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REGULATING CULTURE BEFORE THE NATION STATE: COPYRIGHT REGIMES OF EAST-CENTRAL AND SOUTHEAST EUROPE IN THE AGE OF EMPIRE (LATE 19TH CENTURY – 1914)

Augusta Dimou

Abstract

The article examines the institutionalization of copyright from the late 19th century until approximately World War I in the two multi-ethnic empires of Southeast and East-Central Europe (Habsburg und Romanov), before their ultimate demise and eventual replacement of the former by nation states in the first decades of the 20th century, and analyses the rationale of their respective copyright regimes during the imperial era. It does so with two objectives in mind: firstly, it advances the thesis that multi-cultural, pluri-lingual and multi-lingual formations such as imperial states were faced with a different set of challenges when it came to devising their own copyright regimes (than the more or less ethnically consolidated, monolingual nation states of Western Europe that pioneered copyright legislation), and moreover that this circumstance constituted one of the principal reasons, why the empires of Eastern Europe kept away from the structures of international copyright regulation that developed in the late 19th century. Secondly, it argues that the imperial copyright legislations constituted a legal tradition that remained an important point of reference also in the later development of national copyright legislations in the region.

Keywords: author's rights, intellectual property, intellectual property rights, copyright legislation, legal transfer, legal and commercial regimes, internationalization of copyrights, Berne Union, East-Central and Southeast Europe, regulation of culture, late imperial period

Introduction

When thinking about the protection of creativity and creative professions in the modern era, one of the first connotations to come to mind is the lowercase letter "c" encapsulated in a circle (©). In the contemporary world, copyright stands representative for the legitimate and genuine vindication of the author and his/her work. Much less evident is the fact that copyright is a legal institution with a historical trajectory, moreover an institution that has also been subject to historical change, whereas the notion of copyright often rests on several explicit or implicit assumptions about the nature of the creator and the creative process, the content, meaning and scope of what constitutes: a work, intellectual and/or artistic labor, originality, autonomy, author, audience, value, taste, fair remuneration, canon, access, property, ownership, private and public etc., as well as the ways all these notions and activities are causally related to one another in the field of cultural production (Bourdieu). Historically, modern copyright has been the outcome of both intense negotiation and confrontation between interested parties and participant stakeholders in the field of culture and media industries, and will most likely continue to be an apple of discord both in the near and distant future.

Intellectual Property (IP) is the generic term applied to designate creations of the mind such as literary and artistic works, inventions, designs, symbols, names, and images, which, when protected by law, are formally categorized as copyrights, patents, trademarks, designs, trade secrets, and geographical indications.[1] IP designates a legal right granting authors and creators of original works the exclusive prerogative to determine the use and distribution of their intellectual labor. Framed as the intersection between private and public interests, the development of intellectual property rights (IPRs) reflects the diachronic wrangling that occurs in order to balance and regulate the access and distribution of knowledge between creative labour, commercial interests, and the common good. The consolidation and expansion of intellectual property rights was a complex process that partook, shaped, and was reciprocally shaped by major social, economic, cultural, philosophical and technological transformations, which starting from the late 18th century helped decisively reconfigure the structures of modern European societies.

IPRs establish a limited-time monopoly (e.g., the current term of protection for intellectual works in the EU amounts to 70 years p.m.a[2]), after whose expiration works usually enter the public domain and can be

used by everybody. In contradistinction to this general principle, and in order to accommodate educational and other public and/or civic needs, IPRs can likewise be legally restricted as in the case of provisions of fair use.

IPRs define essentially a legal relationship between creators, mediators and the public (the so-called "end users"). They represent a bundle of social, cultural and legal operating and activity-regulating norms and rights, which create, define and distribute roles, relationships and practices throughout the cultural and scientific fields.[3] As a legal instrument therefore, copyright fulfils multifarious tasks: it protects the individual output of authors; provides for predictable relationships between creators and third parties; legitimizes specific group interests in culture and the cultural industries and finally helps govern and operate complex cultural, social, economic and political interests.[4] The institution of IP is the principal mechanism via which intangible goods enter the market of commodity exchange.[5] Finally, copyrights are territorial rights; they come into being inexorably linked to the nationality of a work, or that, of its creator. Evolving since the late 19th century, international copyright law provides supranational rule standardization and harmonization, and in so doing, properly sets intellectual works "into motion." By these means, it activates the legal mechanism that allows for the international and transnational traffic and cross-border exchange of intellectual goods, devised as a streamlined, legally authorized and structured, predictable and uniform trading process.

More than a simple legal institution, therefore, IPRs are multifunctional and polyvalent managing instruments that stand concurrently for: a set of collective rules of operation, a symbolic order, a legal instrument, a power, commercial and legal regime, but also for a metaphor and a narrative of social and cultural order.[6]

Contrary to common belief, copyright is a fairly modern institution (initiated in the late 18th century) and its evolution cannot be traced back to one singular, causal, or linear development,[7] but was rather the result of the entanglement of forces and processes that abetted likewise the rise of industrial capitalism and modern mass society. Consequently, its development is intricately related to processes like the consolidation of the modern nation state, the unfolding of technological revolutions, the dissemination, application and commercialization of technological innovation, the urbanization, stratification and democratization of societies, as well as the expansion of communications, the advance, industrialization and commercialization of print and audio-visual culture, the alphabetization and massification of society, the nationalization and

internationalization of commercial exchange and markets. The gestation and consolidation of modern copyright was the work of stakeholders, but it presupposed the synergy and convergence of multiple, complex processes related to 1) technological innovations (movable type, lithography, photography, phonograph, radio etc.), which provided for the capacity to infinitely reproduce intellectual works via mechanical means, 2) changes in aesthetic doctrines (the assertion of the idea of a unique "original" and its derivative copies, which was closely related to the above mentioned capacity to reproduce works mechanically on a large scale), 3) the rise of the figure of the author/creator as a uniquely inspired and solitary genius, giving expression to his/her unique individuality, 4) changes in legal thought (the rise of the doctrine of intellectual property/geistiges Eigentum/ propriété intellectuelle), including the professionalization, diversification and specialization of the legal profession, 5) the expansion of literacy and reading publics (the passage from the limited cohort of the savants of the *Republique des Lettres* to universal literacy), 6) the passage from aristocratic to bourgeois society, the rise of the middle classes and the multiplication of their consumption practices, the eventual inclusion of the lower classes and women in participatory politics, as well in practices of reading and entertainment, 7) the codification and proliferation in the modern era of vernacular languages and cultures in contradistinction to the previous prevalence of learned/ancient/dead languages (Latin) as mediums of communication, 8) the professionalization of the arts and the rise of new art forms related to audio-visual means, 9) modern colonialism and overseas expansion, 10) social and physical mobility.[8]

