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## Property in Print: Copyright Law and the American Magazine Industry

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**Property in Print:  
Copyright Law and the American Magazine Industry**

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Key words: property rights law, copyright law, authorship, markets for literature

**Property in Print:**  
**Copyright Law and the American Magazine Industry**

**Abstract**

We study copyright law and its relationship with cultural conceptions of authorship and technical constraints on the economics of publishing in the US. Because American copyright law was first developed in the eighteenth and nineteenth centuries, we focus on that time period. And because magazines were the primary forum for literary expression in America during this time, we study the magazine industry. Both technical and cultural factors created opportunities for magazines and imposed constraints on them, but most effects of copyright law were mediated by cultural, not technical, factors. Lack of copyright protection for foreign authors allowed magazines reprint foreign authors' work for free. However, copyright law was not used by magazines to protect domestic work: very few claimed copyright over the original material they published and none of those claims were adjudicated by courts. Therefore, magazines reprinted work from domestic sources, including other magazines. Nevertheless, copyright law had constitutive effects on the literary market: it spurred the emergence of a cultural conception of the author-as-paid-professional; in turn, this cultural shift fostered the market for literature, as magazines began to pay authors for their work and compete intensely over the work of the most popular authors.

## 1. Introduction

By creating and enforcing laws, the state both enables and constrains markets. In particular, laws governing property rights are foundational legal-economic institutions (Corwin 1914; Scheiber 1981; Campbell and Lindberg 1990). By creating property-rights law, the state determines the technical possibilities of and limitations on markets (Polanyi 1944): it defines the rules that set the conditions of ownership and control over the means of production, as well as over products themselves. Legal-technical constraints on markets include limitations on what can and cannot be sold and under what circumstances, who can and cannot sell it, and who can and cannot profit from selling it. By creating property-rights law, the state also shapes culture by giving rise to new cognitive schemas about the roles market actors play, novel understandings of their power vis-à-vis their exchange partners, and innovative conceptions of the nature of their exchanges (Edelman and Suchman 1997; Fligstein 2001). Thus, property-rights law constitutes markets' technical and institutional environments, determining both what is feasible and what is acceptable.

Cultural conceptions of market actors and their practices, in conjunction with actual practices, also shape property-rights law. These cultural and economic institutions construct in the minds of both legal actors (lawyers, legislators, and judges) and economic actors (owners, managers, employees, and customers) understandings of what kinds of things can be owned, who can own them, and under what conditions (Patterson 1968; Rose 1993; MacLeod 1998; Khan 2005; Buinicki 2006).

In this paper, we examine one dimension of property-rights law, copyright law, and its relationship with cultural conceptions of authorship and technical constraints on the economics of publishing. Because copyright law and literary markets first developed in America during the eighteenth and nineteenth centuries, we focus our analysis on that time period. Much of the research on the relationship between copyright law and markets for literature focuses on books, not periodicals (*e.g.*, Davidson 1986; Jaszi 1991; Buinicki 2006). We study magazines instead because they were the primary forum for literary expression in this era, greatly overshadowing books (Cairns

1898; McGill 2003; Okker 2003; Gardner 2012; Spoo 2013). As poet, short-story writer, essayist, and magazine editor Edgar Allan Poe noted:

The energetic, busy spirit of the age [tends] wholly to the Magazine literature – to the curt, the terse, the well-timed, and the readily diffused, in preference to the old forms of the verbose and ponderous & the inaccessible. (quoted in Charvat 1968: 91)

Magazines served as proving grounds for new forms of fiction, notably the detective story (Lehmann-Haupt 1951; Magistrale and Poger 1999). Magazines also fostered the flourishing of poetry in the early republic (Charvat 1968). Finally, magazines were platforms for philosophical, theological, historical, scientific, and other non-fiction writing (Mott 1930; Marti 1979; Hatch 1989), genres that in the antebellum era constituted the main forms of “polite literature” (Warner 1990).

