

Copyright at a Distance. *From Action to Management* (1880-1910)¹

In a wonderful essay regarding the permanent *diasporas* that have permeated the history of Latin American culture, Rine Leal suggested that a task still to be done was to consider “how *distance* and breakdowns [of communication] have historically influenced our literature and our theatre”.² If Latin American countries were so often conceived as spaces where “geography suddenly becomes history”,³ this paper brings these reflections to raise several questions on the production of routines and legal technologies attached to the historical drawing of “Latin America” in copyright. These routines and technologies were united by an overall attempt to defeat, abstract or transform dilemmas experienced when managing copyright at a *distance*. In so doing, the paper follows the establishment of different mediations for the identification, promotion and position of copyright abroad. As will become evident throughout the paper, at the end of nineteenth century the operational situation to place copyright interests abroad for Spanish entrepreneurs looked promising but still difficult. Whereas transportation costs were declining, customs’ tariffs for the entry of creative artefacts and books also appeared to be turning downwards,⁴ and minimum principles of international copyright were in a process of harmonisation, there were still many problems attached to the transatlantic experience. Of these troubles, jurisdictional hardships, material infrastructures, agency issues and mishaps affected the credibility and preferential constructions of claims over *rights*. It was not only a problem of uncertain statutory recognition of foreign copyright.

1. Geospatial information & descriptive problems

Ownership on-the-Scene

Uncontrollable heterogeneous contingencies, disturbing communicative blockages and disruptive side effects emerged around one dominant issue: the projection of Spanish copyright to Latin America involved practical problems. Such difficulties were not negated by the universal principle of international copyright yet *to come*, yet to be spread, yet even to be legally passed.⁵ In fact a major dilemma was beginning to emerge about the presence and appearance of ownership beyond the sea. Whilst it could be expressed in many different ways, it nonetheless seemed to be focused on the modern ramifications of

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² Leal (1995).

³ *Ibid*

⁴ Compare “République Argentine”, *DA*, May 15, 1888, p. 48 and “République Argentine”, *DA*, June 15, 1890, p. 68. Ecuador (1885), Honduras (1886), Nicaragua (1882), Salvador (1884) and Santo Domingo (1875) did not impose tariffs on books” *Actas CL* (1893) p. 539.

⁵ The majority Latin American countries did not join the *Berne Convention* (1886) until the second half of the twentieth century; Ricketson (1987) p. 865.

property expansion between ownership and control. Property fragmentation and its ramifications created the difficulty of tracing (or perhaps we should say “constructing”) objects and subjects of copyright abroad. For instance, one question focused on the way in which to monitor displays of the intangible abroad without losing property rights. Questions also referred to the proper conventions and grounds on which someone could assert her legal presence when claiming *rights* in distant territories. It was a legal struggle appreciated through a different lens. On the one hand, the effort involved the possibility of claiming legal presence whilst being politically absent. On the other, the dilemma eventually opened schemes involving the incidents of ownership to economic assessments. In fact, as an appendix, as a gloss or investigation of legal enquiry, considerations emerged regarding “costs” and “risks” for copyright interests to be safely transmitted. When disposing rights and transferring interests, when preparing claims for rights, legal and political *distance* involved an intrinsic and impenetrable difficulty; a lucrative difficulty worthy of being considered by these private entrepreneurs, who wanted to establish or who had already established copyright interests across the ocean.⁶

Human Resources

In order to deal with the particularities of the field, in order to secure ventures, a series of networks of correspondents, representatives and clients began to construct a pool of information for those aiming to project copyright interests to Latin America.⁷ The main objective of such an enquiry and its informational output appears to have been the exploitation of literary and dramatic *piezas* (pieces) across the ocean. Investment and exploitation of social and economic networks were made on the basis of different arrangements. Copyright recognition of foreign works had not yet fully arrived in *all* Latin American countries.⁸ But bilateral copyright treaties had initiated such recognition and thereby expectations had been created.⁹ These foreign expectations were channelled by the distribution of empowered representatives abroad.¹⁰ Interestingly, the construction of human networks to exploit these materials served simultaneously as a source to calibrate the development of copyright protection and piracy beyond the sea.¹¹ Commercial and legal information became available through them by “news” of literary, musical or dramatic *piezas* circulating in Latin America that received attention in Spanish and Latin American

⁶ *Treatises of Peace, Friendship and Commerce* cleared up the scenario for future bilateral copyright negotiations; Darras (1893) p. 802.

⁷ The *Galerías Dramáticas* was the major copyright holding in Spain governed by Fiscowich. A second network developed after the *Galerías* was established by the society of Spanish Authors. For a commentary see Caballero (2003) and Surwillo (2002) and (2007).

⁸ See Bellido (2009) chapter 5.

⁹ See Bellido (2009) chapter 4.

¹⁰ For the episode concerning Francisco Javier Osorno “on behalf of some foreign authors” acting in Mexico, see Olavarría y Ferrari (1895) pp. 34-35 and Cruzado (1894).

¹¹ “Notre zélé délégué à Buenos-Aires, M. Julio Perez Carmena, s’efforce d’obtenir que les droits des auteurs espagnols soient dûment garantis dans ces parages lointains, où il serait si nécessaire qu’une loi mit fin aux préjudices dont souffrent depuis de longues années nos auteurs”, *DA*, Jan. 15, 1892, p. 4.

journals.¹² However missives sent by one individual to another constituted the most important form of communication referring to a “reality” on the ground.

From the 1880s onwards, copyright interests and people *interested* in copyright were travelling in directions as diverse as dictated by the unpredictable formation of commercial expectations. Not only Spanish *interests*, but also Spanish people were “transported” to Latin America and vice versa. That is, Latin American entrepreneurs also travelled to Spain, Italy and France with equally diverse expectations.¹³ The main objective of these pilgrimages was to arrange priority contracts and exclusivities, and the agenda of these travellers was to incorporate gradually a package of preferential rights, proprietary or not. Around the informal table of negotiation, copyright licences and assignments for the countries they attempted to profit from were negotiated. With their comings and goings, it became natural then to try to protect what they thought was proper to them in law. Faustino *da Rosa* in Argentina, the dynasty of Cordora in Uruguay, and many other Latin American managers constructed cosmopolitan “circuits”, conducted international “affairs” and formed mixed “alliances”.¹⁴ In so doing, they made friends in Paris and Madrid, they constructed partnerships with Spaniards, Italians or French and, on their way back, they were welcomed for being responsible in bringing the most important “pieces” and “companies” to Latin America.¹⁵ With the importation of objects of desire, not only were praised companies and pieces brought over, but tension over *rights* acquired (or not) were also logically and simultaneously introduced.

With this horizon opened by a network of relationships, bilateral activities and “regularly” maintained routes, the expansion of marketable interests also led to the appointment of representatives abroad. Spanish copyright “representatives” in Latin America became selected and authorised *ad hoc*. The evolution of recruiting strategies carried out by copyright holders involved a distinctive process of individualisation carried out through different mechanisms. Whilst personal contacts and background acquaintances made a certain profile of individuals especially eligible for delegation of power, a capacity to act abroad and a competence to defend copyright interests had still to be mediated by a public document. If we read some of these documents we can extract some features of the *agent*. It was normally a Latin American resident, preferably Spanish, but it could also be a traveller. Names were selected for their prospective possibility to act and for their personal relationship with the copyright holder.¹⁶ Empowering documents by which the principal

¹² *La España Artística* was the major example of a Spanish journal containing information on the theatrical box offices of both sides of the Atlantic.

¹³ Throughout the 1880s, the *Compañía Transatlántica* added new “regular” services that were communicating Spain with Latin America. See Hernández Sandoica (1982) vol. II, p. 1008; and “Comunicaciones Marítimas” *El Imparcial*, Oct, 13, 1887, p. 1. In the 1890s, monthly services were also provided with Central America and Mexico. See “Servicios de la Compañía Trasatlántica de Barcelona”, *Revista de la Unión Iberoamericana*, May 15, 1900, p 16.

¹⁴ In an interview, Da Rosa described himself as a “dealmaker” in “Hablando con Da Rosa” *Semanario P.B.T.*, March 1917, p. 1. On Cordora, see “La Dinastía de los Cordora”, *Revista Rojo y Blanco*, July 1900 in ARW and “Pleito Literario. Buenos Aires” *La España Artística*, Sept. 1898, p. 4.

¹⁵ On the travels of Da Rosa, see Menéndez Onrubia (1984) pp. 315-321.

¹⁶ Power granted by Fiscowich, Arruej on behalf of the society “Arregui y Aruej” to De la Macorra y Pérez (Mexico), signed in Madrid before Arribas and Camacho acting as witnesses” Feb, 21, 1896, T. 395999, fols.

and agents were related had to be formalised before a Spanish notary. Copies were expedited for their use.¹⁷ Ignorant of the final destiny of rights, materials and peoples, the scope of action granted was significantly wide.¹⁸ But such a wide scope was also restricted by the prescribed solemnities of general powers of attorney. As these documents were general, the last authorisation to prosecute an action in Latin America was often reserved to the grant of a *specific* power. If the *general* power met the requirements to circulate abroad, that is, if it was validated, the presence and scope of *legal* action given to the Latin American representative was limited. Among the faculties and discretions normally given, representatives were granted the power to receive payments, to authorise performances, to pursue administrative actions and perhaps, more importantly, an independent capacity to appoint further units of representation in the respective countries in which they were operating.¹⁹ Taking into account such a potential variety of activities to be carried out and because of the difficulty to cover the multitude of risks emerging from them, risks that could certainly affect the patrimony of the principal abroad,²⁰ specific charges were underwritten to secure such a performance. For instance, surety bonds on another's behalf were collaterally annexed to copyright transactions.

These documents were duly recorded, following the standard procedure, in front of two witnesses and a notary. It was perceived as a difficult venture, an enterprise upon which success depended largely on luck, so copyright holders tended to attract fiduciary relationships with third parties residing *in* Spain.²¹ By introducing a specific second set of personal arrangements, the capacity to assume the job of the Latin American representative was guaranteed by default. It is precisely here that we can perceive how Spaniards perceived the transatlantic copyright experience as an adventure full of risks that needed to be tightly secured. Should the representative embezzle, safeguards to counterbalance the consequences of his acts had been established. And it was the setting of those legal constructs that seemed extremely peculiar. The design of the bond established at home (Spain) for a the accomplishment of activities to be carried out abroad (Latin America) attempted to bridge the distance and to secure contingencies on the performance of agents that such a distance amplified. If the set of relationships legally structured by a nexus of contracts between copyright holders and agents had to be constantly re-enacted, an underlying epistolary connection was also developed in order to keep the information updated. As these letters constitute the main source for their histories, it is not very easy to trace a full scale map showing the movement of representatives when passing information to the copyright holder and vice versa. Nevertheless some sequences may be detected. Following an initiative of the *Société des Gens de Lettres*, a representative was placed in

884r-887v in AHPN.

¹⁷ The notary reflected that practice in the margin: "Note. The same above mentioned date, I produced a copy of the power to the grantors" Power granted by Fiscowich, Feb, 21, 1896, T. 395999, fols. 884r-887v, in AHPN.

¹⁸ Power granted by Gullón, Hidalgo, Delgado *and* Cia. to Cevallos Leg. 282, n. 2 (1875) in AHNC.

¹⁹ See clause 4 in the power granted by Gullón, Hidalgo, Delgado and cia. to Cevallos Leg. 282, n. 2 (1875) in AHNC.

²⁰ Alcaraz (1980) p. 33.

²¹ Surety bond constituted by Perez Pendas in favour of Fiscowich and society "Arregui y Aruej", Feb. 21, 1896, T. 39599, fols. 888r-895r in AHPN.

México,²² an agent received a similar honour in Buenos Aires,²³ and so on and so forth. In 1891 a self-proclaimed *official* Spanish theatrical journal, *La España Artística*, edited by a major copyright holding, defined the situation thus: “we have constructed an organisation of the network of correspondents to the most insignificant town of Spain and (Latin) America and an Information Centre FREE for our subscribers”²⁴

Drawbacks of Human Intervention

Nevertheless, it is interesting to note that shortcomings and constraints existed. The establishment of private representatives seemed to have been conceived as a reliable source of communication. An epistolary relationship was not a mere source; it also substituted the traditional face-to-face link that existed otherwise. Such substitution was problematic. While expenses and troubles accrued with the creation of networks of correspondence, it is true that costs were being gradually reduced. Yet, when action around ownership was required, that is, when “correspondents” were converted into “representatives”, a shift that was sometimes unconsciously made, success was not the standard rule. These trading relations faced an uncertain normative framework, that is, a nebulous law-reporting and law-publishing scenario calling for the security of “laws”, a different level of normative productive setting, and a growing series of difficult bilateral normative engagements. Failures were many and of a diverse nature. Firstly, representatives were not given exclusivity to sign deals. And the possibility of reaching agreements for the same *piezas* (pieces) meant that deals began to overlap. Transactions made between Spanish copyright holders and Latin American entrepreneurs without the mediation of the local representative made it difficult for him to monitor the distinction between *legal/illegal* transactions over the intangible in the territory that the agent was supposedly covering.

A second major drawback when streamlining the unregulated world at large by lodging a claim was directly targeting credentials. If an action for copyright infringement was initiated abroad, litigation tended to break down right at a preliminary point, precisely by putting pressure on the validity of the act of appointment. Someone who wished to begin an action had to be capable of doing so, and taking into consideration that capability was an act that was assessed differently by foreign courts, problems were often found with the mechanics of these empowerments. The unreliability of legal representation was exposed everywhere. On the ground, many sorts of risks impinged upon the official acceptance of credentials of lawyers and correspondents in representing a Spaniard in copyright. Not only did danger accrue when each country had a particular way of admitting these accessory documents to the transaction, but if those documents (*powers*) involved a particular phraseology and legal formulae,²⁵ copyright actions, if attempted, faced a careful preliminary scrutiny of the operative part of these documentary prostheses. Authorisation to achieve full capacity was usually provided by “specific” powers of attorney. And whilst the scope of action for a

²² “La Propiedad Literaria en México” *La España Artística*, Oct. 1, 1890, p. 1.

²³ “Los derechos de Autores. España y Argentina” *Bibliografía Española*, Aug. 1, 1901, p. 43.

²⁴ “A nuestros lectores”, *La España Artística*, Nov. 23, 1891, p. 1.

