

# ALBRECHT DÜRER AND THE COPYRIGHT\*

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„Mitten in dem furchtbaren Reich der Kräfte und mitten in dem heiligen Reich der Gesetze baut der ästhetische Bildungstrieb unvermerkt an einem dritten, fröhlichen Reiche des Spiels und des Scheins, worin er dem Menschen die Fesseln aller Verhältnisse abnimmt und ihn von allem, was Zwang heißt, sowohl im Physischen als im Moralischen entbindet.

Wenn in dem *dynamischen* Staat der Rechte der Mensch dem Menschen als Kraft begegnet und sein Wirken beschränkt – wenn er sich ihm in dem ethischen Staat der Pflichten mit der Majestät des Gesetzes entgegenstellt und sein Wollen fesselt, so darf er ihm im Kreise des schönen Umgangs, in dem *ästhetischen* Staat, nur als Gestalt erscheinen, nur als Objekt des freien Spiels gegenüber stehen. *Freiheit zu geben durch Freiheit* ist das Grundgesetz dieses Reichs.

Der dynamische Staat kann die Gesellschaft bloß möglich machen, indem er die Natur durch Natur bezähmt; der ethische Staat kann sie bloß (moralisch) nothwendig machen, indem er den einzelnen Willen dem allgemeinen unterwirft; der ästhetische Staat allein kann sie wirklich machen, weil er den Willen des Ganzen durch die Natur des Individuums vollzieht. Wenn schon das Bedürfniß den Menschen in die Gesellschaft nöthigt und die Vernunft gesellige Grundsätze in ihm pflanzt, so kann die Schönheit allein ihm einen *geselligen Charakter* ertheilen. Der Geschmack allein bringt Harmonie in die Gesellschaft, weil er Harmonie in dem Individuum stiftet.”

FRIEDRICH SCHILLER: Über die ästhetische Erziehung des Menschen, in einer Reihe von Briefen. Siebenundzwanzigster Brief<sup>1</sup>.

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<sup>1</sup> FRIEDRICH SCHILLER: *Über die ästhetische Erziehung des Menschen, in einer Reihe von Briefen*. <http://gutenberg.spiegel.de/schiller/aesterz/aesterz.htm> [date of download: 16 April 2005.]

## I. Introduction

The history of the fine arts could also be written as the history of original works of art created by individual invention, the copies, inspirations, imitations thereof, and the relationship between them. Only a small, one could say – from the hypothetical point of view of absolute numbers – insignificant part of the works of art presents an entirely new approach, an individual innovation, an original, previously unknown solution. Even some of the works of art called principal works by the history of art do not fall into this category.<sup>2</sup> The gravitational force of masterpieces is amazing, sometimes they provoke destruction,<sup>3</sup> and sometimes – and fortunately more often – their artistic influence inspires copying. In some cases the artist himself had to re-create a successful work of art,<sup>4</sup> but more often a work of art spread through various copies at the hands of imitators. Sometimes only a composition pattern, a figure, an idea, or an even smaller detail lived on.<sup>5</sup> A good example of the latter is e.g. the Glass Ball form of the Neapolitan *Misanthrope* of Breughel the Elder,<sup>6</sup> or the painting of Raphael entitled the *Triumph of Galatea* in Villa Farnesina, where Galatea sails across the sea in a seashell equipped with paddle-wheels. The paddle-wheeled seashell of the highly respected Raphael was handed down through numerous

<sup>2</sup> O. PÄCHT: *Künstlerische Originalität und ikonographische Erneuerung*, Methodisches zur kunsthistorischen Praxis, München 1977, 153-160.

<sup>3</sup> One of the most famous cases is when the Hungarian Zoltán Tóth tried to break Michelangelo's *Pieta* with a hammer in St. Peter's church. Ruining „spolying” entered 20th century art: Rauschenberg rubbed a part of De Kooning's valuable drawing, Schwarzkogler killed himself during one of his performance, Jan Tinguely created statues that spoiled themselves (pl. *Greatings to New Yorknak*, 1971). See BEKE L.: *A művészet embertelensége*, [Inhumanity of art] *Mozgó világ* 7 (1981) 5, 3-10. About copyright and modern art see V. FRANK: *Neue Tendenzen in der Kunst und Urheberrecht*, Festgabe M. Kummer, hrsg. von H. Merz — W. R. Schlup, Bern 1980, 277-289.

<sup>4</sup> Among numerous examples let me mention Tiziano's *Magdalen*. The first version is in the Ermitage, the second in Capodimonte in Naples. In 1990 they were exhibited next to each other in a wonderful exhibition in the Palazzo Ducale, Venice. See *Tiziano. Palazzo Ducale Venezia — National Gallery of Art Washington*. Venezia, 1990, 334 (n. 62) and 336 (n. 63).

<sup>5</sup> For example: Dürer's *Der kleine Kurier* (B. 80) is used on Nicolette Rosex da Modene's etching *Hunter*. He put the figures on horse and horseman into a new composition.; see *Vorbild Dürer. Kupferstiche und Holzschnitte Albrecht Dürers im Spiegel der europäischen Druckgraphik des 16. Jahrhunderts*, München 1978, 33. The effects of the works of Dürer analyzed by H. KAUFMANN: *Dürer in der Kunst und im Kunsturteil um 1600*, Anzeiger des Germanischen National-Museums 1940-1953, Berlin 1954, 18-60.

One of the greatest contemporary painter Francis Bacon considered the portrait of Innocent X of Velazquez as greatest piece of art. From the early 50's he painted this topic again and again but always on the basis of reproductions, when he was in Rome he did not go to have a look at the picture.

<sup>6</sup> See O. PÄCHT: *Zur Frage des geistigen Eigentums im bildkünstlerischen Schaffen*, Methodischen zur kunsthistorischen Praxis, München 1977, 176 ff.

examples, without any special attention given to its playfulness by the imitators.<sup>7</sup>

I shall note at the very beginning that, if the small number of works of art at the two extremes are left out of consideration, it is very difficult to say what can be regarded as an original work of art created by individual innovation, and what is only a copy or imitation. First of all, a distinction shall be made between copy and imitation. The Lat. *reproductio* means ‘re-creation’; its derivatives are the It. *riproduzione*, the Fr. *reproduction*, the Eng. *reproduction* and the Ger. *Nachbildung* (the word *Abbildung* has a different meaning).<sup>8</sup> The word *replica*, and its equivalents in foreign languages: the mediaeval Lat. or It. *copia*, the Fr. *copie*, the Eng. *copy* and the Ger. *Kopie*<sup>9</sup> carry a different meaning, they denote the repetition of the object in contrast to the process of re-creation. However, it would be wrong to interpret it all this way in the given historical situation – the end of the 15<sup>th</sup> century and the beginning of the 16<sup>th</sup> century. The demonstration of this is one of the aims of the paper.

Artists, both past and present, create in the bonds of various pictorial solutions: sometimes consciously, but sometimes unconsciously.<sup>10</sup> This ensures the continuity of visual thinking in the fine arts. Goethe discovered this „trap” in Rome:

„Es ist ganz eigen, daß man deutlich sehen und wissen kann, was gut und besser ist; will man sich’s zweigen, so schwindet’s gleichsam unter den Händen, und wir greifen nicht nach dem Rechten, sondern nach dem, was wir zu fassen gewohnt sind. Nur durch geregelte Übung könnte man vorwärtskommen, wo aber sollte ich Zeit und Sammlung finden!”<sup>11</sup>

It is difficult to determine the place of adaptations, further developed versions, works of art showing sufficient novelty between the two extremes – original

<sup>7</sup> About Raphael’s famous seashell and its later varieties see M. MEISS: *Raphael’s Mechanized Seashell: Notes on Myth, Technology and Iconographic Tradition*, The Painter’s Choice: Problems in the Interpretation of Renaissance Art, New York—Hagerstown—San Francisco—London 1976, 203-211. This form spreaded by the sheets of Raimondi.

<sup>8</sup> See E. PANOFKY: *Idea*, Berlin 1960, 23.

<sup>9</sup> MAROSI E.: *Bevezetés a művészettörténetbe*, [Introduction into History of Art] Budapest 1979, 235.

<sup>10</sup> About iconographical topos and archetypical pictures J. BIAŁOSTOCKI: *A „keretémák” és az archetipikus képek*, [„Frameworks Themes” and Archetypes] Régi és új a művészettörténetben [New and Old in the History of Art], Budapest 1982, 167-177, illetve F. SAXL: *Continuity and Variation in the Meaning of Images*, Lectures, I, London 1957, 1-12.

<sup>11</sup> J. W. GOETHE: *Italienische Reise*, Goethe’s Werke in zwölf Bänden, Berlin—Weimar, 1988, X 177 (Rome, 17. Febr. 1787.).

works of art and copies.<sup>12</sup> Even the examination of the phenomenon itself is valid only within a definite scope: it is enough to refer to the fixed canons of icon painting. In the Middle Ages the question of the copyability of a given work of art did not even arise, as artists worked mainly on the basis of given models.<sup>13</sup> MIKLÓS MOJZER, in his excellent book on master M.S., tracked down in detail the sources of each detail, figure of the Passion-cycle in Esztergom, finding the engravings, models used and adapted by the painter (he drew on the works of Mantegna and Pollaiuolo, among others).<sup>14</sup> However, this fact does not alter neither the contemporary nor the present judgement of the art of master M.S. METZGER's words are appropriate: "Die wahre schöpferische Wahrheit ist eine gebundene Freiheit."<sup>15</sup>

From the point of view of the history of art, the question assumes several exciting, on occasions investigative activities. Is it possible to find the spiritual and pictorial predecessor, inspirer of a given work of art?<sup>16</sup> In the past, before the spread of reproductions in large numbers, the pictorial world of an artist was determined primarily by the place where he lived, and it could be or was modified by what he saw or could see. The confines of the area in question can be determined more or less accurately. In most cases the various visual influences can be mapped – by means of style criticism –: who must have been where, who must have seen what for a given pictorial solution to be created. But naturally, it shall also be examined whether the given case is an individual invention, innovation. In case of the absence or scarcity of sources this method

<sup>12</sup> H. TIETZE: *The Psychology and Aesthetics of Forgery in Art*, Metropolitan Museum Studies 5 (1934) June, 1: „The line between forgery and creative intention cannot always be drawn without hesitation.”

<sup>13</sup> MAROSI E. (szerk.)[ed.]: *Magyarországi művészet 1300–1470 körül*, [Art in Hungary about 1300-1470] Budapest 1987, 176. „Johannes Tauler a mystic and dominican monk, an unquestionable honest man suggested in one of his speeches in 1330 <if a diligent artist wants to paint a wonderful picture for himself he should look upon another master's excellent piece of art and go after every point and line of it and he should form his own work as similarly to his example as possible.>” (F. ARNAU: *Művészethamisítók — hamisítók művészete*, [Artforgers and the Art of Forgers] Budapest 1963, 29.) see H. HUTH: *Künstler und Werkstatt der Spätgotik*, Darmstadt 1967, 31-54. In the middle ages reliq and precious stones were mostly copied. see H. VAN DE WAAL: *Forgery as a Stilistic Problem*, Aspects of Art Forgery, The Hague 1962, 3.

<sup>14</sup> MOJZER M.: *M. S. mester passióképei az esztergomi Keresztény Múzeumban*, [Passion Pictures of MS in the Christian Museum of Esztergom] Budapest 1976.

<sup>15</sup> W. METZGER: *Schöpferische Freiheit*, Frankfurt a. M. 1962, 62 (quoted by PÄCHT: *Geistiges Eigentum* (6.), 186).

