

# The Sex of the Author: On Authorship, copyright and the individual

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## ABSTRACT

This article explores the meaning of “authorship” and “author” on the basis of female authorship in the early Swedish film history as well as in contemporary film productions. Film, as a new protectable subject-matter raised fundamental questions as to the meaning and origin of authorship as a copyright concept. The need to identify an author was closely related to its recognition as an art form. The role of female authors in film, as well as how these rights were and are claimed and recognized are central questions discussed in the article.

**Keywords:** authorship, film, Selma Lagerlöf, film production

Authorship and film, or authorship in film, coalesce in exciting if also rather blurry ways. Interestingly enough, both ‘authorship’ as a concept of legal significance in the copyright environment, and film as a new technological (if not artistic) achievement received their first official international exposure in Paris, the former during the *Congrès Littéraire International* on the 17<sup>th</sup> of June 1878, and the latter in the public screening of the Lumière brothers’ films in Paris on 28 December 1895.<sup>1</sup>

It is not at all difficult to imagine why the application of the term ‘authorship’ in film production and consumption culture has been anything else frictionless. First, it took several decades for the public opinion and finally for the legal system to recognize as a form of art or in general an intellectual work subject to copyright protection. At the same time, film is as such a complicated subject-matter in terms of its process of production, the importance of the active involvement of several contributors and the difficulty to discern who in fact is the mastermind, the “genius” behind the artistic quality of the end-result.<sup>2</sup> The multi-level and multi-party contribution, necessary for a film production is *de facto* contradictory to the credits to the sole author. These factors also explain why an “authorship” discourse, that of the *auteur theory* emerges as late as in the 1940s in film theory.<sup>3</sup> At the same time the *auteur*

becomes central in the film context when the industry reached a certain maturity and there was an importance to claim its “fine art” status.

Authorship as such is a rather contemporary concept used to define the person that bears the sole responsibility and enjoys the benefits for the creation of an original work, initially literary works. Certainly, authorship constitutes evidence of origin, originality, a matter of branding, but also often evidence of the legal control on works. Previously, legal control in printed works was awarded to printers and publishers by means of royal privileges. It is not until the late 1800s that the ‘author’ appears as a unique individual, a genius that deserves to be compensated for his work. Gradually this “author” becomes an autonomous legal subject and authorship becomes of central importance for the operation of the copyright system as a whole.<sup>4</sup>

In fact in contemporary film studies, authorship has been awarded a number of different functions; that of origin, expression of personality, sociology of production, as a signature or as a reading strategy, as a site of discourses or as a technique of the self.<sup>5</sup> It becomes thus a concept that is filled with content both with regards to the author’s internal need for expression, as well as with

<sup>1</sup> Rune Waldekranz, *Filmens Historia: De Första Hundra Åren: Del I* (Norstedts 1986). See also SB Dobranski, “The Birth of the Author: The Origins of Early Modern Printed Authority” in Stephen Donovan, Danuta Fjellestad and Rolf Lundén (eds), *Authority Matters: Rethinking the Theory and Practice of Authorship* (Rodopi 2008); Abraham Drassinower, “Copyright, Authorship and the Public Domain: A Reply to Mark Rose and Niva Elkin-Koren” (2018) 9 *Jurisprudence* 179. NB. I am aware that this fact is contested.

<sup>2</sup> Marja Soila-Wadman, *Kapitulationens Estetik: Organisering och Ledarskap i Filmprojekt* (Företagsekonomiska institutionen 2003) 42.

<sup>3</sup> For an elaboration on the evolution of the concept of “author”, see Peter Jaszi, “Toward Theory of Copyright: The Metamorphoses of

“Authorship” (1991) Duke Law Journal 455; Benjamin Kaplan, “An Unhurried View on Copyright” (1967) Columbia University Press 52; Martha Woodmansee, “The Genius and the Copyright: Economic and Legal Conditions of the Emergence of the ‘Author’” (1984) 17 *Eighteenth-Century Studies* 425.

<sup>4</sup> John Feather, *Publishing, Piracy and Politics: An Historical Study of Copyright in Britain* (Mansell 1994); Rosemary J Coombes, *The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law* (Duke University Press 1998).

<sup>5</sup> Janet Staiger, “Authorship Approaches” in David A Gerstner and Janet Staiger (eds), *Authorship and film* (Routledge 2003).



regards to their communication with the public and with other authors.

Authorship constitutes further the theoretical foundation of modern intellectual property rights, the mere existence of copyright presupposes the identification of an author. The concept has however at the same time constituted an expression of a paternalistic and gender-biased discourse where the author, and thus also the owner of intellectual property rights, is in fact a man, a "he".<sup>6</sup> There is very little feminist analysis of copyright law, and thus also of the gender perspective of authorship as such.<sup>7</sup>

One could of course wonder why a discussion on authorship is relevant, and how it actually contributes to address the core concepts of this book, namely the presence and power of women in the Swedish film industry. The reason should however be obvious. Authorship is today used as an all-encompassing term within a widespread area of cultural exchange, it signals property, control but also creativity, personality, the power to include and to exclude, and of course branding. The questions posed by this chapter are thus: 1) how does the presence of an author emerge in the field of film industries in Sweden, in regard to praxis, rights and legislation. 2) What are the specific features of a feasible female author within the film industry? Is authorship equivalent to presence? 3) what are the means that are able to create a "portrait" of an author in the film industry and is it possible for an alleged female author to have control over her own "portrait".

