

Copyright Law: The Author's Name in Legal Discourse

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ABSTRACT

This essay studies the nature and function of authorship from the perspective of legal discourse, focusing on how copyright law defines qualifications for authorship. Here I also discuss the provisions of copyright law, including the justification for originality, the distribution and reproduction of books, along with the laws which regulate these systems, and the qualifications for copyright protection. In addition, I examine how copyright law, in cooperation with the culture industry, materializes and reifies intellectual property as a commodity in the marketplace. These perspectives lead to an examination of the question of whether or not the copyright law does, in fact—as opposed to in theory—serve to protect traditional authorship in order to maintain commercial and material benefits for publishers or entrepreneurs.

KEY WORDS

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In Michel Foucault's "What is an Author?" it is well argued that the author's name and function are construed by discourses, and that they serve to characterize "a certain mode of being of discourse" or "a certain discursive set." Their functioning is not, however, independent in itself, it is also related to other discourses and practices, like legal discourses. In this paper, I will introduce those practices of copyright law which bear on the question of authorship, as part of a broader ramification of Foucault's logic—an undeveloped argument, that "the author function is linked to the juridical and institutional system that encompasses, determines, and articulates the universe of discourse" ("What is an Author?" 113). On the basis that the discourse of the author function needs to be appropriated and circulated, I shall study the relation between the circulation of certain texts endowed with an author-name in legal discourse and the discourse of authorship in general.

I

The authority to enact copyright legislation is derived from Article I, Section 8 of the U.S. Constitution. It reads:

The congress shall have power... to promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.

This regulation endows the author with an exclusive right to multiple copies of his work as property. Copyright law was made to protect all "original" writings of an author, and to foster the creation and dissemination of creative works for the public. However, it is absolutely necessary that the works protected must be original with the author. Considering this prerequisite which determines entirely a work's copyrightability or the author-name, I shall, in the first place, examine in detail the standard and justification of originality to see how the authorial identity is characterized in the domain of legal discourse. The word "originality" is, in the copyright law, regulated as follows:

[C]opyrighted work need not be novel or rise to [the] level of invention; it need only be original, created without copying, and so long as it is not [a] plagiarized copy of another's effort, there is no requirement that [the] work differs substantially from prior works or that it contribute anything of value

[C]opyright protection is available to a work that, while not novel in conception or ideological content, is original (*United States Code Annotated* Title 17 Copyright 21)'.

We see here that the test of originality in Legal discourse has a low threshold. What the copyright law endorses is not originality, or the first author-name in its true sense, but the product of toil or labor; the law does not require that a "Work differs substantially from prior works or that it contribute anything of value." And as Philip Wittenberg posits explicitly in his *The Protection of Literary Property*, "The words, phrases, basic ideas, characters, situations, and incidents might all have had prior existence and have been common to others. When an author makes his own arrangement of them, they become vested with a special right of property, so that he

might thereafter claim his work to the exclusion of others" (40). What is copyrighted and protected is the author's efforts in ordering and arranging words and sentence structures in his composition. Hence, "When an author has by his labor produced such a new work, he may claim it for his own solely by virtue of his toil. The labor need not be of a literary nature. It may lack artistic result. If original toil results in a writing, the author may claim it for his own" (44). In a sense, it is not necessary for an author of a copyrighted work to possess any special talent or literary skill, as all that is needed is that the author has contributed something more than trivial variations or additions recognizably his own. Now matter how artistically inferior the author's variations or additions are, his work is copyrightable if it is a product of his own toil. The dominion over the work as a property lies with the author when the work is done. In short, nothing more than trivial variations or additions made out of an author's own skill, labor, and judgment may justify the test of originality.

In legal discourse, the meaning of originality is therefore reduced to a "distinguishable or recognizable variation" owing its origin to the author. Since only a modicum of originality is required to justify copyright protection, the effort that the author puts into his work is not essentially different from a factory worker's: the essence of the work is to assemble or make up a product out of different parts. Nevertheless, it is the author's labor, not the worker's that is privileged and acknowledged: only the former is entitled to an author-name in legal discourse.

It is thus evident that "originality" in legal discourse may be easily justified and therefore stretched to its utmost limits. One instance mentioned by Margaret Nicholson offers a good explanation for overextended applications of the notion of originality. She states that, "In reply to an infringer who attempted to justify his theft of copyright material, one presiding judge blandly declared that there could be little

force to the argument that copyright material must have originality; 'Very few literary, musical, or artistic ideas,' as he said, 'are really novel' (13). Consequently, the work is original only in the sense that the author does not copy something from other people. At any rate, without a severe test, a work could be easily considered as original and be quickly copyrighted. And it may also cause an illusion that any paper jotted down with some random words is a copyrightable article.

In the order of legal discourse, the copyright law has its own sufficient stance and validly, since it has not only delimited clearly what originality or invention means but, above all, recognized it on a factual basis. However, viewed from the perspective of critical or literary discourse, the meaning of originality defined by copyright law can in no way justify its legitimacy, in as much as critics see nothing more than imitation and simulacrum in artistic works.

In any event, the justification of novelty or invention is much more severe in patent than in copyright law: Once an invention is patented, the public may not use the protected ideas or forms; the copyrighted matters, by contrast, usually belong to the public and may be employed recurrently. Obviously, patenting demands more substantial novelty and originality, and furthermore it in fact renders a broader and better protection than copyright does: no one may use the patented subject matter. If the test or justification of originality in copyright were as severe as that of patent law, the libraries and bookstores would not be jammed with copyrighted works embodying non-substantial originality. Indeed, the author-name in legal discourse does not have the connotation of being truly original, unique, ingenious, or artistic.