<sup>16</sup> See H. BELTING: *Das Ende der Kunstgeschichte*, München 1984<sup>2</sup>, 32: „Meine erste These lautet deshalb: die künstlerische Form existiert nicht nur in einer internen Formengeschichte der gattungseigenen Traditionen, sondern wird in einer solchen Isolierung des vollen Realitätsgehalts geraubt, über den sie verfügt und auf den sie angelegt war. Die Stilkritik ist auf einen hohen Selektionsgrad in der Befragung des Kunstwerks angewiesen, der dessen Anspruch und Verbindlichkeit unterläuft.”

can be used safely, with due care. Staying with master M. S., about whom we have essentially no accurate data at all, we can assume in all probability that he visited Italy, as we can draw this conclusion from the background of his picture at the Hungarian National Gallery entitled *Meeting of Mary and Elizabeth*.<sup>17</sup> In the absence of sources, KÁROLY TOLNAY assumed also on the basis of certain drawings of Pieter Breughel the Elder, that the artist had visited Italy.<sup>18</sup>

In the world of mass-reproductions spread through the mediation of albums, photographs, television, video and other media, this method cannot be used for works of art created since their appearance. Today essentially everyone can see everything from the interior of a cell<sup>19</sup> through the surface of Mars to the birth of a child, and we can learn in our home about the art of the Pueblo Indians, the Eskimos or anyone else for that matter.

## II. Dürer in Venice<sup>20</sup>

### 1. Raimondi

The person of Albrecht Dürer is associated with a number of „firsts”.<sup>21</sup> Among others, he was the first in Europe who not only wrote down his dreams, as Leonardo, but also painted them;<sup>22</sup> he was the first artist in Germany and beyond the Alps who, through Italian influence, tried to lay the foundation of the science of his craft in theoretical writings;<sup>23</sup> he was the first to receive a

<sup>17</sup> I quoted Mr. MOJZER MIKLÓS, former director of the Museum of Fine Arts in Budapest, who lead an unforgettable seminar in the spring-term of schoolyears 1989/90 in the Hungarian National Gallery for students of history of arts.

<sup>18</sup> CH. DE TOLNAY: *Pierre Breughel l'ancien*, Bruxelles 1935, 8.

<sup>19</sup> See P. KLEE: *Über die moderne Kunst*, 1945, 45: „Also befaßt sich denn der Künstler mit Mikroskopie? Historie? Paläontologie? Nur vergleichsweise, nur im Sinne der Beweglichkeit.” Quoted by E. WIND: *Művészet és anarchia*, [Art and Anarchy] Budapest 1990, 125<sup>107</sup>.

<sup>20</sup> Vö. E. PANOFSKY: *The Life and Art of Albrecht Dürer*, Princeton 1948<sup>3</sup>, 107 ff; H. WÖLFFLIN: *Die Kunst Albrecht Dürers*, München 1984<sup>2</sup>, 28 and 152 ff.

<sup>21</sup> Summary of the infinite literature M. MENDE: *Dürer Bibliographie. Zur fünfhundersten Wiederkehr des Geburtstags von Albrecht Dürer*, Wiesbaden 1971. About Dürer's Hungarian connections *Dürer Literatur in Ungarn 1800-1928*, Budapest 1928, item 169. — Dürer's Hungarian origin see Dürer's family chronicle: A. DÜRER: *A festészetről és a szépségről. Írások, levelek és dokumentumok*, [On Painting and Beauty, Writings, Correspondences and Documents] Budapest 1982, 61-63.

<sup>22</sup> *Egy álmokép följegyzése 1525-ből*, [Notice on a dream] see DÜRER: *A festészetről* (21.), 65 (picture no. 11.). Dürer comparing with Leonardo by BIALOSTOCKI: *Dürer and His Critics*. Baden-Baden, 1986, 57: „Dürer played a considerable role in the development of scientific thought and language. He was considered an artist and a scientist in one, like Leonardo.”

<sup>23</sup> J. BIALOSTOCKI: *Ész és ingénium Dürer művészetelméleti gondolkodásában*, [Mind and Ingenium in Dürer's artistic Theory] Régi és új művészettörténetben, Budapest 1982, 110: „Dürer started to be interested in artistic theory during his first travel to Italy. He got interested in it again when he stayed in Venice in 1505/06.”

regular annual income from the emperor (100 florins annually from the taxes of the city of Nürnberg);<sup>24</sup> and furthermore – and perhaps most importantly from the point of view of the history of art – he was the first to transplant the results, idealism, pictorial world of the Italian Renaissance into the art of the North through his own works of art.<sup>25</sup>

Dürer visited Italy on two occasions, first around 1494/95, then in 1505/6. During both of his visits Venice was his main place of residence. His letters written to his friend, Willibard Pirckheimer, the famous patrician humanist of Nürnberg,<sup>26</sup> give us a colourful and enjoyable report on the experiences of his second visit. In addition to a lot of interesting things, Dürer took lessons in dancing, bought gems and carpets for Pirckheimer, and we can read noteworthy sentences in his second letter dated 7<sup>th</sup> February 1506:

„Jch hab vill guter frewnd vnder den Wahlen, dy mich warnen, daz jch mit jren moleren nit es und trinck. Awch sind mir jr vill feind vnd machen mein ding in kirchen ab vnd sy es mügen bekumen. Noch schelten sy es vnd sagen, es sey nit antigisch art, dorum sey es nit gut.“<sup>27</sup>

Then in his 5<sup>th</sup> letter dated 25<sup>th</sup> April we can read the followings:

„Awch wist, daz mir dy moller fast abholt hy sind. Sie haben mich 3 moll vür dy herenn genüt, vnd mus 4 fl. jn jr schull geben.“<sup>28</sup>

These two quotations are probably related.<sup>29</sup> GIORGIO VASARI wrote at great length about Dürer in his biography of Marcantonio Raimondi, and mentioned the above case as well:

„Per ora basti sapere, che avendo disegnato per una Passione Cristo 36 pezzi, e poi intagliatigli, si convenne con Marcantonio bolognese di mandar fuori insieme clueste carte: e cosi capitando in Vinezia, fu quest’opera cagione che si sono poi fatte in Italia cose maravigliose in queste stampe, come di sotto si dira.

<sup>24</sup> About Dürer’s annuity fee see DÜRER: *A festészetről* [On Painting](21.), 155-160.

<sup>25</sup> The idea was first formulated by ABY WARBURG *Dürer und die italienische Antike* (Sonderabdruck aus den Verhandlungen der 48. Versammlung deutscher Philologen und Schulmänner zu Hamburg im Oktober 1905, 55-60). E. PANOFKY: *Dürers Stellung zur Antike*, 1921/22.

<sup>26</sup> See PANOFKY: *Dürer* (20.), 108-109. The correspondence in Hungarian DÜRER: *A festészetről* [On Painting] (21.), 115-129. To the relation between Dürer and Pirckheimer see H. RUPPRICH: *Dürer und Pirckheimer. Geschichte einer Freundschaft*, Albrecht Dürers Umwelt. Festschrift zum 500. Geburtstag Albrecht Dürers am 21. Mai 1971 (Nürnberger Forschungen 15), 78-100. W. SCHULTHEISS: (*Albrecht Dürers Beziehungen zum Recht*, A. Dürers Umwelt, 245): „Seine Brife gehören zu den ersten schriftlichen Äußerungen persönlicher Art eines deutschen Künstlers.“

<sup>27</sup> H. RUPPRICH: *Dürers schriftlicher Nachlaß*, Berlin 1956, I, 43-44.

<sup>28</sup> RUPPRICH: *Dürers schriftlicher Nachlaß* (27.), 49.

<sup>29</sup> VÉGH JÁNOS in DÜRER: *A festészetről* [On Painting] (21.), 145, also the footnote to the letter no. V.

Mentre che in Bologna Francesco Francia attendeva alla pittura, fra molti suoi discepoli fu tirato innanzi, come piu ingegnoso degli altri, un giovane chiamato Marcantonio, il quale per essere stato molti anni col Francia, e da lui molto amato, s'acquisto il cognome de' Franci. Costui dunque, il quale aveva miglior disegno che il suo maestro, maneggiando il bulino con facilità e con grazia, fece, perche allora erano molto in uso, cinture ed altre molte cose niellate, che furono bellissime, perciocche era in quel mestiero veramente eccellentissimo. Venutogli poi desiderio, come a molti avviene, d'andare pel mondo e vedere diverse cose e i mondi di fare degli altri artefici, con buona grazia del Francia se n'ando a Vinezia, dove ebbe buon ricapito fragli artefici di quella citta. Intanto capitando in Vinezia alcuni fiaminghi con molte carte intagliate e stampate in legno ed in rame d'Alberto Duro, vennero vedute a Marcantonio in su la piazzra di San Marco: perche stupefatto della maniera del lavoro e del modo di fare d'Alberto, spese in dette carte quasi quanti danari aveva portati da Bologna, e fra l'altre cose comperò la Passione di Gesu Cristo intagliata in 36 pezzi di legno in quarto foglio, stat stampata di pocco del detto Alberto: la quale opera cominciava del peccare d'Adamo ed essere cacciato di Paradiso dall'Angelo, infino al mandare dello Spirito Santo. E considerato Marcantonio quanto onore ed utile si avrebbe potuto acquistare, chi si fusse dato a quell'arte in Italia, si dispose di volervi attendere con ogni accuratennza e diligenza; e così comincio a contrafare di quegli intagli d'Alberto, studiando il modo de' tratti ed il tutto delle stampe che avea comperate: le quali per la novità e bellezza loro erano in tanta reputatione, che ognuno cercava d'averne. Avendo dunque contrafatto inrame d'intaglio grosso, come era il legno che aveva intagliato Alberto, tutta la detta Passione e vita di Cristo in 36 carte; e fattovi il segno che Alberto faceva nelle sue opere, cioè questo, AD; riuscì tanto simile, di maniera che non sapendo nessuno ch'elle fossero fatte de Marcantonio, erano credute d'Alberto, e per opere di lui vendute e comperate: la qual cosa essendo scritta in Flandra ad Alberto, e mandatogli una di dette Passioni vontrafatte de Marcantonio, venne Alberto in tanta colora, che partitosi di Fiandra se ne venne a Vinezia, e ricorso alla Signoria, si querelo di Marcantonio; ma però non ottenne altro se non che Marcantonio non facesse piu il nome e ne il segno sporadetto d'Alberto nelle sue opere."<sup>30</sup>

The young Raimondi arriving from Bologna tried to make a name for himself as well as some money by copying Dürer's works of art. VASARI mentioned that Dürer went to Venice, among other things, for the purpose of taking action against his copiers.<sup>31</sup> All he could achieve with respect to Raimondi was that

<sup>30</sup> G. VASARI: *Le Vite de più eccellenti pittori, scultori e architettoni*, ed. G. Milanese, Florence 1880, V 403-406.

<sup>31</sup> BIALOSTOCKI pointed out the mistakes of VASARI (VASARI had only indirect sources about Dürer, there all information must be handled carefully); I. BIALOSTOCKI: *Dürer and His*

Marcantonio was no longer allowed to place Dürer's initials on the works of art made by him. The copies engraved before 1506 had Dürer's well-known sign on them, but e.g. the copies of the *Small Passion* published in 1511 did not.<sup>32</sup> It proves the success of Raimondi that he made two editions of the *Life of Mary*-series, and three of the *Passion-cycle*.<sup>33</sup>

## 2. The procedure

The decision made in this private international law case – viewing from the present day – was not the most favourable for Dürer. It can be felt from the tone of the quoted letter that he himself was not satisfied either. The procedure was conducted by a forum according to the *lex loci*, probably on the basis of the Venetian rules, or perhaps the guild regulations – or in accordance with common law –, and the matter at issue was perhaps the infringement of ownership.<sup>34</sup> According to Dürer this forum was the painters' guild, which made the decision for a considerable procedural fee – 4 florins, that even Dürer himself found too much.<sup>35</sup>

The Venetian painters' guild was formed in 1290 and was the second oldest in Italy.<sup>36</sup> Similarly to other guilds, it acted as a court forum in specified cases (such as e.g. disputes between members, quality complaints, violation of guild regulations, etc.). It was in Italy that the social advancement of artists from craftsman-rank began. Artists tried more and more to shake off the guild regulations that evolved in the handicraft trade.<sup>37</sup> There is the well-known case of Filippo Brunelleschi, who refused to pay the guild tax, and because of this

*Critics* (22.), 37: „After the next decades passed, not only Dürer's place of birth, but even his nationality and the place his activities had been forgotten! It is difficult to believe that only forty years after the death of the master, the greatest German artist could have been recorded in the most important document of the «pre-scolary» history of art — in the Lives of the most eminent painters, sculptors and architects of Giorgio Vasari — in the second edition of 1568 — not as German, but as a Flemish artist.” Travel to Venice see PANOFSKY: *Dürer* (20.), 107.