The current article discusses the institutionalization of copyright from the late 19th century until approximately World War I. within the framework of the two multi-ethnic empires of Southeast and East-Central Europe (Habsburg and Romanov) before their ultimate demise and progressive replacement of the former by nation states in the first decades of the 20th century, and analyses the rationale of their respective copyright regimes during the imperial era. It does so with two objectives in mind: firstly, it advances the thesis that multi-cultural, pluri-lingual and multi-lingual formations such as imperial states were faced with a different set of challenges when it came to devising their own copyright regimes (than the more or less ethnically consolidated nation states of Western Europe that pioneered copyright legislation), and moreover that this circumstance constituted one of the principal reasons, why those imperial formations kept away from the structures of international copyright regulation that

developed in the late 19th century; secondly, it argues that the imperial copyright legislations constituted a legal tradition that remained an important point of reference (naturally along with other influences) also in the later development of national copyright legislations in the region.[9]

From privilege to modern copyright. Historical background

Although the "print revolution" of the Renaissance had encompassed a large part of Europe (Germany, Italy, France, Spain, the Netherlands, Belgium, Switzerland, England, Bohemia, Poland),[10] the remarkable industrialization and commercialization of the print of the late 18th and particularly the 19th century, unmistakably changed this geographic configuration, shifting the epicenter of industrialized printing towards Western Europe. For these reasons, both the institution of modern copyright and the movement for international copyright protection were initiated and steered by a group of West and Central European countries (Britain, France, Germany) with variable self-interests, which, having completed earlier the passage from feudal to modern capitalist society, developed a vested interest in the industrial organization and commercialized diffusion of their cultural industries, and saw themselves confronted earlier with the need to regulate the roles of the various stakeholders in the knowledge economy and cultural production. Not by coincidence, at the same time, those same countries represented also the major producers and exporters of specialized and general literature to the world.

Starting in the 18th century (GB: *Statute of Anne* – 1710, France: revolutionary laws of 1791 and 1793) and progressively in the course of the 19th century (for example the German copyright laws: Baden – 1810, Prussia – 1837, the first all-German copyright law – 1871) a number of states in Europe and the Americas developed local/national copyright laws. This period (the *Sattelzeit* in R. Koselleck's terminology) also reflects the slow transition from the previous system of regulation of the printed word based on granted (royal or religious) privilege to the novel paradigm represented by modern copyright law.[11] Although "piracy" and illicit reproductions had been a "real" problem in the early modern period, by mid-19th century the European states with a stake in the book trade had managed, through various means, to bring such processes largely under control, at least in much of the European continent. It had become common for states to regulate the exchange of prints and intellectual goods

through bilateral copyright agreements, which usually formed part of more generic commercial treaties; in the rule, they were based on the principle of simple or formal reciprocity. By 1886 an intricate network of bilateral treaties was in place between European states and some Latin American countries. France was the champion of the bilateral system, followed by Belgium, Italy, Spain, United Kingdom and Germany.

The effects of industrialization, intensification and extension of the trade with print industries, as well as of global migration flows and colonial expansion, and the concomitant need to secure investments in international and transnational terms, caused stakeholders to seek additional, more efficient and assertive instruments of cross-border regulation. It was precisely this "globalization" of the late 19th century that gave rise to the quest for the multilateral regulation of the same trade beyond the habitual form of bilateral treaties. The second half of the 19th century was indeed the birth hour of the international system of intellectual property management that remains in place today. The *Paris Convention for the Protection of Industrial Property* (1883) and the *Berne Convention for the Protection of Literary and Artistic Works* (1886, hereafter BC), along with their revision and/or supplementary treaties[12] constructed the foundation of the current global system of intellectual property protection.

It was the *Association Littéraire et Artistique Internationale* (ALAI),[13] a non-governmental, interest group founded in 1878, that was instrumental in bringing together the forces of publishers, authors, lawyers and diplomats, and in fact became the driving motor behind the creation of the Berne Union. The Berne Convention was subsequently established in September 1886. It was founded on blueprints from ALAI's preceding lobby work and a concurrent initiative by the German Publishers and Booksellers Association (the *Börsenverein des deutschen Buchhandels*, i.e. the association of the German publishing industry), initiatives that eventually resulted in a series of preliminary congresses and conferences held in Berne between 1884–1886.[14] The creation of the *Berne Union* (hereafter BU)[15] was neither a simple nor evident task;[16] nonetheless, its constitution signified a breakthrough in the international and transnational governance of IPRs through the establishment of a uniform and comprehensive legal framework of regulation.[17]

Much of the world, including many of the existing states and empires of the 19th century, refrained from taking up any international commitments vis-à-vis the BU. Although attentive observers of international developments, the multi-ethnic empires of Southeast and

East Central Europe abstained from membership in the BU, motivated largely by political, but also by economic considerations. In the course of the 19th century, both the Habsburg and the Romanov empires had developed, in one form or another, elementary legal provisions for the protection of authors. Representatives of both empires had participated either in preliminary meetings and congresses of the ALAI and/or in some of the preliminary diplomatic conferences leading up to the creation of the BU, mostly as observers. Rather than international copyright regulation, however, their principal concern remained focused on the cultural relationships within their own realms. The continental empires of Eastern Europe were not only multi-ethnic, but also pluri-lingual. In the late 19th century, their political realms wavered between different, often contradictory legitimizing projects whose boundaries were continuously negotiated, such as: 1) legitimation based on the traditional dynastic aura, but also on modern forms of political participation; 2) the application of censorship and control in the public sphere coupled with periods of political relaxation, including information and press freedom; 3) the desire and need to provide for mass education (in the spirit of the Enlightenment, but also to satisfy the claims of rising ethnic groups) and the quest to hold the political project of empire together. These complex sociocultural and sociolinguistic conglomerates constituted multicultural und pluricultural communication spaces,[18] where language, social milieu and identity remained in a perpetually fluid and dialectical relation to one another on the level of everyday communication and exchange. At the same time, they also operated in a state of potential tension and conflict inherent in the structural asymmetry between the usage and the prestige of different languages,[19] but also in the discrepancies between real and invented hierarchies, status and factual political representation of the different ethnic groups.