However, on close examination, we may find that the polemic is, in fact, derived from another underlying assumption of copyrightability; that is, "originality" takes its

existence in a physical form, in the "expression" of an idea, not including the idea itself. The word "original," for example, in reference to a copyrighted work, actually means that a particular work "owes its origin" to the "author." It is on this assumption that many works, however unoriginal, can be easily authorized. Compilations and derivative works, for instance, are also the subject matters of copyright.² It is quite obvious that both are made out of pre-existing materials, and that their uniqueness is comprised of their physical form only: true origin or originality has already been exhausted in pre-existing materials. Of course, there are some original and artistic derivatives, like the film version of certain novels. However, most compilations and derivations are dependent on previous works, and, in fact, their copyrightability makes the compiler, adopter, or editor equal with the author in terms of originality. In a sense, the qualification of the author-name in legal discourse is generally not as strict as in critical or literary discourse.

In addition to compilations and derivative works, translations are also subject matter covered by the range of copyrightability. In the midst of the copyrighted item, the copyrightability of translations demands a second thought, especially when justified on the scale of its originality and creativity. Theoretically, if the original work is already protected, translations of it are not supposed to be copyrighted, because in essence they are only reproductions of the original, represented in another language. Nevertheless, upon closer examination, compared to works of compilation and derivation, works of translation are in a more reasonable situation to be copyrighted, in so far as translation is by and large and integral part of innovatory forces: i.e., an imported originary energy to the target-language literature and an exported one to the original. In fact, the cultural and linguistic barriers between the source and the target literatures usually leave ample space for the translator to claim or

to search for his own identity. Having written under the shadow of the identity of the original author, the translator, by making new literary models emerge and by expanding the repertoire of conventions of the target literature, redeems his fate as an innovator or originator rather than an imitator. Considering this specific feature, Octavio Paz once commented, "every translation is distinctive. Every translation, up to a certain point, is an invention and as such it constitutes a unique text" (as translated in Bassnett-McGuire 38).³

In fact, translation is dialogical and dialectical in nature, and its relation with the author changes constantly owing to changes in the "horizon of expectations," or to the encounter of different cultural and linguistic conventions. The translator may introduce a foreign text to the reader by assimilating or appropriating it in accordance with the cultural conventions of the target literature; thus he injects the original with a new or originary force. Also, in a reciprocal way, the translator activates an exotic or originary energy in the target literature by introducing the cultural conventions of the source literature to the reader; as a result, he always has the potential to be an originator or author in the target literature. On the whole, translation is able to resurrect or renovate authorship in terms of making originary force dynamic, fluid, and mobile through the encounter of differences, be they cultural or linguistic, temporal or spacial.

However, it was not until 1896 that the convention of Berne, in its Article 5, finally authorized the copyrightability of translation. It is likely that the delay of authorizing or protecting translated works is due to their subordinate position to the original, especially in terms of originality. But in an unforeseen way, works of translation turn out to be more original: they always involve two different cultural and linguistic conventions, and they always tint both the source and the target texts with a foreign color. After all, having existed under the shadow of the original without their own

identity, translations thereafter have their own legal position to claim copyright.

In all these details, we may see that copyrightable works are only visually perceptible copies or works "fixed" in a tangible medium of expression from which they can be perceived, reproduced, or otherwise communicated (provision of copyright law 102). Uncopyrightable are "an author's ideas, methods, processes, or procedures." So the criterion of originality in legal discourse is in essence formalistic rather than conceptual. The author is merely the person who originates a written form or expression rather than ideas, and his right resides in the expression.

Notwithstanding that the test of originality has been defined with a low threshold, the court tends to make too strict a standard in justifying infringement. It is defined as follows:

A literal reproduction of the whole, or of substantially the whole, of a copyrighted work, if unauthorized, constitutes an infringement, but an infringement is not confined to literal and exact repetition or reproduction; it includes also the various modes in which the matter of any work may be adopted, imitated, transferred, or reproduced, with more or less colorable alterations to disguise the piracy. Paraphrasing is Copying and an infringement, if carried to a sufficient extent. Complete or substantial identity between the original and the copy is not required. Copying and infringement may exist, although the work of the pirate is so cleverly done that no identity of language can be found in two works. In such cases the question of infringement resolves itself into a question of fact on the evidence as to whether or not the copyrighted work was used and paraphrased in the production of the later work.... To constitute an invasion of copyright it is not necessary that the whole

of a work should be copied, nor even a large portion of it in form or substance, but that, if so much is taken that the value of the original is sensibly diminished, or the labors of the original author are substantially, to an injurious extent, appropriated by another, that is sufficient to constitute an infringement (Wittenberg 135).

Obviously the regulation offers strong protection to authorial originality. Nevertheless, the borderline for distinguishing infringement from originality is still ambiguous, because an infringement includes "the various modes in which the matter of any work may be adopted, imitated, transferred, or reproduced, with more or less colorable alterations to disguise the piracy." According to this regulation, some of the copyrighted subject matter, like works of compilations and derivations, in fact constitute an invasion of copyright, since "the value of the original is sensibly diminished, or the labors of the original author are substantially and to an injurious extent, appropriated by another."

