The Copyright Deadlock, the Contemporary Notion of Authorship and the United States Copyright Wars

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Abstract

This interdisciplinary essay attempts to clarify the long running debates on copyright law in the United States by appealing to the philosophical roots of the notions of copyright and authorship, developed by the Western thinking. Relying on authors not often considered in the copyright debates (Foucault, Barthes, De Certeau), but also on authors that excellently deconstructed the historic notion of copyright (Rose, Patterson, Boyle), I argue that the current copyright impasse is caused by the functioning of two opposing notions of authorship within our discourse. One (belonging to the European modernity) regards the authors as extraordinary individuals with an access to objective truths, while the other considers authors more akin to seekers of wisdom, reaching outward for dialogue rather than postulation. I argue that the United States law favored the latter, but welcomed the former when trying to adapt to European and international standards, thus fueling the contemporary copyright struggles.

Keywords: copyright, authorship, United States law, continental philosophy, post structuralism, censorship.

In 2002, the Supreme Court of the United States decided in the landmark case *Eldred v Ashcroft* that the Copyright Term Extension Act was perfectly in accord with the US Constitutional principles.[1] The US Constitution states that the rights of the authors have to be limited but without specifying the extension of those limits; therefore, Congress is authorized to modify those limits. The plaintiffs' complaint in *Eldred v Ashcroft* was that, by increasing the number of years under which a copyrighted work is protected, the US Congress basically transforms the Constitutional limited right of authors into an unlimited one – a claim that was dismissed by the Court with just two dissenting opinions. Seventy years after the author's death is still a limited term. On a closer look, this case reveals a certain crisis in our culture. As this culture becomes increasingly commoditized, ideas become seen as assets that can be bought and sold. And because they can be bought and sold, they should bear the same status as anything else that can be bought and sold. Ideas then, just like a piece of land, can also be transferred and inherited. But how does this work within the frameworks set by the US Constitution? Congress should promote the progress of science by providing authors incentives for their work. So, does not that mean that the authors should have the right to pass their monopoly rights (granted to them as incentives) to their own descendants? But then, does not that mean that the incentives cease to be incentives and start resembling more of a continuous wage given for a work that has been done sometime in the past?

[1] With the 1998 Copyright Term Extension Act (CTEA), Congress extended the length of copyright by 20 years, applying it to both existing and future copyrights as well. The petitioners (represented by Lawrence Lessig) claimed that the CTEA was unconstitutional, because if the extension were applied to existing copyrights the Copyright Act provision for limited copyright terms would be, thus, broken. Also, they claimed that in their particular case (Eldred was building a digital library of works passed into the public domain) this same extension was violating their First Amendment rights. The Supreme Court of the United States ruled against the petitioners, deciding that there were no First Amendment rights to use the copyrighted works of others, and as well, deciding that the CTEA did not violate the Copyright Act, as the new extension still provided for a limited term.

What about the process of creation itself? Is not the author "borrowing" from various predecessors in order to complete a work (as, for instance, writing in a certain genre)? Such questions have been asked over and over again and there is little to be seen towards finding a practical answer to them. On the one hand it would seem right to grant the authors with monopoly rights on their works, after all these works do belong to them. But on the other hand, an increasing over-regulation of these rights added upon several extensions now, would seem to actually prevent some authors from becoming authors by restricting their access to the cultural dialogue (this would be seen from an authorial perspective), or even by restricting their access to any audience who cannot play in a specific system of market rules. So, is copyright, or its current formulation, the right solution for how Congress should support the "progress of sciences and useful arts?" Or, can we even imagine an alternative to copyright? Lawrence Lessig, himself an author and the lawyer-academic representing Eldred in *Eldred v Ashcroft*, proposed such an alternate solution, called "Creative Commons License:" the authors would be free to grant some of their rights to the general public while retaining others. Supported by the non-profit Creative Commons organization, these "some rights reserved" instances have become quite widespread, now after more than a decade, since this idea's inception. For Lessig, the major problem of this copyright deadlock is the current state of over-regulation of the cultural medium (being especially driven by an over-extended notion of copyright), suffocating the free flow of information in our culture. However, he failed in persuading the Supreme Court (*Eldred v Ashcroft*), or Congress[2] for that matter, that something needs to, and can be, done on this issue. Different from Lessig, because coming from a theoretical perspective, Mark Rose, in *Authors and Owners* offered a good deconstruction of the notion of copyright, showing how little it has to do with its current formulation, yet in the end he steps aside, claiming that even if indeed we are facing something resembling a cultural crisis, there is nothing we can do about it: there are no theoretical solutions. Ray Patterson, Alfred Yen, Jessica Litman, James Boyle, all of these authors seem to agree on this issue: there is a crisis in our culture, a crisis revolving around our notions of authorship and audience, and a crisis revealed by the problems of the copyright laws. All these authors are trying, seemingly in vain, to break the deadlock by inquiring the essence of authorship, or of copyright (as a law) itself. But do they ask the right questions then?