<sup>6</sup> The historical presentation of the "author" will refer to the male author, the "he".

<sup>7</sup> Andreas Huyssen, *After the Great Divide: Modernism, Mass Culture, Postmodernism* (MacMillan 1988) 192; Séan Burke, *Authorship: From Plato to the Postmodern: A Reader* (Edinburgh University Press 1995) 145; Melissa Homestead, *American Women Authors and Literary Property* (Cambridge University Press 2005); Carys J Craig, "Reconstructing the Author-Self: Some Feminist Lessons for Copyright Law" (2007) 15 *Journal of Gender, Social Policy and the Law* 207; Ann Bartow, "Fair Use and the Fairer Sex: Gender, Feminism and Copyright Law" (2006) 14 *Journal of Gender, Social Policy and the Law* 551.

In order to address these questions, this chapter investigates the evolution of the concept of authorship from a specific theoretical point of view of the Auteur-theory developed in the late 1940s by French film critics, its introduction to the world of film and the role it plays to the application of the copyright system. Subsequent to a theoretical and legislative overview of the terms author/auteur this chapter will proceed to look into how authorship has been comprehended and exercised by women who have aspired/aspire to the position of author/auteur in the film industry.

## THE GENESIS OF AUTHORSHIP

Although Foucault's thought-provoking text "Qu'est-ce que en auteur?", was published already in 1968 posing central questions on the definition and validity of the concept very little has been written about the origins of the term *auteur*. In his article, Foucault poses a series of interesting questions in relation to the genesis of the concept, namely:

it would be worth examining how the author became individualized in a culture like ours, what status he has been given, at what moment studies of authenticity and attribution began, in what kind of system of valorization the author was involved, at what point we began to recount the lives of authors rather than of heroes, and how this fundamental category of "the-man-and-his-work criticism" began.<sup>8</sup>

<sup>8</sup> Michel Foucault *Diskursernas Kamp* (Symposion 2008), 141. See also Roland Barthes, *Image, Music, Text* (Fontana 1977) 142; Séan Burke, *The Death and Return of the Author: Criticism and Subjectivity in Barthes, Foucault and Derrida* (Edinburgh University Press 1992); Per I Gedin, *Litteratur i Verkligheten: Om Bokmarknadens Historia och Framtid* (Rabén Prisma 1997); Leif Dahlberg, "Rätt och Litteratur" (2003) TfL.

What seems to be rather clear however is the fact that the term (at least in its contemporary use) is a new normative construction, and one promoted by a group of literary authors that wished to find a legal basis that would allow them to actually make a living of their writing. It is in fact their struggle to acquire a legal protection for the products of their labor that constituted the starting point for what came to be *the author* and in extension that of the *auteur*. In the Renaissance and post-Renaissance era of the early 19<sup>th</sup> century, the ‘author’ is a craftsman, the “master of an art” who provided form to clay, color and words. These “craftsmen” were expected to contribute with literary and cultural expressions, in order to satisfy their sponsors, mainly the royal court and the social elite. It was also these sponsors that provided for the financial, political and social protection necessary for these authors to live and thrive. The dependence of the authors on their sponsors had most certainly their side-effects, since it also dictated very often also what was produced and how. In this very subjective world of artistic and literary evaluation, certain authors and artists of extraordinary quality were considered to have a divine source of inspiration, the glory of God or a muse. The cultural hegemony of the cultural elite was gradually abandoned due to new political and economic circumstances, and in the late 18<sup>th</sup> century artistic creations and literature were increasingly accessible to a broader public. Authors and artists abandon their protégés status, and adopt that of public celebrities.

In this attempt to better serve the cause of linking authorship to a livelihood, late 19<sup>th</sup> century theorists have undermined the role of the craftsman and elevated the role of “genius” that is not of divine origin, and originates from the talents and personality of the “author” himself/ herself. The central role the personality, skills and inspiration of the individual “author” leads to the genesis of the “original genius”. Undermining the role of the divine has a decisive impact on the internal relationship between the author and the work. Art and literature becomes the outcome of the “author’s” genius, a commodity and thus also the author’s property. Although the role of royal and nobility patronage is fading, authors find themselves in new dependency relations, this time exploited by printers and publishers who get richer and richer, while they (the authors) received a limited honorarium. Interestingly enough, the privileges of the printers and publishers originate in the royalty, the historical patrons of art and literature.<sup>9</sup>