On the other hand, according to *United States Code Annotated*, infringement is something "which ordinary observation would cause to be recognized as having been taken from" the work of another. Here, in comparison with the previous regulation, the annotation or justification seems loose. This regulation makes obvious the fact that the author's ideas, abstract conceptions or creations of mind eventually become secondary when compared to his "form of expression and arrangement." After all, with "ordinary observation" as the underlying principle of discerning originality from infringement, the regulations in legal discourse, in a mocking way make the meaning of originality superficial. With regard to this partial justification of originality, Wittenberg comments as well that in legal discourse, "when the author has impressed an 'old' plot with his original arrangements of scenes and incidents, he has created something new, and a new

arrangement of scene and incident is, itself, a creation capable of establishing individual ownership" (143). In a sense, it will be more appropriate to argue that copyright law provides an easy access to every individual with an authorname, rather than protecting the original author, in a true and substantial sense, from being infringed upon. At all events, "linguistic embellishments" entirely comprises the meaning of originality. This emphasis on nothing more than the restructurings and restylings of the form in fact denies the author's originality, in so far as it does not encourage or protect conceptual novelty in a strict way by placing plots, themes, and ideas in the public domain.

Nevertheless, it is hard to understand why ideas, which are the essence of originality, are not copyrightable. It is understandable that the procedure for copyrighting is extremely complicated: ideas are abstract and not embodied in a definite form. In fact, it is due to their multifacetedness—ranging from thought, conception, notion, opinion, belief, plan, to project—that ideas are not copyrightable unless they are expressed in a tangible, fixed, or concrete form. But from the perspective of critical or traditional literary discourse, we know that ideas and the expressions of ideas do not necessarily mean the same thing. Many times the way of expression distorts or limits ideas. Shelley, for instance, conceives of composition or writing, the embodiment of ideas, as translation in the sense of translating imagination into a fixed form. In his view, the imagination or idea already fades in the process of being fixed in a concrete form. He writes:

The mind in creation is as a fading coal, which some invisible influence, like an inconstant wind, awakens to transitory brightness Could this influence be durable in its original purity and force, it is impossible to predict the greatness of the results; but when composition begins, inspiration is already on the decline, and the

most glorious poetry that has ever been communicated to the world is probably a feeble shadow of the original conceptions of the poet (511).

Echoing the Platonic conception of ideas, Shelley contends that the incarnation of an abstract idea which is shapeless and infinite marks a confinement or a limitation, although the idea itself could have been nothing more than the product caused or preceded by something exterior. Eventually, after putting so much emphasis on the tangible, fixed, or concrete form, the authorities in legal discourse have depreciated the intellectual or spiritual values of ideas by materializing them into a visible and physical mode of existence.

II

In addition to the purpose of promoting the progress of science and useful arts, copyright law is also made out of the practical concern for works of beneficial or potential appeal to the public. Hence, economic or commercial interests are also involved in systematizing copyright statutes. As recorded, since the beginning of the history of copyright, the question of to whom the benefit should be attributed, the author or the publisher (e. g., the Stationer) has been controversial. After the statute of Anne, a great contribution to the rights of the author, the individual author was finally considered as the ultimate beneficiary of protection against unauthorized use for a limited time. Hereby, the ownership of copyright includes not only legal protection, but also a certain amount of financial benefit gained from the circulation and sale of books. In fact, the latter, the financial and economic aspects of copyright, have ever since been the main concern. For instance, among the five exclusive rights bestowed to the author by the United States copyright laws, finalized in 1976 and effective as of January 1, 1978, the first three exclusive

rights are mainly concerned with how to protect the author's commercial benefit in the process of reproducing and circulating the copyrighted works. For instance, the exclusive rights they authorize the author are: (1) "to reproduce the copyrighted work in copies or phonorecord;" (2) "to prepare derivative works based upon the copyrighted work;" (3) "to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending" (Wittenberg 56). The regulations make possible the owning and exchanging of intellectual products as a property or a commodity, and thus encourage the industrialization or commercialization of intellectual products. Evidently, the procedure of the appropriation of the author-name in legal discourse is in fact undertaken mainly as a commercial deal.

The commercial features of the copyright regulations can be drawn, from another perspective, in the provision for "fair use." As regulated, a copyrighted work can be reproduced for "fair use," provided it is not used out of an intention of commercial advantage. Provision 107 specifies that "the fair use of copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright." This precept grants a reproduction of copyrighted work, if the reproduction is not made for commercial benefit. It is evident that the "interest" in the book for the author becomes one of the main concerns in the domain of copyright law.

With regard to these commercial interests, regulations on the duration of copyright were also revised. In the United States, it is claimed, the copyright protection is based on the term of "author's life-plus 50 years." It indicates that creation itself has a physical life too, in so far as it grants the author

and his dependents fair economic benefit to maintain their living rather than to foster creation. For the use of copyright, in his article "Copyright and the Literary Artist," Robert Bringhurst comments wittily that "it is noble to leave one's offspring or immediate heirs something other than unpaid debts, and that it is honorable to leave one's fellow man something other than mouldy refuse" (45). He criticizes bluntly that copyright, if it has any use at all, exists to serve the author's living and, if possible, that of his offspring. He states, "Along the way, ideally it helps to feed the literary artist and everyone else who supplies provisions in verbal, aural or visual form (45).

Moreover, the commercial act embedded in copyright law can be drawn from the regulation that copyright ownership can be sold and transferred to other people, and once the deal is made, the author is cut off from his work forever. To this extent, copyright serves and protects a commercial exchange of intellectual products. It in fact mocks its original assumption of protecting or fostering creation or originality, in as much as both features have usually been considered incompatible. In a sense, if the copyright law has any intention to protect intellectual creation, it, however, turns out ironically to devalue or reify mentality by treating intellectual products as commodities and circulating them with a price tag in the marketplace.