Inquiring the essence of authorship cannot be done without bringing in a questioning of the audience as well. Questioning copyright would imply then, a bringing in of both the authorial notion and the notion of audience. So then, if we ask the question on the authors and their rights to copy, we need to ask a supplementary question as well: are we in fact always referring to the same authors? If we proceed with an answer we cannot but observe, while paying attention to all the factors involved here, that there are at least two ways in which we may conceive the author, and these ways are in conflict with each other. An authorial deadlock, I would ask? Two conflicting ideas coexisting within the same concept? Perhaps the origin of the copyright problems can be found exactly in this difference, revealed by the ways in which we relate the authorial intent to an author's audience. One such way would provide us with a kind of author conceived as a lonely speaker. The audience does not really matter, but only as it is able to respond to the author's lonely call. This author is a Narcissus[3]. He is a modern romantic subject, enclosing in a case his message for whoever is able to open it. The creation process is inspiration and expiration; there are no pre-established mechanical rules of writing, and if faced, they are obstinately refused. The author's style is just that: his, and only his, style. His audience is an amorphous, blurred – essentially unknown – mass. He speaks for the entire world and therefore he speaks for no one (in particular).

There is also another way in which we can conceive an author: not a lonely speaker, but a performing speaker, an Orpheus[4]. These authors speak only for an audience, trying to master the various sets of rules designed to facilitate their access to a specific audience. The audience, in fact, is the only one that legitimates this kind of author, because the right for incentives that Congress is supposed to grant comes exactly from this audience.

[2] After failing to persuade the Supreme Court in *Eldred v Ashcroft*, Lessig proposed a bill instituting a $1 tax for the renewing of the copyright of a work, 50 years after its publication. The MPAA (Motion Picture Association of America) lobby strongly opposed the bill, and eventually they succeeded in preventing its passing.

[3] I believe that the mythological figure of Narcissus, the man who fell in love with his own beauty and died while admiring himself in a mirror pool, fits very well this way of looking at authorship.

[4] This would be another mythological figure that fits this description very well: the performer *par excellence*, Orpheus, supposedly the inventor of the lyre, was always able to charm his audience with his songs, up to the point that they were considered magical.

Let us inquire then further these two authorships, in the hope that we will find out how and why do they coexist within the same concept, and how, why, and if they are actually influencing the copyright deadlock. Copyright was born in Europe for a specific type of authorship (the one that I called here "Narcissus"). So then, perhaps we should lean towards the European critique of authorship first if we are to attempt deciphering how Narcissus befriended Orpheus, or, in other words, how an author writes, how authors are assigned rights, and how they are participating in (identity) rites. Let us try then a thinking exercise, and search for what hides behind the authors, their audience, and their medium/culture: after all, what is the meaning authorship?

1. Writers and rites – in which writing reveals the author as the one who writes

Following analyses like that of Mark Rose in *Authors and Owners*, or those of the poststructuralists, we might be persuaded by something that appears as immediately evident: the author is a constructed category. It is a notion not a feature. It is a signifier building its signified. It is an effect of our discourse. But, after all, if we were to pose the question of the author, what would we find in its essence, just by addressing language? Indeed then, the author would appear as being the one who writes, the one who speaks, or the one who expresses. After what was labeled as "the linguistic turn," the twentieth century theory, instead of focusing on the general categories of reason, mind, or on the world itself, started to become aware of the fact that it has to be necessarily formulated as a discourse in the first place. Questioning language then, questioning the formation of signs, has become a necessary endeavor prior to any theoretical constructions. Thus, at the end of the nineteenth century and the beginning of the twentieth we find linguists like Ferdinand de Saussure in Europe, or philosophers like Charles Peirce in US, pointing out the arbitrary or conventional nature of signs. Saussure advocated for a binary construction of signs. A signifier and a signified compose a sign, or, to be more precise, a sign appears within the tension created by the difference of a signifier from the signified. What matters in this model is exactly the difference, which means that a signifier or a signified cannot stand separately, but they receive meaning just because of their difference. The word "paper" for instance, would be meaningless unless we always attach to it the object that it claims to re-present on the level of language. The sign is, thus, differential. But this also means that signs – as signifier/signified – make sense only within their difference from other signs. The word "paper," again would be meaningless, if we take it out of the language to which it belongs. This means that it needs a whole set of other words – signs – to engage in a meaning producing difference. Language then, appears to be a code. But Saussure introduces another term in this model, and that is the arbitrary nature of the sign. There is nothing in the object that we name "paper" that would determine us to call it like that. The sign producing difference is arbitrary – or, if you like, conventional.