It is under such circumstances, that the first official international proclamation of the “author”, is made. In 1878, the year of the *Exposition Universelle* in Paris and the *Congrès Littéraire International*, initiated by the *Société des gens de lettres de France*. Victor Hugo holds the inau-

gural speech and in it is actually he who for the first time constructs the modern international “author”.<sup>10</sup> According to Hugo, if you deprive the author of his property then you deprive him of his independence. The “author” is a genius, possessing extraordinary qualities, an intellectual capital that should enjoy the extensive protection of the legislator. It is this speech that lays the theoretical ground for the Berne Convention (1886), the international treaty regulating copyright law and signed and ratified by in principle all countries in the world.<sup>11</sup>

A discourse on the genius in film, author, that strikingly reminds of the origins of the literary author as he was presented in the speech of Hugo, rises some seventy years later in post-war France. It is the *director as auteur*, a term, concept and value that gradually finds its way to film critics and filmmakers in other countries in the late 1950s and 1960s. Two seminal texts contributed to launching the notion of the *auteur* – embedded, as it was, by a theory called – *le politique des auteurs* – were Alexandre Astruc’s *Du Stylo à la caméra et de la caméra au stylo* (1948), and François Truffaut’s *Une certaine tendance du cinéma français* (1954).<sup>12</sup>

In fact, some of the earliest attempts to theorize around the film medium approached filmmaking as an art form, and emphasized the filmmaker as an artist comparable to a painter or a novelist.<sup>13</sup> In a similar manner as in the case of literary authors previously, the fact that there was no explicit proclamation of the role of the director as *auteur*, does not *per se* also mean that the director’s contribution would have been regarded as insignificant prior to the all-encompassing breakthrough of the concept. Indeed, silent film directors like D.W. Griffiths in the US, Carl Theodor Dreyer in Denmark and Viktor Sjöström in Sweden (to name just three examples) were renowned for their artistry and their individual and specific cinematic style.

In this respect, the *auteur* has been presented as the man who initiates the concept, writes the script, including dialogue of his films, he directs and finances them as well. It is the one that has the sole responsibility for the artistic creation in a cinematographic work and the one to receive the sole credit.<sup>14</sup><sup>15</sup> However, Truffaut, together with other *Cahiers* critics, promoted a rather inclusive approach. In

<sup>10</sup> Eva Hemmungs Wirtén, *No Trespassing: Authorship, Intellectual Property Rights, and the Boundaries of Globalization* (University of Toronto Press 2004).

<sup>11</sup> DA Brooks, *From Playhouse to Printing House: Drama and Authorship in Early Modern England* (Cambridge University Press 2000); Sam Ricketson and Jane Ginsburg, *International Copyright and Neighbouring Rights: The Berne Convention and Beyond* (2nd ed, Oxford University Press 2006); Gunnar Petri, *Författarrättens Genombrott* (Atlantis 2008) 28; Janet Clare, “Shakespeare and Paradigms of Early Modern Authorship” 1 (2012) *Journal of Early Modern Studies* 137.

<sup>12</sup> Alexandre Astruc, *Du Stylo à la Caméra... et de la Caméra au Stylo. Écrits (1942-1984)* (L’Archipel 1992).

<sup>13</sup> See for instance Ricciotti Canudo, “Naissance d’un Sixième Art: Essai sur le Cinématographe”, translated as “The Birth of the Sixth Art” in Richard Abel (ed), *French Film Theory and Criticism: A History/Anthology (1907-1930)* (Princeton University Press 1988); Menno ter Braak, *De Absolute Film* (WL en J Brusse 1931).

<sup>14</sup> Francois Truffaut, “Une Certaine Tendance du Cinéma Français” 6 (1954) *Cahiers du Cinéma* 15.

<sup>15</sup> Our translation from the French original.

<sup>9</sup> Bo Peterson, *Välja och Sälja: Om Bokförläggarens Nya Roll Under 1800-talet, Då Landet Industrialiseras, Tågen Började Rulla, Elektriciteten Förförändrade Läsvanorna, Skolan Byggdes och Bokläsarna Blev Allt Fler* (Norstedts 2003); Nancy Miller, “Changing the Subject: Authorship, Writing and the Reader” in Teresa de Lauretis (ed), *Feminist Studies/Critical Studies* (Palgrave Macmillan 1995); Christopher Buccafusco, “A Theory of Copyright Authorship” 102 (2016) *Virginia Law Review* 1229.

order to stress the artistic value of commercial genre productions as well, the French film critics supported their arguments by analyzing the works of Hollywood directors such as Howard Hawks and Alfred Hitchcock. In order to overcome the criteria asking for possession of the means of production and control of all phases in the production chain, the focus was put on the *style* of each director in a film. The style became the expression for the uniqueness and the artistic value of the final artistic product, the film. Thus, the notion of *auteur* came to signify not only filmmakers telling their own stories, but also directors who succeeded in making personal films even when working from other people's screens.<sup>16</sup>

Looking at the Swedish paradigm, the film industries had, during several decades, aspired the status of art (as in opposition to the aura of low-brow amusement) for their products. This was not only because of the importance to label "art as art", but as an effort to appeal to the culturally refined groups in society. Appealing to this stratum, was in its turn expected to contribute to substantial increases in the box-office income. Parallel to this, and towards the end of the 1940s, the government increased "amusement taxes" based on every paid ticket in different kinds of entertainment facilities, including film shows. On the other hand, theatre performances and musical concerts, being considered as cultural forms, were exempted from the amusement tax. The film industry was presented with a pure economic interest that of receiving similar tax reliefs as the stage theatres. In order to achieve that, film had to be considered as an acknowledged fine art, as an expression of high culture. Fine art and high culture presuppose the existence of the alleviated author. Identifying the film director as an *auteur* came well at hand under such conditions.