Although opinions on whether to join the BU or abstain from its international regime varied among different stakeholders (publishers, authors, politicians, lawyers), the Eastern empires seemed to pursue a different set of priorities in the late 19th century. These can be summarized as follows: 1) The intention to build up and solidify the publishing sector as a branch of the home industry; 2) The maintenance of low copyright protection levels in order to ensure broad access to knowledge and know-how, predominantly of West European origin. This mainly concerned the right of translation and was related to the quest for broad alphabetization and the desire to keep production costs and book prices

low; and 3) The intention to facilitate communication and maintain an equilibrium within the imperial plurilingual and multilingual realms. This was related on the one hand to the fact that the empires functioned de facto through the operationalization of multiple levels of formal and informal translation activity, and on the other to the need to manage (ethnosocial) difference effectively and in ways that buttressed the imperial project. While such management by no means excluded phases and expressions of imperial nationalism/patriotism (for example, as articulated in the cult of the emperor or the suppression and/or instrumentalization of ethnic strive), the East European empires had nevertheless to grapple with the tension between national and supranational identity in an age of expanding political participation. The necessity to devise a copyright regime considerate of different needs, and capable to regulate and balance, also politically, interethnic relations remained a distinct and diachronic trait of East and Southeast Europe throughout the 20th century, particularly in countries that retained their multi-ethnic structure well into the late 20th century, such as the Soviet Union, communist Yugoslavia and Czechoslovakia.

Although they often followed different trajectories, the three continental empires of the East demonstrate also related patterns in the way they handled copyright in their multi-ethnic, pluri-, and multilingual realms. The imperial past left partially its mark on later developments, for example the copyright legislations of Austria-Hungary and Russia formed legal matrices or orientation points upon which later national copyright laws were founded. This was not really the case in the Ottoman Empire, where the notion of copyright was introduced quite late and the 1910 copyright law was barely applied in practice.[20] The social and cultural legacies of the empires also had a long-lasting impact, and they provided the structural patterns that influenced long-term the conceptualization and the dynamic of the relationship between creative elites, the state, market and the public.

The Habsburg Empire

The Habsburg Empire's first legal act regulating copyright was the imperial patent (kaiserliches Patent) of 16 October 1846 "zum Schutz des literarischen und artistischen Eigentums gegen unbefugte Veröffentlichung, Nachdruck und Nachbildung."[21] The law had a series of precursors in the German-speaking world such as the copyright laws of Prussia (1837),

Bavaria (1840), Braunschweig (1842), Saxony (1844) and Württemberg (1845).[22] Enacted under the influence of the politics of the German Confederation (Dt. Bund), it reckoned literary and artistic works to be the property of their creator, but it also restricted property rights. Literary and artistic works were protected 30 years p.m.a. and performing rights 10 years p.m.a. for unpublished works. Translation rights were reserved for one year, after the expiration of which translation was free.[23] Musical and photographic works were left unprotected.

A new decree issued in 1859 awarded authors of dramatic and musical works the exclusive right to deliver permission for public performances of their works, even if the works had been published. Protection lasted the authors' lifetime plus 10 years p.m.a., provided that the author had expressly made such a reservation on the cover page of the printed work.[24]

Austria actively participated in the context of the German Confederation for an amendment of the copyright law (Frankfurt Entwurf), an effort that ultimately affected it little due to the disintegration of the German Bund. A new copyright law ("das Gesetz betreffend das Urheberrecht an Werken der Literatur, Kunst und Photographie")[25] was issued in 1895, and represented the first copyright law of a local making. This new law also retained the major trends of the previous legislation: 1) very short terms of protection for translations and 2) controlled and limited reciprocity in international relations. Consequently, an author retained the right of translation for 3 years, whereas translations were protected for 5 years. After 8 years, therefore, translation was essentially free in all languages. Foreign works were protected only when, and to the degree stipulated by official state treaties, while the option of protecting foreign works on the grounds of formal reciprocity statements, as had been provided previously through the Patent of 1846, was removed. This impairment was lamented by different authors' and publishers' organizations, and was the main reason for the partial revision of the law in 1907, which in the absence of state treaties and when the preconditions for reciprocity existed, allowed the ministry of justice to issue a relevant decree.[26] The Habsburg Empire's copyright regime of the late 19th century opted for a middle course, clearly favoring the public, while paying respect to the monarchy's particular multilingual and plurilingual setting.[27]

The regulation of translation rights diverged significantly from the evolving Bern Union norms. The 1846 Patent envisioned protection for one year, and the 1895 law for maximum of 8 years, while the 1886 BC protected the exclusive right of translation for 10 years from the

publication of the original; both the original and its translation were protected. The Paris Act of the Berne Convention in 1896 extended the duration of the right of translation, equalizing it with that of the original work, the sole precondition being that a translation had to appear 10 years after the publication of the original. Finally, the Berlin Act of the BC in 1908 dropped all reservations and fully equated translation rights to the original. Differences between the two regimes also prevailed concerning the protection of the original: both laws of the Habsburg Empire limited protection to 30 years p.m.a., whereas in the case of the BC the 50 years' term of protection p.m.a. became union norm after 1908.

The reluctance to provide for longer terms of protection and to keep up with the BU standards has among other things been attributed to the Austrian government's disinterest towards copyright issues, a kind of tardy reflex by an inert, slow-moving and antiquated bureaucratic state unable to keep up with the spirit of its age.[28] This interpretation is corroborated by the fact that several professional actors with a stake in the commercial organization of culture and copyright, such as the organization of the Austrian-Hungarian Book, Art and Music Retailers (österreichisch-ungarischer Buch-, Kunst-, und Musikalienhändler), were by contrast endorsing an amendment of the copyright law and petitioned the government to this end.[29] Several professional organizations, representatives of musicians, the Union of Viennese applied crafts, the journalists' and writers' union "Concordia" et al., all had equally supported the entry of the Monarchy into the BU and so did apparently the music retailers.

Opinions therefore on whether to join the BU were split and the issue fervently debated among affected stakeholders. Apparently, considerations for the educational needs of the non-German nationalities in Austria, and the wish to avoid raising costs for the imports of foreign educational materials, were the principal reasons for eschewing BU membership.[30] Moreover, the fact that Hungary was disinclined towards BU accession, an attitude heightened by the local inclination towards free translations, played an important role in determining the Austrian attitude on the matter, and blocked the issue.[31] It was only in 1887 that the Austrian and Hungarian governments signed a treaty, which secured for both halves of the Monarchy reciprocal protection for works of literature and art.

In an effort to sound out stakeholder expectations in the empire's various cultural and educational establishments, the minister of justice conducted in 1900 a survey among diverse institutions, including the

academies of science and arts in Vienna, Prague, Cracow and Lemberg, various literary societies, artists' associations and writers' unions inquiring into their opinion on whether the Monarchy should join the BU or not. The ministry received approximately 50 answers, divided in almost three equivalent thirds, which expressed a positive, negative and neutral (entry only after modification of the Austrian legislation) stance. Resistance to a potential BU membership was strongest in the eastern territories, particularly in Galicia. The academy of sciences in Cracow, for example, feared that Austria-Hungary's entry into the BU would endanger the literary connections between the Austrian and the Russian part of partitioned Poland.[32] Moreover, it could be observed that the warmest advocates of a BU membership came predominantly from the German-speaking organizations and associations, in spite of the fact that the Monarchy represented a multiethnic and polyglot environment. Until 1900 only the Czech writers' association *Máj* was committed to the same stance.[33]

Consequently, the Monarchy's reluctance to join the BU must be seen in correlation with the nationality question and the challenges it posed for a state consisting of 11 main ethnic groups, and territories, where nine languages were spoken. There were significant divergences between the German and the non-German nations, and the government feared that a change in the copyright regime might jeopardize "the ideal end goal of all literary and artistic work, that is, its permeation into the broadest population strata."[34]

The Russian Empire

Copyright law in Russia, as elsewhere, was closely linked to the development of printing, an industry that developed with considerable delay in the case of Russia and only acquired social significance in the early 18th century. From the late 16th century until Peter the Great's reign in the second half of the 17th century, printing in Russia was almost exclusively reserved for religious books and, as in the West, was strictly controlled by the monarch.

