

When the fourteen year period of copyright expired for the first time in the middle of the 1840s the *Stationer's Company*, the publisher's guild that had formerly monopolized the printing and publishing rights, attempted to defend their property claims against the authors who grew stronger due to the new statutory law and through further legislation amending the *Statute of Anne*.[6] These struggles resulted in a series of legal proceedings that fundamentally attempted to answer the question of who was the owner of a text, a composition or a piece of art. In a more general point of view, the legal proceedings triggered off a lively discussion about the origins of authorship and resulted in the notion of the modern author that spread European-wide and mainly contributed to the construction of the individual and, simultaneously, the genius author as a social, cultural and legal standard for a typical European perception of culture.[7] The so called *battle of the booksellers* provoked extended philosophical and legal discussions not only between experts and those affected but also in the public sphere. The crucial and, at the same time, contested issue was the relationship between the author and his text: Did the authorial function consist of something extraordinarily strong enough to legitimate the author's literary property and, at the same time, the priority of statutory law over common law? Proponents of the idea to establish the author as the key figure to decide on the publication and distribution of cultural goods, such as Edward Young, directed the discussion towards the relationship between the materiality and immateriality of a text. Arguing morally and aesthetically, they stressed on the uniqueness of character, style and form of a text. Instead of merely presenting content, texts were perceived as the unrepeatable result of exceptional authorial skills. Out of this argumentation, proponents drew two conclusions: First a text could not be seriously restricted to the material manuscript; quite the opposite, the manuscript was interpreted as a pure vehicle for the author's imagination. Second, against this background, each text had to be interpreted as an integral part of

on Copyright (1450–1900), http://copy.law.cam.ac.uk/cam/tools/request/showRecord.php?id=record_uk_1710 (19th of October 2012).

6 For the following see: P. Jaszi, Toward a Theory of Copyright. The Metamorphoses of "Authorship", in: Duke Law Journal (1991), pp. 455-502; C. May and S. K. Sell, Intellectual Property Rights. A Critical History, Boulder/Colorado 2006, pp. 87-106; L. R. Patterson, Copyright and Author's Rights. A Look at History, in: Harvard Library Bulletin 16 (1968), pp. 370-384; M. Rose, The Author in Court. Pope vs. Curll (1741), in: Cardozo Arts & Entertainments Law Journal 10 (1992) 2, pp. 475-493; D. Saunders, Authorship and Copyright, London 1992; B. Sherman and A. Strowell (eds.), Of Authors and Origins: Essays on Copyright Law, Oxford 1994; M. Woodmansee, The Genius and the Copyright. Economic and Legal Conditions of the Emergence of the Author, in: Eighteenth-Century Studies 17 (1984), pp. 425-448.

7 Bently (ed.), Global Copyright (see note 4).

the author's personality and, as a consequence, no one else other than the author himself could ever own a text.

In legal practice this dispute was settled with the cases of *Millar v. Taylor* in 1769 and *Donaldson v. Beckett* in 1774, cases that, according to Christopher May and Susan K. Sell, "have a totemic importance in all histories of copyright."[8] In *Millar v. Taylor*, The Court of King's Bench acknowledged the existence of a unique relationship between texts and authors. Nevertheless, the court gave priority to the publisher's rights to publication. Consequently, the court decided in favor of common law and ascribed the right to copy to the author's contractual partners, the publishers.[9] This decision was fundamentally revised in *Donaldson v. Beckett* in 1774, a verdict that introduced the "belief in the genius of creation" as a main idea in legal, cultural and economic practice.[10] In this case, the House of Lords introduced three major paradigms in the discussion that signaled the way ahead for the identification of the author's person with any right to possess a text or a piece of art. The first two decisions restricted the rights of authors and publishers in favor of the public: The judges rejected the notion of a common copyright law vested in authors or publishers in favor of a limited copyright protection already envisaged by the *Statute of Anne*. Second, they highlighted the statute's original intention to function as an "act for the encouragement of learning" and emphasized the aim to balance public and private interests in order to stimulate creativity, to support education and to promote the public interest in a free flow of cultural goods.[11] However, despite the strengthening of public interests the verdict fundamentally contributed to the increase in the influence of the individual author. Most important was the conclusion the judges drew regarding who was entitled by statutory law to be the first owner of a text. In this matter, the judges distinguished between the material and the immaterial dimensions of a text. They rejected the comparison between literary property and real estate by asserting the author's "act of creation"[12] as the only plausible and legitimate act to justify property in cultural goods. The judges rigorously conceded the author to be the first owner of a text because of the extraordinary abilities aesthetic theories ascribed to the authorial genius. By merging economic and philosophical arguments they finally contributed to the construction of the idea of individual authorship and initiated the shift from the publisher's trading interests to the exclusiveness of authorial work and the author's personality.[13]

8 May and Sell, Intellectual Property Rights, p. 94 (see note 6).

9 G. Davies, Copyright and the Public Interest, Weinheim, New York 1994, p. 20.

10 B. Sherman and L. Bently, The Making of Modern Intellectual Property Law. The British Experience, 1760–1911, Cambridge 1999, p. 16sq.