In the late 1940s, when *auteur theory* emerges, the film industry has received both the self-confidence and the recognition of its artistic value and seeks a way to individualize the director as the "author".<sup>17</sup> It seems only natural that if film is to be recognized as a work of art, there should also be an "author". The ideal of the "author" that creates freely without any constraints from sponsors, corresponds to the ideal of the "author" of the post-Renaissance era. It also makes a perfect match with the concept of the artist at the introduction of Modernism in art and literature at the turn of the 19th century where a piece of art was to be seen as the expression of a unique mind and an individual's view of life and values.<sup>18</sup>

## AUTHORSHIP IN FILM: ARE THE IGNITION POINTS TIMELESS?

As previously shown in this chapter, authorship is a term loaded with different values, carrying different meanings and thus giving rise to a variety of legal implications. One important aspect in this discussion at hand is what is meant by "authorship" and how the film industry uses the term. What is it really, we are looking at when identifying authorship in film? Is it the level of creativity? Or is it a matter of ownership claim? Is it control of the creative process of film production, or is it control over the end result? Or is it a matter of being attributed the credits to a film? Is it merely a matter of branding? And can it be so that while using the same term, "authorship in film" we weigh and value completely different aspects/meanings of the term?

In the beginning of the 20<sup>th</sup> Century, Sweden participated in the intellectual and legislative debates as to whether cinematographic works are dramatic works or photographs and thus whether they would qualify for copyright protection to begin with. The Law on the right to literary and music works of 1919, did not mention film as protectable subject matter. The same year however, the Law on the protection of photographic works (FL) was adopted and was deemed as most appropriate to foster the protection of this new "subject-matter".<sup>19</sup> This law was of course of relevance for the film industry, as cinematographic works were initially considered a series of photographs. During this first period, discussions were concentrated on the status of copyright protected works used for the purposes of a film production (books, music), as well as on whether and under which conditions a film could be subject to copyright protection as such.<sup>20</sup> A review of the literature and the legislative works in this respect shows that film directors were granted a central position in the film protection debate. In the public inquiries both regarding the 1919 legislation and its 1931 revision, the contribution of the film director was expressly considered more important than that of the theatrical director in stage productions.<sup>21</sup> Nevertheless, in neither of these legislative works is the film director expressly awarded copyright protection for the film as such. Knoph excludes in his work any possibility of protecting the film director as an author, yet at the same time he provides that the contribution of the film director is independent enough from the film as such and could thus be a basis for some form of protection. This was contrary to what the court decided with regards to a theatrical director in the *Mazurka* case.<sup>22</sup>

<sup>19</sup> Martin Fredriksson, *Skapandets Rätt* (Daidalos 2010).

<sup>20</sup> Gösta Eberstein, *Den Svenska Författarrätten* (Norstedts 1926); Ulf von Konow, *Författares och Tonsättares Rätt Enligt Gällande Lagstiftning: Kommenterande Utredning till Lag om Rätt till Litterära och Konstnärliga Verk den 30 Maj 1919 med Däri Genom Lag den 24 April 1931 Gjorda Ändringar och Tillägg* (Natur och Kultur 1941); Åke Lögdberg, *Auktorrätt och Film* (Gleerup 1957).

<sup>21</sup> Elisabeth Liljedahl, *Stumfilmen i Sverige: Kritik och Debatt – Hur Samtiden Värderade den Nya Konstarten* (Svenska Filminstitutet 1975).

<sup>22</sup> See the court case of the Supreme Court of Sweden, NJA 1943:101 s. 411. Ragnar Knoph, "Om Ophavsmannens 'Moralske' Rett til Sitt Verk

<sup>16</sup> Miranda Banks, "Production Studies" 4 (2018) *Feminist Media Histories* 157.

<sup>17</sup> Rune Waldekranz, *Filmens Historia: De Första Hundra Åren: Del I* (Norstedts 1986); Tytti Soila, "The Phantom Carriage and the Concept of Melodrama" in Helena Försås-Scott, Lisbeth Stenberg and Bjarne Thorup Thomsen (eds), *Re-mapping Lagerlöf* (Nordic Academic Press 2014).

<sup>18</sup> Peter Luthersson, *Modernism och Individualitet: En Studie i Den Litterära Modernismens Kvalitativa Egenart* (Symposium 1986).