Below, we compare theories of law and markets developed in economics, law, and sociology, and assess their empirical implications. After that, we explain our research methods. We begin our analysis by detailing the creation of literary property rights and cultural conceptions of the professional author through copyright law. We then examine the impact of both technical and cultural factors on the magazine industry. We find that throughout the antebellum era, copyright law had limited *technical* effects on magazines. The lack of copyright protection for foreign authors did allow magazines to appeal to broad audiences by reprinting the work of foreign authors. But concerning domestic literary work, very few magazines claimed copyright over the original material they published and the few copyright claims that were voiced were not adjudicated by the courts. The strongest effects of copyright law were *cultural*. The development of copyright law both reflected and spurred the decline of a conception of author-as-gentleman-scholar and the rise of a conception of author-as-paid-professional; in turn, this new conception, and the economic practices it fostered, altered the nature of American magazines’ competition over literary work (Haveman 2004). We conclude by considering the impact of our findings for theories of property rights, technical constraints on markets, and cultural conceptions of markets. We also consider the implications of our analysis for intellectual-property rights in the twenty-first century, as they are

reconfigured by new technologies and by the novel economic practices and cultural understandings those technologies engender.

## 2. Law and Markets

The relationship between law and markets has been studied by economists, legal scholars, and sociologists. We discuss theories from each discipline in turn, paying particular attention to their implications for property rights. In doing so, we note points of conflict and convergence. We conclude by generating from these theories predictions about how the development of copyright law shaped the American market for literature.

*Economic theory.* Economists and neoclassical legal scholars hold that law directly shapes economic action and that actors' preferences (their "utility functions") determine how they will behave, given legal strictures (Posner 2010). Economic theory assumes that actors respond to rewards and punishments: they obey law to the extent that legal sanctions raise the expected cost of non-compliance above the expected benefits (Becker 1968). Economic theory is fundamentally instrumentalist and rationalist: it assumes that actors seek to attain *a-priori* goals and that they maximize the benefits derived from attaining those goals, net of the costs of their actions. As a result, it takes actors' preferences as fundamental and law as an external force to which actors intentionally and rationally react. Furthermore, it focuses exclusively on *technical* opportunities for and constraints on actors. With regard to intellectual-property rights, economic theory predicts that both intellectual-property owners and users will balance the benefits of attaining their goals with the costs of doing so (Landes and Posner 1989).

*Critical legal history.* Critical legal history (Gordon 1984, 1997) frames law as the basis of all social life. Contrary to economic theory, it holds that law is not used purely instrumentally: legal relations between actors and cultural conceptions of law cannot be explained solely by actors' preferences. It also holds that legal relations between actors do not simply condition how they relate to one another, as in economic theory; instead, law *constitutes* those relations and actors' understandings of them (Gordon 1984). Property-rights law in particular creates and sustains

relations between property owners and users, not simply by its own authoritative weight, but by the intrinsic connectedness of law, society, and actors' consciousness. Even more basically, property-rights law shapes the interests and goals of both owners and users: it can "persuade people that the world described in its images and categories is the only attainable world in which a sane person would want to live" (Gordon 1984: 109).

*Property rights in the shadow of the law.* Other legal scholars argue that markets often operate "in the shadow of the law" (Mnookin and Kornhauser 1979), as actors negotiate their exchanges in private, outside the scrutiny of the courts. In this theory, law does not directly impose constraints on actors; instead, it provides conceptual frameworks within which actors assess each other's rights and responsibilities and create private orders of legal relations. Actors reach agreements based on their conceptions of what would happen if the outcome of their interactions were to be decided in formal legal settings rather than in private. Law thus creates cognitive schemas to predict what exchange partners are likely to do. This approach was originally developed in the context of divorce law, but it has clear implications for property-rights law, including intellectual-property law (Gallagher 2012). In conceiving of their rights, responsibilities, and legal relations, intellectual-property owners and users will consider how formal law (statutes, courts, and regulations) would decide their actions, but these effects will be observed in everyday practices more often than in formal legal settings.