<sup>32</sup> BIALOSTOCKI: *Dürer and His Critics* (22.), 403<sup>4</sup> only 74 sheets were copied; *Vorbild Dürer* (5.) refers only to 71 copies.

<sup>33</sup> A. WEIXLGÄRTNER: *Alberto Duro*, Festschrift J. Schlosser, hrsg. von A. Weixlgärtner — I. Planiscig, Zürich—Leipzig—Wien 1927, 175.

<sup>34</sup> I don't think they could have acted in accordance with the rules of Nürnberg. The connection *lex loci* was already mentioned by 14th century lawyers. This could have been used in our case as well. This theory of connection can be found in both Bartolus and Baldus. see M. GUTZWILLER: *Geschichte des Internationalprivatrechts*, Basel—Stuttgart 1977, 33 and 47.

<sup>35</sup> VASARI stated that the process was held before Signoria in Venice (RUPRICH: *Dürers schriftlicher Nachlaß* (27.), 49<sup>10</sup>). Dürer's letter seems more precise; see footnote 31.

<sup>36</sup> R. WITTKOVER — M. WITTKOVER: *Born under Saturn*, London 1963, 21.

<sup>37</sup> HAUSER A.: *A művészet és az irodalom társadalomtörténete*, [The Social History of the Art and Literature] Budapest 1980, I, 265. The growth of the artist's status in the society is visible in their salary. In general see A. BLUNT: *Művészet és teória Itáliában*, [Art and Theory in Italy] Budapest 1990, 46-53.



the leadership of the Florentine guild put him in prison on 20<sup>th</sup> August 1434. The Florentine *Signoria* managed to free the number one architect of the city only after five days, to allow the construction of the dome to continue.

The decision of the Venetian guild against Dürer also suggests a motive of taking action against a competitor. By that time Dürer was a man of high reputation, even Giovanni Bellini honoured him with a visit to his Venetian studio<sup>38</sup>. CHRISTOPH SCHEURL, in his work (*Libellus de laudibus Germaniae*) published in 1506 in Bologna, on the basis of Italian humanist examples and in accordance with the laudatory topos of the era, compared the at the time only 35-year-old Dürer to Apelles and Zeuxis.<sup>39</sup> In Venice Dürer was a dangerous competitor, he was snowed under with commissions. He himself wrote about the hostile atmosphere to his friend.

### 3. Dürer's Italian copiers

However, not only Dürer was influenced by the Italian Renaissance, but the southern artists were also influenced, and very strongly, by Dürer. We have to presume that the reason for his strong influence was definitely that his engravings and the copies of the engravings were widely spread. In addition to Raimondi, copies were made by numerous Italian artists, Agostino Veneziano, Benedetto Mantegna, Guilio Campagnola, Giovanni Antonio da Brescia, Nicolatta da Modena, Zoan Andrea, Nicolo Nelli, etc.<sup>40</sup>

## III. Copying

WALTER BENJAMIN began his essay entitled *Das Kunstwerk im Zeitalter seiner technischen Reproduzierbarkeit* with the following thoughts: „Das Kunstwerk ist grundsätzlich immer reproduzierbar gewesen. Was Menschen gemacht hatten, das konnte immer von Menschen nachgemacht werden. Solche Nachbildung wurde auch ausgeübt von Schülern zur Übung in der Kunst, von

<sup>38</sup> Dürer's 2<sup>nd</sup> letter to Pirckheimer (Venice, 7. Febr. 1506.), see RUPPRICH: *Dürers schriftlicher Nachlaß* (27.), 44.

<sup>39</sup> J. VON SCHLOSSER: *Die Kunstliteratur*, Wien 1924, 179. The title of the work is given by R. KAUTSCH: *Des Christoph Schreurl „Libellus de laudibus Germaniae“*, Repertorium für Kunstwissenschaft 21 (1896) 286 ff: *Libellus de laudibus Germaniae et Ducum Saxoniae editus a Christoforo Scheurlo Nurembergensi*. First edition in Bologna 1506, second in 1508 Leipzig. Referred to by MAROSI E.: *Emlék márványból vagy homokkőből*, [Memorial from Marmor and Sandstone – History of Art Criticism] Budapest 1976, 28. — „Wie Italiener vertrat auch Scheurl die Auffassung, die Kunstentwicklung in der Antike eine Höhepunkt gehabt, sei denn im Mittelalter unterbrochen und erst von der Nürnberger Kunst wieder zum Leben erweckt worden.“ U. KULTERMANN: *Geschichte der Kunstgeschichte*, Wien—Düsseldorf 1966, 22 ff (see footnote 76.).

<sup>40</sup> WEIXLGÄRTNER: *Alberto Duro* (33.), 175-177.

Meistern zur Verbreitung der Werke, endlich gewinnlüsternen Dritten.”<sup>41</sup> Contrary to BENJAMIN, however, we have to attach greater importance to copying, or imitation. Actually, we learn our conscious actions, such as writing, reading, speech, drawing, etc. through imitation; but e.g. such a basic biological process, as the reproduction of the DNA-chain ensuring the continuity of human life, is also based on the principle of copying. There was an era in which art was regarded as a copy, representation of the reality (μίμησις, <sup>42</sup> *Abbildung*).

EDGAR WIND viewed and interpreted Plato’s worry about art in a different way. In the opinion of WIND – and we have to agree with him – Plato recognized correctly the danger inherent in art, as „he thought so highly of human imagination, that in his opinion man was capable of even transforming everything that he devised. Therefore he saw great dangers in imitation, and tried to prohibit the imitation of eccentric and evil characters by special laws.”<sup>43</sup> Plato wrote very seriously about acting, among others, and he had every reason to do so, „as we become what we are by imitating others”.<sup>44</sup> The effects of the “divine frenzy” (θεῖος φόβος) of an artist are unpredictable.

The relationship between the copy and the original work of art, as I have mentioned at the beginning, is very varying. The best pieces of the ancient Greek sculptural art are known to us essentially through Roman copies. When the original is lost, the copy takes precedence and its own speciality loses its importance.<sup>45</sup> There are numerous works of art from later eras as well that are known to us only through copies. E.g. Leonardo's and Michelangelo's fresco designs for the Hall of the Great Council in Palazzo Vecchio in Florence, or the central panel of Dürer's *Heller-altar*.<sup>46</sup>

WALTER BENJAMIN put in the first category the trainees, who practised, learned the ideals to be followed by copying the appropriate models of the era. Their hands exercised, adopted the appropriate manner and style. Perhaps this was the case always, in Dürer's time certainly. Cennino Cennini wrote his treatise on painting still in the world of thought of guilds. An apprentice had to

<sup>41</sup> W. BENJAMIN: *Das Kunstwerk im Zeitalter seiner technischen Reproduzierbarkeit* (1936), Frankfurt a. M. 1977, 10.

<sup>42</sup> Vö. H.-G. GADAMER: *Die Aktualität des Schönen*, Stuttgart 1977, 16.

<sup>43</sup> WIND: *Művészet és anarchia* [Art and Anarchy] (19.), 9.

<sup>44</sup> WIND: *Művészet és anarchia* [Art and Anarchy] (19.), 10.

<sup>45</sup> We cannot speak about forgery or copying in connection with the various trends of the modern art like concept, fluxus or performance. „The copying of these no matter of what purpose or intention will create a new and original piece of art actually because of the fact of copying.” (SZILÁGYI J. GY.: *Legbölcsebb az idő*, [The Time is the Wisest] Budapest 1987, 47.)

<sup>46</sup> Dürer's *Heller-altar*, see his correspondence with his patron Jacob Heller (DÜRER: *A festészetről* (21.), 130-137), and P. HIRSCHFELD: *Műzene. Die Rolle der Auftraggeber in der Kunst*, Berlin 1968, 130-139.

be diligent and obedient, for him „the most certain way leading to masterly capabilities was the imitation” of model pictures.<sup>47</sup> Dürer himself wrote the followings in his painter manual: „Item, one will become a really great painter only if one is trained for it from early childhood. Item, first of all one has to copy the engravings of good masters a lot, until one’s hands become skilful.”<sup>48</sup>

In VASARI’s above mentioned work a topos was repeated several times, pointing out a characteristic of the aesthetic view of the era: painters who later became famous, learned the tricks of the art by copying the renowned works of art of famous masters when they were still apprentices, trainees. The most famous ones – such as Dürer’s southern contemporary, Michelangelo – made their name by making copies that were indistinguishable from the original, and only they themselves could tell the difference between the original and the copy made by them. A perfectly reproduced work of art meant that the young artist had the talent, and learned the skills of his immortal predecessor. This view, moreover, supports the fundamental theme of VASARI’s view of history that art develops cyclically, through crests and troughs.<sup>49</sup> After a decline in the Middle Ages, arts began to develop again and the uninterrupted progress starting from Giotto reached perfection in the art of Michelangelo. A later greatness always surpasses a former one, as he is capable of the same as his older predecessor, but at a younger age. Let us see what VASARI said about the trainee-years of the young, only 15-year-old Michelangelo:

„E ciò era, che tutto il sapere e potere della grazia era bella natura esercitata dallo studio e dall’arte; perché in Michelagnolo faceva ogni di frutti più divini i come apertamente cominciò a dimostrarsel ritratta che ei fece di una carta di Martino Tedesco stampata<sup>50</sup>, che gli dette nome grandissimo; imperocché, essendo venuto allora in Firenze una storia del detto Martino, quando i diavoli battono s. Antonio, stampata in rame, Michelagnolo la ritrasse di penna di maniera, che non era conosciuta e quella medesima con i colori dipinse, dove per contraffare alcune strane forme di diavoli, andava a comperare pesci che avevano scaglie bizzarre di colori, e quivi dimostro in questa cosa tanto valore, che ci ne acquisto e credito e nome.”<sup>51</sup>

<sup>47</sup> HAUSER: *A művészet és az irodalom társadalomtörténete* [The Social History of the Art and Literature] (37.), 267; J. H. MERRYMAN: *Counterfeit Art*, International journal of cultural Property 0 [sic!] (1992) 27 refers to as *study-copies*.

<sup>48</sup> A festészetről és a szépségről (1508/09) [On Painting and Beauty], see DÜRER: *A festészetről* [On Painting] (21.), 169. SZILÁGYI: *Legbölcsebb az idő* [Time is the Wisest] (45.), 29 the most ethical copying is to compete with your master.

<sup>49</sup> See E. H. GOMBRICH: *A művészi haladás reneszánsz koncepciója és a gondolat utóélete*. [The Renaissance Conception of Artistic Progress and its Consequences] *Reneszánsz tanulmányok* [Renaissance Studies]. Budapest, 1985, 80-94.

<sup>50</sup> Martin Schongauer.

<sup>51</sup> G. VASARI: *Le Vite de piú eccellenti pittori* (30.), 521; Hungarian: G. VASARI: *A legkiválóbb festők, szobrászok és építészek élete*, Budapest 1983, II, 286.