²⁵ Alcaraz (1980) pp. 62-65.

copyright agent to act abroad was wide, a final authorisation to bring actions to court was often reserved to that specific role. The appearance of that delay for a second authorisation proved to be fatal in a copyright scenario propelled by a rush for action.

It was also difficult to find ways to ground claims. After a few tests, it was sufficiently clear that “human” agency attached to a hostile environment formed an explosive combination. The nature of the challenges waiting abroad was astonishingly diverse, making it difficult to identify the problems and to locate them.²⁶ There was a major difficulty in accustoming the eye of Latin American courts to seeing the intangible when coming from abroad. To give an example of the state of things, in Mexico, a copyright agent of a Spanish principal made a fool of himself when he smiled after obtaining a seizure warrant and displaying as a selective hunting trophy the infringing printed materials (*librettos*) that were going to be used by a Mexican theatrical company for the staging of a *zarzuela* belonging to his principal. He had to observe afterwards how the same company performed that dramatic work beautifully without a script, that is, without the aid of the text, as they had memorised the script.²⁷

Examples of this kind could be multiplied. In fact, piracy by memorisation was among the many problems faced in the wild scenario where the impossible was possible.²⁸ Because of the emphasis on the textual element of the performance, when there was no underlying text, difficulties in enforcing the seizure of the intangible were particularly problematic.²⁹ Rehearsals hiding performances, changes of titles and a repertoire of activities were difficult to monitor. Troubles seemed to follow the Spaniards. In the face of a rapid sequence of events, the issue was not to know the territory but to survey it in a timely fashion. What we can say, retrospectively, is that individual biographies of these agents often show how making decisions at the juncture of copyright litigation, choosing the wrong procedural root or judicially stopping a theatrical performance because of a presumed copyright infringement could aggressively rebound on some of them, as happened. Instead of carrying out a profitable career asserting copyright in the intangibles of their principals, some of them faced bankruptcy proceedings initiated by those presumed (copyright) infringers.³⁰

²⁶ For instance, a meeting to look for a *modus vivendi* (or practical arrangements) was held between Spanish authors (Núñez de Arce, Arrieta, *et al*) and the major publisher (Fiscowich) was attempted while still waiting for future normative frames. See “La propiedad en América” *La España Artística*, No. 31, II, Madrid January 23 1889, p. 1.

²⁷ Miranda (2002) pp. 306-307.

²⁸ For instance, it was reported that “another fraudulent edition of the almanac Bailly-Bailliere has been made in Mexico. The companies announce their edition as original by saying that they have spent 30000 pesos in linotype machinery to compose it when it is has been made by photo-engraving processes”. *Bibliografía Española*, n. 14, Nov. 16, 1901, p. 7.

²⁹ Surwillo has produced a wonderful work on the elements of that fixation and their effects in a process she calls “cultural nationalization”. See Surwillo (2002) p. 181-182 and Surwillo (2007).

³⁰ Autos de interdicto de recobrar promovido por Cevallos contra Torrecillas (empresario de la compañía que actúa en el Teatro Tacón) (1875) Fondo Escribanía Galleti, Leg. 282 in AHNC.

Latin American territories still qualifying as Spanish colonies (Cuba, Philippine Islands and Puerto Rico) had obvious informative institutional resources from which data could have more plausibly been retrieved and labelled as relevant for copyright. However, there were two issues worthy of note. Firstly, the establishment of specific copyright institutions, such as copyright *registries* in Cuba, Puerto Rico and the Philippine Islands, not only evidenced infrastructural problems due to their physical *detachment*,³¹ but also (or perhaps because of that) such establishments began to acquire a political profile.³² Their autonomy was perceived as a problem between Madrid and La Havana.³³ Secondly, the obvious colonial institution (the *ensor*) often displayed a significant indifference towards copyright. The printing and theatrical *ensor* appeared to have been more interested in sanitising other facets of book or theatrical production. They were arbitrarily focused on what a former *ensor* once called the “social prophylaxis”.³⁴ And it is significant that neither the problems of the registries nor the indifference of the *ensor* stopped the emergence of an additional underlying infrastructure of private representatives in these territories.³⁵ These agents operating in Spanish colonies were connected to copyright entrepreneurs in a background that was running beneath official colonial structures.³⁶ Some of them not only were making profitable transactions, but they also looked substantially convincing in pressing the colonial institutions to protect copyright. Such a commitment to the *liberal* values of the institution could be evidenced by their investment in pedagogical enterprises emphasising the benefit of studying copyright law. In a colony ruled under a monarchy, the appearance of copyright textbooks was, to say the least, surprising. In so doing, these agents put pressure on colonial institutions to intervene in the social fabric.³⁷ As such, representatives

³¹ Sección 4 del *Real Decreto de 5 de mayo de 1887*. Ministerio de Ultramar. No. 548. This section of the Royal Decree created the so-called “books” of the copyright registry to be endorsed and signed in their first and last page by an *official* representative of the General Government (*Gobierno General*) and the ratification of the secretary of the same General Government. Previously, the issue of single sheets as receipts created a chaotic registry with papers (or receipts) of different sizes and kinds.

³² There was indeed an intense political debate to organize the registries as “provincial”, “central” or “autonomous”. See *Expedientes sobre la creación de un Registro de la Propiedad Intelectual en Ultramar*, 1892, sig. 6637-4 in AGA.

³³ See generally Hernandez Sandioca (1982).

³⁴ For example, issues such as pornography and “fire safeguards” in theatres as the Cuban *ensor* Mustelier explained in his memories; Mustelier (1913) pp. 15-25.

³⁵ Power granted by Gullón, Hidalgo, Delgado and *Cia.* to Cevallos Leg. 282, n. 2 (1875) in AHNC.

³⁶ Alejandro Chao “owner of a typographical establishment and one of the most important bookshops in La Habana” is described in Nombela (1976) p. 1015. The establishment was *La Propaganda Literaria* located at Zulueta 28, La Habana (Cuba).

³⁷ A textbook on copyright was released by the publishing house owned by Chao and established in Cuba, *La Propaganda Literaria*. The textbook was written by García Garofalo (1890).

of Spanish copyright holders compelled colonial institutions to “publish”, and to “collect” Spanish copyright laws³⁸ in official *Gazettes*³⁹ and other *official* publications.⁴⁰ They also compelled them to gather data about theatrical performances,⁴¹ to “extend” and to “enforce” metropolitan copyright laws.⁴² Lobbying *for* or *against* an extension of metropolitan copyright was then a common but risky enterprise in colonial territories. The effects of such petitions were difficult to predict since they affected both interests of colonial elites and metropolitan entrepreneurs; interests that could be coincidental *or not*.⁴³ Because of that, it is important to highlight here that legal and political intricacies, agency structures and regulatory agendas eventually introduced different copyright issues in Cuba, Porto Rico, or the Philippine Islands from the topics and problems simultaneously appearing in the rest of Latin American countries.⁴⁴

2. Environmental perturbations

Fragmentation & Outsourcing

Of the particular problems when moving copyright interests to Latin America, a significant difficulty for Spanish *private* entrepreneurs was often derived from their internal struggles when identifying facets of ownership. Trouble finding proprietary marks in the materials released abroad was due to the many and diverse arrangements produced alongside the backbone of the intangible. When travelling to and arriving at an unknown legal environment in search of statutory or bilateral security, transporting and reading through the series of contracts underlying the intangible was challenging for obvious reasons. The chain of events show how such a difficult legibility contributed to several experiences of

³⁸ And some of these initiatives succeed; see *Gaceta de la Habana* (Cuba) 21 June 1871. Notebooks promoted by Cevallos, Fondo Gobierno General, 1871, N. Orden 8680 in ANRC.

³⁹ Anacleto Sánchez, representative of the company *Las Novedades* was pleading the publication and application of Spanish copyright bilateral treaties (with England, Belgium, and France) in Cuba. Among other things, he held rights in the (Spanish) translation of Victor Hugo's *Les Misérables*. For that very reason, he was rather interested in securing property interests in the exploitation in Cuba through the bilateral copyright treaties in AHN.

⁴⁰ It was a private pleading what forced the colonial Government to publish, eight years later, the Spanish copyright *law* (1847) in Cuba [published on 2 June 1855 (Imp. del Gobierno, La Habana)]. Regarding the most important legislative output of the nineteenth century in Spain, the 1879 Copyright Law, the process of law publishing was speeded up. In less than one decade, two official publications appeared. The first one appeared rather prompt (1879), and the second one, to which supplements were added (1889).

⁴¹ File promoted by Cevallos requesting certificate of the dramatic works performed at Teatro Colón. 1874. Legajo 176, Número 9424 in ANRC.

⁴² Two documents regarding the file promoted by Cevallos requesting the enforcement of copyright law. Fondo Gobierno General, años 1871-1879. Núm. Orden 16886, Legajo Núm. 351 in ANRC.

⁴³ An example of the complexity is the mediation procured by the Governor (Cuba) to the copyright claim of Cevallos against the society *El Pilar* (La Havana), Aug. 1870 “Libro de Actas. 1870-1876” in AMMC.

⁴⁴ Colonial authorities such as the Governor (Cuba) were granted power to adapt copyright decrees to the “local circumstances”. See Royal Decree May 5, 1887 in *Exposición y Decreto. Ley de Propiedad Intelectual*. Habana, Imprenta del Gobierno y Capitanía General, 1889, p. 4.

defeat. If descriptions of copyright litigation began by looking at particular intricacies of capacity and ownership, genealogical enquiries were subsumed to an even more difficult clearance. Not only did they face a painful journey through the inherent logistics of tracing title, the cursory survey relying on documents and papers of a diverse nature revealed a complex formation of dealings, some of which lacked international recognition. Many of the papers revealed arrangements for private dealings disposing of *rights*. The diversity of these private dispositions led to an unstable position in any litigation overseas. Whereas piracy indeed highlighted a crisis in the clear delineation of the boundaries of the intangible abroad, more problematic and dangerous was the difficult recognition of a fragmented ownership. If distance accentuated the legal variety of transactions annexed to the intangible, legal enterprises abroad made relationships difficult to read. Indeed the variety of contractual forms, the diversity of deals and annexations ran from mortgages or loans using as their basis literary property,⁴⁵ assignments of literary property including subrogation,⁴⁶ sales of half literary property of a libretto,⁴⁷ to the restrictive sales of copyright for the exploitation of works abroad.⁴⁸ If we add to that conundrum of validity the ongoing split between ownership and control of copyright when travelling abroad (that is, the outsourcing through specific agency contracts granting the administration for the exploitation of works “beyond the sea”)⁴⁹ the combination of transactions and proprietary or contractual interests was explosive. While international copyright practical jurisprudence significantly attempted to govern relationships by alluring *principles* and standard contracts,⁵⁰ meanwhile, and given that rich diversity, it was not a surprise to see and even to predict the legal downfall of many “representatives”.

Authenticating provenance

Suppositions and presumptions functioned badly when *rights* were attempted to be exercised from a distance. The architecture of these relationships was often constructed around *private* arrangements and through different rudiments. One observer reported that “few, very few” contracts encapsulating those deals had been “elevated” to *public* documents.⁵¹ For the passage of copyright ownership to have effect *in* the world,

⁴⁵ Loan granted by Jackson to Arregui and Aruej, Nov. 2, 1896, T. 39606, fols. 6536r-6543r *in* AHPN. The systematic purchase of futures gave publishers the label of “banker-publisher” as sharply noted in Sánchez García (2002b) p. 207.

⁴⁶ Assignment contract of literary property regarding dramatic works in order to pay a debt from De Larra to Fiscowich, Nov. 5, 1895, T. 37960, fols. 7257r-7265v *in* AHPN.

⁴⁷ Contract of sale (half literary property of *libretto*) from Navarro in favour of Fiscowich, June 9, 1897, T. 39730, fols. 3409r-3414r; contract of sale (half literary property of libretto) from De Labra to De Pablo, June, 2, 1897, T. 39730, fols 3297r-3302r; contract of sale (half literary work) from Barraycoa to Fiscowich, December 22, 1897, T. 3975, fols. 8215r-8218v *in* AHPN.

⁴⁸ Contract of *sale* from De Burgos in favour of the society “Vidal Llimona y Boceta”, Nov. 13, 1897, T. 39766, fols. 5821r-5826v *in* AHPN.

⁴⁹ Contract of *sale* (*libretto*) from Prieto to Arregui and Arruej, Dec. 29, 1896, T. 39607, fols. 7733r-7741v *in* AHPN.

⁵⁰ The most important of those initiatives was the attempt to find a standard international publishing contract, see “La codification du droit relative au contrat d’édition” *DA*, Aug. 15, 1892, pp. 95-98.

⁵¹ Heras (1897).

authentication was required by Spanish copyright law.⁵² Hence it was necessary to have a process by which a public *instrument* was made on official stamped paper, before a notary and two witnesses.⁵³ The stamped paper functioning as a tax, the act injected a legal formula into which the copyright relationship between persons and things was folded and secured. The parties executed these documents and after authentication; a copy was stored in the notary's office. There was ample space left on the documents in the left-wide margin for posterior dealings.⁵⁴ These comments gave an on-going annotated history of the interests created alongside the intangible. Such documents conveyed, cleared or clarified the *state* of rights by fixing in a categorical manner "the date of transmission".⁵⁵ In doing so, they secured for the assignee the benefits of Spanish copyright law.⁵⁶ The matter was bound and given a juridical *form*. Not surprisingly then, interventions in the flow of ownership were converging and complementing the temporal inscriptions made at copyright registries.⁵⁷ It is not so important at this point to focus on the input and skills deployed in such activity. At this moment it was not so crucial whether these interventions were qualified as evidential devices or as constitutive acts for the creation of *rights*. What does interest us here is however the sensitive output of that activity. These gatekeepers and their formal interventions were obviously not facilitating flexible usage abroad. While copies of public documents could be made upon request for the assignee to use in Spanish provinces, forwarding them to a foreign country required additional affidavits and diplomatic arrangements to be in existence between countries for their circulation.⁵⁸ Indeed for such dynamism to be achieved abroad,⁵⁹ some voices called for the creation of reciprocal representations and for an extension of the Spanish administration.⁶⁰ By the end of the nineteenth century, some Spaniards were insisting on the expansion of services provided by consular networks in Latin America. And not surprisingly one of those desires was related to the intervention of consuls in order to channel and to secure copyright contracts.⁶¹

⁵² "Propiedad literaria" *La España Artística*, Jan. 8, 1889, p. 1.

