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The digital author

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- Core concept of copyright law, be it continental European Authors rights systems or the anglo-american copyright system is – the author!
- Copyright is linked to the author:
 - Justification of copyright: protect the author
 - because she earns it (it is her intellectual prop) or
 - because the protection promotes her future creativity
 - Allocation: who owns the “work”
 - Every “work” has to be allocated to one or several author(s)
- But: what does “author” mean?
 - Concept of author is not less a social construct/cultural formation than the subject matter of copyright (the “work”) and the rights as such
 - So what is the model of the “author” in copyright law?

- The romantic author
 - Mark Rose and Martha Woodmansee: construct of the late 18th century, closely linked to the development of copyright law
 - Also the time where the concept of “work” was developed, see Lydia Goehr, *The Imaginary Museum of Musical Works*
 - Characteristics of the romantic author
 - Autonomous, original genius: creator of original works and not an inspired craftsmen reproducing eternal truths
 - Work is bearing the “stamp” of the personality of the author – thus it is his property like the property in his person (Locke)
 - Is dedicated to his art as a completely detached, autonomous area and uninterested in business
 - Is in need of intermediaries who bring his art to the market: publishers, producers who need protection to protect (author as a political dummy)

- The romantic author: Consequences for copyright law
 - Original owner, e.g. cinematographic works/audiovisual works EU Copyright law CJEU Luksan/van Let „Fotos von der Front“ 2012
 - Exploitation rights vest by operation of law, directly and originally, in the principal director (director of photography, cutter)
 - EU copyright law precludes national legislation which allocates those exploitation rights by operation of law exclusively to the producer of the work in question
 - But: rebuttable presumption of transfer in favour of the producer is possible
 - Different: works made for hire
 - Automatic protection at the moment of creation: nor formal requirements allowed (Berne Convention)
 - Term of protection: coupled to the lifetime of the author
 - Author is considered to be weak
 - Strong protection (in the hand of producers)
 - Copyright contract law as against the producer

- The digital author
 - Social construct linked to digitization
 - Digitization challenges all core concepts of copyright, including the models of the involved parties:
 - From users to prosumers
 - From publishers/producers to online intermediaries like Google and Amazon
 - From the romantic author of the analog world to the digital author
 - Terminology taken from a 2012 decision of the German Constitutional Court
 - Case concerns the copyright consequences of free upload of a work by the author – which rights to you loose?

- Characteristics of the digital author
 - Uses the net as a source of inspiration
 - Creates in the digital network environment
 - Collaborative - not isolated, individual
 - Global (small worlds), not regional/national
 - Commercializes her creativity in the digital network environment
 - You may still grant exclusive rights to an intermediary like a publisher or record company
 - Or you organize commercialization partially yourself
 - Selfpublishing of ebooks and music/videos on platforms
 - Directly communicate with customers (twitter)
 - Offer (some) content for free and commercialize what you cannot digitize
 - Thus: digital author is considered
 - A node in a global network of creativity
 - Shares by claiming only some if any rights vis-à-vis users
 - Acts as an entrepreneur who retains some if not all rights vis-à-vis intermediaries

- Consequences for copyright in general
 - Ownership:
 - Generally with the author who exploits her works (and herself)
 - Moral rights: attribution, integrity
 - Need to be strengthened
 - Why: do not commercialize digital content, but your name as a brand, reputation
 - Exploitation rights
 - Core: direct commercialization by third parties
 - Formalities, term of protection
 - Copyright contract law for openness
 - Accept open content models like creative commons or the implicit consent to the commonly free uses on the net: download, print, search engines