It is important to note here however, that authorship in film as such was not officially recognized until the 1960 Swedish Copyright Act (URL). In lack of adequate legislative framework, the rights of directors, actors, producers were safeguarded (when that was the case) by means of contractual agreements. What is noteworthy in this respect is the fact that although film productions fell outside the scope of the legislation, these agreements were still very laconic (very short in length and including only general terms). It seems that relations in the Swedish film industry of the time were to a large extent self-regulated, by unwritten codes of conduct, that were easy to follow and enforce considering the limited size of the industry at the time. The “author” in this respect, that was recognized was the author of the original literary work on the basis of which the film was produced.<sup>23</sup>

The 1960 Swedish Copyright Act has entailed a new era for the film industry by including in the copyright legislation a list of *sui generis* rights and so-called neighboring rights, several of which concern film, namely rights for performing artists, producers, and even photographers.<sup>24</sup> Neighboring rights, although placed strategically under the same legislation, enjoy a somewhat different legal status than that of copyright. Protection criteria differ, as does the duration of protection granted. Rights are not exclusively based on the creative expression of the right holder as the financial investment in the film also may determine the grant of the exclusive rights (44-47 §§ URL). In fact, these rights may protect a legal person (a company or organization) and do not require the existence of a human, an author/auteur, as is the case with traditional copyright. Furthermore, they reward economic investment and not creativity or originality. It seems thus, that copyright legislation partly deviated from the need to anchor exclusive rights on the Renaissance ‘author’.

According to article 2.1 of the Council Directive 93/98/EEC of the 29<sup>th</sup> of October 1993 harmonizing the term of protection of copyright and certain related rights, the author of the film as such was the principal director. While some other countries, such as the UK, have opted for a more hands-on clarification of the legal status of “authorship” in film, Sweden has chosen a more neutral position.<sup>25</sup> The copyright is awarded to the person/persons who have contributed with creativity and originality

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Efter den Nye Lov Om Åndsverker” in *Festskrift tillägnad Presidenten Juris doktor Herr Friherre Erik Marks von Württemberg den 11 maj 1931 av nordiska jurister* (1932) 316. Åke Lögdberg, *Auktorrätt och Film* (Gleerup 1957).

<sup>23</sup> Åke Lögdberg, *Auktorrätt och Film* (Gleerup 1957); Stig Strömholt, *Europeisk Upphovsrätt: En Översikt Över Lagstiftningen i Frankrike, Tyskland och England* (Norstedts 1964); Stig Strömholt, *Upphovsrätten Verksbegrepp* (Norstedts 1970); Stig Strömholt, “Upphovsmans Ideella Rätt – Några Huvudlinjer” 88 (1975) TfR 289; Stig Strömholt, “Upphovsrätten Som Nationell Disciplin – Exemplet Droit Moral” 74 (2005) NIR 6.

<sup>24</sup> Latin for of its own kind, and used to describe a form of legal protection that exists outside typical legal protections -- that is, something that is unique or different.

<sup>25</sup> DA Brooks, *From Playhouse to Printing House: Drama and Authorship in Early Modern England* (Cambridge University Press 2000) 39; Pascal Kamina, *Film Copyright in the European Union* (Cambridge University Press 2016) 47.

in the final artistic character of the work/the film. This leaves the question of “authorship” rather open and subject to an *in casu* evaluation.<sup>26</sup><sup>27</sup> In the Public Inquiry it is provided that the principal director of a film will also be the author of the film.<sup>28</sup> Following the same line is the law proposal 1994/95:151,<sup>29</sup> confirming the same view but at the same time not considering it necessary to specify this in the legislative text as such.<sup>30</sup>

The fact that copyright is in fact a two-faceted exclusive right containing both an economic right (2 § URL) and a moral right (3 § URL) brings an additional and not unimportant perspective to the discussion. Rights transferred by means of contract or assignment concern only the economic rights of copyright (the right to reproduction, distribution etc)<sup>31</sup>. The moral rights are non-transferrable and remain with the original author of the work. This means that in theory the director, screen-writer or any other joint-author to a film might claim moral rights and object to a certain form of exploitation of a film even after the transfer of their economic rights (See for instance the case *Hajen som visste för mycket* in which the director of the film opposed it being disrupted for advertisements when broadcast by the Swedish television channel TV4, as this was considered to distract the atmosphere and historical character of the film.<sup>32</sup>)

It is thus important to clarify that when using the term “authorship” from a legal perspective we refer in fact to a bundle of rights. The contemporary abstruseness of the legislation with regards to the copyright protection of film works is compensated by elaborate contractual agreements, concentrating the economic rights (be it traditional copyright or neighboring rights) in the hands of the producer/distributor. What authorship thus bestows the film author with above the economic rights of copying, distributing and that of public performance, is the right to be named, the right to have the final say, the “final cut” on the artistic approach of the film, and the right to require that the film is distributed in ways that are not defamatory for the author.

## IN SEARCH OF THE ‘SHE’ GENIUS

Considering the above, the conceptual idea of the author/auteur has historically been a man, a “he”. Victor Hugo, 75 years old at the time of his seminal speech quoted previously in this chapter, clearly identifies the male author.

