

## The Avant-Gardist, the Male Genius and the Proprietor

*Martin Fredriksson*

As the title suggests, this article will deal not only with the avant-garde and the romantic idea of geniality but also with the much more mundane concept of literary property. Even though the law might seem alien to the lofty ideals of the avant-garde artist, the construction of the creative genius and the birth of copyright will eventually prove to be quite closely connected. But before I move on to the legal part I would like to start with the essentials: with the author, or the artist. The American artist John de Andrea sculpture *The Artist and his model* from 1980 is probably one of the most revealing pictures of the avant-gardist self-conception ever made.<sup>1</sup> This is a picture of the artist at work, but I will argue it can also be regarded as a legal character. What meets the eye is however very far from the law as we know it. de Andrea sculpture is a self-portrait of the artist at work: a highly naturalistic full-scale portrait of two people. One of them is a naked woman, resting casually on a white socket and looking down on the other who is a fully dressed man. As the title clearly states, the sculpture depicts the classical relation between *The Artist and his Model*, and it is no coincidence that the artist has a male pronoun and the model a female body. The roles of the artist and his model are traditional stereotypes which we can find in most books on art history – one is an artist and the other is a model; one is a man and the other is a woman; one is dressed and the other one is undressed.

In his widely spread and well used book *History of art*, the American art historian H.W. Janson reads de Andrea's sculpture as an allusion to the ancient myth of Pygmalion:<sup>2</sup> the sculptor who created a statue of the nymph Galatea that was so exquisite that he fell in love with his own work of art, which was then brought to life by Venus. He sees this as an illustration of artistic creativity as a "labour of love" that brings art to life through self-expression".<sup>3</sup> If de Andrea sculpture pictures the well known stereotypes of the artist as a man and the artistic object as a woman then Janson's interpretation of it reflects the widely spread romantic and avant-gardistic myth of the artist as someone entirely filled up with an irresistible urge to create; someone who is obsessed by the work of art

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<sup>1</sup> John de Andrea, *The Artist and his Model*, 1980, Polyvinyl, polychromed in oil, lifesize, Collection Foster Goldstrom, Dallas and San Francisco.

<sup>2</sup> H.W. Janson, *History of Art*. Englewood Cliffs: Prentice Hall, 1991.

<sup>3</sup> *Op.cit.*, p. 16.

in an almost erotic fashion and who is totally subjugated to his desire to his own creation.



Illustration: John de Andrea, *The Artist and his Model*, 1980.

The feminist art historian Carol Duncan claims that this sexualisation of artistic creativity is a long-standing tradition within the modernist movement. In her article “Virility and Domination in Early Twentieth-Century Vanguard Painting” Duncan scrutinizes the modernist avant-garde of the early 20th century.<sup>4</sup> She shows how prominent but entirely different artists such as Edward Munch, Pablo Picasso and Henri Matisse all based their art as well as their pictures of themselves on a reactionary understanding of gender and masculinity. This new modernist generation of artists wanted to picture themselves as a cultural avant-garde who opposed the oppressive norms of contemporary society. As a part of their opposition towards the hypocritical morality of the bourgeoisie they nourished an image of themselves as sexually proficient and put great emphasis on male sexuality as an expression of artistic potency.

This strong association between male sexuality and artistic geniality made many of these artists eager to expose their own sexual proficiency in their art. In

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<sup>4</sup> Carol Duncan, “Virility and Domination in Early Twentieth-Century Vanguard Painting”, in *Feminism and Art History: Questioning the Litany*, Norma Brouge & Mary D. Garrard (ed.), New York: Harper & Row, 1982, p. 293.

this context the woman became a central motif as a projection of the artists' powerful sexuality and she was, with Duncans words, often portrayed as a: "powerless, sexually subjugated being. By portraying them thus, the artist makes visible his own claim as a sexually dominating presence, even if he himself does not appear in the picture".<sup>5</sup> In contrast to the classical nude which was generally depicted in a way that retained a distance between the artist and the model, these avantgardists often emphasized the physical presence and sexual availability of the model who was pictured as a "blatant pre- or postcoital personal experience".<sup>6</sup> In this context, the women in question are generally of minor importance: the artists' major interest lies not in the model he portraits but in the image of himself that he conveys by depicting her in a specific way. He uses the female model as a way to spread a romanticised picture of himself and his masculine, creative omnipotence. By depicting a certain relation to his model he also depicts a certain relation to his art, which he masters with the same compelling urge as he masters his women, and thus paints a picture of himself as an avant-gardist artist.