Later in the century, we find the structuralisms appropriating Saussurian linguistics and taking them further. If this is how the signs are constructed, then what does it mean that language is a code? On the one hand we might be tempted to pursue the thought about language just on its conventional side, but still, there is more to it that just that. This is where the structuralists introduce the concept of structure. Language is a code, yes, if by code we mean structure. This is because what really matters in the sign construction are the differences and not the elements of those differences – as they are arbitrarily joined. The elements then, appear as interchangeable. Their only stability – and yes, we can say *ground* – is provided by the structure in which they find their place: the language as a code. If the word "paper" would have a meaning in itself, then it would not be possible to use it on a different level, to signify an essay for instance. What provides a meaning, and thus consistency, to sign is exactly the structure – the complex of relations – persisting in the use of language.

"The use of language…" This is exactly the structuralists' point in their discussion of the Saussurian concepts. Language is a code/structure, but it is not a disembodied one. We use this structure to make sense of the world. But because language is actually a given, then the structure itself appears as a given. This means that the use of language is structured at its turn. We know how to use the word "paper" because we have appropriated the structure in which the word "paper" makes sense. We have been told how to use it. Because of that, the structuralism concluded, although not disembodied, the structure appears as "larger" that the one who uses it. Because the structure structures at its turn it can be analyzed separately as that on which our experience is founded. But "we have been told…" – and this is where the poststructuralist critique was aimed. This structure is never a fixed medium, as the use of language is never the same. And, also because we must never forget that it is not a disembodied structure, what matters is the fact that this structure structures, or, in other words, that this structure perpetuates itself and the uses that it determines. The structure makes sense (since the signs get sense only within it) and because it makes sense it is a discourse.

"We are being told" by a discourse – in both ways: the discourse tells us who we are, as well as it tells us how to operate. Therefore, we are the results of that discourse, perpetuating it at our turn. It is that discourse that sets us in our place: as elements of a structure. Let us get back to the authorial issue then. Thinking within this line of thought, it might appear obvious that this matter becomes of utmost importance. Yet we find Roland Barthes, for instance, announcing in 1968 "the death of the author." Indeed, for the poststructuralist critique, modernity's romantic author, the creative genius defined by originality – the ultimate expression of the modern subject after all – is a notion that has to be abandoned. In the light of a structuring structure there is no place for that kind of author. When the structure is given, appropriated, and then perpetuated, who is the one who writes: the author or the structure through the author? But Barthes' "death of the author" actually means more than just an author writing from within a structure.

"The death of the author" can be understood in the way that a certain kind of author "died." But more than that, it should be understood as an essential attribute of that author. The author and its death are situated in a very close relationship, and that is because each time an author writes "death" occurs with necessity. When a text is finished, the author ceases to write and thus ceases to exist. What remains of that is the writing itself – which, again, should be understood considering its both meanings: both as a noun and a verb. The produced text (writing) continues to exist under the eyes of the reader and also continues to produce meaning (writing) under the eyes of the reader. For Barthes, "the death of the author" means the birth of the reader. But also (and this time we have in mind Barthes' very own friend, Foucault) the death of the author means the revelation of writing – the author-subject is dead, because the author appears to be a function of discourse.