The printing prerogatives granted until the early 19th century had been rights accorded to publishers, not to authors. By 1825 the private publishing industry had expanded significantly in size and output challenging the capacity of the censor to maintain control over the production and dissemination of both genuine and pirated works of

literature. As a result, the first copyright law was issued in April 1828 aiming at preventing the unauthorized publication and dissemination of works.[35] It consisted of five articles in a censorship statute issued by the tsar, which gave an author or translator the exclusive right to reproduce, publish and disseminate a work and confirmed his/her right to receive payment for the work's use and reproduction. Copyright was automatically vested in the author or translator upon creation of the work, and there were no formalities attached. Protection lasted the author's life plus 25 years p.m.a. The statute postulated the freedom of translation, that is, it guaranteed the translator's right to his translation, while all works were free to be translated by any person without the original author's consent.[36]

The following consequent amendments to the law were introduced: 1) Decree of 1830, which emphasized that author's rights were proprietary in nature and could be assigned, devised or transferred. If the author's successor in rights published a new edition of the work within 5 years of the expiration of the original 25-year term of protection, his rights in the work were extended for another 10 years. 2) In 1845, the Council of State extended the protection of copyright law also to musical works, and the following year likewise to works of fine art. 3) The most significant modification was the extension of the term of copyright protection in 1857, when the Council of State, acting on behalf of Pushkin's widow, extended the duration of copyright protection to the lifetime of the author plus 50 years p.m.a.[37]

Russian civil legislation was recodified in 1887, when the copyright law was separated from the censorship statute for the first time. As legislators deemed copyright law to pertain to property law, they included it in the section of the new code dealing with proprietary rights and relations. Similarly to the earlier statute, the 1887 law declined protection to foreign authors, whose works were first published abroad and maintained the principle of freedom of translation, introducing just a small exception regarding scholarly works. Thereby, works whose writing required scholarly research/labor were excluded from the principle of unauthorized (free) translation, on condition that the author explicitly reserved this right in advance, and had a translation published shortly (i.e. within 2 years) after the publication of the original. "All other works by Russian subjects were in the public domain with respect to translations; anyone could produce a translation without the author's permission or the payment of royalties."[38]

Having had a negligent impact for the greatest part of the nineteenth century, the discussion on copyright picked up between 1880 and 1915,

for three main reasons: (1) the creation of the Berne Union; (2) Russia's withdrawal from bilateral treaties with France and Belgium; and (3) the incipient process of canonization and nationalization of writers by Russian educated society in approximately the same period. Debates were fought in essence around identity issues: they voiced, on the one hand, internal concerns such as the contents of Russian identity, and on the other, external preoccupations such as Russia's positionality in the world. When such abstract themes boiled down to concrete topics, they revolved primarily around the issues of translation, the length of the term of protection of authors' rights, and the protection of authors' personal (and potentially embarrassing) writings post mortem.

In the late nineteenth and early twentieth centuries, by progressively distancing itself from tsar and the church, Russian educated society was rearranging its allegiances with the symbols of Russian nationality. It espoused a more abstract notion of Russian culture predicated on the literature of Russian classics and the social values of the intelligentsia, which it sought to inculcate to newer generations thereby integrating them into a unified Russian culture. Copyright debates were fought by invoking the names of great literary figures, and both supporters and opponents framed their positions around those canonized authors and their works. When it came to issues like more or less extensive copyright protection and/or Russia's accession to the BU, the rival sides claimed to be speaking in the interest of Russian society and expressed their concerns within an existing discourse on backwardness, whereby Russia's position in Europe and among world civilizations was at stake.[39]

The realization that the existing copyright regime was becoming increasingly outdated and insufficient was the major motivation for the passing of the 1911 copyright statute, which was modelled after the German 1901 copyright law. The 1911 copyright law was a piece of modern and mature legislation as it incorporated several contemporary trends in copyright law, demonstrating concomitantly also a strong tendency to provide answers to local needs and priorities.

A significant divergence from previous practice "was the rejection of the concept of copyright as 'property.' The law merely asserted that copyright was sui generis and subsists in literary, musical, artistic, and photographic works."[40] The tradition of protecting only the works of Russian subjects or works published on Russian territory was continued; works published abroad were in the public domain and could be freely translated; a change was introduced concerning foreign works in the original language

published in Russia (i.e. reproductions), where the consent of the foreign copyright owner was now mandatory. Music by foreign composers could not be performed without the copyright owner's permission.[41]

Under the previous law, only scholarly works by Russian subjects were accorded limited protection against free translation. The 1911 law extended this limited protection to all works published in Russia or by Russian subjects. An author could hold the exclusive right of translation to his work, if he printed such a reservation on the work's title page or preface and if a translation was produced within 5 years of the original publication. Compliance with those provisions secured an author the exclusive right of translation for a term of 10 years.[42]

Like Austria-Hungary, Russia followed closely the movement for international copyright protection, but did not participate in the drafting or the signing of the Berne Convention. Rather, in the second half of the 19th century, Russia preferred concluding short-term bilateral treaties with major west European states (France, 25 March 1861, Belgium, 18 July 1862 etc.), which permitted a flexible maneuvering regarding the use of foreign cultural goods. Resistance to bilateral and multilateral conventions stemmed, on the one hand, from the limitations they would place upon Russian theaters, and their capacity to produce foreign musical and dramatic works requiring authorial permission and the payment of royalties. On the other hand, it was due to the massive consumption of foreign literature in Russia and the financial drain that would accompany the payment of royalties to foreign authors. Nevertheless, it was also not uncommon for Russian institutions to remunerate foreign authors for the use of their work.[43]

The last copyright law in pre-revolutionary Russia was modeled after German legislation and the conceptions of Russian civil law specialists (Spassovich, Annenkof, Scherschenevich and Karnicky). Rejecting the property paradigm, the law defined copyright as an exclusive right, investing the author with the prerogative to publish, circulate and reproduce his work through all possible means.[44] The justification for the new law brought together a series of interesting themes. It emphasized the social role of the author and of knowledge, and underscored the importance of moral rights, which featured prominently in the 1911 legislation:

> "In that regard, not only pecuniary interests have to be protected as real rights, but [it also needs to be considered that] the author is a social

> worker, a propagator of ideas, therefore works are the reflection of common aspirations and they emanate from the social milieu upon which they exercise a great influence; the legislator has therefore the task to set the rights of the author in harmony with the interests of society. […] Next to the material and pecuniary elements contained in the right to sanction, [the law] will also consider personal elements. And it is permissible to say that the commission has largely safeguarded them in the project [of the law] by protecting fully all unpublished works against unauthorized publication, by preserving copyright against any enforcement procedure, by abandoning to creditors nothing but the copies published and offered for sale, and finally by interpreting strictly any assignment to the publishers and by delimiting the publishing contract."[45]

The law was debated in the literary [authors'] society of St. Petersburg as well. The majority of its members defended the freedom of translation and spoke against Russia's entry into the BU. More surprisingly, however, the society spoke against the prolongation of copyright's term of protection p.m.a., and advocated the restriction of author's rights from the 50 years' current valid standard to 25, maximum 30 years p.m.a.[46]

Attempting to explain to west European audiences and the readership of the journal *Le Droit d'auteur*, the official organ of the BU's International Bureau, the rationale behind the Russian authors' programmatic positions and "false" consciousness, E. Semenoff, an intellectual, publicist and French lobbyist promoting the cause of international copyright in Russia, offered the perfect definition of intelligentsia:

> "M. Semenoff explains that the very widespread notion according to which the unauthorized translation is not a counterfeit, is due to a special mentality, idealistic and at the same time very basic. According to the Russian tradition, the author has to accomplish a holy mission, that is, free propagation of ideas, knowledge, literature, worship of the principle of freedom in the name of civilization and public education. This conception dominated above every other consideration such as thinking about fees to be paid when establishing a publications' budget, considerations about food, clothing, shelter, even the remuneration of the author's work itself, appeared totally secondary, purely bourgeois and mercantile; the notion that one could call these appropriations [i.e. free translations] theft, piracy, all this appeared incomprehensible."[47]

The 1911 copyright law was based on west European principles of copyright law. It was largely predicated on the 1901 German copyright

law and incorporated aspects of the 1901 German Verlagsrecht (publishing law), but also included provisions that were homegrown. They related to specific, local concerns with copyright regulation and in some cases, such as the protection of oral culture and folklore, they even set a precedent for future developments in international copyright. Summing up, the law's most distinctive features were: 1) departure of Russian copyright law from a property-based notion of copyright; 2) departure from a doctrinal justification of copyright based on natural rights, and an implicit justification based on positive law and/or copyright as a *sui-generis* right; 3) continuation of Russia's own, idiosyncratic path with respect to translations; 4) strong emphasis on moral rights, including the intention to empower the author vis-à-vis the publisher; 5) the innovative – for the times – pioneering step to grant protection to oral works and musical improvisations, related to Russia's rich heritage of folklore and traditional culture.

For different reasons, the 1911 Russian copyright law was an important highlight in the development of author's rights in Eastern Europe, and will be for these reasons presented here in greater detail. It was the first self-reliant, comprehensive modern copyright law among the Slavic populations of Eastern Europe. It represented a forerunner regarding the mode of reception of copyright law in the region and it also became itself a model and point of reference for the drafting of other national copyright laws such as the Bulgarian copyright law, for example.

The law did not provide an exhaustive, but rather a representative list of protected works, such as literary, written and oral works, discourses, lectures, reports, and conferences, musical works including musical improvisations, artistic works, photographic and similar works.[48] Authors' rights were granted to all works published in Russia by all authors and their right-holders independent of nationality, and for all works published abroad by Russian subjects and their right-holders independent of their nationality. Protection lasted the author's lifetime plus 50 p.m.a. When no other conditions were stipulated by the author and in the absence of heirs, copyright extinguished with the author's death.

The law sought to protect authors from unfair exploitation by stipulating limits for contracts on future works to a maximum duration of 5 years (art. 9), even if the contract was issued for a longer period or contained no time specification. The law provided also for an amplitude of free uses: the use of an existing work for the purposes of creating a new, essentially different one was no infringement; nor the creation of copies as far as they

served an exclusively personal use, and did not contain the signature or the monograph of the original author (art. 3). Works of art procured by churches, royal palaces, governmental institutions and public corporations could be copied freely and without authorial authorization, liable only to the consent of a competent authority (art. 54). Exchanges between genres, such as the reproduction of a painting in the form of a sculpture, and the other way around, was not considered a violation of artist's rights. It constituted no infringement: the reproduction of isolated works of art in independent scientific studies, or works destined for pedagogical use, provided that the reproductions served exclusively the purpose of explaining the text; the reproduction of public works of art located in streets, squares and other public spaces through an artistic genre different than the one employed in the original; the utilization of separate parts of a work of art for industrial and artisan products (art. 56). Altogether, there were generous exceptions to protection for public, scientific and educational uses and industrial applications, for example, the reproduction of entire photographic works on industrial and artisanal products did not constitute an infringement (art. 62).

The law sought to protect authors against creditors, prohibiting that copyright became subject of sequestration without the author's consent during his lifetime and without the consent of his heirs post-mortem. Publishing and/or other authorial rights ceded by the author to a third person through contractual agreement, could be restrained in order to satisfy debts only within the limits of the contract (art. 10).

One of the truly novel aspects of the 1911 copyright law was its treatment of folk art. Russian legislation was the first worldwide to extend copyright protection to popular art and oral traditions, which also testifies to the significance of folklore in the Russian context. This circumstance provides for an interesting East-West comparison. The appropriation of traditional stories, poems, songs etc. by the literary and publishing establishment took place in Western Europe as well, only in an earlier period. As convincingly laid out by William St. Claire for the case of Great Britain, text enclosure signified the individual appropriation and lock-in of popular texts, in order to serve diverse printing and publishing models and formats.[49] Inserted in copyright protected anthologies, the popular repository was privatized in order to be commercially utilized. Folklore, oral culture, primitive art, codified as archaic forms of collective expression and deemed somehow irrelevant to the modern commercial copyright regime, which was tied to the figure of the individual author,

were left completely outside of the radar of West European copyright. The eastern part of the continent, by contrast, was still involved in a process of nation-building, where stabilization and codification of language and culture were largely ongoing developments, and where the literary canon was only slowly emerging. Here the systematization of popular texts assisted in the first place the codification of national culture(s). Consequently, the same process served a different logic and different priorities in East and West. The centrality of culture in the engineering of the nation, supported the perception of folklore as the depository of the collective, and for that reason, both folklore and oral culture needed to remain broadly accessible to all as commons and in the form of open access. Therefore, Russian legislation accorded to authors of collections of popular songs, melodies, proverbs, children's tales, stories, popular legends and similar creations of popular/folk poetry, which had been preserved through oral tradition, and to authors of collections of drawings and other products of popular/folk art, 50 years' copyright protection for their compilations from the date of publication. This right, however, did not restrain others from editing and publishing the same works in an original form and collection (art. 13).