11 Davies, Copyright and the Public Interest, p. 19ff (see note 9); D. J. Halbert, Intellectual Property in the Information Age. The Politics of Expanding Ownership Rights, Westport Connetticut, London 1999, p. 7sq.

12 May and Sell, Intellectual Property Rights, p. 93 (see note 6).

13 E. Earle, The Effect of Romanticism on the 19th Century Development of Copyright Law, in: Intellectual Property Journal 6 (1991), pp. 269-290; F. Kawohl, Originalität, Charakteristik und Eigentümlichkeit. Zur Begriffsbildung in Ästhetik und Urheberrecht des frühen 19. Jahrhunderts, in: O. Schwab-Felisch, C. Thorau, and M. Polth (eds.), Individualität in der Musik, Stuttgart 2002, pp. 295-306.

3 The Writing Genius as Legal Standard in European Conceptions of Literary Property – The Cases of Britain, France and Germany

In the course of the eighteenth and nineteenth century, the conception of the writing genius became the prevailing narrative for determining the author's dominant legal position in the field of the cultural industries throughout Europe. Since then European concepts of literary property have centered on the author and granted him exclusive rights in the process of the production, dissemination and reception of literary or artistic works. Nevertheless, the realization of a European-wide notion of an extraordinarily gifted authorial genius that primarily decides on a text, composition or piece of art should not obscure the fact that the national legislators, legal experts, judges, authors and publishers designed copyright rules which emerged from the domestic political, social, cultural and economic demands, thus sketching a slightly different picture of the writing genius each time. Furthermore, each demand found different remits with which to handle the limitation of copyright claims in time, to prescribe the extent to socially and legally acknowledge the public interests, and to balance the distribution of copyright entitlements between authors and publishers. This chapter will sketch the common features of the author's outstanding social, cultural and legal position as well as the national differences that became manifest in the process of formulating the author's sphere of influence in the course of the eighteenth and nineteenth century.

The conversion of the printing privileges regulating the copying and the distribution of a manuscript into an author-centered law that transformed the author into a holder of social, cultural and economic rights and allowed him to be competitive on a liberalizing literary market took place in Britain during the eighteenth century, in France following the French Revolution and in Germany in the late eighteenth and early nineteenth century.[14] The legal, social and cultural acknowledgement of the author's genius shared at least three common principles. First, the idea of individual authorship was legally embodied as an irrevocable cultural and social standard in European societies. In the course of the eighteenth and nineteenth centuries the notion of the author's genius became the leading concept in aesthetic thinking and cultural theory and, at the same time, served as a foundation for the legal enforcement of the author's exclusive economic and moral rights. Second, the author was simultaneously perceived as a holder of cultural, political and economic rights. Consequently, literary property laws mainly contributed to the institutionalization of culture, information and knowledge along the principles of a market economy: The author was invited to risk business activity and he was awarded with exclusive rights of disposal over commercially utilized cultural goods. Third, the European legislators all included the public interest to have a far-reaching access to cul-

14 Introducing the term 'propertization': H. Siegrist, Strategien und Prozesse der „Propertisierung" kultureller Beziehungen. Die Rolle von Urheber- und geistigen Eigentumsrechten in der Institutionalisierung moderner europäischer Kulturen, in: S. Leible, A. Ohly, and H. Zech (eds.), Wissen, Märkte, geistiges Eigentum, Tübingen 2010, pp. 3-36.

ture, knowledge and information in order to encourage education, science and cultural progress. Consequently, from its beginning, national legislators had to balance the individual claims of authors to be entitled with exclusive economic, cultural and social rights while at the same time the public and state interests required the relaxation of the liberal idea of original authorship.[15]

Britain was a pioneer when it replaced the publishers' unlimited property claims in favor of the author as the legal proprietor of his text and introduced a time-limited copyright that transformed protected works into public goods after a certain period of time.[16] In contrast to the developments on the European continent, the British legislators did not draft the legal protection of authors in terms of a property right initially. Rather, at its inception it was meant as a right to copy. That is to say, it did not recognize any moral or personal rights of the author, based in the act of creation, but only granted the right to publish and distribute a text. This limitation of legal entitlements rooted in a discussion about the liberalization of the English book trade in the aftermath of the English Revolution. In 1710, the *Statute of Anne* aimed at breaking down the monopoly of the English publishing guild, the *Stationer's Company*, in order to replace it by anti-monopolistic commercial laws. Due to the relatively short protection of copyright entitlements (fourteen years and a one-time extension option of an additional fourteen years), its objective to stimulate creativity and to reward authorial labor, the British copyright law kept is character as a primarily commercial law until the beginning of the nineteenth century – despite the fact that since 1774, jurisdiction had already acknowledged the notion of the authorial genius as a principle foundation of any literary property rights. It was not until the middle of the nineteenth century that the main concern of British copyright law to prevent monopolies in book trade was challenged by the notion of the original author. In the 1840s the legislator, law scholars, authors and publishers controversially discussed the prolongation of copyright law up to 42 years or, alternatively, for the author's life-span plus seven years *post mortem auctoris*. The amendment was of major importance because it put the act of creation as the starting point for any copyright protection and enhanced the esteem for the author's skills. In this way, the 1842 copyright act reoriented the architecture of copyright law by giving absolute priority to the author.