Another case recorded by VASARI was the famous “Cupid-case”:

„Ma perché conosceva Michelagnolo che perdeva tempo, volentieri se ne torno a Fiorenza, e fe’, per Lorenzo di Pier Francesco de’ Medici, di marmo, un s. Giovannino, e poi dentro a un altro marmo si messe a fare un Cupido che dormiva quanto il naturale, e finito, per mezzo di Baldassarri del Milanese, fu mostro a Pierfrancesco per cosa bella che, giudicatolo il medesimo, gli disse: Se tu lo mettesti sotto terra, sono certo ché passerebbe per antico mandandolo a Roma acconcio in maniera, che paresse vecchio, e ne caveresti molto più che a venderlo qui. Dicesi che Michelagnolo l’acconcì di maniera, che pareva antico; né è da meravigliarsene, perché aveva ingegno da far questo e meglio. Altri vogliono che il Milanese lo portasse a Roma, e lo sotterrasse in una sua vigna, e poi lo vendesse per antico al cardinale San Giorgio ducati dugento. Altri dicono che gliene vende uno che faceva per il Milanese, che scrisse a Pierfrancesco che facesse dare a Michelagnolo scudi trenta, dicendo, che più del Cupido non aveva avuti, ingannando il cardinale Pierfrancesco e Michelagnolo; ma inteso poi da chi aveva visto, che il putto era fatto a Elorenza, tenne modi che seppe il vero per un suo mandato, e fece sì che l’agente del Milanese gli ebbe a rimettere, e riebbe il Cupido, il quale, venuto nelle mani di duca Valentino, e donato da lui alla marchesana di Mantova, che lo condusse al paese, dove oggi ancor si vede; questa cosa non passo senza biasimo del cardinale san Giorgio, il quale non conobbe la virtù della opera, che consiste nella perfezione, che tanto son buone le moderne quanto le antiche, pur che sieno eccellenti, essendo più vanita quella di coloro che van dietro più al nome, che ai fatti; che di questa sorte d’uomini se ne trovano d’ogm tempo, che fanno più conto del parere che dell’essere.”<sup>52</sup>

It is evident from VASARI’s narrative that quality was fundamentally more important than originality;<sup>53</sup> it was not originality that mattered, but the intangible value of the work of art. Indistinguishability became the criterion of quality. ANDRÉ CHASTEL examined the question of imitation in the Renaissance in an excellent essay, and attached great importance to the Cupid-case quoted above in connection with Michelangelo. CHASTEL stressed that as a result of the dogmatic declaration of the theory of imitation, discussed by numerous trac-

<sup>52</sup> G. VASARI: *Le Vite de più eccellenti pittori* (30), 523; Hungarian: VASARI: *A legkiválóbb festők, szobrászok s építészek élete* (51.), II, 290-291. The case debated by J. POPE-HENESSY: *Michelangelo’s Cupid: the End of a Chapter*, Burlington magazine 98 (1956) 403-407, also E. PANOFSKY: *Kopie oder Fälschung?*, Zeitschrift für bildende Kunst 61 (1927/28) 238: „In der Tat ist uns für das ganze 16. Jahrhundert, in dem die Fälschung antiker Skulpturwerke bereits in ziemlich hoher Blüte stand, von male fide hergestellten Handzeichnungen-Fälschungen nichts Sicheres bekannt...”

<sup>53</sup> A. CHASTEL: *Az utánzás elve a reneszánszban*, [The Idea of Copying in the Renaissance] *Fabulák, formák, figurák*, Budapest 1984, 206-214.

tates of the era emphasizing the necessity of imitation, the approach changed significantly compared to the mediaeval view: „It is nature that has to be surpassed; it is the antiquity that has to be equalled.”<sup>54</sup> The model repertory was on the one hand narrowed down to authentic works of art, and on the other hand it was extended to antique examples. It was also the time of the rebirth of the concept of collections, in which both the original and the replica, the copy and the perfect imitation had a place. Collection, the formation of collections, and in parallel with that the art trade also induced the appearance of copies in larger numbers.<sup>55</sup>

CHASTEL emphasized that a very long time had to pass until indistinguishability became the measure of value for copies. Both copies and even forgeries were received favourably, as long as they reached the appropriate standard.<sup>56</sup> There was far less superstitious respect for originality than nowadays. From this point of view perhaps the Janus-face of the decision of the Venetian court can be seen more clearly, as “then the problem of replicas, copies and forgeries arose in a different way from what is customary today, not only at a moral, but at an intellectual level as well.”<sup>57</sup>

At the same time we cannot pass by the fact that in a given case, nevertheless, the originality of a work of art could be important.<sup>58</sup> If someone wanted to buy a genuine Michelangelo, a work of art by the own hands of the master, he sought absolute authenticity. Although a copier or forger who reached the

<sup>54</sup> CHASTEL: *Az utánzás elve a reneszánszban* [The Idea of Copying in the Renaissance] (53.), 206.

<sup>55</sup> See J. VON SCHLOSSER: *Kunst- und Wunderkammern der Spätrenaissance*, Leipzig 1908, 22 ff.

<sup>56</sup> CHASTEL: *Az utánzás elve a reneszánszban* [The Idea of Copying in the Renaissance] (53.), 212. Andrea del Sarto's copy of Raffaello's Leo X was a very famous one. VASARI: *A legkiválóbb festők, szobrászok és építészek élete* (51.), II, 238-240 reported this case. ARNAU: *Művészethamisítók — hamisítók művészete* [Artforgers and the art of forgers] (13.), 32 refers to it as well.

<sup>57</sup> CHASTEL: *Az utánzás elve a reneszánszban* [The Idea of Copying in the Renaissance] (53.), 208—209; KAUFMANN: *Dürer in der Kunst und im Kunsturteil um 1600* (5.), 30: „Das nachahmende Überbieten erinnert daran, daß das spätere 16. Jahrhundert mit dem *imitare* eine höhere Funktion verband; gegenüber mit *ritrare* = «abschreiben dessen, was vor Augen steht», wurde mit *imitare* ein Nachgestalten über Vorgegebenes hinaus bezeichnet. *Imitatio* bedeutet ein zugleich receptives und produktives Verhalten, ein Aufnehmen der Traditionen bei gleichzeitigen Weiterführen auf ein höheres Zielbild hin und in Glauben an ein fortschreitendes Wachstum der Kunst in ihrem stetigen geschichtlichen Vollzuge.”

<sup>58</sup> After the examination of the problem of forgery and the original SZILÁGYI JÁNOS GYÖRGY finishes his thought with the following: (*Legbölcsebb az idő* [Time is the Wisest] (45.), 47 ff): „From the expectations of <forgery> or <original> through the doubts of <forgery> and <original> stepping over the dialectics of <forgery and original at the same time> we get to <forgery as original> which seems to open up the widest scope for the time being. In an age when belief and faith in the real is basically shaken to throw light into the myths where real and fake are unseparable and so provoking and it penetrates with such a light into the most hidden corners of personal existence that it cannot be neglected. <Art> cannot do more than this.”

standard of the work of art to be imitated deserved praise for his achievement, the copied work of art remained the standard, and its author the example to be followed. It was not by chance that Antonio Mini tried to copy the handwriting of his master as closely as possible, to make his artistic works more successful. In the opinion of ERWIN PANOFKY, the *Eigenhändigkeitswert* (the value of a work of art created by original hands) was the phenomenon of the first half of the 16<sup>th</sup> century, experienced more in the north than in Italy.<sup>59</sup> And among the northern artists Dürer was the first to recognize at the earliest and to proclaim the most strongly the value inherent in originality.<sup>60</sup>

#### IV. Book printing and engravings

Looking back to the decision of the court, one interesting circumstance complicates the picture after all. According to the ruling, Raimondi was only not allowed to use Dürer's sign, the judges did not take a position on the prohibition of the copying of the works of art.

After Israel von Meckenen and Martin Schongauer, from 1485 Dürer also initialled first his engravings, and later every piece of work (even sketches) carefully.<sup>61</sup> This regularity and consistency was by no means general in that era. Moreover, after 1485 or 1489, and from 1502/3 regularly, Dürer indicated even the year in his works of art, often composed into them as an integral part of the work.<sup>62</sup> According to WERNER SCHULTHEISS the Dürer-initials indicated that in the given case the work in question was not that of a craftsman, but the creation of a „free artist” (we will come back to that later).<sup>63</sup>

<sup>59</sup> It was LEONARDO who firstly worked out the new concept of originality. In his treatise *About Painting* he declares that in painting there is no copy equal to the original, there is no infinite numbers of children as in the case of printed works, the piece of art is only valuable in its unique existence and gives respect only to his creator. It is exactly its unique character that makes it more valuable than other arts that spread in many copies. LEONARDO DA VINCI refused all kinds of copies.: „*Stultum imitatorum pecus — said.*” (ARNAU: *Művészethamisítók — hamisítók művészete* [Artforgers and the Art of Forgers] (13.), 29.).

<sup>60</sup> PANOFKY: *Kopie oder Fälschung* (52.), 237.

<sup>61</sup> M. NASS: *Stellung und Bedeutung des Monogrammes Martin Schongauers in der Graphik des 15. Jahrhunderts*, Martin Schongauer. Druckgraphik im Berliner Kupferstichkabinet, hrsg. von H. Krohm — J. Nicolaisen, Berlin 1991, 50. The first sheet with signature Israel von Meckenen from 1457(288; see NASS, 50). About Dürer see W. SCHULTHEISS: *Albrecht Dürers Beziehungen zum Recht*, A. Dürers Umwelt (26.), 237. FILARETE had requested that the artist shall sign his picture (HAUSER: *A művészet és az irodalom társadalomtörténete* [The Social History of the Art and Literature] (37.), 270).

<sup>62</sup> NASS: *Stellung und Bedeutung* (61.), 58; contrary WÖLFFLIN: *Die Kunst Albrecht Dürers* (20.), 57 refers to 1496.

<sup>63</sup> SCHULTHEISS: *Dürers Beziehungen zum Recht* (61.), 237; see HUTH: *Künstler und Werkstatt der Spätgotik* (13.), 66 ff.

Dürer initialled first his drawings and engravings, indicating by this the publisher in his works of art. Dürer, who grew up in book printing and goldsmith's workshops (his godfather was Anton Koberger, the most famous and largest German book publisher), made numerous engravings for publications, books, and published his printed engravings not only by sheet, but bound up, in a book form as well.<sup>64</sup> Perhaps one side of the Venetian decision could be explained from this point of view. The Dürer sign authenticated the products of the „*Dürer Verlag*“: Dürer did not place his sign on sheets made for other publishers; his initials could not be used by others.<sup>65</sup>

Book printing began to develop by leaps and bounds at the end of the 15<sup>th</sup> century, in parallel with the spread of engravings. In Venice alone 154 publications were published between 1469 and 1472, and by 1480 the number of Venetian publications reached 600.<sup>66</sup> At that time Venice was regarded as the centre of printing, characterized best by none other than the fact that in 1474 a generally applicable decree was passed on the prohibition of imitations and copies.<sup>67</sup> Essentially, this was what Dürer could rely on, and not the protection of his intellectual property. As book printing generated income, the rights had to be protected.

This is how it became rooted in the contemporary legal consciousness, judicature. This must have influenced the decision of the Venetian court recognizing Dürer's right to the use of his initials. The fact that Venice and Nürnberg had close economic ties could also play a part. These ties extended to co-operation of a legal nature as well, because e.g. the Council of the city of Nürnberg obtained the Venetian rules applicable to guardianship through the person of Pirckheimer.<sup>68</sup> The publisher Anton Kolb, for example, also turned to the Venetian *Signoria* in a letter for the prohibition of the unauthorized copying of his works.<sup>69</sup>

<sup>64</sup> PANOFSKY: *Dürer* (20.), 5 Dürer might have seen woodcuts in the workshop of Wolgemuth (PANOFSKY, 18.).

<sup>65</sup> SCHULTHEISS: *Dürers Beziehungen zum Recht* (61.), 248.

<sup>66</sup> WIND: *Művészet és anarchia* [Art and Anarchy] (19.), 128.; J. ULMER: *Urheber- und Vertragsrecht*, Berlin—Göttingen—Heidelberg 1960, 48 refers to Johann von Speyer who acquired in 1469 a five-years exclusive licence in Venice for bookprinting.

<sup>67</sup> Another interpretation of the decree of 1474 of Venice by LONTAI E.: *A szellemi alkotások joga*, [The Law of the Intellectual Property] Budapest 1986, 9; see H. COING: *Europäisches Privatrecht*, I, München 1985, 223: „In Venedig ist sogar im Jahre 1474 in einem Dekret (*Parte*) eine abstrakte gesetzliche Regelung über die Erteilung solcher Privilegien auf Antrag erlassen worden.“

<sup>68</sup> F. WIEACKER: *Privatrechtsgeschichte der Neuzeit unter besonderer Berücksichtigung der deutschen Entwicklung*, Göttingen 1967<sup>2</sup>, 193.