Particularly noteworthy in the 1911 copyright legislation was the inclusion of provisions on moral rights, specifically the rights of paternity, integrity and divulgence. Indication of the author's name and the source used was mandatory for all legally borrowed excerpts (art. 19). A prominent position was reserved for the right of integrity, with the aim to prevent the unauthorized modification of an author's work and to limit arbitrary changes by intermediaries (i.e. publishers). The person to whom copyright was assigned was prohibited from introducing changes, additions and/or omissions without the consent of the author and/or his heirs, apart from those changes that were completely indispensable and which in good faith, the author himself would not have been able to refuse (art. 20). Violations and injuries of authors and authors' rights obligated to compensation for the damage incurred (art. 21). If copyright injury occurred inadvertently and in good faith, the perpetrator was obligated to compensate the author and his heirs, however only to the limits of the profit incurred.

The right of divulgence was safeguarded in article 27, which prohibited the public reproduction of an unpublished work, or the publication of its contents, without authorial authorization. It also prohibited the transformation of a prose narrative into a dramatic work and vice versa without the authorization of the author and/or his heirs.

The law maintained the freedom of translation for foreign works, excluding only cases where bilateral treaties between Russia and foreign countries stipulated otherwise, and even in those cases, foreign citizens could not enjoy more extensive rights than those of Russian subjects as stipulated by local copyright law. Further, the law prohibited the reprinting of a foreign work (in the original language) without the rightsholder's authorization. Authoritative here were the laws of the country of first publication, provided that the foreign law's duration of protection did not exceed the term of protection stipulated by Russian law (art. 32).

A minor change was introduced concerning the translation of domestic works. The author of a work published in Russia, as well as a Russian subject having published a work abroad and their heirs, enjoyed an exclusive right of translation of their works in other languages, under the condition that they had reserved this right either on the work's cover or preface. The exclusive right of translation belonged to the author for 10 years from the moment of original publication, provided that he initiated a translation of the work 5 years from the original's publication (art. 33). A translator retained the copyright to his/her translation. This right, however, did not impede others from translating the same work independently.

Journals, reviews and other periodical publications could borrow from other similar publications, information/accounts related to daily news coverage. Articles from periodical publications could be reproduced only in the absence of a relevant interdiction by the author. Continuous reproductions from one and the same publication were prohibited (art. 40).

Chapter VII of the law was dedicated to the publishing contract and contained a series of stipulations regulating the relationship between the author and the publisher, mostly to the advantage of the author. Indicatively: publishers were prohibited from relinquishing copyrights to third persons; a work had to be published 3 years upon delivery of the manuscript, otherwise the author could cancel the contract; if no other indication was given, the exact amount of copies that made up an edition had to be mentioned; the author had the right to make a new edition after 5 years; the author had the right to publish a complete edition of his works, containing also works, whose copyright had been ceded to third persons, after 3 years from initial publication for literary works, and after 10 years, for musical works; the right of publication of dramatic, musical or dramatic-musical works did not include cession of the right of public performance nor that of adaptation of musical works to instruments of mechanical reproduction (art. 65–75).

Concluding, it is worth mentioning that the legislator's philosophy was even reflected in the language in which the law was drafted. Consciously defying the language of property (the verb "to own" was mentioned but once), it perpetrated a concept of author's rights, which was antithetical to the property doctrine. As a matter of fact, the noun "property" was mentioned but once in the whole text, and paradoxically enough in a formulation that related to "common property" and was meant to denote the common ownership of rights by heirs.

Both directly and indirectly, the 1911 Russian law became one of the prime channels of legal transfer, and therefore a supplementary transmission pathway for German copyright legislation and copyright doctrine into Eastern Europe in the beginning of the 20th century. German influence in the field of copyright law was felt even stronger in the interwar period, where it became a source of inspiration, but also a matrix for a series of copyright laws in the region. Several reasons explain the preponderance of German influence: 1) the broader impact of German civil law and strong radiation of German philosophy and legal scholarship, 2) the more "paternalistic" character of the German copyright law, which intervened more actively into market-governed relationships and regulated closer the relationship between author and publisher, and which, 3) as a model, corresponded better to the needs and tasks of East European societies and their perceptions concerning the function that copyright was supposed to fulfill in the field of culture. Russian copyright law, which represented the inaugural copyright legislation in the Slavic world, was most probably authoritative [the thesis needs to be qualified further through research in the history of concepts] for the codification and introduction of expert terminology in many Slavic languages. The Russian denomination "avtorskoe pravo," which designates simultaneously both author's rights and the legal field of copyright law, was conceptually the exact equivalent of the German "Urheberrecht" and French "droit d'auteur" terminology. The majority of Slavic languages barely made use of the term "intellectual property/propriété intellectuelle" that was initially strongly advocated by French legal circles,[50] and which had indeed a stronger influence on the genealogy of laws and copyright terminology of several Romance-speaking countries such as Spain, for example.[51]

Predicated upon the particular role played by authors (i.e. the intelligentsia) and their self-perception as the genuine and sole guardians of Russia's cultural heritage, copyright was codified concurrently with efforts to create a unified Russian culture through the canonization of

Russian classics. Public and expert opinion were witness to heirs' efforts (see here the appeals of the Pushkin family, debates within the Tolstoy family and others) to control the uses of the literary estate of prominent Russian authors. Such incidents created awareness of the potentially detrimental influence of heirs on literary heritage, who could use their legal monopoly to prohibit the dissemination of works or conclude exclusive deals with publishers that led to massive price increases, thereby making books inaccessible to the larger public. Maintaining the broadest possible access to Russian cultural heritage also motivated the reluctance towards a protracted term of protection post mortem (though in the end the 50-year term prevailed), and the discussion on the appropriate form of copyright protection regarding diaries and other intimate writings not destined for publication, and their alleged public or private nature.[52]

Multiple motives lay behind the specific mode that copyright was codified in Russia, and several of these features were formative also in the case of other copyright legislations of Eastern Europe. Most importantly, the 1911 law rejected the idea of property as the justification for copyright protection; copyright was codified as a right *sui generis* and the outcome of positive law. Through the conspicuous presence of moral rights and a clear focus on the person of the author, the 1911 law underscored the importance of authorship for Russian development. As noted by Mira T. Sundara Rajan, "[t]he concept of copyright in Russian law was unusual in its readiness to embrace the idea of protection for the non-economic interests of authors."[53] Through the restriction of translation rights, the law aimed at "unifying Russia's diverse people through a common literature, as well as the goal of improving literacy. This policy made sense in view of the international status of the Russian language: its use extended throughout the Russian Empire, but did not reach significantly beyond Russia's borders."[54] The translation policy affected adversely not only foreign, but also Russian authors and authors writing in the minority languages of the Russian Empire. The 1911 regulation of translation for domestic works tried to accommodate some of these concerns, granting domestic authors some limited rights over translation, while sticking to the freedom of translation for foreign works. Altogether, Russia's attachment to the freedom of translation was justified on the grounds of the public good and served the "domestic goal of promoting national unity and greater literacy through the diverse regions and cultures of the country."[55]