15 C. Geiger, Author's Right, Copyright and the Public's Right to Information: A Complex Relationship, in: F. Macmillan (ed.), New Directions in Copyright Law, vol 5, Cheltenham 2007, pp. 24-44; N. W. Netanel, Why has Copyright Expanded? Analysis and Critique, in: F. Macmillan (ed.), New Directions in Copyright Law, vol 6, Cheltenham 2007, pp. 3-34.

16 For the British case see: R. Deazley, On the Origin of the Right to Copy. Charting the Movement of Copyright Law in Eighteenth Century Britain, 1695-1775, Oxford 2004; J. Feather, From Rights in Copies to Copyright. The Recognition of Author's Rights in English Law and Practice in the Sixteenth and Seventeenth Century, in: Carodozo Arts & Entertainment Law Journal 10 (1992) 2, pp. 455-473; Patterson, Copyright and Author's Rights, pp. 370-384 (see note 6); L. R. Patterson and S. W. Lindberg, The Nature of Copyright: A Law of User's Rights, Athens Georgia 1991; M. Rose, The Author as Proprietor. Donaldson v. Beckett and the Genealogy of Modern Authorship, in: Representations 23 (1988), pp. 51-85; C. Seville, Literary Copyright Reform in Early Victorian England. The Framing of the 1842 Copyright Act, Cambridge 1999; Sherman and Bently, The Making of Modern Intellectual Property Law (see note 10); M. Woodmansee, The Cultural Work of Copyright. Legislating Authorship in Britain 1837–1842, in: A. Sarat and T. R. Kearns (eds.), Law in the Domains of Culture, Ann Arbor 1998, pp. 65-96.

The law withdrew from the anti-monopolistic objectives of the former laws and, for the first time, consolidated the author's supremacy for the institutionalization and regulation of culture. The introduction of the writing genius in British legislation reaffirmed the author's gradual emancipation from a writer to the original genius who was morally and aesthetically legitimized to dispose of the reproduction and distribution of his work. However, in contrast to the developments on the European continent, the British law did not codify any moral rights. As such, British law today remains a copy-centered law that provides incentives for authors and publishers to risk business activities and aims at a just reward.

In revolutionary France the laws of authorship were fundamentally reformed in 1791 and 1793 after the freedom of speech and the freedom of the press had been declared, the printing privileges had been abolished, the powerful printing guilds in Paris had been marginalized and the market for literary goods had been completely liberalized.[17] In contrast to the British *Statute of Anne*, however, the French copyright did not regulate the copying and distribution of literary works, but centered on the author. Although the new political regime reformed the organizational structures of the literary market, redefined the hierarchies between the concerned groups and revalued the importance of literary works for broader sections of the population, the legislators drew on concepts of authorship, which were already discussed during the *ancien régime*. The revolutionary laws put emphasis on the author as a creative individual by assuming that he enjoyed certain rights for his efforts. Thereby, they reinforced the idea that literary property rights were derived from some conception of natural law. Consequently, the law was perceived as a *droit d'auteur*: It acknowledged the author's natural right and took the authorial act of creation as the starting point for legislation. The author was viewed as an individual. As the primary beneficiary of the *droit d'auteur* he was awarded exclusive property rights due to his outstanding creative skills and his service to the public domain. Crucial to the further institutionalization of French literary property rights was the decision to subsume literary works into a secular and liberally organized property rights regime governed by the principles of market economy. The so called *propriété littéraire et artistique* protected all sorts of texts for the author's life-span plus ten years *post mortem auctoris*.

17 For the French case see: R. Chartier and H.-J. Martin (eds.), Histoire de l'édition française. Vol. 2: Le Livre triomphant, 1660–1830, Paris 1990; R. Darnton and D. Roche (eds.), Revolution in Print. The Press in France 1775–1800, Berkeley 1989; M.-C. Dock, Contribution historique à l'étude des droits d'auteurs, Paris 1962; C. Geiger, The Influence (Past and Present) of the Statute of Anne in France, in: Bently (ed.), Global Copyright, pp. 122-135 (see note 4); A. Götz von Olenhusen, Balzac und das Urheber- und Verlagsrecht, in: UFITA. Archiv für Urheber- und Medienrecht (2008) 2, pp. 441-463; C. Hesse, Enlightenment Epistemology and the Laws of Authorship in Revolutionary France 1777–1793, in: Representations 30 (1990), pp. 109-137; C. Hesse, Publishing and Cultural Politics in Revolutionary Paris 1789–1810, Berkeley 1991; J.-Y. Mollier, Les mutations de l'espace éditorial français du XVIIIe au XXe siècle. Actes de la recherche en sciences sociales 126/127 (1999), pp. 29-38; J. Schmidt-Szalewski, Evolution du droit d'auteur en Françe, in: E. Wadle (ed.), Historische Studien zum Urheberrecht in Europa. Entwicklungslinien und Grundfragen, Berlin 1993, pp. 151-166; A. Viala, Naissance de l'écrivain. Sociologie de la littérature à l'âge classique, Paris 1985; E. Wadle, Entwicklungsschritte des Geistigen Eigentums in Frankreich und Deutschland. Eine vergleichende Studie, in: H. Siegrist and D. Sugarman (eds.), Eigentum im internationalen Vergleich (18.–20. Jahrhundert), Göttingen 1999, pp. 245-263.

