

Institutionen för språk och litteraturer

**Liberté de création littéraire ou violation de la vie privée ?  
Aspects littéraires et juridiques**

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Akademisk avhandling för avläggande av filosofie doktorsexamen i romanska språk: franska vid Göteborgs universitet, som med tillstånd av humanistiska fakultetens dekanus, kommer att offentligens försvaras fredagen den 25 november 2016, kl 13.00 i Lilla hörsalen, Humanisten, Renströmsgatan 6, Göteborg.



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# Abstract

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This thesis sets out to explore the clash between two rights. On the one hand the right of every person to protect his or her private life and reputation, on the other the right of an artist to create freely. Taking real people and putting them into literary works is not a recent phenomenon, but it is occurring more than ever in modern literature, just as there is a greater propensity to take novelists to court for what they write about real people. Obviously, people do not always appreciate becoming literary heroes, to see their most intimate secrets spread publicly and they themselves becoming the object of idle gossip. That is where the law intervenes, sometimes in favor of the victim, sometimes in favor of the artist, depending on the circumstances. The aim of this thesis is in the first place to proceed with a critical inventory of the current situation, including research into French law as well as court rulings regarding novelists sued by individuals who claim to have been turned into fictional characters. The research material consists therefore of legal decisions as well as of literary works. Fourteen chosen works of literature are discussed in the thesis. However, the main objective and core of the research is to propose new recommendations, inspired in particular by literary theories, which would allow for a better balance between opposing rights. This is all the more important since the French legal system has recently adopted a new law recognizing the specificity of artistic freedom, as compared to freedom of speech. Among the changes proposed is a law stating that a work presented as a novel should be treated as such by a court. Another proposed change is the implementation of the formal right of each person who feels his or her privacy has been encroached upon, to reply to the novelist, in a context provided by the publishing house. The most important improvement would be the possibility for the magistrate to call on an expert in literary theory to assist in the case. The function of the expert would be to judge if the text in question contains elements that identify it as a work of fiction, and more importantly, to assess the degree of fictionality and credibility of the character *alter ego* of the individual claiming to have suffered from the publication. By taking into account literary techniques, and therefore the manner in which an eventual breach in privacy occurs, the courts could then make a fairer and more readily accepted decision, or at least one more in accordance with the rule of proportionality expected in every democracy.

Keywords: Novel, fictional, referential, character, freedom of creation, literary theory, author, genre, balance of rights, law, jurisprudence, court, privacy, damage.