*Sociological theory.* Sociologists assume that the state (and through it, the law) imposes technical constraints on economic action (Polanyi 1944) and thereby shapes actors' preferences. This is congruent with economic theory. Contrary to economic theory, however, sociological theory holds that actors' preferences arise from social interactions – they are socially constructed (Berger and Luckmann 1967). Moreover, for sociologists, law itself is a social construction: its meaning and therefore its power arises from social interaction (Edelman, Uggen, and Erlanger 1999). Finally, sociologists agree that markets are also social constructions, as they are embedded in myriad webs of social relationships and cultural understandings (Fligstein 2001). The upshot is that cultural factors, more than technical ones, mediate the impact of law on markets. Sociological theory holds that



property-rights law in particular is fundamental to markets, as it defines the conditions of ownership and control over the means of production, as well as over economic products themselves (Campbell and Lindberg 1990). Importantly, however, sociological theory further holds that property-rights law both reflects *and* refracts cultural conceptions of ownership and property.

*Empirical implications.* The empirical implications of these theories are clear. In economics, law creates technical constraints on action, which alone shape markets by balancing the costs and benefits associated with action. Culture plays no role. In critical legal history, law constitutes both technical and cultural aspects of economic actors and economic action, which in turn shape markets. Law is causally primary; technical and cultural factors are secondary. In the theory of negotiation in the shadow of the law, court decisions, statutes, and regulations are necessary for law to affect markets, as it is these formal legal institutions that reframe actors' understandings of their legal relations and interests. Here, therefore, law is fundamental to market development. In sociological theory, law shapes markets primarily, although not exclusively, through cultural factors. But law is also shaped by culture, resulting in a reflexive causal relationship between the two.

### **3. Research Methods**

#### *3.1. Data Sources*

To trace the evolution of copyright law, we read extensively in the legal-historical and literary scholarship. We also read key doctrinal texts, both statutes and court decisions, and what eighteenth- and nineteenth-century observers wrote about literary property rights.

To assess the impact of copyright law on the magazine industry, we analyzed data on over 5,000 American magazines published between 1741, when the industry began, and 1860, the eve of the Civil War. These data come from a list encompassing virtually every magazine published in America from colonial times to the Civil War (Haveman 2004, 2014). The first author gathered these data from several primary sources: the American Periodical Series Online; the American Antiquarian Society's online catalogue; microfilm archives covering scores of magazines in the Cornell, Columbia, and New York Public Libraries; and Internet archives of magazines created by

Google in co-operation with university libraries. For the many magazines that left no physical trace of their existence or for which there was only a partial record in the archives, she tapped into dozens of secondary sources.

In this era, there was a fine line between magazines and newspapers, as many magazines broadcast current events and a few emphasized politics. The magazine dataset explicitly excludes newspapers, in accordance with the definition of a magazine used by historians (Mott 1930, 1938; Tebbel and Zuckerman 1991): a publication containing a variety of written and pictorial material, with more than transient interest, published at regular intervals. To exclude newspapers, the first author relied on histories of publishing (*e.g.*, Mott 1930) and bibliographies of the magazine and newspaper industries (*e.g.*, Brigham 1962; Albaugh 1994), as well as inspection of archived copies of periodicals. Pamphlets, almanacs, proceedings of annual meetings, annual reports, and annual transactions of fraternal, professional, or scientific societies were also excluded.

### *3.2. Empirical Strategy*

We analyzed the reciprocal impact of law and culture by tracing understandings of copyright law and cultural conceptions of authorship through magazine articles and other documents of that period. This analysis concentrated on the period 1741 to 1825 because that is when archival coverage is best. After 1825, when the industry entered its first golden age and the number of magazines exploded, an increasingly small fraction of magazines are available in the archives. We also calculated how often magazine founders, editors, and publishers hid their identities behind pseudonyms – a proxy for the conception of author-as-gentleman-scholar. Because we had data on founders of all magazines up to 1860, this analysis covers the entire pre-Civil-War history of the magazine industry.

To determine whether and how magazines used copyright law, we searched magazines founded between 1741 and 1825 for formal copyright notices and other statements claiming copyright protection. We also consulted secondary sources and searched legal databases for federal court decisions adjudicating copyright claims between 1790 and 1860.