How to make sense of the imperial copyright regimes in the late imperial period? Philosophically, copyright has been historically

predicated on two foundational master narratives, which simultaneously constitute two major moral justifications for copyright: 1) the notion of *the right to individual property* emanating from a conception validating the individual labor invested in the creation of intellectual works, respect for labor, the inviolability and sanctity of property, 2) an *utilitarian notion* of copyright, where the author's monopoly right is founded upon the desire to provide creators with a stimulus in order for them to continue creating useful works for the benefit of society. Copyright as framed in the era of classical liberalism of the 19th century was predicated on the figure of the individual author as an ingenious and singular creator and righteous proprietor, a conception that kept up with the dissolution of the social and economic bonds of corporate society, and mirrored rather the individualization, bourgeoisification and commercialization processes taking place in industrial and industrializing societies. Conscious of the need to keep their own internal socio-cultural and political equilibria, the empires of Eastern Europe eschewed copyright models founded on the logic of pure commercialization, which could potentially endanger balances, real and symbolic, of the empires' raison d'etre. Without discounting the realities of politically and ethnically motivated censorship, the Eastern empires apparently chose a middle path, which while honoring and protecting the individual author, nevertheless maintained an ardent approach to culture as a collective and public good. Such a concept served better the complex ethnic and linguistic structures of their societies, facilitated and perpetuated the situational and strategic, sociocultural usage of languages, and moreover sanctioned flexible boundaries and passages between different linguistic idioms. Besides, in some cases, such a copyright regime did not overtly antagonize the processes of ethnocultural consolidation that were taking place simultaneously, yet in an asymmetrical manner in different regions and among different ethnic groups. Translation was a key issue in this constellation. Between the property and the utilitarian models, the Eastern empires tended rather towards the second, and accordingly devised copyright regimes, where the purposes of commercialization and public good were constructed not as antithetical, but largely as complementary goals; for these precise reasons, they had to evidently and declaredly, be kept in balance, sometimes even to the detriment of the commercializing logic.

Endnotes

1 See here the official website of the World Intellectual Property Organization (WIPO), What is Intellectual Property? (wipo.int). For a general orientation see Rehbinder, M., *Urheberrecht*, C. H. Beck, Munich, [15]2008; Ulmer, E., Schricker, G. (eds.), *International Encyclopedia of Comparative Law*, Vol. XIV: Copyright, Brill, Tübingen/Leiden/Boston 1990; UNESCO Culture Sector, *The ABC of Copyright*, UNESCO, Paris 2010; Hofmann, J., (ed.), *Wissen und Eigentum. Geschichte, Recht und Ökonomie stoffloser Güter*, (bpb Schriftenreihe, 552), Bonn, 2006; Bently, L., Sherman, B., *Intellectual Property Law*, Oxford UP, Oxford, [4]2014.

2 P.m.a stands for *post mortem auctoris*, which indicates the duration of the term of protection after the author's death. Works are usually protected for the life time of the author plus a certain amount of years p.m.a., during which the copyright monopoly is usually exercised by the author's heirs.

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

4 See Siegrist, H., "*Strategien und Prozesse der „Propretisierung" kultureller Beziehungen – Die Rolle von Urheber- und geistigen Eigentumsrechten in der Institutionalisierung moderner europäischer Kulturen (18.-20. Jh.)*" in *Wissen – Märkte – geistiges Eigentum*, Leible, S., Ohly, A., Zech, H., (eds.), Mohr Siebeck, Tübingen, 2010, pp. 3–11.

5 Borghi, M., "*Writing Practices in the Privilege- and Intellectual Property-Systems*" in https://case.edu/affil/sce/authorship/Borghi.pdf, pp. 3–4 (last accessed 15 July 2022).

6 Siegrist, H. and Dimou, A. (eds.), *Expanding Intellectual Property, Copyrights and Patents in Twentieth-Century Europe and Beyond*, CEU Press, Budapest/NY, 2017, p. 3.

7 A good overview of the historical evolution of intellectual property can be found in: Hesse, C., "The Rise of Intellectual Property, 700 B.C. – A.D. 2000: an Idea in the Balance," in *Daedalus*, vol. 131, No. 2, On Intellectual Property (Spring 2002), pp. 26–45.

8 As should become evident from the above, the evolution of copyright related in multifarious ways, directly or indirectly, to all those convolute processes, which is precisely the reason why it is so difficult to narrate its history from one single perspective only, and also why it is necessary to approach the topic of IP from an interdisciplinary angle.

9 For readers with an interest in a condensed, *longue durée* presentation of copyright regimes in Southeast and East Central Europe in the 19th and 20th centuries, discussed from the perspective of breaks and/or continuities, see Dimou, A., "Urheberrecht und Kultur im kommunistischen Südost- und

Ostmitteleuropa. Grundzüge und Thesen zur historischen Entwicklung einer rechtlichen Institution – eine Langzeitperspektive," in *Kulturpolitik in Ostmittel- und Südosteuropa (1945-2015)*, Höhne, S., (ed.) (Osteuropa Interdisziplinär 1), Harrassowitz, Wiesbaden, 2019, pp. 141–177.

10 In the early modern period, parts of Eastern Europe regulated knowledge production and the printing trade along the lines of the widely diffused system of privileges. Developments in the Polish-Lithuanian Commonwealth in the early modern period and until the 18th century followed European wide trends, Poland was, for example very close to switching from a regime of privileges to a more modern copyright regime in the late 18th century, a development that was for different reasons frustrated. See Katarzyna Gracz, "Opposing the Expansion of Copyright Law: Social Norms in the Quest against ACTA and the "Commodification of Knowledge and Culture Project" in Siegrist, H., and Dimou, A., (eds.), *Expanding Intellectual Property*, pp. 289–293; On early printing, see Rial Costas, B. (ed.), *Print Culture and Peripheries in Early Modern Europe, A Contribution to the History of Printing and the Book Trade in Small European and Spanish Cities*, Brill, Leiden, 2013.

