

# THE ROLE OF IDEAS IN COPYRIGHTED WORKS AND DOCTORAL THESES. CONTRADICTION IN THE REGULATION OF THEIR REGIME (LAW NO. 8/1996 AND LAW NO. 206/2004)

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## Motto

*"But surpassing all the rest of the amazing inventions, what a sublime mind he had, who dreamed of finding the means to communicate his deepest thoughts to any other man, no matter how far away, beyond vast expanses of time and space. Speak to those in India; to speak to those who have not yet been born and will not be born sooner than a thousand or ten thousand years from now; and that's how easy it is, arranging twenty different signs on a page in any way! "*

*Galileo Galilei, 1632*

*"It's enough to get out of the house and plant a tree and you've created a world"*

*Rainer Maria Rilke*

## Abstract

*Some ideas, which become generators of other ideas and are initially expressed in art, but which have utility and applicability in the field of industrial property, we could call demiurgic ideas. These have an overwhelming impact and should be protected, precisely to give the author the rights to be enjoyed by all authors for the creation of other ideas.*

*Law no. 8/1996 is incomplete. It does not confer or formulate a fundamental right on the author of the work - the right to protect his own idea of the work. An idea that can generate other ideas and that can change the destiny of a fundamentally evolving society. Such ideas, perhaps even from the core of their creativity, are not recognized as having the fundamental right to be protected. At least not by Law no. 8/1996, perhaps not coincidentally called „copyright law”. It remains a real challenge that future regulations no longer commit injustices within the body and spirit of the text of the law.*

**Keywords:** *ideas generating other ideas, Law no. 8/1996, protection of ideas, demiurgic ideas.*

## 1. Introduction. Why the ideas?

The vocation to authenticity of the personality will be reproduced in the following in the form of the meaning of ideas. Expressed from a doctrinal, dogmatic, scientific, legal and artistic perspective, we will be able to be more pretentious about shaping a new, more conducive framework, in order to better develop the environment of "being" the content generator, the fruitful seed, what we understand today to be - the intellectual property.

The human ability to be creative has caused controversy since the beginning of evolution, as the extent to which he exercises this absolute power has generated results worthy of debate. People who generate small things tell jokes, show expressions that can excite those around them. Great people come up with ideas. In philosophy, in literary writings, in inventions, in technology or in everyday life that attracts a need that must be solved more usefully, more effectively, better.

This article aims to understand and bring to the fore why ideas are the greatest. Why do ideas deserve the podium and the trophy for the protection of all laws that understand the defined concept? And why ideas must remain the basic foundations of any human evolution.

Where do the ideas come from? Why do thoughts come? How do we know that an idea is unique? How do we prioritize them when the same idea has been thought of by at least one other person on the planet?

Every person who is born and dies, recognized by a state, was from the very beginning in the formation of the contour of a destiny. This route, undetected, unexplained, becomes a trajectory, worthy of being followed as a human life. A human's main concern is survival, finding a purpose, discovering deeply rooted talents from DNA, growing and maturing with the experiences gained, developing on several social levels and elevating him, through the brilliance of intelligence, truth or wisdom, among the masses of people. As our poet also acknowledges: "(...) *In each*

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*one there is a woman, in each one there is a man, And above all other people only rises he who can*"<sup>1</sup>

Those who have the brightness become the object of observation. The differentiating element of this brilliance most of the time, consists in innovation. Evolving. In the idea. **To recognize a human's ideas means to recognize him as an individual.** How could we really capitalize on such a human resource, if not capitalizing on its own innovation, work or idea?

As I write this article with such a controversial legal and creative theme, it becomes even more challenging, as I have to start directly from God. I cannot abandon the logical red thread of our existence, of creation, of humanity without understanding, to some extent, to the extent of the power of a single mind or, more precisely, to the indulgence of those who will judge and weigh in turn to these meanings.

*"In the beginning was the Word, and the Word was with God, and the Word was God!"*<sup>2</sup> (John 1: 1-14). Of course, this first form of being, where everything was perfect, we almost don't think we would have needed anything else. Only later, after the fall of man, did the first invention (and one of the greatest of mankind) appear - **writing**. At first, people had the word. And the word was enough for them. Following the deterioration of Edenic harmony, people proved to lose their word, and we could say that an "improvement" was needed. **Thus, writing appears an inventive, materialized form, as an evolutionary mechanism.**

Writing, according to some, had a demonic origin (since leaving Eden meant returning to sin, so the worldly form of conquering the human mind), but other researchers believe that it was invented in Egypt, including the writing medium – the papyrus: *"With writing, new spiritual connections were born and developed in time and space. The need to predict the Nile flood data with some accuracy forced the Egyptians to calculate time, thus inventing the Calendar and Astronomy. Mathematics and Geometry developed in connection with the measurements required by the construction of canals, dikes, or monumental buildings (temples, pyramids, funerary monuments)."*<sup>3</sup> So, the first person who had the idea to write the first symbols, generated an idea, which gave rise to a multitude of ideas and sciences that have contributed significantly to the evolution of mankind.