<sup>69</sup> TH. WÜRTEMBERGER: *Das Kunstfälschertum*, Weimar 1940, 186.

In Dürer's case we could raise the question again: why was copying not prohibited by the wise judges?<sup>70</sup> On the one hand, because in Venice the contemporary aesthetic approach would not have accepted it. On the other hand, however, we should not forget that Dürer was an alien in Venice.

### V. Dürer's relationship with his copiers

We have not mentioned yet why Dürer considered the copying of his works of art adverse, or even detrimental. The main reason could be financial. His letter written to his famous patron, Jakob Heller, in which he explained that it was much more profitable to make engravings than panel paintings, is well known.<sup>71</sup> Dürer amassed a considerable fortune – his estate amounted to 6 848 florins, making him one of the 100 richest burghers of Nürnberg<sup>72</sup> – mainly from his income from his printed works.<sup>73</sup> We can find telltale signs in his *Painter Manual* as well: „And the sixth benefit [of painting Z. Cs.] is that if you are poor, with this skill you can acquire great wealth.”<sup>74</sup>

At the contemporary fairs, beside the vegetables, cabbages, fruits and jugs, buyers could find Dürer's works as well. They were sold mainly by his wife and mother. Dürer ended his already quoted 5<sup>th</sup> letter to Pirckheimer with the following sentences: „Good-bye, and tell my mother that she should also be selling at the Imperial Relic Fair. I hope my wife arrives home by that time, I wrote about this to her as well.”<sup>75</sup> Nevertheless, Dürer himself must have felt or known – if only by seeing the demand – that the new artistic forms of woodcut and copperplate engraving were closely associated with his name.<sup>76</sup>

<sup>70</sup> *Vorbild Dürer* (5.), 10: „Es bezeichnet und schützt das Produkt einer Werkstatt, nicht die geistige und künstlerische Autorschaft am Werk.”

<sup>71</sup> Dürer's 7th letter to Jakob Heller (Nürnberg, 26. Aug. 1509.), see RUPPRICH: *Dürer schriftlicher Nachlaß* (27.), 72, in Hungarian DÜRER: *A festészetről* [On Painting] (21.), 126: „You cannot get on with diligent and detailed work. That is why I want to return to woodcut. If I had acted like this up till now I would be 1000 forints wealthier.”

<sup>72</sup> W. STROMER: *Nürnberg's wirtschaftliche Lage im Zeitalter der Fugger*, A. Dürers Umwelt (26.), 19. About wealth of florentine artist see M. WACKERNAGEL: *The World of the Florentine Renaissance Artist*, Princeton 1981, 345 ff.

<sup>73</sup> MAROSI: *Magyarországi művészet* [Art in Hungary] (13.), 176. [wealthmaking effect of copies].

<sup>74</sup> DÜRER: *A festészetről* [On Painting] (21.), 168.

<sup>75</sup> DÜRER: *A festészetről* [On Painting] (21.), 121.

<sup>76</sup> Art historians agree, see WÖLFFLIN: *Die Kunst Albrecht Dürers* (20.), 275: „[...] der Kupferstich ist ja der Ort, wo Dürer eben aus Wahlverwandschaft mit dem Material am meisten sich angeregt fühlte, seiner Stoffempfindung nachzugehen”; see PANOFSKY: *Dürer* (20.), 3-4; R. SCHOCH: *Ein Jahrhundert Nürnberger Druckgraphik. Nürnberg, 1300—1550*, Kunst der Gotik und Renaissance, München 1986, 93.



Dürer worked freely on his graphic works, engravings, not on commission, thus his hands were not tied by the requests of clients. In that era, at the end of the 15<sup>th</sup> century, the beginning of the 16<sup>th</sup> century – to quote MICHAEL BAXANDALL's phrase – „... painting was still too important to be left entirely to the painters.”<sup>77</sup> An engraver, in the absence of a client, was left to his own devices during the work process, elaboration, and there was no possibility of interference either, as e.g. in the case of other works.<sup>78</sup> In Dürer's era patrons determined more or less precisely what they wanted to see painted and how. It is evident from the extant sources (contracts, correspondence) that clients paid close attention to the work to be created, and on occasions intervened in the process of creation in great detail. Guilio de' Medici e.g. made several corrections to the designs for the Medici chapel, made by no less an artist than Michelangelo, and every time the master presented a new design, the cardinal suggested something else.<sup>79</sup>

Dürer made his engravings, drawings of his own will, on the basis of his own ideas, without interference from clients, according to the demands of the market, as a real *freier Künstler*.<sup>80</sup> (As far as I know, no one has examined so far systematically the reason for this „visual hunger” palpable at social level, manifest in the buying up of the by that time considerably increased number of publications of engravings. Perhaps this was the first visual revolution, before the appearance of reproductions and television.<sup>81</sup>)

In the north, at that time it was still not a matter of course at all that an artist had a higher social position than a craftsman. In reality, Dürer liked the respect with which he was received in Venice, as a patrician from Nürnberg, the great painter, the famous artist, and not as a craftsman. As he wrote to Pirckheimer: „Hy pin ein her(r), deheim ein schmarotzer.”<sup>82</sup>

<sup>77</sup> M. BAXANDALL: *Reneszánsz szemlélet — reneszánsz festészet*, [Painting and Experience in Fifteenth Century Italy] Budapest 1986, 11.

<sup>78</sup> HUTH: *Künstler und Werkstatt der Spätgotik* (13.), 23-29.

<sup>79</sup> WIND: *Művészet és anarchia* [Art and Anarchy] (19.), 77.

<sup>80</sup> HIRSCHFELD: *Mázene* (46.), 138 ff. „In der Graphik war er vollständig sein eigener Herr und unabhängig von allen Patronen und ihren Wünschen; er kann nach eigenen Gutdücken Stiche und Holzschnitte produzieren, die er an die Lieghaber verkauft.” Many of Dürer's iconographic specialits are to be understood in term of this.

<sup>81</sup> MOJZER M.: *Tabula — Figura — Imago*, Művészettörténeti értesítő 26 (1977) 2, 11 multiplied etchings, woodcuts, small pictures – the religious ones – were considered devotional objects. In the 19th century Baudelaire is unhappy about the decline of etching. See BAUDELAIRE: *Festők és rézkarcolók* [Painters and Cutters](1862), Művészeti kuriózumok, Budapest 1988, 103-106.

<sup>82</sup> RUPPRICH: *Dürers schriftlicher Nachlaß* (27.), 52. [I am here Gentlemen, at home a parasite.]

In 1497 – three years before the first edition of VASARI’s work quoted several times – JOHANN NEUDÖRFER published a book on the famous masters, artists of Nürnberg.<sup>83</sup> It included, among numerous craftsmen (gunsmiths, locksmiths, carpenters, goldsmiths, printers, opticians, etc.), together with seven other painters, Dürer’s name as well. While VASARI’s work was a memorial to the immortal artists, the chronicler of Nürnberg perpetuated the domestic masters.<sup>84</sup>

With time Dürer’s artist’s self-consciousness developed, it was attributable mainly to his visits to Italy. He signed his name on official documents as *Maler*, and not as *Meister*.<sup>85</sup> He appeared on his *Rosenkrantzfest*-painting (*Feast of the Rose Garlands*) made in Venice as part of the work of art, making his likeness a theme thereof as in art, standing with full humanist self-consciousness and dignity in the select and noble company of saints, patrons, ecclesiastical and secular dignitaries.

## VI. Dürer’s northern copiers

### 1. The northern copiers

Dürer’s works were copied not only in Venice, but in the North, in his home country as well. From 1494 the number of copies increased, and Dürer lost a considerable income. Naturally, at the end of the 15<sup>th</sup> century imitation was not regarded as an illegal or even morally condemnable act on German soil either.<sup>86</sup> In the North the mediaeval tradition was stronger, the artist’s name, personality was not so important as e.g. the client’s. In Germany Martin Schongauer was the first artist to be copied consciously for the purpose of forging.<sup>87</sup>

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<sup>83</sup> J. NEUDÖRFER: *Nachrichten von Künstler und Werkleuten daselbst dem Jahren 1474 in Nürnberg*, Quellenschriften für Kunstgeschichte und Kunsttechnik des Mittelalters und der Renaissance, hrsg. von R. Eitelberg, X, Wien 1875. Cino Rinuccini in the first years of quattrocento in a writing against absolutism he lists the outstanding figures of this town whose activity was result of the flourishing period produced by civil independence. Among representatives of liberal arts besides lawyers, generals and trademen Giotto is also mentioned. The great painter is not regarded as an artist but first of all as a representative of one of the many professions who was excellent in his own field and added much to his towns fame.” BOSKOVITS M.: *A festői perspektíva kialakulása és szerepe a XV. századi itáliai művészetelméletben*, [The Formation and Role of Perspectivity in Painting in 15<sup>th</sup> centuries Italian Theory of Art] *Építés- és közlekedéstudományi közlemények* 7 (1963) 526.

<sup>84</sup> Vö. J. HUIZINGA: *A középkor alkonya*, [Waning of Medieval Ages] Budapest 1982, 189 ff.

<sup>85</sup> SCHULTHEISS: *Dürers Beziehungen zum Recht* (61.), 231.

<sup>86</sup> We will shortly get back to the so-called Dürer-Renaissance. About Dürer’s fakes in general M. JONES (ed.): *FAKE?*, London 1990, 120 ff.

<sup>87</sup> NASS: *Stellung und Bedeutung* (61.), 62<sup>29</sup>.

Between 1595 and 1597 Wenzel von Olmütz copied Dürer's four beautiful witches (B.75) and four other graphic works. Israel von Meckenen re-created a number of Dürer's works, and in 1502 Hieronymus Graff from Strassburg re-engraved and republished Dürer's *Apocalypse*-series of 1498.<sup>88</sup> Dürer tried to take action against his northern imitators as well. Probably through his personal instrumentality, the Nürnberg Council passed the following decree on 3<sup>rd</sup> January 1512:

Dem frembden, so under dem rathaus kunstbrief fayl hat und unnder denselben etlich, so Albrecht Dürer hanndzeichen haben, so im betrühlich nachgemacht sind, soll man in pflicht nemen, dieselben zaichen alle anzuthun und der kaine hie fail zu haben, oder wo er sich des widere, soll man im diselben brief alle als ain falsch auffheben und zu ains rats hannden nemen.<sup>89</sup>

## 2. Mediaeval market protection

In the late-mediaeval Germany the trade relations, thus among others the quality and authenticity of goods, were regulated by strict regulations. According to the regulations of the cloth-hall of Cologne from around 1400, any merchant selling falsely labelled goods was punished with expulsion from the guild and the destruction of his goods.<sup>90</sup> In 1482 in Strassburg any goldsmith selling gilded copper as gold was punished and banned from exercising his trade. A similar case is known from 1492 from the city of Lübeck.<sup>91</sup> But strict action was taken in Nürnberg as well against a baker selling „merklich zu klain und geuerlich” bread, or in Freiburg against a butcher selling bad meat.<sup>92</sup> The moral standards were also more strictly guarded than nowadays. In Hamburg e.g. in 1375 a bath manager was expelled from the guild for allowing men and women to bathe together three times within a year in spite of a ban.<sup>93</sup> What is interesting for us is that in the trade relations the selling of false goods, or any falsification of the goods (presenting old as new, or new as old) was strictly punished.<sup>94</sup> These sanctions were expressly punitive, administrative provisions.

Nürnberg was especially famous for the excellent quality, reliability of its goods, among others its measuring instruments and clocks. It is especially noteworthy that protective regulations were passed to protect the goods of

<sup>88</sup> SCHULTHEISS: *Dürers Beziehungen zum Recht* (61.), 242; *Vorbild Dürer* (5.), 18 and 24ff.

<sup>89</sup> RUPPRICH: *Dürers schriftlicher Nachlaß* (27.), 241.

<sup>90</sup> H. LANGE: *Das Verbot der berufsausübung im Mittelalter*, Weimar 1940, 64.