This way, the author was transformed into an exclusive property rights holder; the rights of publishers and the public were conceived of only as secondary rights derived from the authorial genius. Nevertheless, initially the *propriété littéraire et artistique* focused on financial aspects. It was not until the middle of the nineteenth century that the French legislators became receptive to the author's so called *droit moral*, which permited him not only to decide on the publishing, exploitation and distribution of his work but also to prohibit any alterations of the text.

A glance at the author's rights in Germany reveals a similar growth of esteem for the individual author.[18] This emphasis on the writing genius was initiated by a change in aesthetical and philosophical thinking during Enlightenment and resulted in the author's emancipation from his economic and social dependence on the publishing industry. However, the path to an author-centered literary property right that stressed the importance of individual authorship for the progress of society was not direct. The main problem with German legislation was the plurality of the individual states whose legislations had had priority over federal law since 1648. Consequently, printing privileges were in force only in the territory of the respective sovereign. This restriction of the printing privilege's geographical reach led to serious problems for both authors and publishers. Since 1760 the literary market expanded rapidly without authors or publishers having any legal instruments with which to prohibit unauthorized copying. However, disagreement in economic policy between publishers in Prussia and Saxony on the one hand and publishers in South Germany on the other hand prevented an early agreement for the protection of literary and artistic works on the level of the federal state. Additionally, it was not until the beginning of the nineteenth century that publishers gave up their efforts to hinder authors from claiming the right of reward and ownership of their texts. In contrast to Britain and France where an author-centered legislation was established early for political reasons – the anti-monopolistic policy in Britain and principal considerations concerning the freedom of speech and the freedom of the press in France – German publishers had no reason to voluntarily renounce their right to print and sell manuscripts. Rather, they benefited from concepts in common law that subsumed manuscripts under material property. According to this idea a manuscript could be sold once,

18 For Germany see: K. Bandilla, Urheberrecht im Kaiserreich. Der Weg zum Gesetz betreffend das Urheberrecht an Werken der Literatur und Tonkunst vom 19. Juni 1901, Frankfurt a. M. 2005; H. Bosse, Autorschaft ist Werkherrschaft. Über die Entstehung des Urheberrechts aus dem Geist der Goethezeit, Paderborn 1981; M. Estermann and G. Jäger, Geschichtliche Grundlagen und Entwicklung des Buchhandels im Deutschen Reich bis 1871, in: G. Jäger (ed.), Geschichte des deutschen Buchhandels im 19. und 20. Jahrhundert. Vol. 1: Das Kaiserreich 1870–1918, Frankfurt a. M. 2001, pp. 17-41; A. and I. Götz von Olenhusen (eds.), Von Goethe zu Google. Geistiges Eigentum in drei Jahrhunderten, Düsseldorf 2012; E. Höffner, Geschichte und Wesen des Urheberrechts, München 2010; F. Kawohl, Urheberrecht und Musik in Preußen (1820–1840), Tutzingen 2002; M. Rehbinder, Kein Urheberrecht ohne Gesetzesrecht. Zum Urheberschutz um die Mitte des 19. Jahrhunderts, in: R. Dittrich (ed.), Woher kommt das Urheberrecht und wohin geht es? Wurzeln, geschichtlicher Ursprung, geistesgeschichtlicher Hintergrund und Zukunft des Urheberrechts, Wien 1988, pp. 99-116; M. Vogel, Der literarische Markt und die Entstehung des Verlags- und Urheberrechts bis zum Jahre 1800, in: GRUR 6 (1973), pp. 303-311; E. Wadle, Der langsame Abschied vom Privileg: Das Beispiel des Urheberrechts, in: B. Dölemeyer and H. Mohnhaupt (eds.), Das Privileg im europäischen Vergleich, vol. 1, Frankfurt a. M. 1997, pp. 377-399.

thereafter the former owner could no longer lay claim to the manuscript. The writing genius manifested in a text, composition or piece of art, however, was not introduced to the discussion before the beginning of the nineteenth century. Since then, legal scholars have incorporated aesthetic theories that promote the notion of individual authorship and have perceived literary or artistic works as emanating from the extraordinary skills of an artistic genius. This philosophical esteem for the individual led German legal scholars to conclude that the writing of a text was the original act legitimating all rights of ownership in cultural goods. As a consequence, the writing genius was perceived as the only legally entitled person to own a work while the rights of exploiters and distributors were interpreted as secondary rights. Nevertheless, in the course of the nineteenth century the development of legal doctrines and legislation did not proceed simultaneously. It was not until 1871 that the German legislators passed a law for the protection of literary and artistic property that explicitly acknowledged the author's individual right to exclusively decide on the exploitation and distribution of his work. On the other side, German jurisprudence was at the forefront of working out the concept of the author's moral rights by combining aspects of natural law theory, the aesthetic notion of the genius and the idea of personal property derived from the right to live one's own life. In the course of the twentieth century the idea of moral rights made its entrance into international law. It became one of the most important arguments for the extension of the author's rights on a global scale, while it was simultaneously highly contested because of its specifically European perception of individuality and authorial labor.