However, researchers of the history of ideas place the first revolution of inventions somewhere in the

Paleolithic, where the first stone tools appear - the stone knife, then the bow, the crossbow, and then all the other weapons useful for that time of human survival, settlements or cities. Even today, some anthropologists wonder what was the reason for the evolution of man to an organism with a huge brain in a muscular atrophied body: *"The brain accounts for about 2-3 per cent of total body weight, but it consumes 25 per cent of the body's energy when the body is at rest. By comparison, the brains of other apes require only 8 per cent of rest-time energy. Archaic humans paid for their large brains in two ways. Firstly, they spent more time in search of food. Secondly, their muscles atrophied."*<sup>4</sup> One of the first manifestations of the human mind to imagine objects that have no real correspondence is *"an ivory figurine of a <lion-man> (or <lioness-woman> from the Stadel Cave in Germany and dating to approx. 32.000 years ago). The body is human, but the head is lionine. This is one of the first indisputable examples of art and probably of religion, and of the ability of the human mind to imagine things that do not really exist."*<sup>5</sup> Perhaps the sculptor of this statue did not imagine what creative powers would be unleashed in his contemporaries and descendants and what aspirations and feelings people began to aspire to seeing this figurine. Over a few tens of thousands of years, remarks Yuval Harari, a Frenchman named Armand Peugeot, set up a limited liability company in 1896, also called Peugeot, a legal fiction designed to protect the owner of creditors: *„How exactly did Armand Peugeot, the man, create Peugeot, the company? In much the same way that priests and sorcerers have created gods and demons throughout history, and in which thousands of French curés were still creating Christ's body every Sunday in the parish churches. It all revolved around telling stories and convincing people to believe them [...] According to French legislators, if a certified lawyer followed all the proper liturgy and rituals, wrote all the required spells and oaths on a wonderfully decorated piece of paper, and affixed his ornate signature to the bottom of the document, then hocus-pocus, a new company was incorporated."*<sup>6</sup>

<sup>1</sup> Mihai Eminescu, the poem *Letter I* Leon Levițchi translation, see here: <https://allpoetry.com/-First-Epistle>, accessed on 25.04.2022.

<sup>2</sup> Bible – King James version (KJV), <https://www.biblegateway.com/passage/?search=John%201&version=KJV>, accessed on 25.04.2022. See also: Bible or Holy Scripture, Bucharest, IBMBOR Publishing House, 2018.

<sup>3</sup> Gheorghe Popescu, *The evolution of economic thinking*, 4<sup>th</sup> ed., revised, added and updated, C.H. Beck Publishing House, Bucharest, 2009, p. 18.

<sup>4</sup> Yuval Noah Harari, *Sapiens. A Brief History of Humankind*, Toronto, McClelland & Stewart, 2014, p. 14.

<sup>5</sup> *Idem*, pp. 25-26.

<sup>6</sup> *Idem*, pp. 31-32.

FIG. 1 Ivory cave figurine from Stadel cave in Germany.<sup>7</sup>



Fire leads to the formation of the Bronze Age, then the Iron Age where iron remains certified as an invention and not as a discovery. Iron made possible other inventions such as: the wheel, the writing already mentioned, the appearance of crafts, measuring instruments, electricity and, nowadays, the internet in another order of ideas - thus a completely new world was generated generating prosperity.

## 2. Ideas - Concepts. Terminological definitions. Meanings

When I think of existence, humanity, the planet, the living, the circle of life and the spiral of existence from the creation of the earth, the world, living things, man through biblical myth, we are somehow inspired and predestined to look up directly at the Creator. Where we seek to know, to understand, believe it or not, that we have a God. This God when He created our world first of all had the IDEA. Later this idea becomes the origin of the world, the new unseen or encountered in the Universe. So almost from this beginning we have to ask ourselves if **the idea has become original or not originality preceded the idea**. Even God longed for the creative act from the perspective of a spark, which I call an idea.

The idea of the idea will be the main topic of this article as the main concern will be to understand and adapt, to a suitable and fair context, any person who will shine. We cannot abandon brilliant minds without re-creating their Paradise where genius builds its own home in idea.