<sup>91</sup> LANGE: *Verbot der Berufsausübung* (90.), 64.

<sup>92</sup> LANGE: *Verbot der Berufsausübung* (90.), 67.

<sup>93</sup> LANGE: *Verbot der Berufsausübung* (90.), 68.

<sup>94</sup> LANGE: *Verbot der Berufsausübung* (90.), 63; WÜRTEMBERGER: *Das Kunstfälschertum* (69.), 198; H. PIRENNE: *A középkori gazdaság és társadalom története*, [History of the Economy and Society in the Medieval Ages] Budapest 1983, 259.

Nürnberg known across Europe against domestic and foreign infringers.<sup>95</sup> The earliest extant publishing contract was also made in Nürnberg at the end of the 15<sup>th</sup> century.<sup>96</sup> There was no painters' guild in Nürnberg, the artists could work freely until 1596.<sup>97</sup> The most important issues concerning artists fell directly within the scope of authority of the Council of the city of Nürnberg, the artists themselves, however, were regarded as „free artists”. According to BRADL the quantity and quality of the completed works subsequently justified this procedure.<sup>98</sup> (We have to treat very carefully the institutions that evolved under the circumstances of our era, such as e.g. trademark right, invention or patent right, etc. It would seem more appropriate to make any comparison of both the function and the regulation with these categories only upon the thorough examination of the given case, and only from a distance of half a century.)

In 1478 the local city law was reformed in accordance with the requirements of trade. In 1484 ANTON KOBERGER published the law-book of the city of Nürnberg, which, as the first printed city law, had a great influence on the legal development of its environment.<sup>99</sup> The city of Nürnberg made serious efforts against the imitation of the high quality and famous goods of Nürnberg. Both the legislation and the administration responded to the phenomenon, and took action against foreign and domestic forgers. By the time Dürer was born in 1471, the necessity of the protection of unique, high quality goods was already generally recognized in everyday life as well. Dürer grew up in this environment, and as a young goldsmith's apprentice he experienced that goods were under the protection of the law. The city of Nürnberg played a groundbreaking role in passing provisions prohibiting the reprinting of books as well. The Council took a position on this issue first in its provision of 7<sup>th</sup> October 1525 (under pressure put on it by Luther), then in its resolution of 28<sup>th</sup> October 1531.

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<sup>95</sup> SCHULTHEISS: *Dürers Beziehungen zum Recht* (61.), 220.

<sup>96</sup> H. POHLMANN: *Das neue Geschichtsbild der deutschen Urheberrechtsentwicklung*, Baden-Baden 1961, 16.

<sup>97</sup> HUTH: *Künstler und Werkstatt der Spätgotik* (13.), 79. The guild rules were adopted in 1534 and approved by the Council in 1596.

<sup>98</sup> R. BRANDL: *Zwischen Kunst und Handwerk. Kunst und Künstler im mittelalterlichen Nürnberg*, München 1986, 52 ff. guilds of Nürnberg are mentioned PIRENNE: *A középkori gazdaság és társadalom története* [History of the Economy and Society in the Medieval Ages] (94.), 271.

<sup>99</sup> SCHULTHEISS: *Dürers Beziehungen zum Recht* (61.), 220; H. COING (Hrsg): *Handbuch der Quellen und der Literatur der neueren europäischen Privatrechtsgeschichte*, München 1973-1986, I 611 refers to year 1479. Weisenburg, Esslingen (1483), Eichstädt, Dinkelsbühne, Ulm, Pfalzgraf (1484). A very important book was not available W. SCHULTHEISS: *Geschichte des Nürnberg Ortsrechts*, Nürnberg 1957.

Nürnberg also took the lead in the fight for the protection of authors' works.<sup>100</sup> The decree of the Nürnberg Council quoted above could be interpreted as one extending the trademark right to the works of its burgher already widely known and respected in 1512. The decision included several references to forgery („fayl hat", or „im betrüglich nachgemacht sind"), describing imitation as a morally condemnable act. The piquancy of the case is that an artist wishing to advance from craftsman-rank, trying to climb higher on the social ladder with – as we have already referred to it – *freier Künstler* self-consciousness, received copyright-like protection against the forgery of his works through the analogous application of the trademark right applicable to craftsmen.

At the same time, it is also a part of the truth that most artists (painters, altarmakers, sculptors) worked on the basis of given models, composition patterns. And these models spread and were used through engravings.<sup>101</sup> Thus the artists of the era drew inspiration from Dürer's numerous drawings, engravings as well. In our case, however, Dürer regarded his own works primarily not as models, but as individual works, unique works of art, and tried to prove their legitimacy by means of legal protection as well.

### 3. The author's privilege

Dürer was not satisfied with the decree of the Council, and tried to take action against the copiers of his works of art in other ways as well. In 1511, when he published the sheets of his four great series of engravings, the *Apocalypse*, the *Life of Mary*, the *Large Passion* and the *Small Passion* in a German and a Latin edition, in a joint volume, he inserted a clause prohibiting reprinting in the imprint of the Latin edition.<sup>102</sup>

In the literature the judgement of the so-called *Autorenprivileg* (author's privilege), meaning the prohibition of reprinting, and the so-called *Druckprivileg* (publisher's privilege) shows very marked differences. The bomb-shell came in HANSJÖRG POHLMANN's already quoted work entitled *Das neue Geschichtsbild der deutschen Urheberrechtsentwicklung*, in which the author interpreted the about 350 imperial copyright privileges discovered by him as the first verifiable documents of German copyright. Although Dürer's above-

<sup>100</sup> J. KOHLER: *Die Idee des geistigen Eigentums*, Archiv für die civilistische Praxis 82 (1894) 167 quotes the decisions, including the decision of 10. August 1633.

<sup>101</sup> HUTH: *Künstler und Werkstatt der Spätgotik* (13.), 35 ff.

<sup>102</sup> RUPPRICH: *Dürers schriftlicher Nachlaß* (27.), 76: „Heus, tu insidiator ac alieni laboris et ingenii surreptor, ne manus temerarias nostris operibus incias, cave! Scias enim a gloriosissimo Romanorum imperatore Maximiliano nobis concessum esse, ne quis suppositiciis formis has imagines imprimere, seu impressas per imperii limites vendere audeat; quod si per contemptum seu avaricie crimen secus faceris, post bonorum confiscationem tibi maximum periculum subeundum esse certissime scias.”

mentioned work would take precedence in time, however, for this publication – in contrast to the others – POHLMANN could not find either the application or the authorization,<sup>103</sup> and therefore he concluded that Dürer probably received an oral authorization from the imperial administration to use the privilege clause.<sup>104</sup> POHLMANN's adversaries, thus among others BAPPER<sup>105</sup> or ULMER<sup>106</sup>, linked the copyright privilege to the institution of *Druckprivileg*, and emphasized the publisher side thereof.

In our opinion it is not only the author's work that is relevant for the given institution, but the publication thereof, the published work as well, and this is what is protected by the law. There is a very close relationship between the publisher's privilege and the author's privilege, therefore we can conclude in our story as well that they were probably linked to each other. As far as I know, no one has noticed yet, that the first imperial publisher's privilege was granted in 1501 to Conrad Celtis,<sup>107</sup> who belonged to the circle of Dürer's closest friends (incidentally, he wrote the first laudatory poem about Dürer)<sup>108</sup>. Dürer made numerous engravings and drawings for the publications of Celtis, e.g. the woodcut entitled *Allegory of Philosophy* (B.120).<sup>109</sup> By the way, book publishing and the printing of engravings were very close to each other, especially when Dürer published a picture-book consisting of engravings. He could know about the way and method of obtaining a publisher's privilege if not from Celtis, then from his godfather, Koberger.

<sup>103</sup> It was not possible to find out whether it was Dürer or Arnold Schlick the blind organist who firstly got this privilege.

<sup>104</sup> POHLMANN: *Das neue Gesichtsbild* (96.), 243: „Dürer erhält vermutlich von Reichsoberhaupt eine mündliche Zusage anlässlich seines Nürnberger Aufenthaltes.“

<sup>105</sup> W. BAPPERT: *Wege zum Urheberrecht*, Frankfurt a. M. 1962, 200. Also BOYTHA GYÖRGY IN BERNÁRD A. — TÍMÁR I. (ed.): *A szerzői jog kézikönyve*, [Handbook of the Copyright] Budapest 1973, 18–20. A summary on the Hungarian history ZLINSZKY J.: *Urheber- und Verlagsrecht. Ungarn*, Handbuch (99. j.), III, 4056–4059.

<sup>106</sup> ULMER: *Urheber- und Vertragsrecht* (66.), 47 ff. takes a more subtle aspect: „Die Wendung zur Neuzeit bringt entscheidende Änderungen: Die Bechdruckerkunst ermöglicht die Herstellung einer Vielzahl von Werkstücken. Das Bedürfnis, den Drucker und Verleger, gegebenenfalls auch den Autor, der das Werk, im Selbstverlag [...]. Auch in der bildenden Kunst erwacht angesicht der vervollkommung der Holzschneiderkunst und des Aufkommens des Kupferstichs das Schutzbedürfnis, zugleich fällt kraft der geistigen Strömungen der Renaissance, des Humanismus und der Reformation stärker als im Mittelalter das Licht auf die Persönlichkeit des Urhebers. Neben dem Verbot des Nachdruckes finden wir erste Ansätze eines persönlichkeitsrechtlichen Schutzes.“

<sup>107</sup> BAPPERT: *Wege zum Urheberrecht* (105.), 181.

<sup>108</sup> DIETER WUTTKE has found it in the Library of Kassel (Ms. poet. fol. 7); published by BIAŁOSTOCKI: *Dürer and His Critics* (22.), 17.

<sup>109</sup> In the period 1500–1505 „a few book illustrations and broadsheet made to bolige the famous humanist Conrad Celtis“ (PANOFSKY: *The Life and Art of Albrecht Dürer*, first edition 1971, 95.).

Initially the publisher's privilege meant the authorization of book printing in general to the holder of the authorization, then the exclusive right to publish the given work. In contrast, the author's privilege could apply only to specific works, literary, artistic, musical or scientific works, and certified the originality of the given work, and in order to prevent the copying and imitation thereof, it was issued in the author's name. All this becomes clear when the author transfers this right to someone else – primarily to the publisher, as e.g. Dr. med. Abulensis von Lobera did in 1531.<sup>110</sup> Thus we have to agree with POHLMANN, as he put special emphasis on the fact that this kind of privilege should be interpreted on the basis of its real nature: it was granted when both the work and the author were found to deserve it. POHLMANN drew a parallel between this system and the Anglo-Saxon practice: the sentence *Cum gratia et privilegio Caesaris* was the equivalent of the letter ©, the sign of protection.

But let us return to Dürer. POHLMANN, in the daze of the discovery, forgot to raise the question how it came about that this institution was born in the case of Dürer of all people. We can conclude, on the one hand, that the idea was probably suggested by the publisher's privilege<sup>111</sup> (if not through others, then through Conrad Celtis), and on the other hand, that the person of Dürer was also a key factor, if only because of his worldliness and privileged situation.<sup>112</sup> It is possible that he was the initiator personally, just as in the case of his 100-florin annuity.<sup>113</sup>

The 1522 edition of his sheets made of the triumphal chariot of Emperor Maximilian – which included the following text: „Erfunden, gerissen und gedruckt durch Albrecht Dürer Maler zu Nürnberg“<sup>114</sup> – indicated exactly the author, his work and his role in the preparation of the publication, as he would have had all the glory, had the work not been made for Emperor Maximilian of all people. Dürer's sentence, indicating his real role in a work made on the commission and in the honour of the emperor, and hall-marked by the name of the emperor, can be regarded as a bold act, an unusual course of action on German soil. The title-page still read: „Cum gratia et privilegio Caesareae Maiestatis.“ Thus the intellectual property received protection under the guise of the power of the emperor, as who would try to copy a work enjoying the emperor's privilege.

<sup>110</sup> POHLMANN: *Das Neue Geschichtsbild* (96.), 17.

<sup>111</sup> SCHULTHEISS: *Dürers Beziehungen zum Recht* (61.), 243 takes the same view.