Since works can be commercialized and circulated as property or commodity, and since the rights of ownership can be sold and transferred, the bond between the author and his work is substantially broken. Thus the author-name in legal discourse carries more material value than does originality. This fact can best be exemplified in the case of work "for hire." It is claimed that for a work made "for hire" as a job, the writer in the old regulation is not supposed to claim copyright for his own work. Rather, as stated explicitly in provision 201 of the copyright Act:

In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright (Wittenberg 67).

In work done "for hire," the copyright owner is not the writer himself but the employer, be it an individual or a corporation. In other words, the person endowed with an author-name in legal discourse does not have to be an author in a true sense and does not need to be original at all.

The connection between commerce and copyright in fact bears on the printing industry, an instrument facilitating the quick and abundant increase of copies. Printing, as a labor-saving device, multiplies the copies more quickly and cheaply than manual working and thus facilitates the circulation of books. It also makes feasible and desirable the trade of books. For instance, after the advent of printing in Britain the stationer's office, the forefather of the modern publisher, was instituted to organize all the books' printing and sale through the licensing system, as noted above. The main incentive for the constitution of copyright law became that of gaining benefit from the sale and circulation of books, an effect prompted by the printing industry. Before the invention of printing, a claim for author's rights had never been made or even truly considered. Concerning this, Cornish, in *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights*, also comments, "The sole right and liberty of printing books that the art conferred was given to authors and their assigns; but it stemmed nonetheless from commercial exploitation rather than literary creation pure and simple" (295). This commercial benefit leads us to conjecture that the publisher's intention of gaining commercial interests from

book reproduction and circulation has always been under the legal disguise of protecting the author's right in the field of copyright.

Moreover, the impact of the printing industry on the constitution of the copyright provisions can obviously help us to see that the ways or tools of reproduction are a very important constituent determining the author-function in discourse. In the age of mechanical reproduction, manual art objects are actually designed for reproducibility--this despite the fact that reproduction is, in its strictest sense, branded as forgery. Due to the mass demand, mechanical reproduction is indispensable and has in fact resulted in affecting the mode of existence of art. Mechanical reproduction frees people from the necessity of manual labor and from the limited circulation of books. According to Walter Benjamin, mechanical reproduction puts the copies of the original out of reach of the original itself, and inevitably the reproduced copies are substituted for the original. Hence, the physical mode of existence of art is never as it used to be. In other words, the semblance of a work of art or on artist's autonomy disappeared for good when the pre-existent mode of manual reproduction broke down. The authority or authenticity of the original is alienated or distanced when the reproduced copies circulate everywhere.

Along with the change in the mode of existence of art, the mode of being of authorship should be transformed as well. As Benjamin observes, the enormous changes in mechanical reproduction, specifically in printing, have caused a tremendous increase in authorship. The expansion of the printing industry has permitted every individual to gain equal access to books. Consequently, an increasing number of readers have the potential to become writers in the age of mechanical reproduction: in the new mode of authorship any literate person has the potential of becoming an author. Besides, the writer now, unlike the writer in the past, can obtain a literary license which does not require specialized and professional

training in writing. The broadening of the circulation of books and the increased scale of literacy inevitably breaks the old bond between the author and the reader. As Benjamin noted, in the age of mechanical reproduction, "at any moment the reader is ready to turn into a writer" (39). In fact, in a closely related way, the easy access to authorship or literary license becomes advanced with the aid of copyright law, which promises a certain benefit to the author. Still, all of these facts seem to point to the same end—to secure the author's interest. However, this end is achieved at the expense of materializing or reifying the intellectual product. Although in the late nineteenth century some preference for a creator was emphasized and the need to safeguard the artistic integrity of the author was proposed, copyright, already closely interlocked with mechanical reproduction, and publishing enterprises, in fact, still served industries. In this sense, technological innovations do change the mode or existence of authorship and make the aura or authenticity of the original completely outmoded.

For example, due to this close relationship with the author, the agencies of publishing, printing, and book-producing intervene in the author-function of discourse; they either share with the author or deprive the author of his rights and benefits by attempting to claim copyright, even though they are not the author. When Margaret Nicholson asserts that "The purpose of copyright legislation is not to provide employment for publishers, printers, bookbinders, salesmen, paper manufacturers, theatrical and moving-picture producers, labor unions, copyright lawyers, radio sponsors, or even book reviewers," we may see clearly that it is the publishing enterprises rather than the authors that own the author-name, under the sanction of copyright law, and gain the benefits (61). Moreover, the whole group of interlocked corporations function as a tight and invisible nexus controlling the production and consumption of works and, even more,

manipulating the author's mentality. In fact, in the name of fostering or circulating intellectual products, the publishing industry actually manipulates the writer to compete for attention in the marketplace, molds the reader's taste, and thereafter earns interest. As noted by Cornish, "publishers and other producers of copyright material have taken a monopolist's advantage of their exclusive position: the practice of publishing hard-back editions before paper backs, for instance, or that of showing films at expensive inner-city cinemas before allowing suburban release and the television showing" (309). They use every possible means to gear the writer's mentality to wherever the interests are. In a reciprocal way, many copyrighted works become known and popular through the dictates of a fashion molded by capitalism, advertising, and other related areas. Ironically, the copyright system leaves to the entrepreneur, not to the author, the right of selecting the works deemed economical. As a result, the purpose of copyright protection is to guarantee entrepreneurs the possibility of gaining back the investment they have made in producing and marketing products. Indeed, the author is manipulated by the invisible hand of market power. He could not write without taking into consideration market demand, which is therefore an incentive for imaginative creation. As noted in "Uneasy Courtship: Modern Art and Modern Advertising" by Jackson Lears, "nearly all critics agree that the conflict between modernist art and modern advertising has disappeared—if it ever existed. The cruder version of this argument asserts that modernist art has always reflected the cultural style of capitalist modernization," (133).