4 The Europeanization of the Writing Genius in the Course of the Nineteenth Century

As soon as national legislators had successfully installed the first legal systems for the protection of author's rights, they faced another fundamental problem: The newly drafted literary property laws provided regulations only on the national level but did not provide any regulations for the acknowledgement of the author's exclusive rights on a European level. Once books and other printed works were exchanged in significant quantities between different states and different legal and linguistic areas, thus transcending national spheres of legal influence, the necessity for authors, publishers and legislators in Europe not only to draught national laws but also to endeavor simultaneously to create international regulations for the strengthening of the author's personal rights to decide on the publication of his works became fundamental. From the 1820s onwards the rising trade with literary works forced authors, publishers and lawyers to search for bi- or multilateral contracts in order to handle copyright litigations abroad and to standardize the distribution of copyright entitlements between authors, publishers and the public on a European scale. An early attempt to solve this problem included bilateral trade agreements.[19] Since

19 G. Boytha, Urheber- und Verlegerinteressen im Entstehungsprozess des internationalen Urheberrechts, in: UFI-

the middle of the nineteenth century, these agreements determined mutual acknowledgement of protection from reprinting between different European states.[20]
However, the bilateral agreements were restricted to short term arrangements and their implementation was uneven. Furthermore, for the most part they were part of trade agreements, which achieved the legal protection of cultural works abroad by making concessions to custom tariffs or other economic sectors. Consequently, the first bilateral agreements were mainly guided by pragmatic considerations, which did not take into account the complex legal, cultural, social and economic reflections put forward by authors, publishers and legal scholars on the national level – the focus on the author's personality and the philosophical and aesthetical esteem for his skills, the question of just reward for authorial labor and the social reflection on the value of individual authorship for education and cultural progress of national societies.[21] Therefore, from the beginning of the 1850s onwards authors and publishers mainly from the major European book trading countries such as France, Great Britain, Germany, Switzerland and Belgium pushed their national legislators to introduce long-term legal standards that covered the most comprehensive area possible on a European level. They sought for multilateral agreements that would overcome the existing bilateral trade agreements in favor of international legal doctrines that would introduce the writing genius as the only legitimate concept that granted the author the exclusive right to own his texts on a European level.[22]
In 1858, European authors and publishers met for the first time in order to discuss the lack of a European-wide legal concept of authorship and authorial work at an international congress for authors and artists in Brussels. Intensifying their efforts for the acknowledgement of the author's individual rights as a matter of international law, further congresses followed in Antwerp in 1861 and 1877. However, it was not until the World Exposition in 1878 in Paris that authors and publishers successfully founded an international association of authors, the *Association Littéraire Internationale* with Victor Hugo as president, renamed the *Association Littéraire et Artistique Internationale* (ALAI) in 1884.[23] The ALAI was composed of renowned authors and major publishing houses that campaigned for the exclusive rights of authors to decide on the text, the publication, the distribution, and, to a certain extent, the modes of reception of their works. Thereby, they focused on the notion of the individual author perceived as a genius. For them the

TA. Archiv für Urheber- und Medienrecht 85 (1979), pp. 1-35. S. P. Ladas, The International Copyright Protection of Literary and Artistic Property in Two Volumes, New York 1938, pp. 44-68.

20 H. Siegrist, Geistiges Eigentum im Spannungsfeld von Individualisierung, Nationalisierung und Internationalisierung. Der Weg zur Berner Übereinkunft von 1886, in: R. Hohls, I. Schröder, and H. Siegrist (eds.), Europa und die Europäer. Quellen und Essays zur modernen europäischen Geschichte, Wiesbaden 2005, p. 55.

21 B. Dölemeyer, Urheber- und Verlagsrecht, in: H. Coing (ed.), Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte. Vol III: Das 19. Jahrhundert, München 1986, p. 4059sq.

22 M. Vec, Weltverträge für Weltliteraur. Das Geistige Eigentum im System der rechtssetzenden Konventionen des 19. Jahrhunderts, in: L. Pahlow and J. Eisfeld (eds.), Grundlagen und Grundfragen des geistigen Eigentums, Tübingen 2008, pp. 107-130; S. Ricketson, International Copyright and Neighbouring Rights. The Berne Convention and Beyond, Oxford 2006, paras. 2.01-2.07.

23 R.-V. Blaustein, L'Association littéraire et artistique internationale, in: Le Droit d'Auteur 91 (1978) 2, pp. 71-72; C. Masouyé, Le rôle de l'ALAI dans l'évolution du droit d'auteur, in: Le Droit d'Auteur 91 (1978) 4, pp. 122-128.

genius' importance for the progress of society and culture was justification enough to restrict the free trade of cultural goods and to subordinate the cultural industries with a transnational reach to an international trade regime. The ALAI continued its campaigns with a series of subsequent meetings in London (1879), in Lisbon (1880), in Vienna (1881), in Rome (1882) and finally in Bern in 1883. The last meeting was the most important as the Swiss government agreed to pick up the initiative and to summon an international diplomatic congress that would ideally result in an international convention for the protection of the author's individual rights that would be signed by the major European book trading countries.[24]