<sup>112</sup> In Germany the first step of the artist appreciation is linked to Dürer. See WÜRTEMBERGER: *Das Kunstfälschertum* (69.), 24; HUTH: *Künstler und Werkstatt der Spätgotik* (13.), 5.

<sup>113</sup> I declare this on the ground that he didn't get any other consideration for the work he did to the emperor. About the annuity fee see WÖLFFLIN: *Die Kunst Albrecht Dürers* (20.), 32.

<sup>114</sup> SCHULTHEISS: *Dürers Beziehungen zum Recht* (61.), 243.

However, not only Dürer's artistic publications were popular, but his theoretical writings as well. Therefore he had to protect them, just as his engravings, from reprinting.<sup>115</sup> His work entitled *Treatise of Measurement*, published in 1525, included a similar „copyright” sentence.<sup>116</sup> Dürer tried to provide protection against copiers for his work entitled *Treatise on Fortification*, written in 1527, at the time of the advance of the Turks, and dedicated to king Ferdinand I of Hungary, by indicating the imperial seal and the Habsburg archduke's shield together on the title-page. It is true, however, that neither the imprint nor the text made any reference to the indicated right.<sup>117</sup> The book entitled *Treatise on Proportion*, published only after Dürer's death in 1528, indicated Agnes, Dürer's wife as the publisher, and included the privilege of Emperor Charles V, issued on 14<sup>th</sup> August 1528 in Speyer, prohibiting the reprinting of the book and the making of extracts from it.<sup>118</sup> In spite of this, naturally, this work was also copied and re-published at numerous places.

There are earlier known prohibiting provisions applying to the copying of a book or work. The *Salus populi Romani*-icon in the Borgo-Chapel of the Santa Maria Maggiore basilica in Rome, which was famous for its virtue against the plague, was protected from imitation until the beginning of the 16<sup>th</sup> century by a papal monopoly prohibiting copying. Later the authorization of a single copy was enough, and the picture spread in Europe in numerous versions, this is how it got to us as well in 1736, to the altarpiece of Roznava.<sup>119</sup> But in this case we have to differentiate between the prohibition of copying of sacral nature protecting certain works, and the individual protection granted to a given work of an artist.

In 1532 Hans Goldermund, picture-painter and wood-carver, tried to re-engage and print the sheets made in 1522 of the triumphal procession of Emperor Maximilian, without the permission of Agnes. The Nürnberg Council, with reference to its earlier provision, prohibited this, but at the same time recommended to Frau Agnes to sell her original plates to Goldenmund for 10 gulden.<sup>120</sup> In the end the deal was done. SHULTHEISS was right in stressing that

<sup>115</sup> The detailed lists of the works with the post-prints BIAŁOSTOCKI: *Dürer and his critics* (22.), 22.

<sup>116</sup> SCHULTHEISS: *Dürers Beziehungen zum Recht* (61.), 243: „Keyserlich Freyheit wirt in dem nechsten Büchlin der Proportion, so jch zu drucken forhab, eingeleybat wirt.”

<sup>117</sup> SCHULTHEISS: *Dürers Beziehungen zum Recht* (61.), 244.

<sup>118</sup> SCHULTHEISS: *Dürers Beziehungen zum Recht* (61.), 244.

<sup>119</sup> SZILÁRDFY Z.: *Kegyképtípusok a pestisjárványok történetében*. [Devotional Picture Types in the History of the Black Death] *Orvostörténeti közlemények, Supplementum* 11/12 (1979) 208.

<sup>120</sup> 1532. május 4.: „Hannsen Gulldinmund verpieten, Albrecht Türers wittiben irs haußwirts gemachten triumphwagennit nachzumachen. Und der Thürerin zu raten, dem Gulldinmunden sein formen bis in 10 f. nachzulassen; daran sollen meine herren den halbtail zalen.” RUPPRICH: *Dürers schriftlicher Nachlaß* (27.), 243 ff. (RUPPRICH quotes other notes as well).



the right granted to Dürer became recognized through this deal.<sup>121</sup> This deal is at the same time the first known case on the bumpy road leading to the birth of copyright in which the legal protection could be enforced. The right of reprinting was exercised by the heirs, Dürer's widow, the new publication was made on the basis of the original forms, and Agnes even received money for all this.

The city of Nürnberg, in its resolution of 2<sup>nd</sup> October 1532, also took the trouble to write a letter to the city of Strassburg on the matter of the copying of Dürer's works. They sent letters with similar contents to Frankfurt, Leipzig, Augsburg and Antwerp as well.<sup>122</sup> In our view this action was probably not very successful. On 3<sup>rd</sup> June 1533 the city of Nürnberg requested king Francis I of France on behalf of Dürer's widow to prevent the unauthorized reprinting of Dürer-forgeries.<sup>123</sup>

#### 4. The person of Dürer from the point of view of the protection of his works of art

Dürer's case can be regarded as the result of a favourable juncture of a lot of important circumstances, a fortunate constellation. It was important, among others, that he was a burgher of Nürnberg, a city with great trade and legal culture in that era, that his socialization took place in such an environment and that he developed a practical sense of trading and justice,<sup>124</sup> and furthermore, that the relationship between the artist and the leadership of the city reached an elevated level of mutual respect and honour (Dürer e.g. gave his last famous

<sup>121</sup> SCHULTHEISS: *Dürers Beziehungen zum Recht* (61.), 245.

<sup>122</sup> TH. WÜRTEMBERGER: *Albrecht Dürer — Künstler, Recht, Gerechtigkeit*, Frankfurt a. M. 1971, 55; RUPPRICH: *Dürers schriftlicher Nachlaß* (27.), 239; J. BAADER: *Beiträge zur Kunstgeschichte Nürnbergs*, Nördlingen 1860, 93 ff publishes the decision.

<sup>123</sup> BAADER: *Beiträge* (122.), 1862, 71 ff.

<sup>124</sup> H. H. HOFMANN: *Albrecht Dürers politische und soziale Umwelt*, A. Dürers Umwelt (26.), 1-9; SCHOCH: *Ein Jahrhundert Nürnberg Druckgraphik* (76.), 99. — WILHELM HEINRICH WACKENRODER compared classical art with gothic art appr. three hundred years later and nominated Nürnberg as a new idea: „Nürnberg! du vormals weltberühmte Stadt! Wiegerne durchwaldete ich deine Krümmen Gassen; mit welcher kindlicher Liebe betrachtete ich deine altväterlichen Häusern und Kirchen, dene die feste Spur unsrer alte waterländischen Kunst eingedrückt ist! Wie innig lieb' ich die Bildungen jener Zeit, die eine so derbe, kräftige und wahre Sprache führen: Wie ziehen sie mich zurück in jenes graue Jahrhundert, da du, Nürnberg, die lebendigwimmelnde Schule der vaterländischen Kunst war recht fruchtbarer, Überfleissender Kunstgeist in deinen Mauern lebte und webte: — da Meister Hans Sachs und Adam Kraft, die Bildhauer, und vor allem Albrecht Dürer mit seinem Freunde Willibaldus Pickheimer und so viele andere hochhgelebte Ehrenmänner noch lebten! Wif oft hab' ich mich in jene Zeit zurückwünscht.“ WACKENRODER: *Herzensergießungen eines kunstlebendes Klosterbruders* (1797), idézi H. GLASER — J. LEHMANN — A. LUBES: *Wege der deutschen Literatur*, Frankfurt a. M.—Berlin—Wien 1938<sup>3</sup>, 180.

work entitled *The Four Apostles* to the city).<sup>125</sup> It was also important that with his genius he towered far above his contemporaries;<sup>126</sup> his visits to Italy played a determinant role in the development of his artist's self-consciousness; and Dürer's ambitiousness, manifest in the enforcement of both his intellectual and financial rights, was also a significant factor; even his relationship with the emperor was special, and we could go on and on. WÜRTEMBERGER and SCHULTHEISS tried to demonstrate that the ideals of justice and fairness reflected by Dürer's works prove Dürer's respect for fairness. It is evident from the *Sol Iustitiae*-engraving (B.79), the *Calumny of Apelles*<sup>127</sup> made for the city hall of Nürnberg, the *Last Judgement*, the *Justice of Trajan* and the *Judgement of Solomon*.<sup>128</sup> His work made in 1522, the cover for the *Nürnberg Reformatio*, decorated with *Sancta Iustitia*, also belongs to this category.<sup>129</sup>

### 5. The exceptionality of the Dürer case

The „*Dürer v. Copiers* case” was unique in that era, and cannot be called paradigmatic in the least. But to what extent can the regulations protecting Dürer's works be regarded as the first germs of copyright? The aim of the regulation – viewed through Jhering's eyes the *Zweck* – was the protection of the creations of the artist-master. The question is whether with the prohibition of reprinting and copying Dürer's exclusive right of disposal over the given work was also recognized, and whether there were any subjective rights to speak of at that time at all. It is all the more difficult to answer this, because Dürer was both the author and the publisher of his works in one person. But it was this very spin that made the protection possible. It can be demonstrated that he took conscious actions in this direction, the facts speak for themselves, it is enough to refer to the letter extract in which he inveighed against his copiers. He felt almost as if his self-esteem was injured by the fact that others used, pirated his ideas, solutions. The mentioned regulations can be regarded as the maximum within the given legal framework of that era. Moreover, the author's privilege,

<sup>125</sup> He painted numerous counsellors like Hieronymus Holzschuher (1526), Jakob Muffel (1526) etc. see. WÖLFFLIN: *Die Kunst Albrecht Dürers* (20.), 264-267.

<sup>126</sup> See appr. K. VAN MANDER: *Hírnevés németalföldi és német festők élete*. [The Life of Famous Flamish and German Painters] Budapest, 1987, 36. VAN MANDER writes that when Dürer couldn't reach something emperor Maximilian ordered one of the noblemen to give his shoulder so that Dürer could step on it and finish the work. „Als Dürer starb, wußte man, daß nicht nur ein großer Künstler dahingegangen war — es sollte seit dem Altertum keinen größeren gegeben haben —, sondern daß der Begriff des Künstlers überhaupt durch ihn einen neuen Inhalt gewohnen hatte.” WÖLFFLIN: *Die Kunst Albrecht Dürers* (20.), 293.

<sup>127</sup> WÖLFFLIN: *Die Kunst Albrecht Dürers* (20.), 242.

<sup>128</sup> WÜRTEMBERGER: *Albrecht Dürer* (122.), 25 ff.

<sup>129</sup> SCHULTHEISS: *Dürers Beziehungen zum Recht* (61.), 248, gives a list of the other works.

signifying the first legally defined authority of the artist rising from craftsman-rank,<sup>130</sup> should be evaluated as a significant breakthrough.

We ought to note in brief also that all these efforts were almost entirely swept away after Dürer's death by the phenomenon of the Dürer-craze, also called as the Dürer-renaissance. The endless stream of Dürer-copies and -imitations can be explained only in part by the formation of court, princely and civil collections originating from that time. Dürer was undoubtedly a "star", this only increased the unsatisfied demand, which could be met only in part by e.g. Hans Hoffmann, the excellent forger-copier artist of Rudolf II.<sup>131</sup>

## 6. Legal-dogmatic background

The question is, after all: what right of Dürer was violated by Raimondi, if any. Even if we cannot give an exact answer, we can turn for help to an outline of the legal dogmatism of the era. HELMUT COING pointed out in one of his excellent studies that the subjective right,<sup>132</sup> unknown as such in Roman law, crystallized as the basis of the dogmatism in the middle ages.<sup>133</sup>

As a result of studying the sources of Roman law in detail, glossators made a distinction between the concepts of *is* and *actio*. *Ius* was interpreted as the *causa*, namely the *causa materialis* of *actio*<sup>134</sup>. Through this differentiation *ius* took precedence, not *actio*, thus the substantive subjective right, and not the articulating and enforcing *actio*. The new view was clearly expressed in the definition of Bartolus de Saxoferrato (1313-1357), one of the immortal commentators. Bartolus defined the property right as *ius de re corporali perfecte disponendi, nisi lege prohibeatur*.