We analyzed magazine prospectuses and editorial statements to assess attitudes toward the practice of reprinting material from previously published sources, the value given to original material, concerns about copyright, and conceptions of authorship. We also pored over thousands of magazine articles.<sup>1</sup> Again, this analysis focused on the period 1741 to 1825 because editorial statements and prospectuses were available for 59% of magazines founded in the eighteenth century and 51% of those founded in the first quarter of the nineteenth century. After that point, the fraction of magazines with this kind of documentary evidence plummeted as the industry expanded rapidly: 13% of magazines founded 1826 to 1840 and 3.3% of those founded 1841 to 1860.

We augmented analyses of primary data with close readings of research by historians and literary scholars. These secondary sources improved our ability to assess trends after 1825, when our primary sources were spotty. They also provided information about the fees magazines paid to authors and editors.

#### **4. The Development of Copyright Law in the Eighteenth and Nineteenth Centuries**

Our analysis of copyright law focuses on its philosophical underpinnings. There are two dominant philosophies of copyright (Abrams 1983; Bracha 2008a). First, it may be conceived as *a natural right that arises from common law*, rooted in the idea that authors, as creators of products over which they have labored, have perpetual ownership rights over their literary property. Second, copyright may be conceived as *a temporary monopoly conferred by the state* that motivates authors to produce the creative works that, in turn, benefit the public. The history of copyright hinges on the balance struck between these two philosophies, a balance that shifted from the eighteenth to the mid-nineteenth century.

In colonial America, English law, which we detail in Appendix 1, provided the template for legal consideration of literary property rights. The few copy privileges granted by colonial courts were similar to English printing patents for individual publications, reflecting a conception of

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<sup>1</sup> Because most of these documents were in poor condition, we could not conduct computer-assisted text analysis.

copyright geared toward monopolies for publishers more than rights imbued in authors (Abrams 1983; Bracha 2008b, 2010). Moreover, because most colonial authors were gentlemen-scholars who did not seek to profit from their writing, it was publishers, not authors, who sought copyright privileges (Bugbee 1967; Bracha 2010).

Around the time of the Revolution, however, Americans began to view copyright as rooted in authors more than printers or booksellers. For example, in 1772, the Connecticut colonial assembly was the first to grant copyright privilege to an author rather than a printer or publisher (Silver 1958). Although the governor later vetoed that bill, its passage was an early indicator of the shift toward copyright as centered on authors (Bracha 2008c). After the Revolution, the shift toward authors gained momentum and a discourse about authors' rights emerged (Bracha 2008c, 2010). American writers, such as spelling-book author Noah Webster and poet Joel Barlow, lobbied state legislators for copyright protection. They argued that their writing deserved protection because it would unite the new nation and promote a national cultural identity, pointed to authors' rights as justification for state copyright regimes, and claimed that copyright law was necessary for the U.S. to reach cultural parity with European powers (Barlow 1783; Webster 1843; Charvat 1968; Bracha 2008a, 2010; Pelanda 2011). This shows how early cultural conceptions of authors shaped copyright law.

After petitioning by Barlow, the Continental Congress adopted a resolution mirroring the first British copyright law, the Statute of Anne, and recommended that states craft legislation protecting authors' and publishers' copyright privileges in their works (Continental Congress Resolution 1783). With copyright legitimized by the Continental Congress and with continued lobbying by authors, all states except Delaware enacted copyright statutes by 1786. The idea that copyright primarily served to protect authors' rights was the dominant theme in these statutes: all 12 mentioned "authors" as recipients of protection, while only two also mentioned "publishers" or "purchasers" of copies (Patterson 1968; Abrams 1983).

In 1787, the Constitutional Convention adopted without debate the Copyright Clause of the U.S. Constitution, which granted Congress the power "to promote the Progress of Science and

useful Arts, by securing for limited Times to Authors and Inventors the exclusive Rights to their Writings and Discoveries” (U.S. Constitution, Art. I, § 8, cl. 8). This pronouncement, embedded as it is in the foundational document of the U.S. government, reveals a national interest in promoting learning, while at the same time centering copyright squarely on authors (Patterson 1968: 193).