God Himself created the universe, the starry sky, the earth, living things, nature, and man. When it came to man, it was another idea. Namely that of retreating to Himself. In an earthly, humanoid, complex form, according to His image: "So God created man in his own image, in the image of God created he him; male and female created he them (Gen. 1, 27)."<sup>8</sup> First he prepared the right environment and context (we do not know if the first idea of creation was to give a purpose to the next idea so they were voluntarily cyclized or occurred as a result of the beautifully creative act).

So the **first idea** of God was about the contextual complexity (the universe, the starry sky, and our current home) and **the second idea it was the creation of man**. So far, so good. I dare to remind you as you read that we do not know and cannot be sure whether the source of these first two ideas from the Universe, coming directly from God, was based on any decree or "normative" but I like to believe that everything it was developed with the order of a system that will weigh the nature of things well.

So, going back to God the Almighty, we need to focus on anthropological issues. After God created the world, when he had the desire to fall back on Himself, in man, did he self-plagiarize?

**The term "idea"** in ancient Greek has at least three meanings: on the one hand, we have the meaning of "appearance, appearance, form, appearance." *LXX, Genesis 5: 3 ( ἰδέαν ) and in the form of*<sup>9</sup>, on the other hand, refers to a "particular form, distinctive character: face, kind, way, species, type: [...] <all forms of flight and escape death could be seen in the Athenian camp >"<sup>10</sup> that is, in the specific mode of expression which presupposes a precise distinction from what is imprecise, even with reference to "form, style, essential aspect, classification criterion, species"<sup>11</sup>, and the third has a philosophical connotation, especially in Platonic thinking where we have: "**the ideal form, idea, notion [ idea good ]**"<sup>12</sup> that is, the perfect and transcendent world of ideas, after which the demiurge creates the worldly world. Later, in Latin thought, Seneca tried to explain and translate into Latin the concept of *eidōs (idea)* influenced by the

<sup>7</sup> See: <https://upload.wikimedia.org/wikipedia/commons/4/4c/Loewenmensch1.jpg> accessed on 25.04.2022.

<sup>8</sup> Bible – King James version (KJV), <https://quod.lib.umich.edu/cgi/k/kjv/kjv-idx?type=citation&book=Genesis&chapno=1&startverse=26&endverse=31> accessed on 25.04.2022.

<sup>9</sup> Constantin Georgescu, Simona Georgescu, Theodor Georgescu, *Dicționar Grec-român*, vol. V, Z-H-Θ-I, Nemira Publishing House, Bucharest, 2013, p. 150, sq, article ἰδέα.

<sup>10</sup> *Ibidem*, pp. 151.

<sup>11</sup> *Ibidem*.

<sup>12</sup> *Ibidem*.

Greek understanding of the term: “ *The statue has a certain face: it is <eidos-ul>. But the model itself, which the artist contemplates making the statue, also has a certain face: this is the idea (Habet aliquam faciem statua: haec est idos. Habet aliquam faciem exemplar ipsum, quod intuens opifex statuam figuravit: haec idea est).*”<sup>13</sup> Of course, we agree with Clara Auvray-Assayas, who subtly remarks that translating the concept of *eidos* (*idea*) from ancient Greek into Latin “*changes the meaning or, more precisely, reduces it. Wanting to transmit, he freezes; privileging example impoverishes thinking*”<sup>14</sup>.

When Alfred Whitehead argued that “*European philosophical tradition is just a long series of footnotes to Plato,*”<sup>15</sup> he hinted that the originality of ideas is an extremely difficult endeavor, in which few have a chance to say a new idea, which has not been expressed in any way by our forerunners, so that the attempt of some to convince us of the originality of some ideas seems doomed to failure. Therefore, I will try in this article to argue the need to protect those truly original ideas, certain ideas that have the role and ability to inspire to impact large masses of people to create new ideas, methods, procedures or technologies that we they improve and change our lives for the better.

### 3. Regulations and legislation

Romanian legislation puts the scales of ideas in the balance sheets. In this legislative DNA, the legislator provides the framework where the idea is born. **Law no. 8/1996** introduces us to the idea, however, what matters in this plate of the law is only its expressive manner (although we will be able to make an analysis of the text of the law where we will notice that the legislator himself subtly contradicts the admissibility expression). Only the form of the idea will reach the heart of the legislator and not the substance. Since Law no. 8/1996 recognizes the existence of a work through the prism of originality, however, it does not protect its idea - that is, the germs that can lead to the whole creative process, and without which the work itself would not exist. The imprint of the author of the work is completely detached within the meaning of the law from the instrument without which the author would have been amputated in the creative act. It even stipulates in a manner that is not at all mannered and resolutely states that the idea does not benefit from the supreme protection of the law.