But how can we say that the author ceases to exist when the text is finished? Does that mean that a finished text is ultimately authorless? This is a confusing question, yet it seems to appear with legitimacy. If we think of the author as a scribbling entity that lives only as long as the text is written, we might as well ask the question about the text itself. What happens with a text after it is written? There are a few points that need to be clarified. First, it is about the notion of the author itself. The author is not a person, but a process and a point of discourse. The author is a process because the author is the one who writes, thus defining its essence through the process of writing (this is Barthes' main point on the issue). Then, the author is a point of discourse, because it always serves as a classifying criterion (this is Michel Foucault's attempt to explain and further detail Barthes' point, in his conference "What is an Author?"). Because of these two "features" the author comes to be identified with the person behind the scribbling entity.

Second, it is a problem of interpretation – or what happens when the reader is called upon for questioning. When reading a text the reader constructs the author as the projected origin of that text. The classifying function/feature of the author then, helps the reader's constructed author and the text's constructed author (meaning the author as a process) to overlap each other, simulating an identity – which is Foucault's correction to the Barthian text. To understand this better, let us just think about the "famous" question of a certain type of literary critique: "what does this author mean in this text?" And then let us think about the various interpretations that a certain text might get. What was the author thinking? And do all these different interpretations of the same text have the same point of reference? We might be tempted to say "yes, because even if they do refer to different versions of what an author might have said, they still have the same reference in the person of that author." But instead of that, the answer should be "yes, because even if they do refer to different versions of what an author might have said, they still have the same reference in the text produced by that author." It is not the person who is always the same, because when reading a text the reader never engages the author personally. It is the text itself that, because it is finished, because its author ceased to be an author, is always the same.

Ultimately, we might say that at the readers' level, there are as many authors of that particular text as there are readers. So what can we say about an author after all this? There are two things. First, we can say this: writing reveals *the author as the one who writes* – which means that the author lives only within its text. And second, we can say this: *writing reveals the author* as the one who writes – which means that it is the writing that which conceives the author. The very thing that matters most in this attempt of murdering Narcissus (an attempt that is shown by this dialogue between Barthes and Foucault) is that the author appears indeed as a constructed concept, but constructed by the reader. That is why this is a departure from the author-Narcissus. As discourse appears as essentially a structuring discourse, a different field of analysis is opened. The ones who speak and produce meaning will always be imposing those meanings on the ones who listen. Speaking/writing appears then as a power act. "Knowledge is power," sounds one of the famous modern maxims.

Foucault tried to turn this maxim against itself throughout all of his work. Knowledge is power indeed, he claims, but not because the accumulation of knowledge grants us with a certain power over nature, but it is power itself the one that grants us with knowledge. To know "the real," the subject needs to produce a discourse on that "real." For the discourse to be indeed a discourse it needs to be communicated. And when the listeners give in to that discourse, acknowledging it, they are subjected by its power – in other words, this is about the compelling power of "truth." Ultimately though, the origin of a discourse does not matter but only the perpetuation of that discourse, the fact that the subject produces that discourse on the "real" already in a given frame (structure) of language (discourse). What matters is the fact that the subject becomes a subject, not in opposition with its object, but ultimately as it is subjected by a structure always larger than itself. This is where the poststructuralist reading of authorship was actually aiming: the author appearing to be constructed by the reader frees the text from the powerful authorial position. As the author reveals as meaningless outside the text, then that text does not belong to the one who writes anymore.

So, we have the writing creating the authors by gifting them with language, and then we have the writing creating the authors by addressing their texts to the readers: apparently the drowning of Narcissus. Yet Narcissus still lives, staring into his mirror pool from within a clearing of "natural rights." We have a law (the copyright law) recognizing an author outside the text and (mostly) recognizing the author in the power position of the immortal subject. The author is a subject by excellence, thus what he speaks does not matter, it only matters that he speaks. This brings us again to the question of authorship, this time thinking on the authors' audience as well. To whom the authors speak? From whom they need to be defended?

2. Censors and rights – in which the authors write but writing reveals their rights as being about something other than themselves

In the light of discourse power is about control. The meaning maker, just because he has to make sense, controls the meanings. And in this sense, he expresses his rights to control (the distribution of) meaning. Using the same light, we might actually reveal an "evil" subject of the author. But let us muse on this picture for a while. On a short flight over a poststructuralist landscape the act of writing appeared to be more than just about an author addressing a reader. But in their discussion of authorship and in their attempt to overturn its narcissist component, these theorists indeed do not fully consider the so mundane issue of copyright. Even if their analysis of writing reveals the authorial and reading positions as different at different conceptual levels, they still discuss this issue on just these three possible directions: the author, the text, and the reader. Yet, to have a full picture of the issue, the act of mediating an author's address to a reader needs to be brought into question as well.