In the end this is not only a way to boost his own ego but also a way to promote himself on the market. A way to attract the attention of the bourgeoisie that he scorns by assuming the role of the morally dubious outsider that is so shockingly appealing to the men with the money. So, in a way the artist is not just objectifying and selling his model – he is also objectifying and selling himself. Duncan regards this as an important aspect of the avant-garde myth and she points out that "if the artist is willing to regard women as merely a means to his own end, if he exploits them to achieve his boast of virility, he in his turn must merchandise and sell himself, or an illusion of himself and his intimate life, on the open avant-garde market".<sup>7</sup>

John de Andrea is obviously not one of these early avant-gardists but his sculpture *The Artist and his Model* draws on a modernist tradition of nude painting that reflects a certain understanding of gender and sexuality. Janson's interpretation of it is in its turn clearly influenced by a traditional romantic definition of the artist as autonomous and omnipotent creator. By defining the artistic process as "an intensely private experience" which can only be performed in perfect solitude Janson enforces the comprehension of art and creativity as an antisocial phenomenon which is raised above and untouched by the social

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<sup>5</sup> *Op.cit.*, p. 293.

<sup>6</sup> *Op.cit.*, p. 310.

<sup>7</sup> *Op.cit.*, p. 311.

relations that structure society at large.<sup>8</sup> This is the ideology of artistic autonomy that is so essential to both romantic and modernist aesthetics.

This ideology of artistic autonomy is not just active in regard to visual arts but is also, as Pierre Bourdieu has shown in his *The Rules of Art*, a fundamental principle within the entire field of cultural production in the 19<sup>th</sup> and most of the 20<sup>th</sup> century.<sup>9</sup> In many regards it emanates from the literary rather than from the artistic field since many of the most influential ideas of artistic creativity and geniality were originally articulated by British 18<sup>th</sup> century romantic philosophers and writers such as Edward Young, William Duff and Robert Wood.<sup>10</sup> These were all writers who had literature and poetry, rather than visual arts, in mind when they proclaimed the birth of the genius as a new type of creative artist, that rose above the formal classicist rules that had previously governed the production of literature.

### **The History of the Genius**

Christine Battersby is one of the few who has tried to write a critical history of the male genius as a universal character in western culture. In her book *Gender and Genius* she tells a story of how the concept of geniality has developed throughout history: a history that clearly shows that the sexualisation of geniality was no innovation of the modernist avant-garde but existed long before the rise of modernism.<sup>11</sup> The term Genius was born in ancient Rome where it originally referred to a protective spirit that watched over the family and its dominions. Since one of its primary functions was to promote prosperity in general and the birth of sons in particular, it was soon to be associated with male virility and gradually transformed from an external spirit to an internal creative power that was supposed to reside in every free man.

This definition of the Genius as a patriarchal spirit remained until the 18<sup>th</sup> century but during the medieval era the term Geniality would also come into use. In the beginning Geniality simply referred to superior artistic skills in a technical

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<sup>8</sup> Janson 1996, p. 17.

<sup>9</sup> Pierre Bourdieu, *The Rules of Art: Genesis and Structure of the Literary Field*, Cambridge: Polity Press, 1996, *passim*.

<sup>10</sup> See for instance Edward Young, *Conjectures on Original Composition* (1759); William Duff, *An Essay on Original Genius* (1767) and *Critical Observations on the Writings of the most celebrated Original Geniuses in Poetry* (1770); Robert Woods, *Essay on the Original Genius and Writings of Homer* (1769).

<sup>11</sup> Christine Battersby, *Gender and Genius: Towards a Feminist Aesthetics*, London: The Womens Press, 1989, *passim*.

sense rather than to any extraordinary creative abilities. During the 18<sup>th</sup> century these two concepts – Genius and Geniality – merged, and the term Genius gave some of its metaphysical dimensions to the term Geniality, which now developed from a matter of mere skilfulness to a term for a creative capacity of nearly divine dimensions. At the same time, the Genius turned from a universal male power to a certain type of creative person, who had the rare capability to create something entirely new with the use of his own imagination and other mental capacities.