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<sup>26</sup> Jeffrey Knap, “What is a Co-Author?” 89 (2005) *Representations* 1.

<sup>27</sup> A case-to-case evaluation needs to be made in this regard.

<sup>28</sup> See *Lagförslag av Auktorrätskommittén* (SOU 1956:25) 134.

<sup>29</sup> Governmental Bill (1994/95:151) 25.

<sup>30</sup> Kathy Bowrey, “Who’s Writing Copyright History?” 18 (1996) *European Intellectual Property Review* 322; Stig Strömholt, “Upphovsrätten Som Nationell Disciplin – Exemplet Droit Moral” 74 (2005) NIR 6; Martin Fredriksson, *Skapandets Rätt* (Daidalos 2010) 217-219.

<sup>31</sup> Pascal Kamina, *Film Copyright in the European Union* (Cambridge University Press 2016) 89.

<sup>32</sup> The director of this film was Claes Eriksson (1989).

He also lived in a period of time when women had no legal rights after marriage, not even the acclaimed authors could in fact represent themselves and decide upon the management of their rights.<sup>33</sup> Looking into central principles and terminology of copyright law leaves no doubt of its gendered origins. The right of the author, according to copyright law, to have his name attached to his work is named “paternity right”, as in fact the right of the father to protect the patrilineal line. The parental metaphors do not stop here, the author “creates”, “originates” he also acquires the rights to “reproduction” and when the identity of the author is unknown the works are “orphan”.<sup>34</sup> Regrettably of course, both authorship as a political and legal term, and the concept of *auteur* in film theory, was developed almost entirely by men who developed the intellectual construction of a male author, the only one who could be a “genius”. One female person with an influence in the early discussion on authorship was the American film critic Pauline Kael, discussed below. One could of course attempt to understand (though not justify) why this was the case.

The notion of the *auteur*-director was created by male film critics, and the filmmakers that they canonized were also men. In 1963, a few years before Barthes and Foucault wrote their pieces on the (missing) author, Pauline Kael criticized “auteur theory” as ‘an attempt by adult males to justify staying within the small range of experience of their boyhood and adolescence’.<sup>35</sup> After her, many feminist film theorists have rejected auteurist approaches to film, claiming that a focus on the director is inherently tied to a sexist cult of male personality. Yet, many feminist

<sup>33</sup> See Martha Woodmansee, “The Genius and the Copyright: Economic and Legal Conditions of the Emergence of the ‘Author’” (1984) 17 *Eighteenth-Century Studies* 425; Eva Heggestad, *Fången och Fri: 1880-talets Svenska Kvinnliga Författare och Hemmet, Yrkeslivet och Konstnärskap* (Uppsala Universitet 1991).

<sup>34</sup> Rose Mark, “Mothers and Authors: Johnson v Calvert and the New Children of Our Imaginations” 22 (1996) *Critical Inquiry* 613.

<sup>35</sup> Pauline Kael, “Circles and Squares” 16 (1963) *Film Quarterly* 12.

film scholars have also opted to use the idea of authorship to celebrate the work of women directors.<sup>36</sup>

Despite of the origins of author and *auteur* and their dependence on the male prototype, the “she” geniuses of the film industry are non-negligible. There is a long list of important contributions of women in the history of film production, be it as authors of literary works adapted to films, screen-writers, set decorators, directors or producers.<sup>37</sup> It becomes also equally important to see how their acclaimed authorship (and the rights this bestowed them with) was acclaimed and defended by them, as well as how this was welcomed by the state, the stakeholders of the film industry and the audience.

On the basis of what was previously concluded as a core of authorship in film, namely the moral rights to the work, it is of interest to investigate how these rights were exercised by “she” geniuses of the film industry historically. An interesting illustration is that of state censorship emerging as a means to control the content and distribution of films in Sweden. The Nobel prize winning author, Selma Lagerlöf was one of the female authors with the most notable resistance to the attempts of the censors to inflict on her authorship. In 1925, the Gustaf Molander film *The Sons of Ingmar* (*Ingmarsarvet*), based on the first part of Lagerlöf’s trilogy *Jerusalem*, attracted the interest of state censorship. The distributor (SF) was in fact informed that certain scenes should be removed (in particular a scene with a woman drowning after a fight for a lifebuoy). The distributor replied that Lagerlöf was strongly against such interference in her creative work, since this would severely damage the artistic value of the film. In the letter informing of their final decision, the censors state clearly that they do not share Lagerlöf’s opinion, but will however respect her wish.<sup>38</sup>

This decision is noteworthy since it illustrates how censorship and authorship collide in film, but also and above all, because Lagerlöf managed to defend her rights as the “author” and in fact impose her approach on the censors. At a period of time, where there was no established, self-evident author for the film work as such, the author of the literary work -that the film was based on- often became the frontal figure both to defend its intellectual and artistic sanctity as well as a brand name under which the film would be advertised.