⁵³ "Algunas disposiciones de las leyes de Propiedad Intelectual y Propiedad Industrial relacionadas con el oficio del notario" *La Notaría*, July 9, 1883, pp. 10311-10316.

⁵⁴ A wonderful description of those activities is given in Merwick (1999) pp. 4-10.

⁵⁵ "Algunas disposiciones..." p. 10313.

⁵⁶ Article 9 Spanish Royal Decree Sept. 3, 1880.

⁵⁷ "Algunas disposiciones..." p. 10313.

⁵⁸ For instance, a power of attorney found in Cuba was granted in Spain by a set of Spanish publishers and owners of dramatic works to a Cuban agent. See power of attorney by Gullón, Hidalgo, Delgado, De Latrina before the notary Hortiz y Peña, Madrid, March 10, 1870, Escribanía Galleti, Leg. 282, No. 2, *in* AHNC. See also a power of attorney to a Mexican agent. General power by Fiscowich, Aruej y Navarro, on behalf of the company "Arregui y Aruej" in favour of De la Macorra y Pérez, Feb. 21 1896, before the notary Moragas y Tejera. Tomo 39599, fol. 884 r. - 887 v. *in* AHPN.

⁵⁹ The same power of attorney became legalised before a Public Notary in La Havana (Cuba). Escribanía Galleti, Legajo 282, No. 2 *in* AHNC.

⁶⁰ Intervention of Marcoartú in *Actas* CL (1893) pp. 177-178.

⁶¹ Alcalá Galiano (1892) pp. 545-556.

Interstices of Procedure

Expectations of what could happen and the inability to achieve the conceptual autonomy of the intangible were coupled with an *in-situ* anxiety. Local representatives had their own interest in ascertaining *rights*. And they had a special sense of urgency. They were the ones to see and touch piratical copies and to attend what they claimed to be piratical performances. They were also the ones especially concerned with piracy because they experienced in the front line activities that could have been qualified as directly prejudicial to their profit making desires. Even before “their” *rights* or their principals’ rights, if any, could be determined at law, misdemeanours encouraged them to look for special measures. The question was of enormous practical importance. Their preliminary attempts were often channelled through *interdicts*. Pressured by debts, and with a sense of urgency, some representatives channelled their anxiety through a belligerent procedural agenda. Interdicts were characterised by their sharpness and aggressiveness. They were fast. They were also efficient. And above all, they could avoid the traditional adversarial confrontation, a legal confrontation for which representatives were perhaps not fully equipped. Whilst these moves constituted a challenge, anecdotes of their unsuitability proliferated.

In fact, the sharp effect of interdicts was somehow similar to a freezing “injunction”, but their mode of proceeding was shaped markedly differently, depending on the domestic context in which they were petitioned. Of the type of interdicts they had on hand, the most appealing was the interdict to recover possession.⁶² It is, however, not a surprise that such a “possessory spirit” was about to experience considerable troubles when dealing with the logic of copyright as envisioned through its underlying property relations. Because of their factual original underpinnings, because of their propensity for interruptions and because of the common categorisation of possession as a vehicle for acquisition of tangible property, these measures that were petitioned by a proxy created even more confusion. Aggressive as they were, these legal attacks in their straightforward categorical interrogation had several consequences. And they also facilitated legal scapegoats. They were rapidly addressing the vexed question of recovery. And to answer “what” to recover and with “what” status the request was made, was not clear at all. Narratives of trial proceedings are particularly revealing. Defendants often counterattacked representatives by isolating their counterarguments around the two tenets of litigious property: the “owner” and the “thing”.⁶³ And not surprisingly, they highlighted the “inherent” difficulty of recovering

⁶² Autos de interdicto de recobrar promovido por Cevallos contra Torrecillas, Escribanía Galleti, Leg. 282, n. 2 (1875) in AHNC.

⁶³ Doctrinal discussions on the difficulties for possession and copyright to match were produced in Spain and UK. See for instance, Williams (1895) pp. 223-237 and “Derecho Real de Reproducción” *RGLJ*, vol. 81, 1892, pp. 74-105.

possession of “some verses”,⁶⁴ combined with the paradoxical aggressiveness of representatives, as if they were attempting to become “more owners than the owner”. Mobilising their arguments around the questions of “when, where and how” property connections had been made,⁶⁵ strategic defences were remarkably successful.⁶⁶

3. Seeing the “Thing”

Evidential Problems

Amongst the difficulties encountered, not only was the capacity of *the* copyright representative subject to scrutiny, but enormous difficulties also affected the relationship between evidential proofs and the making of the intangible in copyright. Owing to the very nature of intangible property, *distance* and enforceability became a dreadful combination to lock into orbit the “object” and the “subject” of copyright.⁶⁷ Litigation abroad often provided for a rich repertoire of copyright “cases”.⁶⁸ Enforceability was not *the* issue but the symptom of problems in legal categorisation. Indeed speed and *distance* opened chances for principles to get muddled with their illustration or for the appearance of numerous troubles around what was once called in copyright theory “investitive facts”.⁶⁹ Not only had multiple intermediaries “worked” items (*piezas*, books), but a screen of different temporalities had just occurred in transit opening up the possibility of new property meanings attached to the intangible. How to manage and to give effect to temporalities has been a long-standing concern for the constitution of copyright systems.

⁶⁴ Autos de interdicto de recobrar promovido por Cevallos contra Torrecillas, Escribanía Galleti, Leg. 282, n. 2 (1875) in AHNC.

⁶⁵ “Contrairement à ce que le discours de création esthétique suggère, il possède une plasticité ou réversibilité qui fait que chaque lien entre auteur et œuvre est nécessairement construit, et que le processus de construction s’organise selon des points de repère qui sont trouvés hors du vocabulaire de surface ” Pottage and Sherman (1997) p. 97.

⁶⁶ Autos de interdicto de recobrar promovido por Cevallos contra Torrecillas, Escribanía Galleti, Leg. 282, n. 2 (1875) in AHNC.

⁶⁷ “To assert one is to imply the other, and together, like the twin suns of a binary star locked into orbit about each other, they define the centre of modern literary system” Rose (1994) p. 28.

⁶⁸ Hiring well-known lawyers, judges and legal scholars in an attempt to find copyright recognition abroad became a common practice. Sometimes legal scholars on tour in Europe offered their services to act as representatives to fight for legal recognition in his home country. In Argentina, for instance, Delcasse, law Professor at the Universidad of Buenos Aires and supervisor of a series of thesis on copyright, was hired by the Italian publisher Ricordi. He published the particulars of the copyright claim in Delcasse (1895). In Mexico, Xavier Osorno, first instance judge, after visiting Paris in 1887 expressed his desire to stop piracy there and “et annonça que, dans ce but, il avait reçu des pouvoirs spéciaux notamment de MM. Alexandre Dumas, Sardou [...]” *Chronique*, Oct. 25, 1890, pp. 217-218. His desire was also reported to have been the establishment of a “local jurisprudence” to guarantee French authors the protection of their works in “Mexique. Propriété littéraire et artistique au Mexique” *Clunet* (1890) p. 777.

⁶⁹ Publication or manufacture *in* the specific Latin American country gave certain rights to the person publishing the work. It might be argued that this act *invested* him with certain rights. See Bellido (2009) chapter 5.

In so doing, administrative measures could be seen also as the establishment of different ordered practices to control the relationship between evidence (*certificate of the registry*) and what such evidence could have been “pointing toward” (*ownership*).⁷⁰ If copyright registries had succeeded, this measure could have also attracted copyright to public law. Many consequences could have been derived from this institutional support. For instance, if the idea of copyright registries had realised, the likelihood of copyright being a magnet for the attention of its political radar could have also increased.⁷¹ It could be argued that with the passage of time further (constitutional) significance would have attached to the ways of acquiring property and that copyright could have developed different forms and answers in Latin American countries.⁷² In this sense, registration was an institution with political, legal and economic consequences. Furthermore, registration attached to copyright a different “territorial” character. While the history of Latin American copyright registries is something yet to be written,⁷³ we can anticipate some features of the experience in the majority of Latin American countries. Most of them faced internal and external infrastructural difficulties.

To give an example: when copyright registration systems were planned in Latin American countries, alternative solutions were developed *in* Europe directly attacking their consolidation. It is here that we can appreciate the effects of the narrative anticipation of international copyright over national differentiation. When countries such as Costa Rica sought to adjust their bilateral treaties to their registration systems, when they were trying to use tempering mechanisms in their connection to the “world” in copyright, related actions in Europe sharply followed. Not only did multilateral frameworks begin to avoid formalities, bilateral copyright relations found hyper-functional ways to maximise the benefit of protecting rights beyond the sea without procedural or temporal impositions coming from abroad. An example of such a convenient way of preserving flexibility *in* an abstract entity and of securing protection *for* copyright abroad was the negotiation for the

⁷⁰ Pottage (1998) p. 132. This issue flared up in litigation because “[n]ot having a copyright registry securing rights, companies lacked the means *to see* whether the works they were offering were or not proper” Quesada (1904) p. 6.

⁷¹ While modern copyright scholars such as Spence (2007) pp. 23-24 conclude that the historical failure of copyright registries was a natural consequence of their inability to reduce search costs, it seems to me that such an economic understanding simplifies historical controversies in copyright between *professionalism* and *officialism*. For instance, the very idea of registration attracted orders from Public Works’ Ministries and mediating attempts to recognise, qualify and invalidate property origins in copyright, *see* Soto (1902).

⁷² And the running of time could have affected not only the status of the record but also the likelihood to succeed in copyright actions abroad. It was no surprise then to see how some Latin American jurists convinced that “copyright is acquired when the author deposits the work before the authority” in *Actas (a)* p. 323.

⁷³ Of the issues that affected the fate of the copyright registration systems was the late assimilation of the translation right into the reproduction right. The registry was one of the means to fix the clock for the running of time (*ten years*) in the right of translation. This solution provided by the first text of the *Berne Convention* (1886) led copyright scholars such as Darras and Bricon to propose the creation of an international copyright registry; *see* Bricon (1888) p. 173. In Latin America, many countries began projecting copyright registries. *See* Venezuela’s copyright law May, 12 1887 as recalled in Medina (1975) p. 129 and p. 133.

establishment of Latin American national copyright registries *in Paris*.⁷⁴ Not surprisingly such recourse was portrayed as an attempt to institute a more suitable *modus vivendi* for French or Spanish copyright interests abroad.⁷⁵

Nonetheless, the main practical problem was to define juridical concepts in copyright. Details emerged in the wake of disputes. It was as if the lack of normative crystallisation had fully impregnated and given birth to different meanings of the intangible in Latin America. Because of diverse conditions, mainly derived from the surplus of materials and the active investment of intermediaries, an untameable scenario was staged for those who wanted to come first in their attempt to isolate an object of property abroad. For the thing to be “captured” in copyright law, cognitive and procedural difficulties were as tricky as the scene once narrated by James Barnes.⁷⁶ The mentioned surplus of materials was produced at different stages of the creation of the intangible. And these temporalities could have found their justification in many circumstances: for example, the existence of taxes on specific types of bindings that made it more profitable for foreign “books” to be “reworked” in Latin America.⁷⁷ However, the theoretical consequence of these issues was that if the justification of copyright was based upon labour theories, the possibility for Spaniards to formulate claims diminished as “reworking” activities gave birth to new property claims. Indeed, these activities were thought of as attaching property titles to different “works”. “Running copies” of texts,⁷⁸ groups of unbound leaves, composite works containing parts of music and librettos,⁷⁹ were all circulating specimens taking full advantage of the possibility to claim priorities and to make up “origins” and identities.⁸⁰ The combination of chances for access, and the rich terrain to create property “origins” on the ground, precisely made Latin American courts reluctant to absorb conceptual crystallisations of modern copyright law.⁸¹

⁷⁴ Chavegrin (1901) p. 737. See also Bellido (2009) chapter 4.

⁷⁵ “Si cependant il était absolument impossible d’arriver à ce résultat, ne serait-il pas possible d’établir un *modus vivendi* qui faciliterait l’inscription de l’œuvre et la production du certificat d’origine, ou qui remplacerait ces deux formalités par une déclaration à faire à la légation Cubaine, à Paris” in letter from the Ministry of Public Works to the Ministry of Foreign Affairs, June 16, 1910 *in* CADN. Carton 121. Another example was the reorganisation of the Spanish copyright registry to avoid those prescriptions and temporal specifications of the property were productively used in Latin America. See further “Comunicación de Fomento” March 27, 1895, Exp. Inscripción de obras en el Registro, Leg. 288, n. 10, *in* ACD.

⁷⁶ Barnes (1974) and Barnes (1970) pp. 299-300.

⁷⁷ Tariffs on different binding types led some publishers to enter into the business of piracy. Only paperback bindings did not have to pay in Venezuela or Mexico. The rest of the binding types were paying tariffs. See *Actas* CL (1893) p. 539.

⁷⁸ Despite being devoted to an earlier period, interesting notes on the relationships between the intangible and its embodiments in Bouza (2001).

⁷⁹ Barnes (1974).

⁸⁰ Some notes on the temporal productivity where piracy emerged are given in Nowell-Smith (1968) p. 8 and transcript of session, March 18, 1903 presided by Aza *in* ASGAE.

⁸¹ Pappafava (1885) pp. 226-234; 295-305 and “A propos du caractère juridique et des vicissitudes historiques du Droit de propriété sur les œuvres de littérature et d’art. Étude du docteur Vladimir Pappafava” *DA*, March 15, 1888, p. 29.

Rationalising Sight

Unsuitable as it was, heavy-handed as it appeared, the first issue was to accustom the eye to peruse specific materials and to control specific data. A failure to notice what might be perceived as an insignificant legal detail or inappropriate selections of evidential strategy were issues that needed attention. What is normally labelled as the flip of a coin became a decisive intervention of domestic *chance* in copyright disputes in Latin America. Likelihood of failure due to a circumstantial detail in asserting and constructing claims formed the everyday experience of copyright representatives. If someone looked at the unplanned character of litigation, copyright holders appeared to demonstrate a continuous inability to *re-produce*, to identify and to monitor the “intangible” when transmitted and communicated to Latin America. That might explain how bilateral copyright negotiations and their normative expectations were coupled by a distinct sense of disquiet regarding particular annotated experiences “on the ground”.⁸² Incidental litigation was indeed another kind of related problem that showed its specific features. The basic problem was the mobility of information. In these situations, the handling of literary and dramatic property knowledge in Latin America, that is, its data-basing, migration and construction, was a problematic issue. Tracing of data and reconciliation of legal materials regarding property ownership was observed to be a fragile chain. The legal itinerary usually formed a journey set in temporal sites full of material surprises regarding the tidiness and provenance of property information. Methods of identification in “literally” a forest of materials needed practical and professional knowledge to quantify, qualify and therefore to construct different categories to cross accounts than copyright *inspection*.