To recall Michel de Certeau (another French theorist of the same lineage as Barthes and Foucault) we might say that in order for a text to matter it needs to be "believed," or at least credible. The power of discourse is compelling, as it is power, but in order to compel, first it must seduce – which means that, in order to be believed, that is regarded as true, it must successfully present itself as truth. This happens, he says, as an "intertextuation of the bodies" complementary to an "incarnation of law" – which means that a discourse (as a structure), in order to become a structuring structure needs to be generally distributed and appropriated. In order for a discourse to become normative, it first needs to become a perpetuating story speaking in the name of reality. There are two ways, says de Certeau, in which this happens: as religion and as politics. The first is a compelling discourse because it tells the name of reality, the second is compelling because it is never questioned anymore, but creates habits and organizes practices in the name of a reality. In both cases the question of distribution appears with necessity. Thus, perhaps an analysis of copyright might reveal more about authorship than just the discussion centered on the text: and here, in a good Foucauldian tradition, we find Mark Rose's copyright story in *Authors and Owners*.

If we are to pose the question "who was first? The author or the copyright?" we might be tempted to answer that, of course, the author was first, not the copyright. Yet this is exactly the answer that Mark Rose is trying to undermine there. In fact, he says, the notion of copyright itself produced this certain notion of the author, against which the poststructuralists were also fighting. Historically speaking, copyright is a recent development with dubious origins. The first governing act resembling a granting of copyrights apparently is to be found in fifteenth century Venice, when Marc Antonio Sabellico – the historian of Venice – was granted with "printing privileges" for a limited amount of time. Due to those privileges, he received exclusive rights in printing his Venetian histories.

The interesting part in this is that he was the only one that had these privileges, which basically means that the Venetian act was not actually a copyright, but an attempt of preventing the distribution of any other non-Sabellico discourses. This practice was then imported in England where the monarchy granted a booksellers' guild, the Stationers' Company, exclusive rights in the book trade. Without this mediation of the royal licensed guild no author could have been distributed.

The right to copy was in fact the publishers' right to publish and the monarchy's right to approve that publication. An author did own the manuscript, yet that ownership and any other rights – excepting the "moral" right to the integrity of his work and to receive acknowledgments for it – passed into the hands of the publishers. The official birth of the copyright law is generally recognized to be the passage of the English Statute of Anne in 1710. But again, the ones in question were not the authors but the publishers. The Licensing Act of 1662 not only provided the Stationers' Company a monopoly over the published discourse, but also prevented any other printers from joining the business, or other merchants from selling imported books. The Statute of Anne was meant to change that, and so the authors were first brought into discussion (as the booksellers were always referring to their trade agreements with the authors). The question was whether the authorial works may have the same propriety status as a piece of land (what the booksellers were arguing, as that would have contributed to extending their claims of "righteous" monopoly), which meant that the authorial works themselves needed to be defined. The Statute advocated against such a metaphorical construction (owning works as owning land) making the works equivalent to the mechanical inventions (hence the rights with the limited terms model – as the inventors owned the rights of their inventions for fourteen years, just as the Statute enacted in regard to the authors).

But what the Statute of Anne did, argues Rose, was to shift the attention from the booksellers to the authors, as it provided ground for a definition of authorial property as an immaterial property. And because the author was the one producing this immaterial property, so the "mystification of the author" began. Following a Lockean tradition, the authorial work became to be understood as the embodiment of the author's personality itself – as, because immaterial, it is originated only in the author's originality. Thus, the booksellers suddenly disappeared from discourse, leaving the authors to speak in their place. As an example, Rose points out that in the nineteenth century it was the authors advocating for perpetual rights in their works and not the booksellers anymore – even if the profits still belonged to the booksellers. It was already a question of principles, as only such a perpetual right to control the distribution of works fit the image of an *ex nihilo* creator.

Thus, what is this story telling us? It tells us four things: that censorship created the booksellers as a common body if interests; that the booksellers created copyright to assure their censorious profit making; that, eventually, copyright created the modern author; that the modern author appeared in a censorious frame. Even when the authors themselves, in the nineteenth century were advocating for their right to have perpetual rights in their works, their rights were not about themselves but about their *mediated* expression. When the Statute of Anne limited the length of those rights, it was limiting the *mediation* monopoly, acting against an economic construction based on a residual censorship attempt. The notion of the author was used against that mediation monopoly, even if later on, that very notion brought the "righteousness" of that monopoly back into discussion.