11 The literature on the passage from the system of privileges to modern copyright is voluminous, exemplarily see on the German case, Gieseke, L., *Vom Privileg zum Urheberrecht. Die Entwicklung des Urheberrechts in Deutschland bis 1845*, Otto Schwartz Verlag, Göttingen, 1995; Deazley, R., Kretschmer, M., and Bently, L. (eds.), *Privilege and Property, Essays in the History of Copyright*, Open Books Publishers, Cambridge, 2010.

12 The Berne Convention was amended in the following Revision Conferences: 1908 Berlin Act, 1928 Rome Act, 1948 Brussels Act, 1967 Stockholm Act and the 1971 Paris Act.

13 On the history of the ALAI see *Association Littéraire et Artistique Internationale (ALAI), Son histoire – ses travaux 1878–1889*, Préface, par M. Louis Ratisbonne, Statuts et liste des membres, les congrès par M. Jules Lermina, Résumé par M. Eugène Pouillet, Paris: Bibliothèque Chacognac, 1889.

14 On the official history of the Berne Union, see Bogsch, A., *The First Hundred Years of the Berne Convention for the Protection of Literary and Artistic Works*, WIPO, Geneva 1986; also Cavalli, J., *La genèse de la Convention de Berne pour la protection des œuvres littéraires et artistiques du 9 novembre 1886*, Imprimeries réunies, Lucerne, 1986. More recent treatments Löhr, I., *Die Globalisierung geistiger Eigentumsrechte. Neue Strukturen internationaler Zusammenarbeit 1886-1952* (kritische Studien zur Geschichtswissenschaft Bd. 195), Vanderhoeck & Ruprecht, Göttingen, 2010.

15 On the *Berne Convention* see Ricketson, S., *The Berne Convention for the Protection of Literary and Artistic Works: 1886–1986*, Centre for Commercial

Law Studies, Queen Mary College, London, 1987; Ricketson, S., Ginsburg, J., *International Copyright and Neighboring Rights. The Berne Convention and Beyond*, vols 1–2, Oxford UP, Oxford [2]2006.

16 Cf. Boytha, G., "*Urheber- und Verlegerinteressen im Entstehungsprozeß des internationalen Urheberrechts*" in *UFITA*, No. 85, 1979, pp. 1–37.

17 In time, the BU also developed relevant administrative structures like the set-up of an international office (the *Berne Bureau*), acting as a coordinating center and clearing house for information pertaining to copyright issues in the different member states.

18 Wolf, M., *Die vielsprachige Seele Kakaniens. Übersetzen und Dolmetschen in der Habsburgermonarchie 1848 bis 1918*, Böhlau, Wien/Köln/Weimar, 2012.

19 Ibid., pp. 366–369.

20 This is argued by M. Birnhack when examining the impact of the Ottoman legislation in the territories of Palestine, see Birnhack, M. D., "Hebrew Authors and English Copyright Law in Mandate Palestine", in *Theoretical Inquiries in Law*, 12 (1), 2011, pp. 206. More broadly, idem., *Colonial Copyright, Intellectual Property in Mandate Palestine,* Oxford UP, Oxford, 2012. Most recent explorations into the Ottoman copyright law see Yilmaztekin, H. K., "The Legislative Evolution of Copyright in the Late Ottoman Empire", in *Journal of Intellectual Property Law and Practice*, vol. 17, issue 1 (January 2022), pp. 45–53.

21 It translates as imperial patent "for the protection of literary and artistic property against unauthorized publications, reprints and reproductions."

22 Murray, G. H., Österreichische Verlagsgeschichte 1918–*1938*, Bd. I Geschichte des österreichischen Verlagswesens (Literatur und Leben, Neue Folge Bd. 28/I), Böhlau, Wien/Köln, 1985, p. 25.

23 S. Gerhartl, *"Vogelfrei" – Die österreichische Lösung der Urheberrechtsfrage in der 2. Hälfte des 19 Jhs. oder Warum es Österreich unterließ, seine Autoren zu schützen*, University of Vienna, Wien, 1995, pp. 12–13.

24 Ibid., p. 18.

25 The Law Regarding Copyright in Works of Literature, Art and Photography.

26 W. Dillenz, "Warum Österreich-Ungarn nie der Berner Übereinkunft beitrat", in Wadle, E., (ed.) *Historische Studien zum Urheberrecht in Europa. Entwicklungslinien und Grundfragen* (Schriften zur Europäischen Rechts- und Verfassungsgeschichte, vol. 10), Duncker & Humblot, Berlin, 1993, p. 181.

27 Gerhartl, *"Vogelfrei"*, pp. 29–31.

28 Ibid., p. 26.

29 Ibid., pp. 22–26.

30 Dillenz, "Warum Österreich-Ungarn", pp. 179–180.

31 Ibid., p. 183. Also *Le Droit d'auteur*, year 24, no. 4, 15 April 1911, p. 54.

32 Dillenz, "Warum Österreich-Ungarn", p. 182.
33 Gerhartl, *"Vogelfrei"*, p. 57.
34 Ibid., p. 61f.
35 M. A. Newcity, *Copyright Law in the Soviet Union*, Praegar Publishers, New York, 1978, pp. 5–6.
36 Ibid., p. 7.
37 Ibid.
38 Ibid., pp. 7–8.
39 Herceg Michael Westren, "The Development and Debate over Copyright in Imperial Russia, 1828–1917," *Russian History* vol. 30, No. 1–2 (Spring–Summer 2003), p. 170–171.
40 M. A. Newcity, *Copyright Law in the Soviet Union*, p. 9.
41 Ibid.
42 Ibid., pp. 9–10.
43 Ibid., pp. 12–13.
44 "*Partie non officielle, Études générales, Le droit d'auteur en Russie*", in *Le Droit d'Auteur*, 15 August 1908, year 21, no. 8, p. 93.
45 Ibid., p. 94.
46 Ibid., p. 95.
47 Ibid..
48 "*Russie, Loi concernant le droit d'auteur du 20 mars 1911*", in *Le Droit d'Auteur*, 15 July 1911, year 24, no. 7, pp. 87–91.
49 Cf. William St. Claire, *The Reading Nation in the Romantic Period*, Cambridge UP, Cambridge, 2004.
50 In fact, the issue of the appropriate terminology and appellation constituted a major point of discord on the way to the creation of the Berne Union.
51 Even today the term "propiedad intellectual" is more in use in the Spanish-speaking world than the term "derecho de autor."
52 Westren, "The Development and Debate over Copyright," 157, 161, 168, 171, 182. See here also the inspiring and insightful discussion by Ekaterina Pravilova, *A Public Empire: Property and the Quest for the Common Good in Imperial Russia*, Princeton University Press, Princeton 2014, esp. part III., 215–261.
53 M. T. Sundara Rajan, *Copyright and Creative Freedom: A Study of Post-Socialist Law Reform*, (Routledge Studies in International Law, vol. 6), Routledge, New York, 2006, p. 77.
54 Ibid., p. 81.
55 Ibid., p. 86.