Placing Orders

If we focus our attention on the expectations generated in the theatrical marketplace, how the way in which copyright was transacted from the 1880s onwards, these shifts in its inner workings affected the visibility and ways of communicating and transacting copyright abroad. For some time, a prototypical way of making arrangements had governed the transportation of dramatic “pieces” from Spain to Latin America. It was quite common that, as valuable assets, texts for performance exploited the temporal gap opened by distance. Economic relations between the two sides of the Atlantic expanded through the combination of the moments of “delivery” and “payment” which were singularly managed. And hence contracts coordinated different private expectations: Spanish editors who acquired copyright,⁸³ representatives who had been commissioned and Latin American theatrical managers who looked for exclusivity. These three units created a chain of relationships in which the subject matter was often two tiered: first, the contractual formulation comprised of the acquisition of the “right to use” these “materials” in the

⁸² See chapter 4, Bellido (2009).

⁸³ Nombela (1976) p. 979; Surwillo (2002) pp. 178-180 and pp. 232-233.

“Republics of Spanish America”;⁸⁴ second, the procurement of copies sent for their exploitation. The upshot of this outline was a complex set of activities in which major holdings of rights “collected”, such as those led by Arregui, Hidalgo, Gullón, or Fiscowich, compromised the supply of copies *by post*.⁸⁵ Since the act of payment was often settled for individualised lump sum transfers, risks were specially distributed. For Spaniards the problem came primarily when piracy activities broke that postal communication in transit. For representatives and Latin American entrepreneurs, major risks were deferred to a posterior moment, when “materials” arrived in Latin America. The point to observe here was that these major copyright Spanish holdings were *institutionally* and physically remote. Copyright scholars would, in the future, consider that those types of transactions could not be easily categorised as copyright agreements. They could certainly argue that they contained the exploitation of the “use” of the tangible material. It is not my purpose here to enter into the copyright significance of such a relationship but to continue with a set of differences in the way those ingredients of material copies and rights became differently and productively combined, helping to project abroad the conceptual autonomy inscribed in modern copyright. The aim is to follow them to show metamorphosing relationships and how possibilities to describe the intangible abroad were also changing. The scene was embedded in convoluted stories where epistolary relationships, business ties and companies *en route* played different roles with the consequence of bridging that distance.⁸⁶

The first type of communicative network that came to mutate ways of dealings in copyright was established in the most important Latin American cities.⁸⁷ And it came to portray a picture of Latin American cities as being “invaded” by professional artists and writers with immigrant origins.⁸⁸ Immigrants that were recently settled served as a point of interaction in the circulation of information related to copyright. Communicative lines were established between the places they left behind (Spain, France or Italy) and their new “home”.⁸⁹ For instance, some associations of Spanish immigrants in Latin America became proxy observers of copyright. These associations in Buenos Aires (Argentina) or Montevideo (Uruguay) transmitted relevant information to diplomatic legations, information that became exploitable by Spanish copyright holders.⁹⁰ Eventually they also offered their services to publishers to become representative of Spanish copyright interests abroad.⁹¹ It

⁸⁴ Nombela (1976) p. 1032.

⁸⁵ *ibid.*, pp. 185-186. Delgado described Fircowich as “a man of clear intelligence, a gentleman astute in business, active and prudent, [...] with a deep knowledge of the human heart in general and of the heart of dramatic authors in particular” Delgado (1999) p. 66.

⁸⁶ García Sebastian (2005) pp. 147-176.

⁸⁷ “It was not until 1887 that the first *census* of Buenos Aires was established. It consisted of 433.375 inhabitants and 400 industrial establishments of which more than a half (213) had been founded after 1880” Lafforgue (1977) p. 439.

⁸⁸ Lafforgue (1977) p. xxvii; see also García Velloso (1960) pp. 128-129; and Rusich (1974) p. 97. “¡Literatos, a defenderse!” *La España Artística*, July, 8, 1889, p. 2.

⁸⁹ “The strongest wave of emigration is dated in the period from 1887-1890” Butel (1999) p. 249.

⁹⁰ Letter from Brunetti y Galloso (Spanish legation in Montevideo) to the Ministry of Foreign Affairs (Spain), April, 1 1891, Leg. 1382. Rel. Culturales *in* AMAE.

⁹¹ “Los derechos de autores. España y Argentina” *Bibliografía Española*, n. 4, Aug. 1 1901, p. 43.

was not only those “mapping” exercises that made them extremely effective, nor was their distinctive influence only derived from a reservoir of personal contacts they had kept with the literary and drama scene⁹² (contacts that nonetheless were also often interchanging opinions and suggestions on copyright law),⁹³ rather, the most interesting social element in this trajectory was perhaps its fruitful incorporation in those Latin American cities. Their penetration and interaction grew as time passed by. Indeed, while they kept in touch with Spain or Italy, they also began to be increasingly involved in the local scene by representing copyright interests,⁹⁴ introducing and exchanging contacts, giving and obtaining expertise. When they were involved in transactions, they obviously attempted to defend property rights in dramatic works; but it was their insistence on recognition of *interests* that began to be productively confused with the recognition of *rights*.⁹⁵

Companies constructed a second type of network *en route*. It is difficult to reconstruct exact itineraries and precise activities. But it is nevertheless possible to ascertain a significant appearance of “desires of interacting persons for adjustment to new benefit-cost possibilities”.⁹⁶ Many circumstances could elucidate the emergence of these expectations. Communications and professionalisation could serve to explain how a significant emergence of business opportunities was created by the difference of seasons between Europe and Latin America. Itinerant theatrical companies began to operate yearly in both Spain and Latin America.⁹⁷ Systematic tours of theatrical companies such as *Cia. Mendoza-Guerrero* or *Cia. Ramón Cebrián* not only channelled economic desires but also brought about a significant social influence through which the form of economic routines and legal relations were “acclimatised”.⁹⁸ Social ties, commercial transactions and copyright dealings all came together. Not only did secured means of transferring credit through correspondence predominate,⁹⁹ the circulation of these companies also showed that they were both personal vehicles of theatrical know-how and further interactive points between

⁹² The bibliography here is vast. A nice introduction could be Arrieta (1957).

⁹³ Letter from Ayala to Olavarria where the former was thanking the later for the envoi of different copies of an essay on literary property, June, 21, 1875 in AOF.

⁹⁴ Lafforgue (1977) p. 440.

⁹⁵ Some of these Spaniards or Italians were “naturalised” Mexican or Argentinean, see “Carta de naturalización mexicana extendida a Enrique de Olavarría y Ferrari”, México, Nov. 24, 1880 in AOF. In 1892, a theatrical company managed by a Spaniard announced that they were going to distribute royalties pouring from copyright, “the purest property”, even though it was not yet legally recognised in Argentina. “En annonçant l’ouverture de la nouvelle saison théâtrale pour le mois de mars 1892, l’entreprise Onrubia à Buenos-Aires a fait savoir au public qu’elle était disposée, la propriété littéraire, « la plus pure des propriétés », n’étant pas sauvegardée dans le pays, à mettre de côté. Chaque soir, le cinq pour cent des entrées pour être distribué aux auteurs des pièces dramatiques représentées. *La España Artística* applaudit à cette mesure équitable et espère que l’exemple qui en ressort sera suivi”, *DA*, July 15, 1892, p. 91.

⁹⁶ Anderson and Hill (2002) p. 489 quoting the famous essay by Demtsetz (1967) p. 347.

⁹⁷ “The success of [...] in Madrid continued in Cuba, Porto Rico and Philippines” in Nombela (1976) p. 1033. For a general overview of the issue, see Casares (2002) pp. 532-539 and “Los teatros” *La Ilustración Española y Americana*, Oct. 15, 1894, p. 223.

⁹⁸ Lafforgue (1977) p. 440 and p. 442; Carella (1957) p.108.

the Spanish and Latin American box offices.¹⁰⁰ Travelling around the most important Latin American cities, artists took with them a selection of Spanish dramatic productions.¹⁰¹ Subsequently, copyright tensions arose.¹⁰² Specifically, the presence of these companies in Latin America gave Spanish copyright holders occasion to put pressure on local intermediaries and entrepreneurs to pay some money for the exploitation of Spanish dramatic pieces.¹⁰³ Threats of artists' strikes before a performance occasionally enabled Spanish artists to collect money for their authors, even before any legal recognition of international copyright protection in several Latin American countries.¹⁰⁴ A few decades later, the Spanish *society* of authors found it productive to instrumentalise for its own benefit the behaviour of these artists en route. It did so in different ways. On the one hand, it used the information provided by travelling companies to control the activities of its representatives in Latin America.¹⁰⁵ On the other hand, it also upheld sharp measures to extend its scope of collection to places where foreign copyright was not yet fully recognised.¹⁰⁶ For instance, measures began by restricting the use of the repertoire *in* Spain to companies that were not collecting money in Latin America.¹⁰⁷ And it continued by formally requiring from artists and entrepreneurs the payment of rights issuing from representations made abroad.¹⁰⁸

The appearance of Bordereaux

⁹⁹ "I enclose with this letter a bill of exchange valued in 205 pesetas, that was the sum of your *rights* from a representation of *San Quintin* we made in Buenos Aires", letter from Díaz de Mendoza to Pérez Galdós, Nov. 19, 1899 in Menéndez Onrubia (1984) p. 149.

¹⁰⁰ For the routes taken by the theatrical company led by María Guerrero, see De Pedro (1928) pp. xi- xv; see also "Compañías y Actores" in Menéndez Onrubia (1984) pp. 253-299. For the references to the Latin American experience of María Tubau, see Menéndez Onrubia & Ávila Arellano (1987) p. 60. For a biography of Tirso Escudero, see Castan (1940).

¹⁰¹ A description of this figure is given in Pérez Galdós (1923) pp. 217-222.

¹⁰² Letter from Díaz de Mendoza to Pérez Galdós, Sept. 22 1899 in Menéndez Onrubia (1984) pp. 142-145; and Oyuela (1900) p. 17.

¹⁰³ These collecting activities made by artists were criticised by representatives of SAE in Latin America because they were loosing their commission fees. See transcript of session, May 18, 1904 presided by Echegaray *in* ASGAE.

¹⁰⁴ Letter from Tovia to Herrero Espinosa, Ministry of Foreign Affairs, March, 6 1900, Leg. 1382. Rel. Culturales *in* AMAE.

¹⁰⁵ "Some artists and entrepreneurs of Spanish theatrical companies denounce that Philippine companies perform Spanish works in Tagalog language without authorisation of their authors and they have also informed that some of the representatives of this society in the Islands are precisely the authors of the translations" in transcript of session, Nov. 28, 1903 presided by Echegaray *in* ASGAE.

¹⁰⁶ "A cobrar" *El Heraldo de Madrid*, Aug. 23, 1903.

¹⁰⁷ Transcript of session, May 18, 1904 presided by Echegaray *in* ASGAE and another warning was given one year later, in transcript of session, May 6, 1905 presided by Sellés *in* ASGAE.

¹⁰⁸ "The assembly decides to claim those rights to the actress and entrepreneur Matilde Moreno"; transcript of session, May 18, 1904 presided by Echegaray *in* ASGAE.

In response to the needs of the moment and embedded in the sudden increase of communicative networks, itinerant artists and immigrants became part of changing practices affecting the projection of copyright. Their ongoing relationships built a vital bridge for communicating *rights* at a distance. It was not a one-way street. Local interests contracted artists, disputed rights, amounts and ways of payment. Foreign companies were hired.¹⁰⁹ And theatres were often rented spaces for the production of theatrical pieces. If we pay attention, what the picture begins to give us is a glimpse of the appearance of different mediators between persons (*authors*) and things (*works*) reaching Latin America.¹¹⁰ First, *artists* were often employed to “work in *any* Republic of South America and Central America”.¹¹¹ And secondly, business practices began to create links and grounds for the construction of legal arguments in the litigation and collection of *rights*. A special type of theatrical practice provided for a kind of responsive *document* suitable for the handle of these activities in which many people intervened. When entrepreneurs dealt with *rights*, they obviously attempted to clarify the security of the intangible. If there was a foreign case and no international copyright had to be paid, a place for such a non-existent relationship in the accounts was to be left blank. This blank space showed nonetheless how those practices were extremely important because they began to capture, to acknowledge and to categorise the complexities of relationships. Such practices of processing data formalised spaces by opening up the possibility of compromises and rights to be recognised and allocated in a standard descriptive format. Not surprisingly the same practices continued to be used when the normative picture of copyright appeared a bit more clarified and forms of international copyright then applied.¹¹² The recording of collaborations and the emergence of these descriptions began by the common use of *bordereaux*, a reporting gesture annotated in the margins of discussions by copyright experts in international forums.¹¹³ Making a *bordereaux* involved the collating of relevant information on paper for the production of a dramatic piece. Theatrical owners asked for an account of the everyday activities held in a theatre in order to measure its productivity and to discharge responsibilities.¹¹⁴ To a certain extent, *bordereaux* served to avoid the menace of *injunctions*. By making the information visible, *bordereaux* was a form of accounting suitable for processing and tracking different moments of the theatrical production. They brought together data of different types of relations and “unified” it.¹¹⁵

¹⁰⁹ “Contrato de la Actriz” in Menéndez Onrubia (1984) pp. 319-320.

¹¹⁰ It is highly significant that *lease* contracts operated in theatres. In case of a copyright infringement, there was a potential responsibility that the owners of theatres want to set aside. This specific circumstance affected the internalisation of accounting practices this paper is exploring.

¹¹¹ See Sassone (1943) p. 68, 88-89 and 95.

¹¹² For instance, after the Spanish signatory of the *Montevideo Convention* in 1899, we can see how the same type of accounting practices was productively used by Spaniards to retrieve information from Latin American theatres. These practices were important because through them *rights* could be connected to certain descriptions of the intangible.