This was the birth of the original genius that immediately assumed its role as the great creative hero in romantic, and later also in modernist, aesthetics. Geniality was no longer just a higher form of skilfulness and the genius was not just a gifted person but rather, as Battersby characterizes him, "a superior type of *being* who walked a 'sublime' path between 'sanity' and 'madness', between the 'monstrous' and the 'superhuman'".<sup>12</sup> In romantic aesthetics a superior work of art is not simply a product of the artist's great skills but a direct expression for the artist's entire personality.

One aspect of the old roman definition of the Genius that the romanticists did embrace was of course its close association with masculine virility. The genius was thus still regarded as an exclusively male character. Griselda Pollock has shown how the role of the artist as an autonomous creator has been constructed in a way that tends to exclude women: how the historical role of the artist by far has exceeded the cultural boundaries within which women has been allowed to act according to traditional norms of female behaviour. The characteristics ascribed to the artist – characteristics that taken together form the very definition of artistry – are characteristics exclusively attributed to men in a traditional bourgeoisie culture.<sup>13</sup> This creates a synonymy between artistic creativity and masculinity – a synonymy which makes the artist in general and the avant-garde artist in particular a male actor per se.

### **The Author as an owner**

The story about the birth of the romantic genius can also be told as a story of the author as a legal person: as a proprietor of a published text. Many scholars have shown that the history of copyright is actually closely connected with the history of the romantic genius. One of the best examples of this is Mike Roses book

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<sup>12</sup> *Op.cit.*, p. 103.

<sup>13</sup> Griselda Pollock. *Vision and Difference*, London & New York: Methuen, 1988, p. 11.

*Authors and Owners: The invention of Copyright.*<sup>14</sup> Here, Rose looks at the birth of the *Statute of Anne*, the famous English copyright act from 1709, and shows how this was closely intertwined with the definition of the romantic author as an original genius and with the conception of literature as the natural property of the author.

*Statute of Anne* is generally referred to as the world's first copyright act but it was definitely not the first time that someone laid legal claims on a literary text. Compared to the common law-practices that existed before 1709, the *Statute of Anne* was actually an attempt to limit the possessive claims that the booksellers had laid on literature during the 17<sup>th</sup> century. Until 1709 the book market was almost exclusively dominated by the Stationers Company – England's national guild for printers and booksellers. According to common law it was the Stationers Company's job to allot the rights to publish certain books among the members of the guild. Even though this was not a matter of literary property in the modern sense but rather of privileges to publish certain texts that the state granted certain actors, it still meant that only printers and booksellers could own literary privileges. Like within modern copyright these rights were exclusive, but unlike modern copyright they were also eternal. Once a bookseller got the rights to a text it was his to hold forever or to sell to the highest bidder, causing a flourishing trade with literary privileges.

*Statute of Anne* was to a large extent a codification of practices that already existed within common law, but with two major exceptions: it declared authors to be potential owners of their works and it limited the term of copyright-protection to 14 years. This was an obvious attempt to break the monopoly of the Stationers Company. Making authors potential owners of literature, and thereby competitors to the printers and booksellers, was not such an immediate threat as it might seem: most authors were still dependant of the members of the Stationers Company to finance the publication which kept the printers and sellers in a dominant position. Limiting the term of protection was however a hard blow against the Stationers Company whose main assets – the literary privileges – were all of a sudden losing their value.

The Stationers Company fought the new law in several court-cases and continuous debates throughout the 18<sup>th</sup> century, and their main argument against a limited copyright was, ironically, the authors' absolute right to his own work. At the core of this argument lies the classical, liberal discourse of property, articulated by John Locke. In his *Two treatises on government* Locke claimed that

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<sup>14</sup> Mark Rose. *Authors and Owners: The Invention of Copyright*, Cambridge & London: Harvard University Press, 1993, *passim*.

every individual has an inalienable property in his own person and when he, through labour, uses his own person to transform the raw material that nature provides into a product, then this product is his unquestionable property.<sup>15</sup> This meant that property was no longer a social convention but a natural right and that no one could justly be denied the fruits of his labour. By regarding the text as the fruit of the author's labour, the Stationers Company could claim that literary property was a natural right that could not be limited in term but that the author was of course in his full right to sell. In the end the Stationers Company failed to influence the legislators on this account, but as a by-product they managed to replace the old discourse of literary privileges with a new discourse of literary property that has survived until today.<sup>16</sup>

In response to the property discourse, another discourse was taking shape during the mid 18<sup>th</sup> century: the discourse of the original genius. Unlike the property discourse, which was mainly the product of the booksellers, this discourse was primarily fostered by the authors themselves. Facing the risk of being reduced to mere producers of commodities, authors such as Edward Young and Samuel Richardson started to spread the image of the author as a transcendental genius, who through the use of his inner, imaginative powers created works of literature that were original expressions of the authors own personality.<sup>17</sup> It was this conception of the author that in the late 18<sup>th</sup> and early 19<sup>th</sup> century found its warmest proponents among the English and German romanticists.