In 1790, Congress passed the first federal Copyright Act, entitled “An Act for the encouragement of learning, by securing copies of maps, charts, and books, to the authors and proprietors of such copies during the times therein mentioned” (U.S. Congress 1790). Unlike most state statutes, the federal statute mentioned “proprietors” along with “authors.” To secure copyright, authors or proprietors had to comply with statutory requirements, including paying a fee, depositing a copy of the title of the work in their local district court, having a copy of the record published in a newspaper for four weeks, and filing a copyright claim with the Secretary of State (U.S. Congress 1790).<sup>2</sup> The inclusion of proprietors and the onerous procedural requirements indicate that the federal statute emphasized copyright as a statutory grant at least as much as authors’ property right (Abrams 1983; Patterson 1968: 198; Bracha 2010).

No major legal developments occurred until the Supreme Court, in *Wheaton v. Peters* (1834), established that after publication, claims of copyright infringement must be based on the federal statute, as no such claim arises out of common law. *Wheaton* did recognize the existence of common-law copyright for *unpublished* works, but regarding published works, the decision was clear: copyright is solely a creature of statute, authors must adhere to statutory requirements to gain protection, and protection is limited to the term specified by statute; moreover, copyright protection was conceived as encouraging authors to benefit the public by granting them the incentive of copyright protection (Patterson 1968; Abrams 1983). Thus, from the first state statutes in the late eighteenth century to the *Wheaton* decision in 1834, the dominant philosophy underlying copyright law shifted away from authors’ rights and toward the public interest.

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<sup>2</sup> In combination, the onerous procedural requirements for securing copyright constituted a practical obstacle for many publications (Sprigman 2004).

There was one glaring omission in American copyright law: it did not protect works by foreign authors until 1891, and even then it continued to favor the interests of American publishers over foreign authors (Barnes 1974; Spoo 2013). The Copyright Act of 1790 explicitly excluded foreign works, enabling American publishers to reprint and sell them without paying royalties. This situation was reinforced by the first major revision of copyright law in 1831 (U.S. Congress 1831). In the 1840s and 1850s, large American publishing houses observed a pale, informal imitation of copyright law, “courtesy of the trade” (Spoo 2013). Publishers paid foreign writers for advance sheets of their work and, by informal agreement, received exclusive rights to reprint that work (Barnes 1974; Spoo 2013). But such payment was still far below the real economic value of foreign work (Charvat 1968). This situation benefitted American publishers, booksellers, and readers to the detriment of authors everywhere: foreign authors received at most very small royalties and American authors could not compete on price with cheap foreign prose and poetry (Griswold 1981).

## **5. Copyright Law and Culture: Evolving Conceptions of Authorship**

Cultural conceptions of authorship were reflected in and refracted by copyright law – both law on the books and law in use. Accordingly, we trace the rise of the idea of authors as creators of literary work and therefore as actors with property-rights claims on that work. We also analyze economic issues by tracing the rise of professional authors who earned at least part of their living by writing.<sup>3</sup> (Because cultural conceptions of authorship in America reflected earlier developments in Britain, we trace British developments in Appendix 2.)

In the eighteenth century, most of the few Americans who produced literature were gentlemen-scholars whose output was an avocation, a byproduct of their learning. For example, lawyer-polemicist William Livingston and minister-essayist Aaron Burr Sr. sought to further their own political, artistic, religious, and scientific objectives, not to make money (Charvat 1968; Dauber

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<sup>3</sup> In allowing that professionals might not earn all of their living from writing, we follow Jackson (2008) rather than Charvat (1968). This definition reflects the fact that even in the late twentieth century, when the market for and legal status of literary property were well developed, only 5% of American authors earned all of their income from writing (Kingston and Cole 1986).

1990). For this reason, eighteenth-century Americans were generally unconcerned with claiming property rights over their writing. Indeed, they generally shunned publicity: their writings were usually published anonymously or pseudonymously. Perhaps most notable is the case of Thomas Jefferson, who publicly disavowed and threatened to burn the entire first edition of his only book, *Notes on the State of Virginia*, when it was published in 1781: “Do not view me as an author, and attached to what he has written,” he cautioned James Madison (quoted in Ferguson 1984: 34).