In fact, this was not the first time the censors chose to abstain from interfering with Lagerlöf’s authorship. Already in 1917, there were serious concerns for the film *The Woman He Chose* (*Tösen från Stormyrtpet*) based on Lagerlöf’s book with the same name, and whether it should be classified as white (prohibited for both adults

<sup>36</sup> Annette Kuhn, *Queen of the B’s: Ida Lupino Behind the Camera* (Greenwood Press 1995); Tytti Soila, *Att Synliggöra det Dolda: Om Fyra Svenska Kvinnors Filmregi* (Brutus Östlings Förlag Symposium 2004); Joan Simon, *Alice Guy Blaché: Cinema Pioneer* (Yale University Press 2009).

<sup>37</sup> Carol Rose, “Bargaining and Gender” 18 (1995) *Harv JL & Pub Pol'y* 547; Carol M Rose, “Women and Property: Gaining and Losing Ground” 78 (1992) 421.

<sup>38</sup> Gösta Werner, *Rött, Vitt och Gult: Färgerna i Censuren Banér: Den Svenska Filmcensuren Bedömningar av Victor Sjöströms och Mauritz Stillers Filmer 1912-1936* (Statens Biografbyrå 2002) 95.

and children) since it included the rape of a woman, a child born outside of wedlock and a father who refused to take responsibility for his actions. However, the censors seemed unwilling to interfere with the work of Lagerlöf, recognizing her status and admitting some form of 'sanctity' in her intellectual work.<sup>39</sup>



Fig. 1. Caption: The poster from the film is illustrative of the predominant position Lagerlöf had as an 'author' of the film as such.

Lagerlöf's interface with censorship provides an interesting historical illustration of the power and impact of female authorship in the early film industry. Contemporary stories of authorship expressed in the interviews conducted by Tytti Soila reveal that while the Copyright Act of 1960 provided for a more solid legal basis concerning rights on film works, authorship, as exercised and experienced by women in the film industry has surprisingly been limited. These interviews had as a main focus the role of Mai Zetterling in the history of Swedish film. Zetterling's artistic work was admirable taking into consideration that Swedish film history could enumerate not more than three female film directors previous to her. In

her interview, Stina Ekblad compares the creative space offered to Ingmar Bergman and to Mai Zetterling respectively and concludes that when Bergman used erotic scenes it was acceptable, while when a female director would do the same, it became less artistic and much more criticized.<sup>40</sup> According to Ekblad a female director, such as Zetterling, had to be so much more in order to establish a career in the film industry, and at some point, this "much more" became "too much". Gunnel Lindblom discussed the film *Flickorna* (1968), which she considers to this day to be a very important and powerful film raising issues of women empowerment, but that met the criticism of the male audience, as well as of the women's rights organizations, most probably due to its female director.<sup>41</sup>

Director Marianne Ahrne provides that although she thinks that many of the commercially successful films made by male directors could have been made by women, women are in general more interested in preserving the integrity of their authorship. Women have a story they want to tell in their films.<sup>42</sup> This is also, according to Ahrne, the reason why most women make documentary films in Sweden, because in the production of those, the director has much more creative space and a much more active authorship. Equally characteristic is what she says about her films, among which she is able to see a distinction. Some of them, being her "works", "works on life and death", these seem to be the results of difficult and painful process, and as she herself says, "works made after taking a big risk".<sup>43</sup>

In her book *Ravinen*, film director Lisa Ohlin describes in diary form her work with the production of the film *Walk with me*.<sup>44</sup> In the detailed description of the working process with the specific film, Ohlin writes about her process of becoming a director, her love for film, and the difficulties she has encountered in her career due to the fact that she is a woman. Her creative freedom is limited by producers but also by photographers and other members of the production team that would normally be expected to execute her requests. The book describes all the turns that the lengthy production has taken, changes in the budget, changes in the cast as well as in the directions given by producers and distributors that have clear view on what is needed in order for the film to become a success. All these comments and creative "contributions", gradually limit Ohlin's creative activity to the minimum.

The content of the book is not revolutionary as such and the difficulties faced during the production of the specific film are not unique. It is however very interesting because it exposes to the broader public, an industry-internal truth, namely the vital importance of being asked to make films, to become an author, that forces

<sup>39</sup> Gösta Werner, *Rött, Vitt och Gult: Färgerna i Censuren* (Banér: Den Svenska Filmcensurens Bedömningar av Victor Sjöströms och Mauritz Stiller's Filmer 1912-1936) (Statens Biografbyrå 2002) 82; Anna Nordlund, "Selma Lagerlöf in the Golden Age of Swedish Silent Cinema" in Helena Försås-Scott, Lisbeth Stenberg and Bjarne Thorup Thomsen (eds), *Re-mapping Lagerlöf* (Nordic Academic Press 2014); Tytti Soila, "The Phantom Carriage and the Concept of Melodrama" in Helena Försås-Scott, Lisbeth Stenberg and Bjarne Thorup Thomsen (eds), *Re-mapping Lagerlöf* (Nordic Academic Press 2014).