¹¹³ “Another suggestion, made in 1896, by the famous copyright scholar Pouillet, was that the publisher should furnish the author with a *bordereaux*, in *Publishers’ Circular*; see also the supplement to n. 2 *DA*; Feb. 15, 1894, p. 39.

¹¹⁴ An evolution of this process of making data visible in Uruguayan theatres is given in Bouret (2004) pp. 74-80.

In 1889, an immigrant named Justo López Gomara, a man once considered “the Spaniard with more friends in Argentina”,¹¹⁶ pioneered their systematic use in Buenos Aires.¹¹⁷ The presence of these sheets of paper imperceptibly spread fast throughout the whole continent. If we attempt to draw a map, traces of similar papers can be spotted in many other Latin American theatres.¹¹⁸ Their design was interesting. The list of entries contained ran from the date and hour of the performances, the quantity of the performances, the title of the dramatic works, the distribution of seats in a theatre, the amount of tickets sold, the type of the taxes owed, or the date of the premiere. Information about these activities was rendered, distributed and partitioned in various columns, each being identified with brief headings. And what is more important: theatrical companies supplied the data. Those boundaries within the sheets of paper created a textual description from which copyright could operate. Perhaps the most interesting issue to highlight here is that some of these ways of describing the intangible were previously held as legal obligations. The shift from obligation to habituated practices of recording was subtle but thoroughly significant. The generalised convention shows a transformation from legal to social obligation. Now theatrical companies made transparent their own activities through these accounting exercises because the transparency had been accepted socially.

Lack of completeness made those objects (*bordereaux*) relevant. As they provided information to be entered and ordered onto specific forms, they were not completed until the intangible work was produced. As if an inner matrix had developed copyright to extract information, their potential relied upon the combination of a sheet of paper *and an actor* to fill in the data. Soon after that, references to the accuracy of these explicit professional self-exercises to give accurate information were collaterally made in discussions on international copyright. The interesting issue here is that these requests were now produced not on the basis of legal principles but on the moulding of behaviour to *professional* standards. It is not a surprise that their references were peppered by appeals to “sincerity”.¹¹⁹ The appearance of these replicating sheets in Latin America allowed for a significant synthesis that could associate data *with* rights. The set of data variables became extremely useful for the display of information relevant for copyright management.¹²⁰ Reconciling rights and data, the acquisition of information for copyright *collecting* or infringing purposes relied upon the regularity of these detachable materials. Not only could the form of payment be modelled through them, but *bordereaux* had the generative capacity to pursue different ways of computing rights. They contained a pooling informational basis whereby percentage royalties could be calculated. Facilitating the dissolution of property into money, their

¹¹⁵ Souchon from SACEM discussed the major errors found in those accounts in supplement to n. 2 DA; Feb. 15, 1894, p. 39.

¹¹⁶ Rahola (1905) p. 382; Biagini (1993) pp. 137-147; Lena Paz “Argentina” in Casares (2002) pp. 141-142.

¹¹⁷ Quesada (1904) pp. 82-83 and p. 114-115; see also Lafforgue (1977) p. 442.

¹¹⁸ The archive of the Teatro Solís (Uruguay) keeps the accounting practice of *bordereaux* since 1897.

¹¹⁹ Supplement to n. 2 DA; Feb. 15, 1894, p. 39. “Relations of Authors and Publishers in France” *Publishers’ Circular* April 22, 1899, p. 416.

¹²⁰ On the other hand, “bordereaux [were] making so difficult the life of the artist in “La sociedad de autores” *La Correspondencia de España*, Aug. 19, 1903, p. 1.

appearance also paved the way for the imperceptible shift that was making a significant equivalence between the collection of *rights* and the collection of *money*.¹²¹ The appearance of this portable way of making visible descriptions of the intangible in copyright is coincidental with the incipient litigation in Latin America. Ernesto Quesada, surely the most important copyright scholar in Latin America at the time, admitted the crucial evidential weight that those sheets of paper carried when grounding copyright claims.¹²² The intangible “work” in copyright was made manifest through these accounts. And not only did litigation begin to resolve issues according to them. What seems significant is precisely how professional practices helped to translate abstract concepts in copyright (“work”, “author”) by *distancing* them from the contingencies that could accrue underneath. These transportable devices lend themselves to connecting concepts and data far afield. For instance, literary or theatrical professionals based in Latin American cities continued requiring companies working in provinces to supply and produce these paper sheets.¹²³

4. From “archives” to the “repertoire”

Strategies of Constitution

In 1899, the *Sociedad de Autores Españoles* (Spanish Society of Authors)¹²⁴ was constituted. It was a key and controversial event. For some, it was the constitution of a literary “picklock”.¹²⁵ For others, mainly those who joined such an associative endeavour, perhaps it was an attempt to “break the chain of intermediaries” through collective measures. It constituted the “abolition of the economic slavery” in which authors and writers “had been for many years enchained”.¹²⁶ Surely it was a “beginning” in copyright’s history that reflected the emergence of a certain type of professionalisation in the field. The birth of most of the modern copyright collecting societies in Europe coincides with crucial moments of international copyright.¹²⁷ Some commentators of international copyright went even further when they noted the “creation *nécessaire* de sociétés des auteurs”.¹²⁸ Whereas the

¹²¹ Arroyo (1961) p. 13.

¹²² Quesada (1904) pp. 114-115; see also “République Argentine” *DA*, July 15, 1892, p. 91.

¹²³ *Porteños* (people of Buenos Aires) and people from provinces as noted by Quesada (1904) p. 85.

¹²⁴ Sánchez García (2002b) pp. 205-228; transcript of session June 16, 1899 in ASGAE.

¹²⁵ See generally Pérez Gironés (1903).

¹²⁶ Más Ferrer (1978) p. 33; González Peña “Sinesio Delgado” in Casares (2002) pp. 622-623; and Delgado (1963) p. 22.

¹²⁷ Ehrlich seems to link the emergence of collecting societies to the *Berne Convention* (1886). According to him, SACEM (France) became the prototype upon which the Italian (1882), Austrian (1897), Spanish (1901) and German associations were constituted; see Ehrlich (1989) p. 1.

¹²⁸ Bricon (1888) pp. 180-187. It is true that associations of authors existed before this period, however collecting societies as a “company” of authors in which administration and ownership was divided, that is, incorporated societies were a phenomenon of the late nineteenth century; see the comments in *Publishers’ Circular*, Feb. 1, 1884, pp. 97-98.

aims of the Spanish society were often overemphasised,¹²⁹ some important organisational infrastructural changes took place. Not only did the birth of the new association absorb old associations,¹³⁰ it also meant the reorganisation of collections of materials that major copyright holdings had previously acquired.¹³¹ It also meant the creation of a separate institutional space for copyright. In a circular bearing the warning “extremely important”, Spanish and Latin American theatrical entrepreneurs could then read that the aim of the society was to “facilitate the exploitation of this class of business” in order “to attend the common good”.¹³² The outline is surely known to copyright scholars. It is the story of authors by a profession organising themselves to control *rights* and to exploit their works.¹³³ Since it is a well-known passage, it is at specific features of the episode where this paper will focus. These lines refer to the particular instances in the organising process by which the administrative machine of the society was “solidly” constituted.¹³⁴ It was precisely the separation of copyright ownership and administration that made the emergence of collective societies extremely successful abroad.

Of the strategies to break the so-called “monopoly” of publishers, the founding fathers of the society fashioned what they considered an extraordinary move, a “memorable event”.¹³⁵ For them, the main obstacle to constituting a society was the bottleneck formed by a nexus of exclusive contracts already signed by authors.¹³⁶ These contracts were compromising the future productive input of authors. When, for instance, “original” scores or materials had to be given to the party to whom the author had transacted, it was then quite difficult to make up a society of authors anew and therefore to attempt the construction of a new stock of *rights* and materials. Archives were the meeting point where such a stock was simultaneously managed and policed by publishers,¹³⁷ a combination that was said to provide them with a strategic position to decide the moment of making copies (or not) and to gain a priority over the timing of licensing *rights*.¹³⁸ The plan of the society to break such a bottleneck and to gain subscriptions began by making several authors write and compose

¹²⁹ Letter from Delgado to Perez Gironés, April 1, 1901 in Perez Gironés (1903) p. 7.

¹³⁰ The major fusion came between writers and musicians (*Sociedad de Autores, Compositores y Editores de Música*). See transcript of session, June. 27, 1900 presided by Arín in ASGAE. General historical overview is also given in Tussell and Delgado Porras (2000) pp. 16-17; and Arozamena (1961).

¹³¹ See power of attorney granted by Fiscowich, Feb. 25, 1896, T39599, fols. 844r-887v in AHPN.

¹³² Transcript of session, Feb. 13, 1900 presided by Aza in ASGAE.

¹³³ Transcript of session, Oct. 3, 1899 presided by Aza in ASGAE.

¹³⁴ “It has been proceed with the necessary pace, the appointment of correspondents and the envoi of repertoires for the administrative machine to begin to work with a service solidly organised and no cent was lost”, *ibid.*

¹³⁵ Soto (1914) p. 207; see also Delgado (1999) pp. 4-5.

¹³⁶ Surwillo (2007) p. 148.

¹³⁷ See for instance the news on the seizure of Fiscowich’s archives in *Montevideo Musical*, July 8, 1894.

¹³⁸ Delgado (1963) p. 20.

works together.¹³⁹ The combination involved an unknown writer and a well-known musician, the latter being tied contractually to the aforementioned “monopolistic” publishers. Given that the output of the collaboration was a work of joint authorship, a lacuna left in exclusive contracts was fruitfully exploited. Stipulations of contracts did not say anything about collaborations when tying the contractual future of authors, so a door was left open for those activities to break sharply with previous exclusivities. New materials derived from those joint creative efforts, such as scores or librettos fed simultaneously the new repertoire recently created by the society and the old archive of publishers already established. Whereas an unknown writer gave one so-called “original” manuscript to the society, another copy of the same manuscript was transmitted to the publishers by a famous author. In doing so, ambiguous terms of previous exclusive contracts were “respected”. After a few weeks, the strategy became even more aggressive. Not only were works of joint authorship promoted inside the society, but also works under pseudonym were tactically appearing in its incipient *repertoire*.¹⁴⁰ These strategies finally succeeded.¹⁴¹ With the ability to act rapidly, the society of authors was faster to reproduce materials and to dispose of both materials and *rights* in the market. When publishers retaliated, claiming breach of exclusive contracts, fraud and copyright infringement, the new society of authors claimed that scores and related materials were legally obtained by one of its members, or two members, under “the abyss” and “labyrinths” of pseudonyms.¹⁴²

After many vicissitudes, not only was the society opportunistically constituted but also “the king of the archives” was defeated.¹⁴³ For the reorganisation of peoples and things, the society had to arrange membership and a flexible infrastructure. As with any other type of social grouping, the society achieved cohesion by stipulating conditions for the entry and exit of its members.¹⁴⁴ Written statutes contained special clauses, of which a significant one was that authors of *librettos* were compelled to sign agreements with musicians *before* the premiere of a dramatic piece. Hence, the compromise with these authors was not to sell or to license rights to anybody but to communicate these letters to the society.¹⁴⁵ While the society indeed constituted a new centre of organisation of rights; a centre which provided free legal advice for the service of its members,¹⁴⁶ these rules requiring the affiliation of writers and musicians gave birth to a significant nexus of contracts that supported the emergence of linking transactions and the creation of an overall “mandate”. As the constitution of a large agency, it was its identification and separation of ownership through

¹³⁹ These aims were described as “bureaucratic machinations” by Perez Gironés (1903) p. 34.

¹⁴⁰ Delgado (1999) p. 138.

¹⁴¹ Delgado (1999) p. 105.

¹⁴² Delgado (1999) p. 115.

¹⁴³ González Peña “Florencio Fiscowich” in Casares (2002) pp. 781-782.

¹⁴⁴ When a writer tried to drop his membership, the assembly agreed to “impose collective authority upon those unhappy who want to be exploited, in order to give an example to the exploiters” in transcript of session, May. 4, 1900 presided by Aza *in* ASGAE.

¹⁴⁵ Transcript of session, Feb. 5, 1900 presided by Ramos Carrión *in* ASGAE.

¹⁴⁶ Transcript of session, March. 30, 1900 presided by Aza *in* ASGAE.

managerial authority that proved to be extraordinary. Inside, the society established internal adjudicative mechanisms to solve disputes over copyright ownership.¹⁴⁷ One virtue of this flexibility is to provide for a collective *administrative* umbrella that displaced the primary construction of ownership enquiries through notaries' windows and sparse safeguards.¹⁴⁸ It allowed for a smoother translation of copyright interests abroad by making them more transparent. It was indeed a very limited and external transparency. But that transparency, when streamlined abroad, meant profitability. For profitability was derived from a disposition that meant that ownership was able to be circulated, a copy of the *repertoire* was literally put "in the hands" of representatives.¹⁴⁹ Significantly, the streamlining success also had much to do with the establishment of a centre that opened a more "regular line" of communication.¹⁵⁰

Taming distance to a single Office

When the society received the materials recently bought from the publishers, "in forty eight hours" they constituted the "archive" differently.¹⁵¹ What seems extremely interesting from the birth of the society of authors was the process of making a space in which relevant objects fluctuated. Of the many institutional resources created, there was a peculiar item called the *repertoire*. Despite the short time allowed, the process to obtain an office space and to build up this singular item was not a straightforward task.¹⁵² First, it was a process of creating a distinct item with the purpose of leaving it unfinished. The importance of the repertoire was its incompleteness since it had to become an object in continuous flux. The openness facilitated the reception and cataloguing of new materials on arrival. Then it was the "administrative machine" of the society that gave such an item its movement. The society partitioned its activities and moved to a more spacious office where divisions and roles were distributed. Entering the new building, crossing the garden, the edifice was divided into two wings. By looking at them it was possible to see the main distinctive tasks with which the society was engaged.¹⁵³ On the left, a visitor faced the main offices. But if he had had a look at the basement, he would have seen a copy office at the centre of which lay a recently bought lithograph printer. The machine – reporters observed – had an incredible speed rate of 750 copies *per* hour.¹⁵⁴ It was indeed the jewel upon which the

¹⁴⁷ Arbitration was chosen many times to avoid litigation and to adjudicate ownership between members, see transcript of session, May 27, 1904 presided by Echegaray *in* ASGAE.

¹⁴⁸ The society was constituted by "faithful administrators" in "A cobrar" *El Heraldo de Madrid*, Aug. 23, 1903.