In the light of discourse, power is about control. The meaning maker, just because he has to make sense, controls the meanings. But even if we start from such a "mundane" perspective as copyright, we might see that the issue of this meaning maker is quite problematic. So who is the meaning maker then? Is it really the author? Yes, if by that we actually understand the mediated expression legitimated by the postulate of a subject speaking of/for the world. Rose's story presents the birth of the author in the spirit of copyright, and the birth of the copyright in the spirit of censorship. And censorship is about interdiction. It is about controlling the flow of discourse by denying meaning to all but what is coherent with the privileged (main) one. This is where Mark Rose and the poststructuralist approach on authorship meet and find themselves complementary.

The Statute of Anne tried to prevent that censorious profit making by disseminating the power of the expression mediators. Then it passed into the US Constitution, where it was placed alongside an essentially anti-censorship provision – the First Amendment. The stage was set for a happy ending, yet, just like the return of the repressed, the residual discourse of copyright resurfaced once again to legitimate and strengthen what appears to be a narcissi[5] authorship industry.

[5] I prefer to use this form in order to better differentiate the Narcissus-like authorship from the implications involved by the use of the term "narcissistic," or "narcissist."

3. Markets and rites – in which writing affects the authors as the rights affect the writing

I am an author and, as I am writing this text, I speak to you as an author. How do I become an author? I become an author when this text reaches you in one way or another, say, when this text is published or lectured. And although I cease to be an author after that, this text legitimates me as a residual author, meaning as the one who wrote. Indeed, the author is the one who writes, but in this authorship concept we must not forget its procession character. We do not have two standing fixed positions of an author and a reader. The only fixed thing, and that needs to be fixed – as the law says – is the text itself. Through that text the author and its reader engage one another, framing each other in the frame of a discourse. Authorship is, thus, a rite legitimating and constructing both the author and the reader. But this rite is conditioned, made possible by an inter-mediating, which, in our case, is provided by the market. Let us not forget who were at the center of the copyright and authorship defining struggles of the eighteenth century: the book*sellers*.

We have seen how the eighteenth and nineteenth century copyright struggles added to the creation of the modern author-subject-Narcissus, despite a statutory law trying to liberate the expression of control. But what happened when that statutory law passed into a different setting? In the frame of an anti-censorious Constitution, the US Copyright Act (as a reenacted Statute of Anne) and its afferent notion of authorship became about the readers: Narcissus was finally banned as the stage was set for Orpheus.

The US Constitution, Article I Section 8 states: "The Congress shall have the 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." There are a few things to observe in this provision. First, the ideas are implicitly separated from their expression (and Title 17 of the Copyright Law explicitly does just that). If an author is to own something, then that something needs to be a tangible something. There is no immaterial propriety spawned by a subject-genius, but the finished text itself: that which remains after an author ceases to be an author. Second, the explicit aim of this provision is to have authors producing more and more texts *to be read*, and not just one telling the ultimate and absolute truth – meaning the very text that would shut down any other text production. This also makes to appear quite legitimate (in a certain light) the American practice of the first roughly 100 years of not paying foreign copyrights. And that is because the provision does not recognize the right beyond any doubt of a narcissi author in its immaterial propriety. The third thing to observe is that in order to have such a "progress of useful arts," copyright needs to be enforced *and* limited. Because of that limitation the authors are supposed to produce more, and any reader will eventually be able to have access to those products (as from the moment in which the copyright stops, the work passes into the "public domain," speaking freely from within an essentially unrestricted space).

For a narcissi approach to an author's copyright we would have the following observations: first, the author always speaks the meaning of his text; second, the aim is not the reader but the truth, or, let us say, the meaning itself; and third, copyright needs to be enforced *and* unlimited (or limited as less as possible). This is exactly the modern discourse of and on an author – what the Statute of Anne never intended to produce, and what the French poststructuralists were trying to overcome. The US Constitution seemed to provide exactly this sought place in which finally writing would be freed in its flow, released from the authorial grip and, thus, readied to be read – and subjected. So, we have two different notions of authorship in question here, notions that are intimately related to two different notions of copyright. This difference though, is not of the same nature of that which we find in the construction of signs for instance: it is not a constitutive difference. These two notions can exist separately and, in fact, this is what they do. The narcissic approach is never in dialogue with the orpheic one. And when they do meet on the same stage there is no possible agreement – as they are irreconcilably different. What we see nowadays in the society that adopted a power-disseminating statute alongside an essentially anti-censorious Constitutional provision is exactly that: Orpheus meets Narcissus on the same (previously orpheic) stage.