In 1886, these efforts resulted in the Berne Convention, a multilateral contract for the legal protection of literary and artistic works.[25] The Berne Convention signalled a breakthrough for the idea of individual authorship as the principal basis for cultural and societal progress in literature, art, science and education. The convention universalized the concept of the individual author by means of an internationally negotiated standard consisting of at least three main components.[26] First, the Berne Convention guaranteed that the work of each author who was a citizen of a member state and published his works in another member state of the Convention was treated on an equal legal standing with domestic authors. In doing so, the Berne Convention affirmed the principle of national treatment of authors and artists abroad; It gives the author's moral and economic interests priority over the cultural industries in foreign countries. Second, from its outset it was possible for foreign authors to have better legal conditions than native citizens due to the rights the convention granted to the former. In these cases most legal experts agreed to focus on the author's benefit instead of giving preferential treatment to domestic law and state interests. This interpretation of international law was innovative. It replaced the principle of *lex posteriori* – the priority of the treaty, which had been concluded last – with the idea to center on the rights and needs of the individual author despite his nationality.[27] Finally, the revision conferences, which took place irregularly in order to continuously adjust the convention to technical, cultural and political innovation,

24 H. Püschel, Internationales Urheberrecht, Berlin 1982, p. 31; E. Ulmer, Hundert Jahre Berner Konvention, in: International Publisher's Association and Börsenverein (eds.), Internationales Urheberrechtssymposium, Heidelberg 24.-25. April 1986, München 1986, p. 33.

25 S. Ricketson, The Berne Convention for the Protection of Literary and Artistic Works: 1886–1986, London 1987; J. Cavalli, La genèse de la Convention de Berne pour la protection des œuvres littéraires et artistiques du 9 septembre 1886, Lausanne 1986.

26 For the following see: W. Bappert and E. Wagner, Internationales Urheberrecht. Kommentar zur revidierten Berner Übereinkunft, München, Berlin 1956, pp. 37-46; P. Buck, Geistiges Eigentum und Völkerrecht. Beiträge des Völkerrechts zur Fortentwicklung des Schutzes von geistigem Eigentum, Berlin 1994; B. Mentha, Berne Convention, in: H. L. Pinner (ed.), World Copyright. An Encyclopedia, Leyden 1953, pp. 1029-1070; H. Püschel, 100 Jahre Berner Union. Gedanken, Dokumente, Erinnerungen, Leipzig 1986; R. Plaisant, L'évolution des conventions de propriété intellectuelle, in: Les unions internationales pour la protection de la propriété industrielle, littéraire et artistique, 1883–1963, Genève 1962, pp. 47-88; E. Röthlisberger, Die Berner Übereinkunft zum Schutz der Werke der Literatur und Kunst und die Zusatzabkommen. Geschichtlich und rechtlich beleuchtet und kommentiert, Bern 1906; E. Ulmer, Urheber- und Verlagsrecht, Berlin, Heidelberg, New York 1980.

27 E. Brem, Das Verhältnis der Berner Übereinkunft zu anderen völkerrechtlichen Verträgen, in: Schweizerische Vereinigung für Urheberrecht (ed.), Die Berner Übereinkunft und die Schweiz. Schweizerische Festschrift zum

gradually strengthened the author's legal position. In 1908 the copyright protection *post mortem auctoris* was extended to fifty years, and in 1928 the member states introduced the author's moral right into the convention. By acknowledging a text, composition or piece of art to be closely interconnected to the author's personality, the member states interpreted artistic or literary works as part of the authorial genius and introduced this notion irrevocably in international law.[28] The effectiveness of the Berne Convention, however, was rooted in the pre-existing consensus of the member states to privilege and codify a shared and unique European idea of the individual and genius author, a practice that domestic laws had already legitimated about a century before. In order to introduce the individual author as a legal standard, at least on the European level, the states boosted the scope of their national rights by institutionalizing the notion of the writing genius as an international legal standard for the economic, social, cultural, legal and political handling of literature, art or music.[29]

5 The Writing Genius – A European or Universal Concept?

Until the beginning of the twentieth century, authors, publishers and governments in Europe perceived the writing genius not as an originally European concept but as universal. They strongly advocated the achievements of this concept for the public, which in their eyes was mainly rooted in the commitments of a highly gifted individual to enhance culture and society. Consequently, authors, publishers and governments in Europe sought to apply the concept of individual authorship, incorporated in the Berne Convention, to all regions in the world. The aim was also to implement the genius author in non-European territories in order to guarantee the return flow of royalties from abroad and to derive a secure contractual foundation for the increase of the author's and publishers' business activities on a global scale. Therefore, authors, publishers and states in Europe intended to gradually expand the geographical reach of the Berne Convention. After nine member states had signed the convention in 1886, the convention grew rapidly, and at the beginning of the 1920s it had thirty-six member states and covered the whole territory of Europe, Africa, Australia and Asia including the European colonies and dependent territories in India, the Middle East and parts of Africa.[30] Nevertheless, the convention's effectiveness suffered from the absence of the American states. For the

einhundertjährigen Bestehen der Berner Übereinkunft zum Schutze von Werken der Literatur und Kunst, Bern 1986, p. 103; Mentha, Berne Convention, p. 1056sq. (see note 26).