¹⁴⁹ "Associates promptly sent me the list of their works; I spent many hours ordering that; type composers stayed awake and on June 29, all the representatives had their catalogue on their hands" Delgado (1999) p. 83.

¹⁵⁰ Reporting regularity moved from the traditional three months to a shorter reporting frequency (one month); Delgado (1999) p. 84.

¹⁵¹ Transcript of session, Oct. 3, 1899 presided by Aza *in* ASGAE.

¹⁵² Bowker and Leigh Star (1999) p. 18.

¹⁵³ Arroyo (1961) p. 11.

¹⁵⁴ Soto (1914) p. 210.

society had been constructed,¹⁵⁵ and that physical proximity and co-presence in the society of authors causes us to reflect on the curious legal segregation between the intangible and its embodiment. Nevertheless, it was also in that wing that it was possible to see an archive where the polished “originals” were kept.¹⁵⁶

These zones of activities were subdivided according to the variety of tasks they were assigned. A glance at the everyday routine of the offices could have shown how spatial usage also divided activities. In other words, space differentiated between reception, inventory, copy, and remittance of copies.¹⁵⁷ There was also a collecting office and a negotiating department.¹⁵⁸ There was a telephone line established to support and to enhance those activities.¹⁵⁹ And very close to it, the visitor was confronted with another daily resource. The resource was an important device to manage copyright abroad. A clerk who started working at the society at the age of fifteen enthusiastically reflected the ritual in his memories. It consisted of looking at a chart in which “a nomenclature where all tariffs and seating capacity of theatres in Spain and Latin America was specified”.¹⁶⁰ For the clerk the chart constituted one of the many steps in the administrative impulse in which the society was involved. Not only had the resourceful device been drawn to control spatially the intangible, but a series of legislative *collections* of Latin American copyright laws and a theatrical *census* were also edited.¹⁶¹ Indeed, these materials were united by an interest in “knowing” and acquiring specific information from abroad, anticipating or substituting many operations on the ground. To some observers, it was precisely the situated technology in which facts and numbers were observed *in* the office through these devices (charts, collections and maps) that gave the society a sort of “territorial property” at a glance.¹⁶² And, importantly, these devices preserved the minimum of useful information, information that was however important for copyright collecting.

A last but important resource by which the infrastructure was brought into action was the employment of clerical staff that soon numbered eighty. To a certain extent, the working practices of the society resembled those of a factory. Figure 6 precisely captures a scene in which we can see how the copy “office” created a workspace for the management of copyright. We can appreciate how desks and people were arranged in a way utilising space and time to maximum efficiency. Sheets of papers were suspended from lengths of string

¹⁵⁵ It was even symbolically “baptized” with champagne; Arroyo (1961) p. 12.

¹⁵⁶ “A lithographic machine to print sheets using electric motor was installed” in transcript of session, March 3, 1901 presided by Aza *in* ASGAE.

¹⁵⁷ Transcript of session, Feb. 13, 1900 presided by Aza *in* ASGAE.

¹⁵⁸ Transcript of session, Dec. 22, 1900 presided by Arin *in* ASGAE.

¹⁵⁹ “Telefono 1484” *Bulletin SAE*, July 10, 1905, p. 1.

¹⁶⁰ Arroyo (1961) p. 17.

¹⁶¹ Perez Gironés (1903) p. 34.

¹⁶² Perez Gironés (1903) p. 39.

to maximise time and to organise files. Office space was also organised to ensure that clerks were not interrupted. Their face-to-face contact with the public was severely restricted to avoid chatter and distraction.¹⁶³ Lecterns and other tools of trade were provided. And we can also see how the office manager inspected the work done by clerical staff. Some of these clerks had been trained to communicate and to interact effectively *with* representatives. They were dispatching letters, using machines and calculating royalties.¹⁶⁴ They were trained to be aware of the practicalities of handling *bordereaux*. They also served to cut off the “infinity of abuses made by correspondents”,¹⁶⁵ abuses that had previously been creating copyright conflicts with Latin American entrepreneurs. Reviewing the work done by representatives became a routine task for the collective enterprise. After a few months, the same clerk remembered being able to say: “we knew the *repertoire* by heart” because the job was “as simple as ABC”.¹⁶⁶ Indeed, both staff and the divisions created a workspace encompassing repetitive tasks where they were supposed to interact in order to avoid organisational “hindrances”.¹⁶⁷

The success in expressing that copyright collective *voice* depended not only on the construction of a society but mainly on the making of an interactive workspace through which the object (*repertoire*) was set in motion. In doing so, the manner and pace of exploitation of *rights* were also affected. Payment was now based on a formula in which a percentage was applied.¹⁶⁸ Liquidity of rights and fluctuation of money became the rule for the payment of copyright abroad, more common even than lump sums. *Invoicing* was automated and systematised. Perhaps more importantly, the modelling and coordination of activities not only affected the form of reception but also the conceptual perception of copyright abroad. This process of building the informational infrastructure for copyright was indeed a crucial shift in sorting things out in small practical areas of international conflict that were developed at the time. The founder of the Spanish society described the modelling process as follows:

“Tracks full of exemplars were arriving from different publisher's warehouses [...] All different editions of dramatic works made throughout the nineteenth century were arriving, mixed and messed up. The task to be done was that of dividing titles, inspecting different catalogues, making a general recount, applying to each author

¹⁶³ “An Appeal to the Members: The Managing Director earnestly appeals to members and to everybody who is about to deal with the society that any claim, report, data request, complaint, etc...they may have to be always addressed to the Managing Director instead of filing it directly with the clerks. He also appeals to them to avoid entering into the offices, archive, or copy office in order to avoid any interruption or distraction of the personnel” *Bulletin SAE*, Aug. 1904, p. 7.

¹⁶⁴ Delgado (1999) p. 84.

¹⁶⁵ Transcript of session, Jan., 15, 1900 in Soto (1914) p. 214.

¹⁶⁶ Arroyo (1961) p. 9.

¹⁶⁷ “[...] everything was catalogued, ready, disposed and ordered to work without hindrances”. Transcript of session, Oct. 3, 1901 presided by Arin in ASGAE.

¹⁶⁸ Spain began to reflect this on her bilateral copyright treaties. For instance, the Mexican-Spanish treaty (1903) included the following clause (article VI): “The aim of this article is to avoid doubts and difficulties on performing rights that could be paid to authors of dramatic works, lyric or lyric-dramatic works in the country which is not the country of origin, tariffs, the parties agree here to fix the tariffs”. See “Servicios de la Compañía Trasatlántica de Barcelona”, *Revista de la Unión Iberoamericana*, Sep. 30, 1900, p 2.

those works that were related to him, pointing out the part that corresponded to each owner...To sum up, the task to be done was that of arranging everything because *without those arrangements there was nothing* [...] ¹⁶⁹

Thousands of materials arrived simultaneously at the office basement. And thus the modelling process began. It was a data-intense activity, an “arduous task” forging an ongoing process of collecting and purging data and attaching literary, musical and dramatic “works” to their “authors” for copyright collecting purposes.¹⁷⁰ Not only did that bureaucratic work of framing and formatting increase the exploitation ratios of *rights* regained, it precisely eradicated ownership difficulties by giving birth to an uninterrupted layout where identification tools of copyright were established.¹⁷¹ Initiated by the society, this practice of cataloguing and indexing scores, annotating copies and specifying rights produced a *list* of “works” and “authors” that were previously scattered over different places, private catalogues and private contracts.¹⁷² Useful device that it was, this list (*repertoire*) served to diminish what was previously considered as “inherent” problems of distance.¹⁷³ It was nothing more than a list, but precisely because of that, it was indeed an easy device to be transported abroad. It was also “compact” since controversies about property had been arbitrated, compressed and cleared. After such an infrastructural shift, - the observer continued - “the repertoire (*of “works”*) emerged flamboyant, clean, exact [...]”.¹⁷⁴ So extraordinary was the activity of the society that the first tax classification given by the Spanish government to the society was that of a publishing industry. And the response the society gave was that “they [were] not a publishing house but merely a deposit warehouse of exemplars”.¹⁷⁵

When this “social edifice” made reference to Latin America,¹⁷⁶ the desire was that the “payment in those Republics could be made with the same facility as in Spain”.¹⁷⁷ Not only did collectivising a *voice* help authors in being heard in the Spanish Parliament when copyright bilateral negotiations were at stake,¹⁷⁸ the effect was even more powerful. When

¹⁶⁹ Delgado (1999) p. 83.

¹⁷⁰ Arroyo (1961) p. 11

¹⁷¹ Leigh Star (1999) p. 379

¹⁷² An illustration is given in Surwillo (2007) p. 86.

¹⁷³ “In Mexico some difficulties were spotted at the beginning because of the obstacles inherently created by distance”; transcript of session, Oct. 3, 1899 presided by Aza in ASGAE.

¹⁷⁴ Transcript of session, Oct. 3, 1899 presided by Aza in ASGAE.

¹⁷⁵ Transcript of session, May 13, 1902 presided by Aza in ASGAE.

¹⁷⁶ “It consists of the unification of all the theatrical services, destroying current archives by building a social edifice [...] by destroying intermediaries” transcript of session, Oct. 3, 1899 presided by Aza in ASGAE.

¹⁷⁷ Transcript of session, Oct. 3, 1899 presided by Aza in ASGAE.

¹⁷⁸ Delgado to Echegaray in which he sent the report of the society “concerning the Mexican-Spanish copyright negotiation”, June 21, 1903 in AS.

the *repertoire* was connected and superimposed on *bordereaux*, the society maximised the use of these two devices to translate interests abroad.¹⁷⁹ Simply but importantly, the combination secured time and money and prevented controversies. A typical sequence before the coming of this administrative machine showed how the mechanics of acquiring the material, knowing about places and inquiring about rights was full of nuances. When this scenario was suddenly taken over by the society, the implications were profound. Communication technologies also helped. Cablegrams from and to Buenos Aires or Mexico were increasingly dispatched from that single office. And more importantly, transactions produced in the intervening periods were reduced for the main objective was to produce a “cheap and fast” *collection*.¹⁸⁰ Cheapness and speed were the ideals and they were reflected in the regulatory framework now established. For instance, additional payments for urgency of material were eradicated.¹⁸¹ Deposits for their use were also abolished.¹⁸² And Latin American representatives were sent materials to build up an available on-demand stock in which the society reserved auditing rights and a capacity to inspect.¹⁸³ By turning the previous troubling search of ownership to a flexible supply of *rights* and *materials*,¹⁸⁴ a significant resource was opened.¹⁸⁵ Previously unknown territories were now accounted for since the rules of the *repertoire* gave free access to theatrical companies and actors.¹⁸⁶ The “freedom without limits” in the disposition of rights and materials was often perceived as making available numbers of copies and rights facilitated upon request. Rights and copies were able to be authorised now at any time and on more

¹⁷⁹ “Given the wide explanations given by Mr. Santomé and Torres Reina, and reading all the letters, documents and *bordereaux* exhibited by Santomé in order to show his job done in Latin América in order to obtain the payment of property rights [...] the assembly agrees to declare his management entirely satisfactory” [highlighted in the original] transcript of session, May. 4, 1900 presided by Aza in ASGAE.

¹⁸⁰ Delgado (1999) p. 88.

¹⁸¹ Before the coming of the society of authors, private entrepreneurs were quite discretionary in stipulating payments. For instance, there were bonus payments for the urgent deliveries and premieres. See Valverde (1979) p. 240; “15 pesetas per day, 30 pesetas if the work was new, 30 pesetas if it was an urgent delivery, and 500 pesetas on bonds” in González Peña “Florencio Fiscowich” in Casares (2002) pp. 781-782.

¹⁸² Real orden circular derogando la de 2 de Enero de 1889 acerca del estricto cumplimiento de los artículos 49 de la ley de Propiedad literaria y 63 y 119 del reglamento para su ejecución, sobre depósitos de cantidades en garantía de los derechos de los propietarios de obras dramáticas ó musicales *Gaceta de Madrid*, 83, March 24, 1891.

¹⁸³ As the Mexican representative suggested that making copies in Mexico was very expensive, he was provided with more materials to foster the exploitation by renting. Transcript of session, Feb. 27, 1901 presided by Aza in ASGAE; auditing rights of the same Mexican archive can be read in transcript of session, Oct. 19, 1904 presided by Echegaray in ASGAE.

¹⁸⁴ An example of this flexibility was the creation in the archive of materials for theatrical companies without orchestra. The absence of those materials before made some companies to annotate copies to adjust it to their use; see “Report” *Bulletin SAE*, Feb. 10, 1905, p. 5.

¹⁸⁵ For some observers, that lack of supply was one of the causes of piracy. Reporting a fraudulent copy made in Mexico, they suggested that the “lack of available copies awakened the greed of (Latin American) industries”. *Bibliografía Española*, Nov. 16. 1901, p. 7.

¹⁸⁶ Ramos Carrión recalled the experience of reading the first payroll as follows: “When I saw the payroll from July I was amazed to see not only that the amount of money was higher than the same month of previous years but also that I was being paid from places I had no notice at all” Delgado (1999) p. 84.

flexible manner. The society “trusts[ed] the good faith of theatrical companies and actors who will surely correspond to this act of trust”.¹⁸⁷ Gentle in manner, strong in deed,¹⁸⁸ it was true that the making available of information and their possibilities to structure repertoires were crucial for bridging copyright distances. They were translating them from contingent *ad hoc* claims into a systematic management of copyright.

Registry & Repertoire

It was not an issue that could be explained only in economic terms. The result can better be seen as a work of practical intelligence and of social engineering.¹⁸⁹ By solving problems of previously witnessed linkage, institutional resources of the society solved several controversies.¹⁹⁰ And such a social investment attracted orders from abroad since its significance was derived from the confidence shared in *rights* already “cleared”.¹⁹¹ It was as if a different indexation of copyright information was created. Now the reference to an “author” was foremost and the back was by a corporate society. Previously there had been a need for an enquiry through the contractual nuances of copyright ownership and the possible flaws of copyright registries.¹⁹² When the design of the “unique archive” was attached to the conduct of business abroad, multiple consequences were achieved.¹⁹³ Not only had the administration begun to fit the plane provided by *bordereaux*, but descriptions of an intangible in transit were also facilitated. This also became an imperceptible routine in the on-going coordination of actions. Standard copyright contracts had been implemented,¹⁹⁴ and those standard frames were also flexible. They were subject to slight

¹⁸⁷ Transcript of session, Feb. 13, 1900 presided by Aza in ASGAE.