L. Ray Patterson explains very clearly in *The Theory of American Copyright Law* how, what I called here, the orpheic approach to copyright was slowly and subtly transformed into a narcissic one under the pressure of a more and more persuasive market thinking. Even if the statutory law was aimed to benefit the public, the common law turned against it by keeping alive a residual narcissic discourse. Eventually, the common law copyright ended up in influencing Congress in modifying the legislation to better fit the narcissic approach. The copyright terms received a small extension in 1831 (from 28 to 42 years) and in 1909 (to 56 years). Then, in 1976, with the open reason to align the American legislation to the Universal Copyright Convention, the terms finally adopted the form that we knew today: "life plus" (in 1976) 50 years.

In 1998, says Patterson, the limited American copyright became finally a plenary property right: extended for the life of the author plus 70 years – this time under the open reason of aligning the American legislation to the European Union provisions. It is quite a change I would say, from not paying foreign copyrights to adapt your own copyright legislation to match the foreign ones. Just as Mark Rose was arguing in *Authors and Owners* – that the booksellers were always behind (or benefiting from) an authorship deeply rooted in modernity, and that, in fact, it was exactly their disappearance from the main discourse, after the passage of the Statute of Anne, that facilitated the birth of the modern narcissi author – Patterson also warns that the ones benefiting, and thus the ones behind this move towards a narcissi approach to copyright, are the publishers, not the authors, and definitely not the public. His analysis was aimed towards overcoming this, as it appears to be indeed, copyright deadlock. And he did observe a certain difference at work in this market driven society: not only that we have two different copyright laws, but the current American law (aligned to the European Union's one) confuses the authors' rights in the copies of their works with their works themselves. This would put an end to the public domain (that space in which authorial works circulate freely)[6], eventually bringing the marketplace into schoolrooms, libraries, and homes. In such a light, Congress seems to have forgotten the fact that it has the power "to promote the progress of science and useful arts." Writing in another tonality, Alfred Yen (in *The Interdisciplinary Future of Copyright Theory*) was also acknowledging the fact that there are two copyright "theories" at work in the American society: again, an essentially narcissi one, and an essentially orpheic one. His solution is though presented as a need to create a middle-way, a way to collapse these two dissenting theories into a compromise. But is it really a need for that? Does not that already happen? Are not they already at work in a huge, strange, confusing copyright legislation? There is one thing that Yen observes correctly: economists, despite this marketization of culture, cannot decide the future of copyright law.

There seems to be an agreement among various authors that there is a difference and confusion at work in what concerns copyright, and that is because we find ourselves indeed in a copyright deadlock. Yet this deadlock might be unfolded only on the level on which copyright appeared: the level of discourse. What this deadlock is all about is not just different styles of copyright laws, but about two essentially different ways of thinking and authoring.

The meeting between Narcissus and Orpheus is not over yet, even if the latter seems to become more and more narcissistic. What we need to understand about this meeting though, is that it is not a struggle, a "war," but it is the tension born between two notions of copyright that bear two essentially different notions of authorship, and thus, that bear two essentially irreconcilable and different thinking paths. Narcissus is the booksellers' author, an author that focuses inwards, yet one that claims to speak the truth. Orpheus is the audiences' author, an author that focuses outwards, one that claims to search for truths. Unless we separate them somehow, or simple yet, decide for one against the other, unless we clear our minds and clarify our thinking, we will never be able to overcome this difficulty and we will waste ourselves on struggles doomed to fail.

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[6] Here Patterson meets with James Boyle's analysis of a second enclosure movement, that privatizes the public domain, an enclosure similar to the post-feudal English enclosure of public lands. But as the "intellectual property" is not of the same nature as land property, this enclosure may prove to be fatal for our culture. The same concern we find in Jessica Litman's attempts to theorize and find ways to consolidate a public domain against the market driven thinking invading the cultural realm.