Art. 9 letter a), in the order of the enumerations, stipulates that, the ideas, as the first ones excluded from

the protection. Nothing is more unjust and overwhelming in terms of a law that claims to understand, admit, protect, and serve the supreme good of the author.

Ideas are not a priority, in the classical sense, but they are not seen as spiritual either. Or not decisive enough to convince the public, the readers of the works remaining with the idea of the work, touched by the expression of the author but can always have a free way to become the "puppet" of the idea, giving a new destiny to the original idea. Thus, if we are in the presence of a literary work where the writer of the work had the inspiration to outline an entire intrigue around an idea, the idea not being protected, it can be taken over by any reader. The idea will be transposed in a new or different way and, thus, the "destiny" of the idea, initially foreseen by its original creator, will be completely changed. Therefore, the idea itself by granting the infinite possibilities of staging suffers from the perspective of the originality of its appearance, as the originality of the idea will no longer inherit the expression of its author by *extenso*, once the idea goes to another author. So in the spirit of Law no. 8/1996, which protects the expression of works, it was not provided that failure to protect the ideas generating other beneficial ideas that can add value to society, will lose the value of the expression of the author and therefore the entire capital. We cannot claim to give value to the work, validating the manifestation of the author's will and expression without capitalizing on the idea that generated the author's expression. No personality of the author denies the living spirit of the idea that generates for himself the final result to which the work is directed.

**Art. 7 of Law no. 8/1996** provides in its text the description of the objective “whatever the way of creation” but, by “any” the legislator does not include the manner arising from the idea. By “way” of creation in order to play a work we can understand the “bursting” of the idea that leads to the very birth of the work. **The generalized form of expression of the legislator allows the interpretive approach , of all the meanings.** An article of law that allows a lexical universality forgetting the new meanings that can give rise to controversy. Without this “outburst”, as a way of expressing the author's self, the work would not have existed. We would have been in complete absence. Also **art. 9 letter a) of the Law no. 8/1996** , by formulating the text, whatever the way of taking over, of writing “infringes”, through the text of the law, the

<sup>13</sup> Barbara Cassin (coord.), *European Vocabulary of Philosophies. Dictionary of untranslatables*, translation and additions to the Romanian edition coordinated by Anca Vasiliu and Alexander Baumgarten, Polirom Publishing House, Iași, 2020, p. 1220.

<sup>14</sup> *Idem*, p. 1221.

<sup>15</sup> Plato, *Integral Opera*, vol. I, Translation, General Introduction, Introductions and Notes by Andrei Cornea, Humanitas Publishing House, Bucharest, 2021.

freedom of the authors of the works to render the work in their own, authentic manner.

Law no. 8/1996 is incomplete. It does not confer or formulate a fundamental right on the author of the work - **the right to protect his own idea of the work**. An idea that can generate other ideas and that can change the destiny of a fundamentally evolving society. Such ideas, perhaps even from the core of their creativity, are not recognized as having the fundamental right to be protected. At least not by law 8/1996, perhaps not coincidentally called „copyright law”. It remains a real challenge that future regulations no longer commit injustices within the body and spirit of the text of the law.

**The right to protect one's own idea** must belong to its author, its "creator", only to the one who brought it to life, and to recognize in its absolute way the proper way of existence of the self through work, and of the work through idea.

Also **the extension of the term of protection of the works**, provided in art. 27, art. 28, art. 29, art. 30, art. 31, art. 32, art. 33, and art. 34 of Law no. 8/1996 should also provide a certain category of protection regarding the **determining priority** which will classify the works, through the exclusive prism of ideas. This exclusive character will lead to a rethinking of the calculation of the life of the works, namely the fact that if an idea from a work can be easily taken and manipulated later, this fact could be interpreted as altering the quality preserved after taking the idea, of the whole work. Thus, the work will no longer be able to benefit from the same term of protection as the central defining element that led to its creation and determination as a work, in terms of the exclusive and absolute nature of the idea of the work was manipulated, freely taken over and reinterpreted. "The old polish is not new!"

#### 4. Ideas protected in the light of Law no. 206/2004

On the other side of the scale, Law no. 206/2004, also known as the "law of plagiarism," weighs the weight of shamefully appropriated facts in terms of ideas.