¹⁸⁸ “Suaviter in modo, fortiter in re” was the description given to the operations of the society by Perez Girones (1903).

¹⁸⁹ “Without time to waste, it has been decided to transmit a certificate of the works inscribed in Spain before 1899 and exemplars for their inscription in the registry of Cuba”, transcript of session, April. 20, 1900 presided by Aza in ASGAE; A similar *envoi* to secure rights was done in relation to Mexico, transcript Nov. 2, 1904 presided by Echegaray in ASGAE and Costa Rica, transcript of session, Oct. 18, 1905 presided by Linares in ASGAE.

¹⁹⁰ While the repertoire of SAE was an ongoing catalogue of dramatic and musical works, almost simultaneously, publishers not only professionalised themselves, they also launched a similar catalogue to the literary scene. It was called the *Bibliografía Española* and later converted into *Bibliografía Española e Hispanoamericana*. I have focused here on the theatrical and musical scene because it seems to me that they involved a more specific challenge to monitoring the production of the intangible in Latin America and a more interesting place to study the coordination of actions and emergence of objects to do so abroad. For literary details see Martínez Rus (2002) pp. 1021-1058.

¹⁹¹ It was precisely that confidence built in the society what made the activity successful and the “scheme workable”. In different context (land registry), suggestions on how minor bureaucratic routines were relevant in UK Land law, see Pottage (1995) p. 401.

¹⁹² The lack of coordination between the market and the infrastructure of the Spanish copyright *registries* (general and provincial) was considered as one of the consequences that “Spanish works might be freely reproduced by French publishers in Latin America”. See note from Nuñez de Arce to López Puigcerver, Dec. 21, 1894 in AGA Caja 63 Leg. 6803.

¹⁹³ González Peña “Archivos” in Casares (2002) pp. 129-133; and Soto (1914) p. 209.

modifications “to sanitise deficiencies experienced *in practice*”.¹⁹⁵ Adjustments were then employed to absorb complexities, facing contingencies as they arose. In other words, adjustments were made continuously from the variety of dealings and as the pace of problems of collecting rights flourished.¹⁹⁶ So, for dealing with contingencies abroad, clerical activities and agency structures were expanded to achieve an international management of rights abroad. The performance of these activities and the framing of these structures were concentrated in Latin America. The new centralised office established in Madrid set in motion facilities for a fluid momentum to gain strength. On the one hand, representatives had to report the point of origin and the destiny of travelling theatrical companies.¹⁹⁷ On the other hand, certificates and exemplars, scores and librettos (now polished) were despatched to Latin American representatives for their inscription in domestic Latin American copyright registries.¹⁹⁸

Yet the same flexibility had a more curious effect that needs to be emphasised. The reporting frequency brought about an on-going stability in the descriptions of the intangible abroad. If we read some of the copyright cases at the end of the nineteenth and beginning of the twentieth century *in* Latin America, we see how those descriptions came to the surface in the forms provided by those societies.¹⁹⁹ This technical and powerful ordering activity and that collective agency formed an assemblage that opened up a possibility of overcoming some of the problems previously experienced in a difficult legal environment.²⁰⁰ It was being considered as a descriptive guarantee. Previously, communicative and legal troubles provoked by the *distance* between Spain and Latin America were peppered by controversies mainly derived by the diversity of sources dealing with different informational artefacts. Now the information was uploaded *in* Latin America through clearance sheets and copies of *bordereaux*. These copies were finding their way back to the Madrid office on a monthly basis.²⁰¹ The very same sheet of paper furnishing the data was processed according to the different statuses and signatures accumulated on the route.²⁰² This issue is perhaps the most interesting topic to consider now. The

¹⁹⁴ The contract was implemented in 1903 and representatives were given some scope of action to decide when theatrical companies had to provide a collateral bond; see “Report” *Bulletin SAE*, Feb. 10, 1905, p. 5.

¹⁹⁵ Transcript of session, May 13, 1902 presided by Aza *in* ASGAE.

¹⁹⁶ For the contracts, see transcript of session, Feb. 5, 1900 presided by Ramos Carrión *in* ASGAE.

¹⁹⁷ *Bulletin SAE*, Sept. 10, 1905, p. 2.

¹⁹⁸ An account of the *envoi* to Cuba to secure rights on works is given in the transcript of session, March 13, 1900 presided by Aza *in* ASGAE; another *envoi* to Costa Rica for the inscription in copyright registries was given in transcript of session, Oct. 18, 1905 presided by Linares *in* ASGAE.

¹⁹⁹ Quesada (1904).

²⁰⁰ And that was not a banal issue. The authority of those “catalogues” was scrutinised. Observing another catalogue, a journal suggested that it was not reliable because there was no attachment of authors to their works. See “Abusos a la sombra de la propiedad intelectual” *La España Artística*, 140, pp. 1-2.

²⁰¹ Transcript of session, June 21, 1900 presided by Aza *in* ASGAE.

²⁰² “Announcement to representatives: It is advised to representatives that they should send the list before the 15. If they fail to do so, they will be disturbing the work of the office, delaying all operations with evident prejudice for the efficiency of the services” *Bulletin SAE*, June 10, 1905, p. 1.

infrastructural shift did not only reflect an efficient management but more a vital involvement in reporting actions by grounding the *facticity* of copyright in transit.²⁰³ Having empty carriers (*paper sheets*) to apply to particulars (*performances*), it shows how concepts such as “the author” and “the work” were indeed constructs that needed a reliable network to be powerfully secured abroad.²⁰⁴ If there was a scattering of materials; if there were disagreements showing a substratum of different rights, positions and conditions on the intangible, a secured procedure (*repertoires* and *bordereaux*) overshadowed them and reduced the space for disagreement.

As copyright scholars often highlight, the final construction of copyright concepts such as “authorship” and “work” are indeed dependent on legal operations based on contingent circumstances managed in relation to temporal legal processes.²⁰⁵ The appearance of collecting societies was crucial to achieving a smooth management between them in order to secure international priorities. It put together embodiment, ownership and rights by performing a set of precise activities. For instance, its *repertoire* (or catalogue) became more productive than national copyright registries.²⁰⁶ And such an impulse accelerated and absorbed the complex role of identifying an “author” and in legitimising a “work” by preparing a repertoire of “works” attached to “authors”.²⁰⁷ Obviously the real possibility of projecting and running copyright concepts abroad excited the society in Spain. Crucially for what this paper is trying to explain, the institutional gesture constituted a different mode of appearance of rights overseas. Indeed, the European tendency to avoid copyright registries was taken over by *collecting* societies. And the consequences of this displacement also affected the distance copyright was acquiring from public law.

Management of Rights

When the society took over, the way copyright was disputed also began to change. In Spain, the society organised a series of interventions. Security inspection intervals were produced by a front line staff which had eventually been hired. For it was common at this stage to see a number of inspectors specifically recruited to “examine sheets of papers” and “to stamp tickets” at theatres.²⁰⁸ Additionally, the society attempted to extend their

²⁰³ The president of the Spanish society, Echegaray, recalled how the management of copyright in Mexico was the issue that under his presidential tenure took him most of the time occupied because it involved a painstaking exam and “order of data” in transcript of session, Sept. 10, 1904 presided by Echegaray in ASGAE.

²⁰⁴ On the theoretical issues between social constructivism and copyright categories, see Sherman (1994).

²⁰⁵ López Morán (1892) p. 78 highlighted that the “fundamental division is that of subject and object of copyright law. See also Pottage and Sherman (1997) pp. 95-113.

²⁰⁶ Not only “works” but also “movement of companies and archives”, “lists of representatives” and “contracts” were registered in different sections. See *Bulletin SAE*, Sept, 1904, pp. 1-3. Some critics focused on the evidential problems of the displacement of the registry by societal *repertoires*. See Perez Girones (1903) p. 34.

²⁰⁷ For a theoretical reflection on the legal construction of authorship in copyright, see Bently (1994).

²⁰⁸ Transcript of session, Feb. 27, 1901 presided by Aza in ASGAE.

inspection to “circuses, cafés, clubs, societies”, and other non-traditional places where a dramatic work could be performed.²⁰⁹ Not only was the scope of action extended to new places’ old issues also metamorphosed. A new set of representatives was drawn up and different ways of dealing with them were devised. First, their names were publicised differently.²¹⁰ More than five hundred representatives were released in an on-going “list” that began to be published in the *bulletin* and in the official Spanish gazettes, for instance, the *Gaceta de Madrid*.²¹¹ And either a copy of the provincial *Gaceta* or the *Bulletin* of the society served as accreditation for the representatives.²¹² A “school for representatives” and a “correspondence” section made instructions to representatives visible through the same *bulletin*.²¹³ Through notices and circulars, representatives were updated monthly on their job and on the way to carry out their duties.²¹⁴ It can also be argued that these variations and their regularity gave rise to new possibilities of seeing copyright in Latin America. Now it began to be derived from professional knowledge as opposed to personal knowledge. Here, we may perceive how epistolary correspondence had lost its primordial prominence as the means to communicate. The *bulletin* was converted into the main source through which copyright representatives were instructed and now addressed “as a whole”.²¹⁵ There was no time in the office to indulge in fostering private correspondence. Now if the *bulletin* was the collective reference to action, communications and instructions were published simultaneously to achieve the long-desired coordinated behaviour between agents. On the other hand, it was common for the society to attempt to control activities of representatives that were not considered ethical. Deviation from the corporate style was not tolerated and the *bulletin* issued preliminary threats to those agents who took advantage of their professional capacity and pursued a self-profiting exercise, for instance, by systematically failing to check the accuracy of *bordereaux*. The threat was specified on many occasions, for instance when circulars bore the following advice: “*innocent tricks* could put representatives in trouble by making them accountable before the courts”.²¹⁶

Of the activities carried out by these representatives, the control of future performances by these agents located in Latin America continued to be the biggest concern. On the one hand, there was a need to control the demands made by these agents.²¹⁷ On the other hand, it was also necessary not to be affected by their pecuniary fate. In order to control the risks

²⁰⁹ “Circular” *Bulletin* SAE, Aug. 10, 1905, p. 1-2.

²¹⁰ The transitional moment for the appointment of the Argentinean agent is given in transcript of session; Oct. 3, 1901 presided by Arin in ASGAE.

²¹¹ *Gaceta de Madrid*, n. 170, June 19, 1909, pp. 1506 – 1507; see also “Representatives appointed in June” *Bulletin* SAE, July 10, 1905, p. 2.

²¹² Royal decree June 27, 1896.

²¹³ *Bulletin* SAE, June 10, 1905, p. 2; for the decision to publish the monthly bulletin see transcript of general assembly Jan. 14, 1903 in ASGAE.

²¹⁴ “Administrative correspondence” *Bulletin* SAE, Aug. 10, 1905, p. 7.

²¹⁵ Not only the *bulletin* substituted letters, the manner in which instructions were given shifted from *handwriting* to *typewriting*.

²¹⁶ [italics in the original] “School of Representatives” *Bulletin* SAE, June 10, 1905, p. 2.

of possible defaults, their jobs were still guaranteed.²¹⁸ Information about the trustworthiness of these prospective agents was often retrieved from professional contacts that Spanish literary publishers previously had in their experiences in Latin America.²¹⁹ While personal recommendations still proved productive and sometimes led to those appointments, trust now appeared less based upon personal connection than upon curricula experience and *professional* prospects that an agent could offer abroad.²²⁰ Individuals who had competing interests with the society, such as theatrical entrepreneurs, were completely excluded from obtaining such a commissioned job.²²¹ If there was one important selection among the Latin American spectrum of available appointments, it was the one affecting the prospective agent to be established in Argentina. The society attempted to coordinate all Latin American copyright representations by creating a “South-American” copyright administrative point in Buenos Aires.²²² After its establishment, the regional office began to receive “news”, instructions and commands to be followed with “fidelity”.²²³ As we have already mentioned, for the instruction of their performance, commands were issued in peculiar and periodical form. “Circulars” were specially published in the monthly *bulletin*. And a great number of them involved *aide memoirs* for potential contingencies and appropriate solutions.²²⁴ Further protocols were established internally to minimise the possible appearance of an excessive self-interest in representatives. When powers to sign contracts were granted, their signature was now subjected to a *ratification* given in the monthly assemblies of the society held in Madrid.²²⁵

²¹⁷ A Spanish representative in Cuba had been extremely aggressive in his copyright claims. They included the payment of copyright infringements made during ten years. See his claim against the society *El Pilar* (Havana), Aug. 1870 “Libro de Actas. 1870-1876” in AMMC.

²¹⁸ The Argentinean agent was required to deposit 20.000 pesetas. Transcript of session, June 21, 1900 presided by Aza in ASGAE.

²¹⁹ Common agency was established with Lazarraga, the Argentinean agent of the publisher *Casa Hernando* since 1892. See Botrel (1993) p. 434. Lazarraga was also appointed by SAE as its agent in Buenos Aires. Transcript of session, June 21, 1900 presided by Aza in ASGAE.

²²⁰ The appointment of the Mexican representative was now made according to the propositions and advantages different candidates offered. See transcript of session, Sept. 10, 1904 presided by Echegaray in ASGAE.

²²¹ This prohibition attempted to avoid the trouble when agents were also theatrical entrepreneurs. According to one reporter, if they had a dual role, they converted themselves “in a sort of theatrical sultan”. This dual role had created a considerable tension between domestic entrepreneurs and the Spanish copyright owners as it happened once in Mexico, “La propiedad literaria” *La España Artística*, April 3, 1898. p. 10.

²²² Transcript of session, June 21, 1900 presided by Aza in ASGAE; see also *Bulletin SAE*, June 10, 1905, p. 4.

²²³ Transcript of session, Feb. 27, 1902 presided by Ramos Carrión in ASGAE.

²²⁴ “To the Representatives” in *Bulletin SAE*, July 10, 1905, p. 1. Here the order was to inspect installations such as *balnearios* (public baths) because “at this time of the year, almost daily dramatic performances, dances and concerts are held”; “To our representatives in Porto Rico and Philippines” *Bulletin SAE*, Aug. 1904, p. 1.

²²⁵ For instance, contracts signed by the agent in Mexico were ratified in May 1900. See transcript of session, May 5, 1900 presided by Aza in ASGAE.