28 M. Plaisant and O. Pichot, La conférence de Rome. Commentaire pratique de la nouvelle convention pour la protection internationale de la propriété littéraire et artistique, Paris 1934.

29 F. Ruffini, De la protection internationale des droits sur les œuvres littéraires et artistiques, in: Recueil des cours de l'Académie de Droit International de La Haye, Paris 1926, p. 444-456; L'Union internationale pour la protection des œuvres littéraires et artistiques: Sa fondation et son développement. Mémoire publié par le bureau de l'union, Berne 1936.

30 Tableau des pays de l'union au 1er novembre 1928, in: Union internationale pour la protection des œuvres littéraires et artistiques (ed.), Actes de la conférence réunie à Rome du 7 mai au 2 juin 1928, Neuchâtel 1929, p. 9sq.

most part they refused to take over the specifically European figure of the writing genius because of its social, economic and political implications, which in their eyes best served European authors but not Latin or North American interests: Whereas the USA refused to accede because of a divergent legal tradition, Latin American states referred to the absence of economically and socially independent authors comparable to the European author and argued that their cultural industries were still in the process of development and thus not able to afford preferential treatment of a single author. In the course of these struggles, however, it became obvious that the European societies had developed a shared and originally European idea of the writing genius. It was the outcome of a certain set of cultural and legal practices that were obviously not reproducible outside the European sphere of influence so that in the end, the writing genius lost his universal connotation and became a European.

From the end of the nineteenth century, European states had tried several times either to include the American states into the legal regime of the Berne Convention or to conclude bilateral agreements that could have bridged the gap between the European idea to exclusively acknowledge and protect the individual author and the refusal of American states to extensively grant individual rights to the Europeans.[31] The United States continuously refused to grant European authors extensive rights. The majority of authors, publishers and the state rejected the idea that a book, a composition or a piece of art was necessarily related to the author's personality. Even though authors, publishers and legal experts did not question the author's imagination and his creative skills as the driving force for the creation of literary or artistic works, they did not agree with their European colleagues on the extraordinary legal status authors held in European legislation.[32] As the cases of France and Germany have shown, the author's exclusive rights to decide on the production, dissemination and reception of his works was rooted in natural rights theory. This approach closely linked the author's person to his rights to decide on his works with the result that state legislation was only able to legally acknowledge a pre-existing right. This emphasis on the author's moral rights, which– at least in the European perception – even existed outside state authority, was codified in the Berne Convention in 1928. Since then it became increasingly unlikely to reconcile the European notion of the writing genius with the US author who was always subordinate to American legislation as the only legitimate authority that could grant rights or take them away.[33] In addition to the question of the author's moral rights, US legislation refused to acknowledge the universal character of the writing genius in terms of space. Whereas authors, publishers and

31 B. Dölemeyer, „Geistiges Eigentum" zwischen „Commerzien" und Informationsgesellschaft. Einzelstaatliche Gesetzgebung und internationaler Standard, in: Pahlow and Eisfeld (eds.), Grundlagen und Grundfragen, pp. 107-130 (see note 22), E. Röthlisberger, Der interne und der internationale Schutz des Urheberrechts in den Ländern des Erdballs, Leipzig 1914, p. 16.

32 K. N. Peifer, Moral Rights in den USA, in: ZUM (1993) 7, p. 325; C. Seville, The Internationalisation of Copyright Law. Books, Buccaneers and the Black Flag in the Nineteenth Century, Cambridge 2006, pp. 146sq.

33 Halbert, Intellectual Property, p. 12sq (see note 11); W. W. Fisher III, Geistiges Eigentum – ein ausufernder Rechtsbereich. Die Geschichte des Ideenschutzes in den Vereinigten Staaten, in: Siegrist and Sugarman (eds.), Eigentum im internationalen Vergleich, pp. 262-289 (see note 17).

governments in Europe highlighted the act of creation and perceived all rights to print and distribute a work as secondary rights, the US legislation stressed the place where a book or a composition was printed. Since 1891 the rights of authors within the US territory could only be granted if the work was printed in US-territory.[34] Eventually, this regulation was relaxed in 1909 through several bilateral agreements; the USA concurred with European countries, which lessened the negative effects for European authors.[35] These disputes revealed the deeply European origin of the writing genius and uncovered the failed attempts of European authors and publishers to universalize the specific set of cultural, social, legal and economic practices that mainly contributed to the notion of the extraordinary gifted and personally autonomous writing genius.