If Law no. 8/1996 allowed the takeover of ideas and, this fact not only was not punished, it was not even provided as unnatural, Law no. 206/2004 does not allow the takeover of one's ideas, without recognizing the source. Thus, whether we address the academic environment, the business environment, or research, the ideas cannot be taken over without the consent or consent of the author of the original idea. Every idea taken already has a date of birth, a certificate of life and a path that can generate amazing results, or profitability

or an evolution without which humanity would go mad through the darkness of involution.

If in Law no. 8/1996 we had the legislative, enumerative, and exemplary text, starting from the methods of rendering the work and the freedom of the author to manifest himself through this prism, from a general (but not specifying a particular, such as the rendering of the idea, and the idea should be worthy of being called the method of rendering the expression of the author of the work) in Law no. 206/2004, art. 4, letter e).

Ideas from literary works are rare. And stepped by copyright privileges. The ideas in scientific works, research papers become the object of differentiation, as the purpose is to determine what is new. Thus, this aspect is immediately closely related to the citation condition and within the Law no. 8/1996, art. 35, letter b).

The freedom to take over in this law is allowed, however, conditioned by the recognition of the author of the idea or the citation of the source. So the freedom to take over is more obvious, but more restrictive, while in Law no. 8/1996, the taking over of ideas is a pure act of ownership of the idea, without being considered an act of betrayal towards its author.

The main highlight in the case of the two laws, regarding the idea of works is to determine the value of the work. In Law no. 8/1996, the value of the work regarding the idea is considered to have a low threshold of originality, thus pursuing high diversity; while in Law no. 206/2004, regarding the expression of renderings, the high standard of novelty of the idea is pursued. So he obeys the rules of plagiarism. The novelty element generates the scientific research work.

Also art. 9 of Law no. 8/1996 and art. 4 of Law no. 206/2004 do not contradict, but complement each other, in the spirit and interpretation of the law. Law no. 206/2004 is also presented in the form of shocking and severe sanctions provided in art. 14. Thus satisfying the interference required by such an honorable research framework as the academic one.

We also find the aspects mentioned in the case of scientific works, research, or doctoral theses. When we refer to a doctoral thesis, in the sense assigned by art. 42 of the Code of doctoral studies, according to GD 681 of June 28, 2011 published in the Official Gazette of Romania no. 551 of August 3, 2011, we see that there is a clear distinction between scientific doctorate and the professional one: in the case of the first, the finality is *“the production of original scientific knowledge, relevant internationally, based on scientific methods”*, and in the case of the professional doctorate it is addressed to the fields *„of arts and sports, scientific method and systematic reflection, on artistic creations or on sports performances of high national and international level and which can constitute a basis for*

*the professional career in higher education and in research in the fields of arts and sports.*"<sup>16</sup> The condition of originality is mentioned by the lecturer in the case of both types of doctorate, but without specifying the way in which the originality is verified, but at art. 65 para. 5 states that it is mandatory to "mention the sources for any material taken." Art. 4 letter (d) of Law no. 206/2004 describes plagiarism, i.e. "the acquisition of ideas, methods, procedures, technologies, results or texts of a person, regardless of the way in which they were obtained, presenting them as personal creation," in other words we have some form of protection of ideas, described by the fact that if a person acquires during the scientific research activity an idea that does not belong to him and does not mention the source, this is a plagiarism, in contradiction with art. 9 letter a) of Law no. 8/1996, which stipulates that the ideas do not benefit from the legal protection of copyright.

## 5. Debates and controversies

There is not yet a history of the originality of ideas or a history of the origin of ideas, because, at least from a biological and psychological point of view, the manner or algorithm for the formation of ideas or thoughts has not yet been elucidated. Some researchers estimate that the human mind generates about 60,000 thoughts a day<sup>17</sup> according to a consistent methodology, but with an undisclosed mechanism and it is unknown why some thoughts or ideas are more persistent and insistent, and others disappear into oblivion. However, mankind over time has sought to understand the importance of certain ideas in understanding the world, and some have been willing to sacrifice their lives for an idea, or a bunch of ideas, because they felt it was more important to fight for an idea. Idea or for several ideas, considered so important and valuable that they deserved even the ultimate sacrifice. For example, Socrates did not write any ideas, but the system of ideas he presented orally to his students was of such great personal value that he was willing to fight for these ideas and defend them before the Athenian court. If he risked the death penalty for impiety and corruption of the youth.<sup>18</sup> We have many examples of this, from Giordano Bruno, convicted and burned at the stake by

the Inquisition, to Jan Palach, a Czech student who set himself on fire in January 1969 in protest of the invasion of his country by Soviet troops and which became a symbol in the Czech Republic.<sup>19</sup> Do not the ideas in the name of which these people were willing to give their lives deserve to be capitalized on and protected? Was their sacrifice in vain? Not to mention the martyrdom of hundreds and thousands of people who throughout history have fought for various religious ideas. The advent of printing in the sixteenth century alone helped nearly 200,000 editions of books, with nearly 200 million copies, awaken humanity from the slumber of reason, revitalizing scientific research and encouraging thousands and millions of people to come up with new ideas for the progress of humanity.<sup>20</sup>