It is obvious that in the contemporary world, cultural productions are industrialized and commercialized through the manipulation of consumption by the few entrepreneurs who not only control the instruments of production, but also monopolize all cultural activities. Intellectual products become commodities and can be mass produced and consumed. The

artist becomes their slave, working and producing in accordance with their demands. These entrepreneurs reify cultural products and strangle individual and spontaneous creation, in so far as they control the way of thinking, reasoning, reflecting, and making creation itself an instrument or a means to satisfy the mass's demands for something new, or unique, or different. In the market, the entrepreneurs can even make uniform and standardized intellectual productions always come out in the guise of an individual creation. The forged or artificial creation and the pseudo-individualization fittingly and vividly depict the author-name in legal discourse.

In Taiwan, for instance, certain publishing enterprises are trying to monopolize whole intellectual or cultural activities. Through advertisements, they mold a certain class of readers by a certain kind or taste or a uniform need to read a certain type of book. The reader will usually consume in the way the publishing enterprise has dictated, because uniform consuming behavior will reward him with a sense of belonging to a certain type of people with whom he wants to associate or identify. Based on consumers' needs, which are actually the publishing enterprise' desired needs, the publishers or entrepreneurs shape the writers to create a specific kind of work. Eventually, the writers (producers), the readers (consumers), and the works themselves are all designed and manipulated by the publishing and related enterprises. Identical needs are to be satisfied by identical goods.

[F]rom the individual artist's point of view, advertising offers little possibility of creating a coherent personal vision from recalcitrant materials; instead it demands that one perform one's craft smoothly enough to fit into the larger package prepared to please the corporate client. Even if one is content to reduce art to technique, this procedure violates the modernist shibboleth of artistic autonomy.... The artist who makes the

necessary compromises risks becoming a stock figure in advertising lore: the abused, dyspeptic genius (138).

In a sense, the autonomy of the individual is lost in the market-system. The writer exchanges his capacity for independent creation for money or commercial interests', in so far as he would rather contribute his own part of expertise to cooperate with others in a highly specialized division of labor. In short, in the domain of the culture industry, the artist's potential to be novel and original is under the control and guidance of the advertising enterprise, always needing and supplying the appearance of something new. At any rate, the artistic or literary production is inseparable from commercial activities. Trapped in an on-going cycle of supply and demand, which is all out of his control, his identity, individuality, and subjectivity are lost. He becomes a writing puppet manipulated by the invisible hand of capitalists. In "The Culture Industry: Enlightenment as Mass Deception," Adorno comments that in the culture industry it is due to the standardization of the means of production that the individual becomes an illusion. He claims:

[The individual] is tolerated only so long as his complete identification with the generality is unquestioned. Pseudo-individuality is rife: from the standardized jazz improvisation to the exceptional film star whose hair curls over her eye to demonstrate her originality. What is individual is no more than the generality's power to stamp the accidental detail so firmly that it is accepted as such. The defiant reserve or elegant appearance of the individual on show is mass-produced like Yale locks, whose only difference can be measured in fractions of millimeters. The peculiarity of the self is a monopoly commodity determined by society; it is falsely represented as natural.... individuals have ceased to be them-

selves, and are merely centers where the general tendencies meet.... Individuation has never really been achieved (154-55).

Because a person's identity and individuality are lost in the monotonous and unified form of mass generality, authorship or the author-name constrained by legal discourse is in fact a kind of pseudo-individuality, since the alienated and disclaimed individual, a miniature of the society's general tendencies, is indispensable for reinforcing and strengthening the status quo of continuous consumption and reproduction.

In capitalist society, human nature and value are directed to places generating interest; in other words, the primacy of interest already subverts or displaces authentic originary force. It is on account of the problem of living and survival that the artist cannot help but succumb to the homogenization of society. He makes his creation or thinking an instrument working "for the anonymous sway of the status quo." In fact, under the constraint of cultural generality, the individual can be relegated to a number only, always replaceable in the market place. The individual is not unique and irreplaceable any more. Depersonalization depicts the individual in industrial society. Along with the demise of personality, the expressions and the applications of language become formulaic, uniform, and standardized. Since the expressions of language become hackneyed, originality in writing will surely be hindered. By and large, subjectivity is perverted from individuality to generality; that is to say, cultural totality is more important than the individual's subjectivity.

As a remedy for the enslaved situation of artists, Adorno proposes the cultivation of cultural criticism. Cultural criticism, for Adorno, is capable of keeping the individual from being homogenized by the status quo; cultural criticism can help regain the individual's freedom of self-determination and recuperate independent thinking and creation. The main

concern of cultural criticism is to liberate human nature through the rebellion or resistance to the reification of arts. If this proposal is a realistic one, it would restore the author in the context of an overall liberation of society.

III

In all these details, we might want to know further who the authors are and what the definition of authorship is in legal discourse. The definition has never been finalized, but one sure thing is that it gets more and more hybrid as new technological instruments of reproduction come out. In the immediate wake of the formation of copyright, nothing but literary works were protected; later, under several revisions, musical compositions; dramatic works, translations, pantomimes, choreographic works, films, sound recordings, computer programs, and even more recently, advertisements have been included as well. The general term of the author name has never had its innate identity or definition in legal discourse; it is contingent, spontaneous, evolving with and dependent on technological developments. Copyright keeps including new kinds of works; these resemble less and less the traditional works of imagination. New reproductive instruments always create new authors; for instance, the invention of the camera makes a photographer a new kind of author. The same applies to the programmer of computers. Unfortunately, the uncritical extension of copyright makes more vulnerable the protection of traditional works of authorship.