<sup>40</sup> Tytti Soila and Maaret Koskinen, Interview with Stina Ekblad (25 October 2008).

<sup>41</sup> Tytti Soila, Interview with Gunnel Lindblom (26 April 2011).

<sup>42</sup> Tytti Soila, *Att Synliggöra det Dolda: Om Fyra Svenska Kvinnors Filmregi* (Brutus Östlings Förlag Symposium 2004) 35-36.

<sup>43</sup> Ibid. 36.

<sup>44</sup> Lisa Ohlin, *Ravinen* (Type & Tell 2018).

directors to remain silent, to avoid conflicts with someone that potentially can in the present or in the future, influence their chances to future projects. A film director does not want to be considered difficult and picky, and thus accepts comments on the script, the scenery, the lighting even the way the film is to be directed by producers, distributors and other financers such that should not have a decisive impact on the creative work of the film. While the scope of creativity that Ohlin as a director was able to exercise was extremely limited, she was the one held solely accountable for the commercial failure of the film. Thus, authorship that should be twofold, i.e. originating in the expression of the personality of the author, and at the same expressing the origin of the creative work, has in this case constituted solely a grounds for accountability. While Ohlin had to accept and execute the directives of others, the result of the intellectual creation, the film was her responsibility. Ohlin is clear on the difficulties she had had to deal with during her career due to her sex. Everything from comments from male colleagues on her private and professional choices, the unwillingness of photographers to execute her orders, questioning her ability to direct, the sexual violence she was exposed to by a producer, and the defiance she had to deal with from the press when she chose to make a film about men (questioning what made her do a film about men, and whether she thought she was able to). It becomes obvious that the hurdles faced by authors in the film industry due to the particularities of the industry and economic restraints are accentuated when the author is a woman.

Apart from the economic restraints and the way producers restrict creativity and thus also indirectly authorship, there is another perspective of importance, inherent to film productions, that is their collective and collaborative nature. The film as a creative work, cannot potentially be attributed to the contribution of only one author (the

director), there are several contributions that could be decisive for the final character of the film as such.

These contemporary voices make it clear, authorship of women in the film industry is framed and constrained. Whether it is budget limitations (women make films with lower budgets in general), or the difficulties in taking the lead of the production team, or finally the constraints posed by distributors, women are not able to create freely. Their authorship is thus consequently limited, and its exercise timid.

## DOES AUTHORSHIP MATTER?

In conclusion, the cases presented here show that women's presence within the Swedish film industry has been tangible and even belligerent from very early on. They have been visible through concrete debates on issues of authorship and copyright, making a stand, claiming their rights.

The case of Selma Lagerlöf shows that for a woman, being successful in the debate concerning author/auteurship, a considerable amount of cultural capital has been necessary. Lagerlöf was an internationally acknowledged, Nobel prize winning author and member of the Swedish Academy. However, she clearly was a path breaker, and this study also shows that during the past decades the amount, awareness and self-confidence of women within the (Swedish) film industry has increased exceedingly.

One needs to address one important question in this respect, namely, is the gender of the author important when investigating power, presence and portrayal in film? And if so, why and to what extent? In fact, a decisive issue when discussing power, presence and portrayal, precedes any discussion of authorship, namely the possibility to be given the chance to make a film in whatever position that may be. This possibility of actually being part of the creative process of making a film, is what makes a woman, an author. If you are excluded from film productions, then authorship is a very theoretical exercise. It seems however that even at times when women were still questioned with regards to their intellectual capacity, the exercise of their fundamental rights and their right to a legal personality, a number of "she" geniuses emerged and occupied central positions in the film industry.

Today, authorship is framed by the strict constraints of the reality in which film productions take place, namely the very few opportunities directors have to make a film, the strict budgets, the extensive role and impact of other stakeholders such as producers and distributors. The competition in the creative space of the author is high, the stakes are high, and thus the sanctity of aesthetics, creativity and intellectual investment of the author (whoever that may be, the screen writer, the director, the producer, the author of the original book etc), will if needed be sacrificed to protect the commercial viability of the film or its broader distribution. Such a limited approach to authorship, means also that women directors, produc-

ers, authors in general are deprived of the power to choose what stories to tell, how to tell them, what to portray and for whom. It means in the end that their power to control the result of their work is limited. All the compromises they are willing to make, will without a doubt have an impact on the scope of their authorship. In this respect, it seems that these constraints are general and irrespective of gender.

Hence the sex of the author is vital. It is vital since the film industry is *de facto* an industry where women are still to this day underrepresented, it is vital because according to statistics women get to do films with lower budgets, it is also vital since women, the “she” geniuses, have very often to deal with bigger hurdles in their exercise of authorship, exercising authority in the production team, or negotiating with the production company (reference to relevant part of the book). It is also of central importance, since authorship has formed film politics and in particular gender politics and goals of the Swedish Film Institute. A lack of understanding of what authorship in film entails, what rights it includes, and to what extent these are framed by other objectives, such as budgets, corporate



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