Going back to Plato, it is worth mentioning that in his system of thinking, ideas had the most important role, that of being the source of inspiration for the demiurge for the creation of this world, there being a perfect world of ideas that existed in itself. **This idea of separating the immanent of the transcendent, the world of perfect ideas of the corruptible immanent world was the source of inspiration for all subsequent philosophical systems on the European continent and for the philosophical conceptualization of Christian religious doctrine.** Later, during the Middle Ages, the great debate was also around ideas and generated the *quarrel of universals*, which resulted in three concepts: realism, nominalism and conceptualism.<sup>21</sup> Nominalism was represented by a French thinker, **Roscellin**, who argued that **ideas** are in fact *flatus vocis*, words in the wind (empty words) and have no existence in themselves. Also in the Middle Ages, Thomas Aquinas analyzed the objections of the existence of ideas in God and argued that " *the divine mind begets a plurality of ideas based on creative intelligence... Each human creature has its own specific form, due to which it participates in the representation of the divine essence. Therefore God, insofar as he recognizes his essence imitated by the human creature, also recognizes his own way of being, as well as the Idea represented by this human creature [...]* It is found that God conceives a plurality of ways and own systems for modeling the plurality of ideas."<sup>22</sup> In modern times, **Descartes** is the one who brings to the fore the thought process (and methodical doubt) as essential and specific

<sup>16</sup> Code of doctoral studies, according to GD 681 of June 28, 2011 published in the Official Gazette of Romania 551 of August 3, 2011, art. 42.

<sup>17</sup> Gabriel Liceanu, *The madness of thinking with your mind*, Humanitas Publishing House, Bucharest, 2016, p. 22.

<sup>18</sup> Costică Brădăţan, *To die for an idea. About the dangerous life of philosophers*, translated from English by Vlad Russo, Humanitas Publishing House, Bucharest, 2018, p. 15.

<sup>19</sup> *Idem*, pp. 15 et seq.

<sup>20</sup> Raymond Trousson, *History of free thought, from its origins to 1789*, translated by Mihai Ungurean, Iaşi, Polirom publishing house, 1997, p. 50.

<sup>21</sup> Giorgio del Vecchio, *Lessons in Legal Philosophy*, translated by J. Constantin Dragan, preface by Mircea Djuvara, Europa Nova Publishing House, Bucharest, sa, pp. 187 et seq.

<sup>22</sup> Toma de Aquino, *Summa theologiae. Works I. About God*, translated from Latin by Gheorghe Sterpu and Paul Găleşanu, Scientific Publishing House, Bucharest, 1997, p. 265.

to the human being and the only way that makes us aware that we exist: „*cogito, ergo sum* (think, therefore, exist).”<sup>23</sup> Debates have been about the **origin of ideas**, such as the idea of causality, of God, of the soul, of immortality, etc., whether they **are innate** or taken from experience and processed by our minds. **John Locke** claimed that our minds are born *the tabula rasa* (like a blank slate) to which ideas are added, taken from experience, while other authors, such as Descartes or Leibniz, argued that we are born with certain ideas, such as those mentioned, because otherwise we would not be aware of them and we would not have had a similar representation in the minds of all men. **I. Kant** is the thinker who „*distinguished, therefore, in hierarchical order, the elements of knowledge, arranging them architecturally, according to their own function and value, and showed that some elements of knowledge are necessary a priori, that is, they do not derive from experience because they are the conditions that make the experience itself possible.*”<sup>24</sup> In other words, we are born with the ideas of temporality and spatiality, and these make us understand that the passage of time should not terrify us, nor should closing in a smaller space, such as a room, trigger us the feeling of claustrophobia.

A French author and jurist, **Edmond Picard**<sup>25</sup>, argued **that an author has an absolute right over his work**, although “*especially in terms of duration, because it seems, in principle, from now on that all productions of the mind must fall, after a certain period, in the public domain, "to return to it", as we say in an expression that reveals the feeling, hidden and right, that they are, in reality, emanations of the community much more than of an Individuality.*”<sup>26</sup>

## 6. Case Study

**Some ideas, which become generators of other ideas** and are initially expressed in art, but which have utility and applicability in the field of industrial

property, we could call **demiurgic ideas**, have an overwhelming impact and should be protected, precisely to give the author the rights to be enjoyed by all authors for the creation of other ideas.