Their conduct was also subject to approval.²²⁶ By making the performance of representatives periodically accountable,²²⁷ the society exercised neutralising powers.²²⁸ The recently established centre of communication facilitated the production of internal monitoring filters.²²⁹ And feedback was channelled through copies of *bordereaux*, now used as units of analysis to compare payment orders and reports.²³⁰ But there is also an important issue to note here. The financial experience changed in an important way, giving birth to a different kind of sociality and a different perception of copyright abroad. By making tariffs visible from the very beginning, confrontation over the legitimacy of copyright was displaced. Now charts of established rates replaced negotiations and modified the way in which money, people and copyright were related.

It is worth emphasising this gesture of constructing the *payment* in copyright, because it is not self-evident. Through an anxiety to condemn and to avoid what was perceived as vestiges of the past (a past often portrayed in obscure requests for money for copyright by false representatives, intermediaries and entrepreneurs),²³¹ the *collective* endeavour now looked for consistency in making its tariffs and representations transparent.²³² Before this collectivising gesture, the development and payment of copyright transactions was carried out through private means and without visible standards.²³³ Now the collecting society

²²⁶ "The assembly had decided to approve the conduct followed by the Mexican representative" in transcript of session, March 18, 1903 presided by Aza in ASGAE.

²²⁷ This obligation was established in the contract that linked representatives with the society, see the reminder to the Mexican representative in transcript of session, Nov. 25, 1905 presided by Eugenio Sellés in ASGAE; and see the different activities of the society in *Bulletin SAE*, Sept, 1904, pp. 1-3.

²²⁸ These neutralising mechanisms were rapidly exercised against the Argentinean agent, who attempted to deceive Argentinean theatrical entrepreneurs by falsifying the signature of the president of the Spanish society. "The assembly believed that authors cannot continue to give confidence to that representative" See transcript of session, May 29, 1900 presided by Aza in ASGAE.

²²⁹ "Four cablegrams were sent to theatrical entrepreneurs in Buenos Aires for them to continue accepting our representation by Mr. Santomé" in transcript of session, May 5, 1900 presided by Aza in ASGAE. See also Valverde (1979) p. 241.

²³⁰ "Given the wide explanations given by Mr. Santomé and Torres Reina, and reading all the letters, documents and *bordereaux* exhibited by Santomé in order to show how his job was done in Latin America" [highlighted in the original] transcript of session, May, 4, 1900 presided by Aza in ASGAE.

²³¹ The lack of standard tariffs had been the source of the majority of tensions. A snapshot of them is given by a Spanish author who "sent a telegram to Mario, another to the representative, and [I] wrote to Fiscowich repeating as always: monologues do not generate rights; neither few, nor a lot, neither one, nor half"; letter from Echegaray to María Guerrero, May, 6 1892 in Menéndez Onrubia & Ávila (1987) pp. 190-192.

²³² Before the arrival of the society, there were many controversies surrounding genuinely false agents, or agents attempting to act beyond their powers. For instance, in México "he did not confess to whom he represents" in "Los Autores españoles y el Sr. D. José de la Macorra" *América Artística*, Feb. 3, 1898 and "La propiedad Literaria. España y Méjico" *La España Artística*, Jan. 9, 20 and 23, 1898, p. 4; and Feb. 13,20 and 27, 1898, p. 2; [Philippine Islands] "he says he is representing Fiscowich" in Fernández Campano (1898) pp. 2-3; "Who has collected then? Someone who had a false power" in "La propiedad literaria", *La España Artística*, March 13, 1898.

²³³ "If the demands of an empowered representative of foreign publishers are not fixed in a standard rate but left to the appetite or ludicrous desire of this representative [...]" (México) in Cruzado (1894) p 123; and regarding the tariffs in Mexico it was observed that "Mancorra in Mexico capital and his agents (in the

made copyright valuation available immediately by establishing fixed rates ranging from 15 % of revenues collected abroad to 2% in Madrid.²³⁴ From reading the literature of the time, it seems it was observed as a transparent exercise to meet demands of fairness in copyright. Visibility was equated to transparency. And it also fostered negotiability.²³⁵ While expectation of returns was made visible at this point, rates and tariffs were eventually raised or reduced.²³⁶ If the setting of ticket prices, arrival of famous artists and the capacity of theatres and places of amusement led to a new rise, it is curious that when tariffs were lowered, explanations of such a shift were made on the basis of objections in order to adjust tariffs to “a right spirit of justice”.²³⁷ While tariffs could go down, that downward movement was couched in “charitable” terms and conditions bargained for particular ends.²³⁸ On the other hand, we can also perceive how copyright began to be attacked as good or bad, not in relation to its existence and recognition but to the fairness of the rates, something that did not happen before the arrival of the society.²³⁹

Blueprints abroad

Alongside such managerial flexibility, one of the major concerns of the society *in* Spain was to avoid “costly” litigation abroad. When one of its reporters explained the coordination of operations to avoid legal friction in Mexico, he recognised that “fortune has favoured our conduct”.²⁴⁰ Indeed, it is the height of irony that flows of money pouring from Argentina, Cuba or Mexico constituted a vital source to give solidity to the newborn Spanish society.²⁴¹ Latin America was crisscrossed by societal footprints to the extent that a former clerk still remembered fifty years later, “how much fun a Spanish author had when receiving the payment from La Havana since Cuban theatrical companies at that time were paying in gold”.²⁴² And it is not a surprise that given such a success that the interface placed

provinces) did not have fixed rate” in “La propiedad Literaria. España y Méjico” *La España Artística*, Feb. 20, 1898.

²³⁴ Tussell and Delgado Porras (2000) p. 27.

²³⁵ Troubles had been concentrated on “the ways the collection were announced” in “La propiedad literaria” *La España Artística*, May, 1, 1898, p. 6.

²³⁶ “To the representatives” *Bulletin SAE*, Jan. 10, 1905, p. 5.

²³⁷ An agent was appointed to reorganise the administrative system, “making all the opportune and necessary trips for the practical study of each locality in order to establish new tariffs according to a right spirit of justice”, transcript of session, April 22, 1902 presided by Aza *in* ASGAE.

²³⁸ The establishment of tariffs and the drafting of instructions to representatives were often made in coordination with SACEM, *Bulletin SAE*, Nov. 10, 1905, p. 1-5; “To the representatives” *Bulletin SAE*, Jan. 10, 1905, p. 5.

²³⁹ Cruzado (1894).

²⁴⁰ “Report” *Bulletin SAE*, Feb. 10, 1905, p. 6.

²⁴¹ Delgado (1999) p. 120; also Tussell and Delgado Porras (2000) pp. 29-30; and Soto (1914) p. 229.

²⁴² Arroyo (1961) p. 9 “In La Havana and Porto Rico, theatres [were] charged an ounce of gold per act” in Leicibabaza (1898) p. 1.

by the society was achieving abroad; the institutional policy fostered was to concentrate and to give priority to Latin American returns.²⁴³ Permanent attention and expansion of the focus can be seen by looking at different outputs. Not only was the society often ready to use formal diplomatic channels to pursue official reclamations,²⁴⁴ but the place where securities were arranged was also extended. If securities had been previously tied exclusively in Spain, now safeguards were also established *in situ*, that is, in Latin America.²⁴⁵ Commissions that representatives in Latin America received were rapidly and substantially elevated.²⁴⁶ Loyalty programmes were cemented through incentives that made such a job more attractive.²⁴⁷ For the requirement to gain those additional profits was to “attract those provinces [in Mexico] where up to now payments had not been made”.²⁴⁸ In a slip of the tongue of professionals and office workers, the societal desire was said to have been to “conquer again, through the means of Spanish art, what politics has lost”.²⁴⁹

Both the normalisation of auditing practices and the regulatory process performed by *collecting* societies show an underlying shift in the vocabulary of debates through which copyright was bridging the distance between countries. Not only we can perceive a significant change from action to management of *rights*, but it is precisely by exploring such a passage that it is possible to witness how discussions of copyright abroad began to be gradually shaped not on the question of being *right* but on having *rights*. The shift also can be perceived in the way international copyright was reduced to the emblematic cipher of money. Discussions over cost displaced previous disputes on the legitimacy of copyright itself. And this tendency was followed by a further final detail. Mirroring the European collecting societies of authors, new (Latin American) societies came into being. In what was perceived as a struggle for a domestic upheaval, nationalisation of institutional behaviour and rules towards copyright in Latin America could also be seen as a related distinctive effect when copyright was projected abroad. If we sharpen our focus, we will realise that the combination of conflicts and settlements, and the triggering sequence of events looks surprisingly familiar in the majority of Latin American countries. Despite the fact that most of the societies of authors were private corporations, a productive link had been forged

²⁴³ “Before the end of this year, the society will be represented in all countries where Spanish is spoken and therefore the rights of Spanish authors will be guaranteed”; “Report” *Bulletin SAE*, Feb. 10, 1905, p. 6.

²⁴⁴ “It is agreed that the society will ask the ministry of Foreign Affairs for a diplomatic reclamation of the payment of copyright in Argentine since Spain is now adhered to the *Montevideo Convention* and consequently, she is able to ask and obtain them” in transcript of session March 20, 1906 presided by Sellés in ASGAE.

²⁴⁵ For the report of the securities in Mexico, see “Report” *Bulletin SAE*, Feb. 10, 1905, p. 6.

²⁴⁶ The Mexican agent was the Spanish dramatist Joaquín Valverde. See transcript of session, Feb. 5, 1900 presided by Ramos Carrión in ASGAE.

²⁴⁷ “In this office the representative with exceptional merit is the one who *zealously* performs his job in the collection of payment” in “Circular” in *Bulletin SAE*, Aug. 10, 1905, p. 1; see also the “list of representatives of the month” *Bulletin SAE*, Oct. 10, 1905, p. 2.

²⁴⁸ “Given that this agent is attempting to get the payment of rights in provinces of Mexico where it has not been verified because of the difficulties of communications and because of the fight he has to carry out, it is a costly enterprise. Because of that it is decided that the agent will receive about 50% commission from these provinces”. *Ibid.*

²⁴⁹ “Report” *Bulletin SAE*, Feb. 10, 1905, p. 6.

between societies and a corporate understanding of nationhood. For instance, the Mexican copyright *collecting* society was born after a conflict with, it was reported, “*the*” Spanish society.²⁵⁰ Insofar as the “collective” form of a society of authors led to a symbolic reference to a nation, it is not surprising that the new society in Latin America was born in order “to create a repertoire of Mexican works”.²⁵¹ Analogous desires “to have” *rights* and to create societies evolved in Argentina or Uruguay. And, more importantly, stories seem to point out that when disputes were settled, alliances were precisely constructed between collecting societies; alliances that, in turn, helped to lower the costs of transacting between Spain and Latin America. This formal affinity proved to be successful since new societies managed themselves by *bordereaux* and *repertoires*. They also established fixed rates and hired a number of clerks.²⁵² It is not surprising then that during the twentieth century another type of relationship emerged between societies: training. International societal alliances were constituted and their historical traces last until today.²⁵³ The irony is that linking contracts and administrative powers whereby *repertoires* and *bordereaux* could be interchanged and foreign societies could be represented, foreign societies became natural allies and institutional politics applied. Instead of appointing more and more representatives abroad, societies of authors were affiliated and copyright became “international” on the ground.

Illustrations

- Fig. 1. « Cotejo » (La Habana, Cuba) *in* AHNC.
 Fig. 2. « Bordereux» (Teatro Solís, [Uruguay];
 Fig. 3. . « Bordereux» Teatro Opera [Argentina]).
 Fig. 4. « Public copyright notices. Librettos » *in* ASGAE.
 Fig. 5. « Public copyright notices. Librettos » *in* ASGAE.
 Fig. 6. « Copy Office SAE » *in* ASGAE.
 Fig. 7. « Bulletin SAE» *in* ASGAE

Abbreviations

<i>Actas</i> (a)	Actas de Montevideo (1894)
<i>Actas</i> (b)	Actas de Montevideo (1928)
<i>Actas</i> CL	Actas Congreso Literario Hispano-Americano (1892)
<i>Actas</i> CJ	Actas Congreso Jurídico Ibero-Americano (1892)

²⁵⁰ Cruzado (1894) p. 12.

²⁵¹ Miranda “Ramón Buxo” in Casares (2002) vol I. p. 321 and Miranda, “México” in Casares (2002) vol II, p. 306-307.

²⁵² In his autobiography, the first president of the Argentinean society of authors directly referred to the making of tariffs as the marking point for the emergence of collective endeavour in copyright. “Before we impose the 10%, theatrical companies knew how much we value, now they now how much we cost” García Velloso (1960) p. 7.

²⁵³ Schlatter (2005) p.55.

ALAI	<i>Association Littéraire et Artistique Internationale</i>
AEA	Asociación de Escritores y Artistas
DA	<i>Le Droit d'Auteur</i>
<i>Chronique</i>	<i>Chronique du Journal Général de l'Imprimerie et de la Librairie</i>
<i>Clunet</i>	<i>Journal du droit International Privé et de la Jurisprudence Comparée</i>
RGLJ	Revista General de Legislación y Jurisprudencia
SAE	Sociedad de Autores Españoles
SACEM	<i>Société des Auteurs, Compositeurs et Éditeurs de musique</i>

Archive sources

ACD [Archivo Congreso de los Diputados] Madrid (Spain)
 AGA [Archivo General de la Administración] Madrid (Spain)
 AGN [Archivo General de la Nación] Bogotá (Colombia)
 AHNC [Archivo Histórico Nacional] Havana (Cuba)
 AHSRE [Archivo Histórico Secretaría de Relaciones Exteriores] México D.F. (México)
 AHPN [Archivo Histórico de Protocolos Notariales] Madrid (Spain)
 AMAE [Archivo Ministerio Asuntos Exteriores y Cooperación], Madrid (Spain)
 AMMC [Archivo Museo Municipal del Cerro] Havana (Cuba)
 AOF [Archivo de Enrique Olavarría y Ferrari] México D.F. (México)
 ARAJL [Archivo Real Academia de Jurisprudencia y Legislación] Madrid (Spain)
 ARW [Archivo Rodríguez-Widman] Montevideo (Uruguay)
 AS [Archivo del Senado] Madrid (Spain)
 ASGAE [Archivo de la Sociedad de Autores Españoles] Madrid (Spain)
 CADN [Centre des archives diplomatiques] Nantes (France)

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