<sup>130</sup> The act on prohibition of the print of Basel was published in 1531 ULMER: *Urheber- und Vertragsrecht* (66.), 49.

<sup>131</sup> In general F. KORENY: *Albrecht Dürer und die Tier- und Pflanzstudien der Renaissance*, München 1985; G. GLÜCK: *Fälschungen auf Dürers Namen aus der Sammlung Erzherzog Leopold Wilhelms*, Jahrbuch der kunsthistorischen Sammlungen des allerhöchsten Kaiserhauses 28 (1909/10) 1-25. „The emperors Rudolf II and Maximilian I competed with each other to get paintings, drawings and etchings of Dürer but quite a few owners of civil collectors tried to get first and foremost his works. Those drawings, paintings were unavailable and were replaced and since authography was given much less significance than nowadays. Buying copies or having originals copied than seemed if not the best but still a good solution.” BODNÁR SZ.: *Hans Hoffmann másolatai egy Dürer-rajzról*, [Copies of a Dürer's drawing by Hans Hoffmann] A Szépművészeti Múzeum közleményei 66/67 (1986) 134.

<sup>132</sup> SZLADITS K. (szerk.): *Magyar magánjog*, I, [Hungarian Private Law] Budapest 1941, 189: on the personal right (subjektives Recht)

<sup>133</sup> H. COING: *Zur Geschichte des Begriffes „Subjektives Recht“*, Gesammelte Aufsätze zu Rechtsgeschichte, Rechtsphilosophie und Zivilrecht 1947-1975, I-II, Frankfurt a. Main 1982, I, 241-262.

<sup>134</sup> „Die *causa materialis* ist diejenige, *quae explicat, quid res sit.*” COING: *Subjektives Recht* (133.), 250.

A distance of two centuries in time was enough for DONELLUS (1527-1591) to approach private law in his work entitled *Commentariorum iuris civilis* as the system of subjective rights.<sup>135</sup> DONELLUS defined the subjective right as *facultas et potestas iure tributa*, and in his approach *actio* was none other than the *remedium* provided for the individual subjective rights, in order to protect private law.

What is interesting for us from all this is that the legal approach in Dürer's era – although he was almost a generation away from DONELLUS – could not be far from the subjective right-based view. In principle it was not strange for the law to see the violation of Dürer's property right in the imitation and selling of his works (*meine Dinge*). By that time the property right was no longer limited to corporal objects, but included claims or incorporeal assets as well.<sup>136</sup> It is evident from Dürer's correspondence and actions that he regarded his objectified intellectual work as his own in the same way as his other assets. Probably no further proof is needed on the side of the master of *Melencolia I* and the author of numerous theoretical works. The question was in the air of the era, however, the law was prepared to give only partial answers.<sup>137</sup>

According to the currently prevailing approach, the intellectual prerequisite of the development of the modern copyright was JOHN LOCKE's approach to private property, conceived in the rationalist natural law.<sup>138</sup> The right to private property is justified for its holder through work. The concept of work is used here in an abstract sense, and it can be both intellectual and manual. And the disposal over the property right is the exclusive right of the holder, the sacred corner-stone of the private sphere. Leon Battista Alberti, the famous architect of the *Quattrocento*, incidentally a humanist with a degree in law, in his tractate entitled *Della pittura*, published in 1432, emphasized that the value of a picture was determined not by the expensiveness of the used materials – gold, silver, ultramarine –, but by the skill of the painter, who could imitate,

<sup>135</sup> COING: *Subjektives Recht* (133.), 251.

<sup>136</sup> KOHLER: *Die Idee des geistigen Eigentums* (100.), 170.

<sup>137</sup> Vö. E. ULMER: *Copyright and Industrial Property*, International Encyclopedia of Comparative Law, XIV, Tübingen-Boston 1987, 4; WÜRTEMBERGER: *Albrecht Dürer* (22.), 51. The intellectual property in the antiquity see K. VISKY: *Geistige Arbeit und die „artes liberales“ in den Quellen des römischen Rechts*, Budapest 1977, 104-124. See E. PANOFSKY: *Idea* (8.), 68 ff. Finishing thought (71): „Das Mittelalter war gewohnt gewesen, Gott mit dem Künstler zu vergleichen, um uns das Wesen des göttlichen Schaffens verständlich zu machen — die Neuzeit vergleicht den Künstler mit Gott, um das künstlerische Schaffen zu heroisieren: est ist die Zeit, in der Künstler zum Divino wird.“

<sup>138</sup> H. COING: *Europäisches Privatrecht* (67.), 222; also ULMER: *Copyright and Industrial Property* (137.).

represent it all.<sup>139</sup> At the beginning of the 15<sup>th</sup> century, in Italy (!) clients paid usually for the material and the hours worked by the painter, or the fee was determined on a square foot basis.<sup>140</sup> The view that the skill of the painter should be remunerated came to the fore in the second half of the century. Thus the client stipulated in the contract, among others, that the most important parts (e.g. the human figures, the background) should be painted by the master himself, and should not be left to his assistants.<sup>141</sup>

With the recognition and special stipulation of artistic „skill”, the work of the painter became relevant legally as well. This was given special emphasis in the contracts, and slowly it became widely recognized that the success of the work of art depended mostly on the work of the painter, and not on something else. Pictures made on commission became the property of the patron, thus in such cases we cannot speak of the rights of the author. The decision on whether to have a copy made of the work of art or not was made by the client. But in the case of printed engravings the right was limited to the acquisition of the individual sheets, the artist was entitled to the right of ownership and disposal of the original plate. We can speak of the protection of these rights in connection with Albrecht Dürer.

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<sup>139</sup> BAXANDALL: *Reneszánsz szemlélet — reneszánsz festészet* [Painting and Experience in Fifteenth Century Italy] (77.), 24.

<sup>140</sup> German circumstances see WÜRTEMBERGER: *Das Kunstfälschertum* (69.), 70; fees in Florence see WACKERNAGEL: *The World of the Florentine Renaissance Artist* (72.), 338 ff.

<sup>141</sup> BAXANDELL: *Reneszánsz szemlélet — reneszánsz festészet* [Painting and Experience in Fifteenth Century Italy] (77.), 31 brings numerous examples, one of them is the following. In one of Signorelli's contracts for the frescos of Orvieto cathedral there is a very realistic provision: „Master Luca promises and is obliged to paint all the human figures on the vault especially the faces and the upper bodies above the waists and warrants that all work must be performed in his presence. Master Luca is obliged to mix all paints himself.” – translation of mine from Hungarian.

## SUMMARY

**Albrecht Dürer and the Copyright**

ZOLTÁN CSEHI

The essay discusses the birth of the notion of copyright in the context of the life and work of Albrecht Dürer. The first part addresses artistic aspects of what is an original work of art and what is a copy. Note that in the Middle Ages such a dilemma did not exist. Next the author reviews letters Dürer wrote to his friend, the noted humanist Willibald Pirckheimer, during his visit to Venice in 1509. Those letters witness Dürer's debate with Italian painters. Dürer was indignant because the Italians had copied many of his works and sold them as their own. Dürer's letters indicate that he had sought legal remedy at the guild of Venetian painters, but to no avail. In Dürer's time copying works of other artists was not a culpable act either in an aesthetic or in ethical sense. That is why his lone campaign was a respectable effort.

In the third part of the treatise the author discusses Dürer's interpretation of originality. Dürer made a living as an independent artist, selling his own works. In fact, he became a wealthy burgher of Nurnberg thanks to his career as a painter. His woodcuts and engravings were widely sought after and were sold in the open-air market by his wife and mother-in-law. He strove to protect his intellectual property, his works, to which he referred as „*meine Dinge*.” In 1512 the noblemen of Nurnberg issued an ordinance prohibiting copying Dürer's works, and later on the emperor granted him the privilege of issuing woodcuts and engravings. Those prohibitions remained in force even after Dürer's death.

In Italy at the beginning of the 15th century, when a client commissioned an artist, he paid for the materials used and for the artist's working hours. During Dürer's lifetime – at the time of the Italian Renaissance – the status of Italian painters changed from craftsman to independent artist. In the early 16th century, the contracts that the clients and artists entered into stipulated that the works of art, or at least their key components, had to be made by the artists themselves. It was the artist's talent and skill that were paid for rather than his working hours. Dürer was the first artist with a unique artistic identity and consciousness concerning that he alone owns his works and it is he who has the right to dispose of them. Hence, it follows that we have a good reason to consider Dürer a seminal figure in the emergence of copyright protection.

## RESÜMEE

**Albrecht Dürer und das Urheberrecht**

ZOLTÁN CSEHI

Der Verfasser untersucht in seiner vorliegenden Studie die Geburt der Idee des Urheberrechts im Spiegel des Werkes und des Lebens von Albrecht Dürer. Der erste Teil der Studie schneidet das Problem der bildenden Kunst bezüglich des Originals und der Kopie an, mit besonderem Hinblick auf die Tatsache, dass sich diese Frage im Mittelalter noch nicht gestellt hatte. Im Anschluss daran kommt er auf diejenigen Briefe Dürers zu sprechen, die dieser im Rahmen seiner Venedig-Reise im Jahre 1509 an seinen Freund, den berühmten Humanisten Willibald Pirckheimer, geschrieben hatte, und die ausgesprochen den Disput Dürers mit den italienischen Malern erwähnen. Dürer beklagte unter anderem auch in seinen Briefen, dass die Italiener seine Werke regelmäßig kopierten und diese zu ihrem eigenen Nutzen verkauften. Aus den Briefen ist herauszulesen, dass Dürer versuchte, in der Zunft der venezianischen Maler sein Recht durchzuführen, jedoch keinen Erfolg verbuchen konnte. In der damaligen Zeit galt das Kopieren weder aus ästhetischer, noch aus ethischer Sicht als verwerfliche Handlung, deshalb kann der Kampf Dürers gegen den Zeitgeist als historisch bezeichnet werden.

Im dritten Teil der Studie analysiert der Verfasser die Dürersche Auffassung der Originalität. Dürer arbeitete als selbständiger Künstler, im Grunde finanzierte er seinen Lebensunterhalt aus dem Verkauf seiner Werke und wurde auf diese Weise zu einem vermögenden Mann in Nürnberg. Mit seinen Stichen, die sehr gefragt waren, verdiente er wohl sehr gut; die Drucke wurden auf dem Markt von seiner Ehefrau und seiner Schwiegermutter verkauft. Er versuchte diese (geistigen) Produkte zu schützen; sie waren – wie er es selbst formulierte – „meine Dinge“. Im Jahre 1512 wurde das Kopieren der Werke Dürers vom Stadtrat von Nürnberg in einer Verordnung verboten. Anschließend erhielt er vom Kaiser ein Privileg zur Herausgabe seiner Stiche. Die oben genannten Verbotsverordnungen blieben nach dem Tode Dürers weiter bestehen.

Anfang des 15. Jahrhunderts zahlten Auftraggeber in Italien für das Material und die Zeit der Malerarbeit. Parallel zum Lebenslauf Albrecht Dürers wurde der Künstler im Laufe der italienischen Renaissance aus einem Handwerker zu einer selbständigen Persönlichkeit und einer mit dem Auftraggeber gleichwertige Vertragspartei. Die Auftraggeber verlangten vom Künstler nunmehr – oftmals sogar im Vertrag niedergeschrieben –, dass er gegebenenfalls das gesamte bestellte Werk, oder dessen wichtigste Teile persönlich anfertigt. Die Verände-

zung ist auch bezüglich der Tatsache nachzuweisen, dass der Künstler nunmehr nicht für seine Arbeitszeit belohnt wurde, sondern für sein „Geschick“ und sein „Talent“. Die Originalität des künstlerischen Schaffens und die Bindung dieser zum Künstler, sowie das künstlerische Bewusstsein, dass er selbst Eigentümer seiner geistigen Werke ist und selbst über diese verfügen darf, ist erstmals bei der Person Dürers nachzuweisen. Aus diesem Grund kann er als eine bestimmende Gestalt der Herausbildung des Urheberrechtsschutzes angesehen werden.