If we analyze the modern controversy of the **history of camouflage**, we will see the relevance of this debate. Even today, the Americans and the British dispute the primacy and paternity **of the use of camouflage in the military field, after works of art** by the British painter Norman Wilkinson (24.11.1879 - 30.05.1971)<sup>27</sup> and the American painter Abbott Handerson Thayer (12.08.1849 - 29.05.1921).<sup>28</sup> It is true that both authors had their first works of art in similar periods: Abbott Handerson Thayer wrote about the first ways of camouflage in nature in 1892<sup>29</sup> and during the American-Spanish War of 1898 he became involved in the **first forms of camouflage of warships** and the first patent for the military camouflage method was obtained in 1902 with a friend, George de Forest Brush, and was entitled “*Process of Treating the Outsidings of Ships, etc., for Making Them Less Visible*”<sup>30</sup> After the outbreak of World War I in 1915, he proposed to the British War Office to cooperate in camouflaging ships, but was rejected, but received support from the United States Navy and, along with other enthusiasts, recruited hundreds of artists into the American Camouflage Corps.<sup>31</sup> Around the same time, the British Norman Wilkinson, in 1917, while serving in the army had a **flash of an idea, when he thought what would be the way one ships to avoid the torpedoes of German submarines, inventing the way to paint dazzling or "dazzle painting."**<sup>32</sup> After the war, Norman Wilkinson had a legal dispute with John Graham Kerr, a zoologist who had written to Winston Churchill in 1914 about how to camouflage ships in contrasting tones by hiding the top of light-colored cannon ships and lower in darker colors.<sup>33</sup> At the end of the legal dispute, Norman Wilkinson was declared the winner by the judiciary and received financial compensation, as he was also the one who **widely used**

<sup>23</sup> R. Descartes, *Discourse on Method*, translated by Cr. Totescu, Scientific Publishing House, Bucharest, 1957, p. 21.

<sup>24</sup> Giorgio del Vecchio, *op. cit.*, p. 187.

<sup>25</sup> See also Viorel Roş, *The right of creators to eternity and intellectual rights*, in Romanian Journal of Intellectual Property Law, no. 3 of 2018, pp. 25 et seq.

<sup>26</sup> Edmond Picard, *Le droit pur*, Paris, 1908, page 101: “*Mêmes opérations pour les droits intellectuels. Le Plein c'est le droit absolu de l'Auteur sur son œuvre, sauf les limitations légales, spécialement quant à la durée, puisqu'il semble de principe, désormais, que toutes les productions de l'esprit doivent tomber, après un certain délai, dans le Domaine public, « lui faire retour », comme on dit par une expression révélant le sentiment, caché et juste, qu'elles sont, en réalité, des émanations de la Collectivité bien plus que d'une Individualité.*”

<sup>27</sup> See <https://valentinefineart.co.uk/portfolio-item/norman-wilkinson/#biography> accessed on 25.04.2022.

<sup>28</sup> See <http://americanartgallery.org/artist/readmore/id/542> accessed on 25.04.2022.

<sup>29</sup> See [https://en.wikipedia.org/wiki/Abbott\\_Handerson\\_Thayer/](https://en.wikipedia.org/wiki/Abbott_Handerson_Thayer/) accessed on 25.04.2022.

<sup>30</sup> *Ibidem.*

<sup>31</sup> *Ibidem.*

<sup>32</sup> Norman Wilkinson, *The Dazzle Painting of Ships*, *Journal of the Royal Society of Arts*, vol. 68, no. 3512 (march 12, 1920), pp. 263-273, see <https://www.jstor.org/stable/41355095>, published by: RSA The royal society for arts, manufactures and commerce, see [https://en.wikipedia.org/wiki/Norman\\_Wilkinson\\_\(artist\)](https://en.wikipedia.org/wiki/Norman_Wilkinson_(artist)) accessed on 25.04.2022.