The twin conceptions of author-as-gentleman and author-as-amateur (someone who wrote for the love of it, not someone who was unskilled in writing) were reinforced by the economics of authorship in the eighteenth century, when there were few wealthy aristocrats to flatter with prose and poetry. Even in the nineteenth century, only a tiny fraction of American authors found wealthy patrons to underwrite their literary aspirations. Most notably, several Transcendentalist writers, including Margaret Fuller and Henry David Thoreau, were supported by Ralph Waldo Emerson (Dowling 2011), while Herman Melville’s wealthy father-in-law supported him so he could write full-time (Charvat 1943). A few others, including essayist Robert Walsh and novelist Nathaniel Hawthorne, received remunerative political appointments that freed them to write – a distinctly American form of political-literary patronage that persisted throughout the nineteenth century (Charvat 1968; Brubaker 1975). But such political patronage appointments supported only about 50 men (Brubaker 1975).

Americans who lacked personal fortunes and who sought to earn their living by their pens were often disappointed. For example, Charles Brockden Brown, one of the earliest professional American novelists, was unable to earn a living from the seven novels he published between 1798 and 1801, forcing him to work in his brothers’ export firm for several years, until he found an outlet for his literary ambitions by editing and writing for magazines (Dauber 1990). Not until the 1830s could even a handful of Americans like Washington Irving and James Fenimore Cooper earn reasonable livings as professional writers (Charvat 1968; Dauber 1990; Jackson 2008).

As America became a more market-oriented society and as literature evolved to connote commodities created by professionals and traded for profit, American understandings of what it

meant to be an author changed fundamentally. (In this, America echoed, at a temporal distance, developments in Britain detailed in Appendix 2.) At the end of the eighteenth century, Joseph Dennie's letters reveal a nascent conception of authorship as a potentially lucrative profession: "My grand object ... was money. The ways & means were Authorship" (Dennie 1795, in Pedder 1936: 145). Despite their mercenary theme, these missives reveal a fervent desire to emulate the great British essayists, Addison and Johnson. For example, defending his foray into writing a series of essays for *The Tablet*, collectively titled "Farrago," Dennie wrote:

I ... was advised to establish a miscellaneous [*sic*] paper intended as a vehicle for those Essays which I had already written or might in future write .... I am not printer nor Editor, but receive for my *Farrago* this important addition to my income .... The Essays of Addison & Johnson were published in this manner ... and shall I be ashamed to tread the path they have pursued? Believe [*sic*] me, ... it leads to property, it leads to ... my legal & to my literary eminence. (Dennie 1795, in Pedder 1936: 146-147)

In the following decades, Dennie continued in the same vein. Writing as editor of the *Port Folio*, he opined:

If the conductor of such a miscellany be persevering, like Cave [founder of the successful London-based *Gentleman's Magazine*], he may possibly, at length, obtain aid like Johnson's, and a patronage, liberal as its plan, and wide as its currency. (Dennie 1809: 5)

Even those who had uneasy relationships with the literary marketplace came to recognize it as a hard fact. Charles Brockden Brown stated that "...pecuniary profit is acceptable ... this is the best proof which he [the editor] can receive that his endeavours to amuse and instruct have not been unsuccessful" (Brown 1803: 5). In a letter to the publisher of the *Southern Literary Messenger*, which he was editing, Edgar Allan Poe declared that "to be appreciated you must be *read*" (Poe 1835; emphasis in the original). He went on to argue that a tale he had submitted should be judged on economic, not aesthetic, grounds and claimed that the quality of tales like these "will be estimated better by the circulation of the Magazine than by any comments upon its contents."

Although the conception of author-as-professional first emerged in the late eighteenth century, professional writers were not held in high esteem. For example, one essay denigrated those who wrote for pay as possessing a "degenerate ambition" that "would work no good" (*Museum of Foreign Literature, Science, & Art* 1828: 92). Another ranked four motives for becoming an author in



descending order of value. The top rank, the gentleman-amateur, was lauded as a “public benefactor” who spreads his “knowledge and attainments” that “may be beneficial to the rest of mankind” (Herbert and Patterson 1833: 3). The second rank, the professional, included “many praiseworthy, estimable individuals, and persons possessing talents of even high rank” but “the writings of this second class are worth ‘as much as they will bring’” – although the essay admitted that “is frequently and deservedly a high price.”