As far as the overwhelming extension of copyright is concerned, we may want to explore further another constituent regulating the author-function of discourse; that is, the instruments for reproducing copies and the media for circulating copies. As we have indicated, whenever there is any innovation in the reproduction instrument, there is always a revision or a new form of the copyright law. Nevertheless, a

crisis has emerged from today's technological instruments of reproduction: the new technology not only interferes with the revision of the copyright provisions, it also threatens the legitimacy of the copyright law itself to the extent that it might disavow the law.

The advent of the technological age indeed signals a momentous shift from an age of production to one of reproduction. Its most prominent feature is to allow people to obtain their own copies of whatever is reproducible, and to make the most extensive circulation of the reproduced. Thus, new technological instruments of duplication and reproduction could have benefited the author through the maximum dissemination and circulation of works, but ironically they turn out to have severely threatened the author's rights. The convenience or handiness they have brought provides the users private use of protected works without their feeling obligated to pay for this use. In an unpredictable way, the abundant duplication and extensive unauthorized use of protected materials have put substantial pressure on copyright or its owner's rights and interests. For instance, ever since the invention of photocopying, it has become extremely easy to access protected works for non-commercial users. In such a handy way, people photocopy all the time without the slightest sense of stealing information from others. Even more, instead of paying the author, they actually pay the copying machine companies. As a matter of fact, when people photocopy a copyrighted work without providing any compensation for the use of the material, they might be infringing on the author's rights. Nevertheless, easy and immediate access to unauthorized use and copying is such a temptation for all researchers that a thorough control is usually out of the question.

In fact, intentionally or not, technological enterprises encourage unauthorized use. The rapid expansion of unauthorized use is, on the one hand, beyond control. On the other

hand, it stems from the ideological premise that creative works are indispensable to education. Due to this assumption, these works should be considered as social contributions or donations, not applicable to regular copyright protection and appropriatable to any form of property, as indicated in the regulation of "fair use." This authorizes noncommercial use for advocating education and popularizing the circulation of cultural and informational works. Since information, unlike other commodities, is not used up when it is used, and since the range or standard of "fair use" is never delimited in a clear way, it has become easy for users to strain the rules to their advantage. In all events, copyright appears to be protecting something beyond definition and control. The invention of new instruments of reproduction virtually nullifies the author-name in legal discourse.

The excuse of unauthorized use of protected materials in fact limits an author's benefits and rights to the minimum. In a subtle way, the provision of "fair use" imposes an obligation or responsibility on the author to pay for public use. It is clear then that behind this argument is hidden "a lack of appreciation of authors and their works and even a distrust for those who work with their spirit and mind," as Ladd posits (415). However, the irony is that the advocacy of the maximum circulation of intellectual products does not give the author appropriate esteem and benefit but puts him in a sacrificial position, in so far as technologies cut off authors' earning potential by making them lose any control over the circumstances in which the copying is done without authorization.

In a sense, it is a predicament already that "copyrighted works are increasingly used on a wide, systematic and commercially significant way by large non-commercial user organizations" (Ladd 415). Meanwhile, before a really sound solution has been found, the only remedy for the negative effect of enormous copying or pirating is to demand that users

have good ethical practices—even though it is in fact a challenge for users to exercise moral practices in a capitalistic world. The dilemma in copyright law between a commitment to the free exchange of ideas (or free public access to information), and an obligation for the protection of intellectual property eventually needs to be resolved.

New technologies in information transmission and exchange, such as broadcast, satellite transmission, computer and computer-controlled optical disks, are widely disseminated, making the control of private use even more difficult. Concerning this difficulty, David Ladd observes in "The Future of Copyright" that "Authors' and publishers' rights become difficult to enforce as we move away from the print culture and confront a surge of space-age apparatus that enables the broad-based dissemination and simultaneous reception by huge audiences of almost unimaginable quantities of creative works" (441). In a foreseeable way, a vast new array of technological innovations challenges "our understanding of authorship and copyright and our will to vindicate their values" (441). The increased facilities for distributing and reproducing intellectual products do depreciate the value of authorship and copyright. Some critics even believe that the handiness of duplicability has already made copyright obsolete.

Evidently, technology has accelerated the pace of change. It is claimed, "Expanding information technology, from computers to satellites, from television to teletype, ensures that we will become even more of an information society in the future" (Kastenmeier 428). Reciprocally, the extensive need for information makes the media industries in technology even more highly developed. "Media" signifies, in this context, not only newspapers, books, magazines and radio transmissions, but also cable, home computers, video terminals, and the like. The home computer has made electronic publishing possible, and through video terminals people can exchange information.

Some speculations about the future dissemination of information are as follows:

- Someday, the daily newspaper, already processed and stored in computers in the publisher's plant, could be "downloaded" to storage media of subscribers during the night via telephone or cable lines, instead of "rolling off the press." The subscriber then views the newspaper on a portable flat, high resolution screen that could be carried to the porch, the bus or train.
- Books as well as archival information could be stored on optical video discs, for viewing also on a television screen.
- Publishers of reference works, such as encyclopedias, are already providing online access to users with home computers. As telephone transmission speeds get faster, some customers could decide to have the entire work "downloaded" onto their own mass storage media. Then after the one time charge for this transmission, they would not have to pay continuing royalties to either the owner of the reference material or the service bureau that provided the computer facility (Compaine 429).