<sup>33</sup> Hugh Murphy and Martin Bellamy, *The Dazzling Zoologist. John Graham Kerr and the Early Development of Ship Camouflage*, in *The Northern Mariner / Le marin du nord Journal*, Ottawa, Ontario, vol. XIX, 2009, pp. 174 et seq. See: [https://www.cnrs-scrn.org/northern\\_mariner/vol19/tnm\\_19\\_171-192.pdf](https://www.cnrs-scrn.org/northern_mariner/vol19/tnm_19_171-192.pdf) accessed on 25.04.2022. See also [https://en.wikipedia.org/wiki/John\\_Graham\\_Kerr](https://en.wikipedia.org/wiki/John_Graham_Kerr) accessed on 25.04.2022 accessed on 25.04.2022.

**camouflage techniques in the military.** Wilkinson was able to convince the court (albeit unjustly) that John Kerr "*sought invisibility, rather than disturbing the image.*"<sup>34</sup>

Today, all the armies of the world use the camouflage technique, inspired and adapted according to an idea of a painter who used his own painting technique with great skill, and the new "canvas" for painting became military ships. Here is how an idea, a technique, and then another idea, saved the lives of those involved in that military conflict. I dare to call these kinds of **ideas demiurgic ideas.**

Another example of a "demiurgic" idea is the creation of world wide web or the Internet by Tim Berners-Lee, a British man who in March 1989 developed a simple way to transfer files from one computer to another at CERN. But it was not until the following year, in 1990, that his boss at CERN accepted this proposal, which he found "vague but interesting"<sup>35</sup>, but which was later adopted by all mankind. For this proposal, Tim Berners-Lee did not want to protect her invention in any way, nor to market or patent it, but decided to leave it free of any kind of constraint, so as not to limit its usefulness and distribution.<sup>36</sup>

## 7. An Organization / Organization to protect ideas

Although there is no institution to protect the ideas that generate others ideas, or "demiurgic" ideas, I believe that an Organization should be set up to protect ideas (I propose the Organization for the Protection and Appear of Ideas - OPAI ) and to inventory them, following the rights of creators of ideas, because some artistic ideas have industrial utility, they come to be so large that in reality they come to benefit others from such ideas, to the detriment of the one who created the idea for the first time. What would Tim Berners-Lee and many other strangers like him look like today if Internet giants like Amazon, Google, Facebook, Microsoft, and others paid for the right to use the Internet? What would have been the progress of mankind if the righteous had been truly stimulated and rewarded and given their due rights? How many people like Tim Berners-Lee would we have had and how advanced materially and spiritually could we have become?

## 8. Why do ideas deserve to be protected by copyright?

Ideas are valuable. The fact that Law no. 8/1996 does not protect ideas, but Law no. 206/2004 penalizes plagiarism, *i.e.* the appropriation of the ideas of others, shows that the legislator wanted at least in the field of scientific research to have a form of recognition of the value of ideas. Of course, not all ideas deserve to be protected. I can't say that I came up with an idea to look at the Betelgeuse star, and everyone in my opinion would have to either quote me or use this idea in a limited way, but only ideas that generate other ideas, or that are useful and have industrial applicability and which can be validated and certified by OPAI.

A form of recognition of the value of ideas is also regulated by Law no. 489/2006, where at art. 41 letter b) it is stipulated that the written presentation of ideas of a religious nature in the form of a confession of faith is recognized as a manifestation of religious freedom. It is not possible to recognize a second cult with exactly the same confession of faith or with the same name, according to art. 8, para. 4: "The name of a cult cannot be identical to that of another cult recognized in Romania." The value of this confession, together with the other elements required by law, lead to autonomy from all points of view, of course respecting the constitutional provisions, including regarding the organization of the own education system, according to art. 39 of Law no. 489/2006.

## 9. Back to the argument

Ideas cannot remain "hidden" only under the protection of Law no. 204/2006 without enjoying the protection of copyright, the copyright maker of the work (a work that can be the initiative and the proven result of a single idea - as were the stories of Jules Verne).

Ideas that generate ideas are a category that, framed and classified legally accordingly, in a relevant normative form, would protect the ideas that have already demonstrated that they bring a new utility and value, greater to the whole society. Sometimes the ideas in the works can be more edifying for the author himself, as he is looking for the pure act of creation, apart from identifying the right idea or inventing it, the author's creative life would no longer make sense.

THE IDEA ETERNIZES ORIGINALITY! And not the other way around. I do not believe in an originality that does not recognize that it is based on the idea that is the generator of brilliance in that work.

<sup>34</sup> *Ibidem.*

<sup>35</sup> See [https://en.wikipedia.org/wiki/Tim\\_Berners-Lee](https://en.wikipedia.org/wiki/Tim_Berners-Lee) accessed on 25.04.2022.

<sup>36</sup> See <https://www.nbcnews.com/id/wbna5217598> accessed on 25.04.2022.



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