Regarding Latin America, the European states faced comparable problems, which in the end resulted in the same, namely the regionalization of the writing genius as a European citizen. Since the middle of the nineteenth century Latin American societies have vested authors with the right to decide independently on the publication of their work. In addition to the national laws, the Latin American states passed a first Inter-American agreement for the protection of authors rights in 1889, followed by a series of multilateral agreements that guaranteed authors and publishers special rights for the writing and disseminating of artistic or cultural works.[36] However, in the perspective of European authors and publishers the Latin American book market remained problematic as the multilateral agreements only provided legal protection for Latin American authors and explicitly excluded authors from Europe.[37] Authors, publishers and governments in Europe tried to alter this situation by either concluding bilateral agreements or by acceding to the multilateral contracts. As the examples of France and Germany show, neither possibility materialized. On the one side, states such as Chile, Cuba and Brazil[38] rejected bilateral agreements with France because of the different position authors held in society. Whereas French authors were perceived as profiting from the writing and publishing of their works, these states argued that they did not possess complex cultural industries that allowed authors to live from their work adequately and to contribute to the knowledge production of their society. Consequently, they insisted on having relatively free access to the works of European authors with the aim to support their own authors and to motivate them to emancipate themselves culturally, economically and politically from their European colleagues.[39] On the other side, states such as Germany failed to accede to one of the Inter-American agreements. Comparable to the French case, signatory states

34 Davies, Copyright and the Public Interest, p. 53 (see note 9).

35 C. Royer, La protection international du droit d'auteur en Amérique et les tentatives de rapprochement des conventions panaméricaines et de la convention de Berne, Toulouse 1942, pp. 95-100.

36 M. Canyes, P. A. Colborn and L. Guillermo Piazza, Copyright Protection in the Americas. Under National Legislation and Inter-American Treaties, Washington 1950.

37 Ricketson, International Copyright and Neighbouring Rights, p. 1175 (see note 22).

38 Finally the Brazilian government agreed to conclude a bilateral agreement with France in 1913; Röthlisberger, Der interne und der internationale Schutz, pp. 13-17 (see note 31)

39 For the several attempts of the French government to conclude bilateral agreements with Latin American states at the beginning of the 20th Century see: Archives Nationales Paris F/17/13491/6.

such as Uruguay, Peru and Argentina refused the German request and declared that European authors were privileged compared to their own authors because of the extended cultural landscape in Europe that allowed European authors – at least theoretically – to live from their writing.[40] For this reason they rejected the originally European idea that authors should be protected against illegal reprints worldwide. Instead, they pointed out the different economic situation of authors in Europe and Latin America and drew the attention to the dissimilar social and cultural practices that enabled European authors to appear as a highly independent and gifted individual with exclusive social, cultural and economic rights whereas authors in most of the Latin American states were not embedded socially, culturally and economically enough to make their living through writing and publishing. Therefore, these states insisted that the writing genius was not a universal phenomenon but an originally European one, and in order to enable authors from South America to emancipate themselves, especially economically, these states refused to acknowledge literary property rights of the European writing genius on their own territory.

6 Conclusion

Edward Young's reflections on original composition, published in 1759, were an important contribution to the contemporary debate on the origins of creativity. Young strongly emphasized the author's exceptional intellectual skills and took them as the starting point for each kind of creative work. In his view, innovation and progress in culture, science and art were deeply rooted in the individual, and therefore he strived for the acknowledgment of texts not merely as a material object or commodity that can be purchased and sold by publishers but rather as an integral part of the author's personality. Nowadays, aesthetic theories on the original author are no longer discussed seriously after aesthetics, art history and philosophical writings have contested the notion of the autonomous artist in favor of concepts of collective authorship, reflections on the impact of cultural traditions on individual creativity and the audience's role in the social and cultural construction of categories such as "quality," "value" and "relevance".[41] Nevertheless, Young gave rise to a certain perception of the author's person, which has vividly survived in the legal doctrines of European societies. Since the second half of the eighteenth century the image of "the" European author appeared in national and international literary property rights: Therein the proponents drew the picture of the individual, a creative and an extraordinarily gifted person who contributed fundamentally to the social and cultural progress of society. From the middle of the nineteenth century onwards, the

40 For the German attempts to accede to the convention of Montevideo in 1926 and 127 see: Archive of the German Foreign Office R 43761.

41 M. Foucault, Qu'est-ce qu'un auteur ?, in: D. Défert and F. Éwald (eds.), Michel Foucault: Dits et écrits I, 1954–1969, Paris 1994, pp. 789-820; R. Barthes, La mort de l'auteur, in: R. Barthes, Le bruisement de la langue, Paris 1984, pp. 61-67.

writing genius became the core concept for the institutionalization of the cultural field in modern European societies, and since then innovation and progress in the fields of culture, science and education was personalized and conceived of as the success of a creative and liberalized individual. However, the European dimension of this concept did not become obvious before European authors, publishers and governments sought to implement the appropriate legal regime in the USA and in the states of South America. This attempt revealed that the notion of authorship put forward by the European actors was not a universal conception of authorship applicable to all regions, societies and cultures worldwide. On the contrary, European authors, publishers and lawyers were confronted either with different legal conceptions of individuality and individual rights – the case of the USA – or with completely different social, economic and cultural circumstances for authors – the case of the Latin American states. In both cases the differences in theory and practice gave the political actors in the Americas several arguments to prefer their national authors and to neglect European authors and the idea of the writing genius. Even though these conflicts were settled after World War II by means of several international agreements for the protection of author's rights on a global scale – the Universal Copyright Convention in 1952 and the foundation of the *World Intellectual Property Organization* in 1967 – they revealed without a doubt that authors, publishers and governments in Europe pursued a shared notion of the author and of authorship, which was the outcome of a certain set of cultural, social, political, economic and intellectual practices which could not be easily universalized and implemented outside the European sphere of influence.