The social ranking of amateurs and professionals had reversed by the 1840s:

Among the various divisions and subdivisions into which the trade of authorship is divided, we recognize two classes; authors by profession, and amateur writers: those who regard study and composition as the business of their lives, and those who look upon them merely as incidental occupations. (Mimin 1845: 62)

Indeed, the professional came to be viewed as superior to the amateur:

Few can do well “for love” which can be better done for money.... If it be true in the common concerns of life, that the laborer is worthy of his hire, it is much more to be so considered when we ascend in the scale of labor, and come finally to that which most tasks the intellect and requires the greatest number of choice thoughts.... An amateur in almost every walk is regarded as much inferior to a working member of the craft. A man rarely puts his heart or invests the whole stock of his faculties in a pursuit which he takes up casually to while away an hour or two of an idle day. (Mimin 1845: 62-63)

This reveals a conception of professional authors as people who possess specialized expertise, which confers upon them exclusive authority over literature (Larson 1977). As one prominent critic declared, “Authors are ... entitled to a prominent rank among the producing classes” (Whipple 1849: 12). This also reveals a change in the meaning of amateur authors – no longer people who wrote purely for the love of it, but now those who produced “faulty and deficient” literary work (Bledstein 1976: 31).

There were, of course, reactions against acceptance of author-as-professional. In the 1830s and 1840s, the Transcendentalists maintained a stalwartly anti-commercial stance (Dowling 2011: 91-96). Ralph Waldo Emerson characterized the task of serious scholars as “the slow, unhonored, and *unpaid* task of observation” and said that they “must relinquish display and immediate fame” (Emerson 1837; emphasis added). As late as the 1850s, New York’s Knickerbocker group, led by Washington Irving, conceived of themselves as “gentlemen who wrote, not writers” (Bender 1987:

131). Yet these men were deeply embedded in the literary marketplace: all of them sold their work to magazine and book publishers, and several founded magazines.

Although professional authors' social standing had improved by the mid-nineteenth century, their economic situation remained precarious. Only Americans with independent means or easy and remunerative sinecures could indulge in writing. One anecdote made this point humorously:

Secure yourself ... a livelihood independent of literary successes; and put into this lottery only the overplus of your time: for wo [*sic*] to him who depends only on his pen! – nothing is more casual. The man who makes shoes, is sure of his wages; but the man who writes a book is never sure of any thing. (*Port-Folio* 1815: 201)

Other articles depicted the writer's routine toil. One noted the drudgery of having to pen what the author deemed to be unworthy pieces simply because he was ordered to do so. Describing a dream he had when "first turned Author," in which he was told that his destiny consisted of "Poet, Fame, and Poverty" (*Minerva* 1825), he grappled with the idealistic conception of the Romantic author (Poet; Fame) and the reality of the professional author (Poverty). Another lamented:

The first consideration with a professional author is, what his writings will produce, and how he may most profitably transmute the productions of his genius or talents into the current coin of the realm. ... Literature is to him what law, physic, and divinity, are to the lawyer, the physician, and the parson, – a profession by which he must live, in the first place, and earn fame in the next, if he can. (*New York Literary Gazette* 1826: 360-361)

In the 1840s, novelist Nathaniel Parker Willis compared authors to skilled artisans and complained that authors were not compensated fairly for their work:

How much ought the jeweler to have for buying [the watch] from the maker, warranting it "to go" after examining it, for advertising it, and for selling it across a counter? Suppose the watch to sell for one hundred dollars, and seventy dollars to be the net profit above the cost of material. What would you say, if the maker got but ten or twenty dollars, *and the retailer fifty or sixty?* Yet that is the proportion at which author and bookseller are paid for literary production—the seller of the book being paid *from twice to five times as much* as the author of it! (quoted in Tomc 2012: 182; emphasis in the original)

Similarly, a literary monthly compared the easy wealth of printers and booksellers to the utter poverty of authors, grumbling that "a poor woman who steals a herring is confined and sentenced to a month's hard labor; while the same law protects the printer and bookseller in their wholesale spoliation of the works of authors" (*Arcturus* 1842: 241-242).