This discourse did not oppose the property discourse; on the contrary, it blended well with it. So well that the conception of the literary text as both an original, unique work and the natural property of the author mixed into a twin-discourse that, according to Rose, has laid the conceptual foundations for modern copyright thinking. It was this twin-discourse that, mediated by the romanticists, spawned the first generation of copyright acts outside of England: the French, German and Swedish acts from the late 18<sup>th</sup> and early 19<sup>th</sup> century.

### **Copyright and the Avant-garde**

So, if we are to listen to Mike Rose, the ideology of artistic autonomy that is so fundamental to western culture from romanticism and onwards is actually the consequence of a petty quarrel over a couple of legal paragraphs in 18<sup>th</sup> century

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<sup>15</sup> John Locke. *Two Treatises on Government*, London: McMaster University Archive of the History of Economic Thought, 2000 [1690], p. 116.

<sup>16</sup> Rose 1993, p. 51.

<sup>17</sup> *Op.cit.*, p. 114.

England. But where does that leave us? Are romantic aesthetics really just a consequence of legal controversies? If we turn our attention to the legal development in countries like Germany and Sweden the relationship between law and literature seems to be a lot more dialectic. These examples clearly shows that the romantic ideas of authorship, that was originally spawn in mid 18<sup>th</sup> century England, in its turn became the cultural, ideological and intellectual fundament for the first copyright laws in the rest of Europe. The history of Swedish copyright law actually reveals a lack of legal autonomy, and this opened up the legal process to impulses from the cultural sphere. If *Statute of Anne* is an example of how the legal field influences the cultural development, the birth of the Swedish copyright law can be read as an example of the opposite: of how aesthetics influence the law.

It is possible to see how the idea of the romantic genius, that Young and others articulated in England and Germany from the mid 18<sup>th</sup> century and onwards, made its way into Swedish literature and aesthetics in the late 18<sup>th</sup> century through the work of the first generation of Swedish romanticists in the 1780's and 1790's. As in most other European countries, this resulted in a new way of looking at authorship and artistic creativity that would coincide rather well with the redefinition of the author as a proprietor of his literary works. A couple of decades after this romantic breakthrough, Sweden would have its first copyright law in the guise of *Statute for the Freedom of the Press* from 1810.<sup>18</sup> If one looks at the legislative process that preceded it, it is possible to see how the ideas that was formulated in 18<sup>th</sup> century England – the idea of the original genius as well as the idea of literary property – found its way into the legal debates and documents in Sweden, primarily mediated through the aesthetic movements that flourished in Germany and France at the turn of the century.<sup>19</sup> This is a direct consequence of the fact that many of those taking part in the writing of the *Statute for the Freedom of the Press* were active as authors. Although many of these authors were not romanticists themselves they still belonged to the world of literature, and as such they were inevitably influenced by the aesthetic ideas that had been promoted by the romantic avant-garde a half century earlier, by now widely spread in European culture.

This leakage between literature and the law clearly indicates that the law can not be regarded as a system of its own, that the copyright legislation from the beginning was heavily influenced by aesthetic and literary ideas, and especially by

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<sup>18</sup> Tryckfrihetsförordningen 3/9 1810.

<sup>19</sup> Gösta Eberstein. *Den svenska författarrätten*, Stockholm: Norstedt, 1923, p. 70.



the idea of the romantic genius. So in the end, the artistic identities that are formulated within the cultural field in general and the cultural avant-gardes in particular also affect the construction of the juridical laws that govern them. This means that the avant-gardist self-conception of the artist and the author as a masculine and omnipotent creator might not just be a question of cultural but also of juridical relevance. And that is why John de Andreas sculpture *The Artist and his Model* pictures not only an aesthetic but also a legal character which embodies an understanding of creativity and originality that has shaped the history of art and literature as well as the history of copyright.

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