Under the new circumstances, the processes and the forms in which they will be available for producing and distributing intellectual products and will be different from those of the past; the pattern of workforce has been substantially altered as well. Rapid technological advances in communications and circulation of information, specifically in microelectronics, photonics, and satellites, make this new age information-oriented. In fact, the impact this age has brought is that information is going to bring with it a kind of power. Some futurists even comment that "by the end of this century, most workers will be employed in an information, or knowledge, industry and that information will be the principal

export commodity from any highly industrialized nation" (Weingarten 435). Thus, information products and services are becoming the main concern in the information age, the so-called post-industrial age. Inevitably intellectual legislation and protection will be affected by changes in the society of the information industry.

The transition from industrial to post-industrial society has taken place partly on account of the enormous increase of ownership of accessible instruments of duplication or advanced media of information circulation. When information or knowledge is so nearby, it becomes a kind of "intellectual commons" or new capital in the world of the information industry. As noted again by Coates, "The mass flow of information to and fro in society creates a new intellectual commons in which ideas are generated, rapidly fall into common currency, and their origins or source are lost sight of" (432). The increased availability and diversity of new information technologies in the public domain will also spur the public to gain access to information. It is due to the enhanced social and economic value of information and knowledge, together with the efficiency new media have brought, that people are willing to pay the enterprising intermediary rather than the creator for the quick and handy service of creating, storing, reproducing, and transmitting the intellectual commons. "Increasingly, all Americans expect full, ready, free, and equal access to information," (coates 432).

Nevertheless, information is so transitory in this age because of rapid exhaustion or consumption, of competition in the marketplace, and of the rapid pace of change, be it social, economic, political, or technological. In all these complications, it is foreseeable that the modification of copyright law will be a big challenge in the society of the information industry. The earlier copyright, it is evident, is by and large a notion coping with the social and economic structure of the industrial era in which physical goods and properties are the

main concern in terms of ownership. However, as the workforce of the printing press is overtaken, so must copyright change. In other words, in the new age the author-name in legal discourse needs to be redefined to survive.

Related to this change is the influence of technology on language itself. Now terms have been generated in accordance with technological inventions, such as "Xerox," "computer," "hard disc," "software," "mouse," etc. Meanwhile, the computer programmer still keeps creating new languages, engendering new thinking processes or logics. In a predictable and unavoidable way, technology is going to structure us instead of us monitoring it. Besides, as we have noticed, with the aid of technological innovations in personal computers, it has become easy to make information synthesis and repackaging. Since all the derivatives are copyrightable in the legal domain, and in such a handy way, almost every work has the potential to be copyrighted. Hence, "modern technology makes it easier for anybody to become an author or publisher," (McDonald 425). It is feasible, through specific computer programs, to modify original content and to create an output that could be essentially different from the original materials entered into the computer. The ease of information synthesis and repackaging not only imposes a great harm on the original authors but also exhausts entirely the validity of the author name in legal discourse, because it keeps distancing the source of materials step by step from the originator. Also, it is extremely easy, with the aid of a computer, to make all kinds of variations, an authorized standard of originality entitled to claim the author's name in legal discourse. Furthermore, in the meantime, multi-originals can be printed out at one time, and the distinction between the original and the copies no longer exists. With regard to this, we might need to reconsider the following questions. Compaine asks:

- Who is the "author" of "original" material created by a

computer program: the computer programmer? the author of the original article or book? the owner of the computer? the computer?

-How does one measure which source has added what elements to a creative work if the digital editing and duplication process leaves no visible trail, unlike penciled marginal notes?

-How, if at all, can duplication and transmission of electronic works by users in the home or office be measured?

-How can one tell the difference between a legally authorized copy and a "bootleg" copy, particularly when dealing with textual material that has come from the computer of the publisher to the computer of the user?

-What mechanisms can ascertain that creators of intellectual property get compensated for their contributions without stunting the development of technological tools that are expanding the process and format options available for these creators? (431).

To simplify, all of these questions point to the problem that the copyright law is confronting now: who is the individual qualified to claim its protection? The ambiguity caused by technological innovations in fact seriously challenges the criteria of the copyright law and makes the discourse of authorship more controversial than ever.

All of these considerations lead us directly to the conclusion that the meaning of creation needs to be redefined, since electronic circuits are going to be substituted for mental skills in making more than trivial variations. They save the drudgery of work. For instance, "research on authentic authorship, and evaluation of manuscripts for authenticity and originality are now accomplished by the computer without the laborious drudgery of individual readings of thousands of available texts," (Shepard 147). Concerning this, Shepard

indicates, in his "Technology: Messiah or Monster?," "Work requires creativity, purposefulness, and accomplishment to preserve its dignity and meaningfulness... The utopian hope of a laborless society threatens a loss of meaning of the use of one's hands" (150). In a perceivable way, the act of artistic or literary creation is eventually going to be modified, because after overdependence on computers, people cannot but assimilate or adopt the machines reasoning and thinking processes.

The response to this kind of automation, cybernation, or computerization has not been entirely positive. The side-effects of this are as follows:

- (1) Contemporary technological trends dehumanize people; they are made to be anonymous and lose significance and individuality.
- (2) Work loses dignity, creativity and meaning.
- (3) Cybernation encourages non-reflective conformity.
- (4) Materialism and technolatriy replace traditional religious values.
- (5) Technique becomes autonomous and human beings its slaves (Shepard 149).

For instance, man and computer become acutely interdependent. The symbiotic relationship makes most people lose their integrity, humanity, and even more their identity and creativity; for their behavior and thinking conform to those of a computer. In fact, an increasing number of writers already rely heavily on their personal computers to generate thinking and creation. The man-computer symbiosis, as we already see, atrophies human attributes and potentials by highlighting quantity and speed rather than quality and personal creativity for an intellectual product.

In a sense, the computer is constantly changing and permeating our lives. It is not out of the question that the whole process of humanistic creation will be simulated or entirely replaced by computerized cybernation or automation

in the future. This crisis is clearly observed by Bolter in *Turing's Man*:

By making a machine think as a man, man recreates himself, defines himself as a machine. The scheme of making a human being through technology belongs to thousands of years of mythology and alchemy, but [A. M.] Turing and his followers have given it a new twist. In Greek mythology, in the story of Pygmalion and Galatea, the artifact, the perfect ivory statue, came to life to join its human creator. In the seventeenth and eighteenth centuries, some followers of Descartes first suggested crossing in the other direction, arguing, with L. Mettrie, that men were no more than clockwork mechanisms. Men and women of the electronic age, with their desire to sweep along in the direction of technical change, are more sanguine than ever about becoming one with their electronic homunculus. They are indeed remaking themselves in the image of their technology, and it is their very zeal, their headlong rush and their refusal to admit any reservation that calls for such a violent action from their detractors. Why, the critics ask, are technologists so eager to throw away their freedom, dignity, and humanity for the sake of innovation? (13-14)

This is indeed quite a reflection on the dilemma of human beings. So far as this embarrassing case is concerned, Mary Shelley's *Frankenstein or the Modern Prometheus*, in which the creation of Dr. Frankenstein, instead of being the benefactor of humanity, turns out to be a monster of destruction bringing remorse to the inventor, has rendered a prophetic admonition for the threatening of the technological age. As foreseen by Turing, "by the year of 2000 computing machines would be capable of imitating human intelligence perfectly," (Bolter

191); the machine has more than sufficient potential in rivaling human beings. Man thus becomes an intelligence and information processor only.

After all, in the age of information or technology, it seems likely that the creator does not have any control over the distribution of any forms of intellectual property. At some points creators cannot even collect any fees for the use of their creations. Furthermore, the enhanced value of information creates a strong incentive to copy illicitly. Hence, new intellectual property legislation needs to be devised to respond to an unpredictable market change and new technological developments. It is more than obvious that strengthened legal protection is vital for stimulating new creations. Unless copyright objectives change to meet substantially changed social, economic, and technological circumstances, copyright will gradually become impertinent in actual practice. But the catch is how the legislation or regulations in copyright law are going to cope with the accelerated tempo of change, and then to protect ephemeral property or ownership in an information society. In a sense, the author should have the absolute right and control over his works in order to maintain independent creativity. Copyright will otherwise become obsolete if it cannot help maintain the dignity of creation. The onslaught of new technology, together with conflicting economic and political needs or stances, leaves the future of authorship very much in question.

IV

It has been demonstrated that the way the Copyright Office regulates the rights of the owners and the qualifications for application has limited, standardized, and institutionalized authorship. Its encouragement for maximum dissemination of intellectual products or information imposes a materialistic value on the author's creative or original mentality. It is so

because eventually it endorses or rewards the author with fame and wealth through publication, or unexpectedly it actually helps the entrepreneurs to realize their expected material interests. It is not unfair for us to say that copyright is not really meant to protect the author and to foster creation in an authentic sense, but rather to protect the commercial beneficiary, be it the author or the entrepreneur. Concerning the fact that copyright turns out to have a devastating impact on the author rather than protecting him in a substantial way, Ringer criticizes severely copyright law as a tool of the devil that forces "individual authors back into a collective strait-jacket or makes them into human writing machines" (28). Indeed, copyright law puts the author under a death sentence by making him provisions-oriented, and by materializing his intellectual products—this despite the fact that it is supposed to authorize protection for him as a living entity.

The author-name in legal discourse is not an autonomous and organic entity; it is always conditioned by circumstances, be they political, economic, or technological. At most, the author in the domain of copyright is only a craftsman. In an interesting way, legal discourse shares a similar notion of authorship to that claimed by the post-structuralists in the aspect that the author in legal discourse re-presents exactly the nature or the phenomenon of the postmodern author; that is, the the author never creates; he only copies and plagiarizes. At the manifest level, both discourses have totally different contentions; legal discourse, for instance, verifies the author name, whereas critical discourse disavows it. However, according to our investigation here, we also have found out that, at the latent level, the author name in legal discourse is only an empty term, or that it does not have any substantial significance. Besides, in critical discourse, what critics claim is not necessarily what they think. Their works seem to reveal the demise of authorship, but, on close scrutiny, we see they actually desire an author. Hence, in spite of different starting

points and critiques, we see clearly that the discrepancy between legal and critical discourses has so far been proved paradoxical rather than substantial.

Notes:

¹ The grammatical mistakes are the original's.

² Both terms are defined in legal discourse as follows: A "compilation" is a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term "compilation" includes collective works. A "derivative" is a work based upon one or more preexisting works, such as translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, are reproductions, abridgments, condensations, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations or other modifications which, as a whole, represent an original work of authorship, is a "derivative work" (copyright law 101).

³ Octavio Paz, *Traduccion; literaturay literalidad* (Barcelona: Tusquets Editor, 1971). p.9.

⁴ According to the Copyright Act of 1976, the appropriation of protected material is measured by the criterion of "fair use," which means a taking that is substantial but is permitted by statute. "For example, a drama critic, television commentator, news reporter, teacher, or research scholar may freely reproduce of the subject under review to a greater extent (including multiple copies for classroom use) than can one whose use is of a commercial nature and may interfere with sales or other exploitation of the work by the proprietor." *Encyclopedia Americana*.

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