In this difficult literary market, the proliferation of magazines provided much-needed outlets for aspiring professional authors (Cairns 1898; McGill 2003; Jackson 2008; Gardner 2012). As we explain below, magazines began to pay at least some writers handsomely for their work. In making their livings by writing for and editing magazines, Dennie and Brown were the pioneers. The trail they blazed was followed by many others, such as Poe, who made careers as professional authors and editors in the magazine industry (Charvat 1968; Dauber 1990).

Authors themselves recognized that copyright law at the time made the profession of book authorship difficult in America. As Poe explained:

The want of an International Copy-Right Law, by rendering it nearly impossible to obtain anything from the booksellers in the way of remuneration for literary labor, has had the effect of forcing many of our very best writers into the service of the Magazines and Reviews... (Poe 1845: 103)

Although Poe complained that not all magazines paid their contributors, and those that did often paid little and belatedly, he reserved his greatest scorn for those who wanted cheap books and supported the lack of international copyright law. He deemed this “demagogue-ridden public” (Poe 1845: 104) the biggest threat to literature in both the U.S. and Europe.

## **6. Copyright Law and Magazines: Technical and Cultural Effects**

### *6.1. Magazines not Protected by Copyright Law*

Copyright law was seldom applied to magazines during our study period because until well into the 1820s, few publishers assumed that American literary property was commercially valuable (Charvat 1968). Therefore very few magazines copyrighted their contents until long after the Civil War.<sup>4</sup> Moreover, there were no federal court decisions concerning magazines and copyright between 1790 and 1850 (Ginsburg 1990; Brauneis 2008).<sup>5</sup> Litigation over copyright remained quite rare after 1850, as well. Searches of legal databases revealed only 17 copyright-infringement actions

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<sup>4</sup> In this, magazines were similar to books: the vast majority of books published between 1790 and 1820 were not copyrighted (Starr 2004; Khan 2005).

<sup>5</sup> One decision, *Clayton v. Stone* (1829), denied copyright protection to newspapers because their contents were “too ephemeral” to merit the protection that copyright law afforded to books, which were viewed as making more-permanent contributions to society. There is no evidence that this decision affected magazine-industry practices by deterring magazines from claiming copyright protection.

in federal courts between 1850 and 1860; none pertained to a magazine. Thus in this era, intellectual-property rights were asserted, if at all, “in the shadow of the law” rather than in court (Gallagher 2012).

There is evidence, however, that the law *constituted* magazine actors’ practices and conceptions of copyright (Gordon 1984; Edelman and Suchman 1997). A few publishers invoked copyright to secure a monopoly over the magazines they published. Between 1790 and 1825, 39 magazines (7.2% of those in the archives) printed copyright notices in their first issues, and one more printed a notice in its third issue. A few others claimed intellectual-property rights in editorials. For example, Noah Webster, founder-editor of the *American Magazine*, claimed copyright over his periodical, forbade the reprinting of its contents, and threatened lawsuits against those who continued reprinting:

Printers throughout the United States are requested to observe, that this publication circulates as the Editor’s property. A man who has devoted the most valuable period of life to the acquisition of knowledge; who has grown ‘pale o’er the midnight lamp;’ who labors to decipher ancient manuscripts, or purchases copies at three thousand percent above the usual price of books, is indubitably entitled to the executive advantages resulting from his exertions and expenses.... Several trespasses upon the property of the Editor, in different parts of the country, have been already committed – and will be passed without further notice. But a repetition of the injuries, will call, before the proper tribunal, a legal question of considerable importance; and produce some trouble and expense, which every man of a specific disposition would wish to prevent. (Webster 1788: 2)

## 6.2. *Magazines Reprint Material Published Elsewhere*

*Domestic work.* Because copyright was rarely claimed and never litigated by magazines, a “culture of reprinting” (McGill 2003) prevailed in the industry, which created a “literary commons” (Tomc 2012) in which all could share. Without explicit recognition and use of literary property law, publishers could – and often did – reprint material previously published in books, newspapers, and other magazines without fear of lawsuit (McGill 2003; Haveman 2004).

In addition, postal regulations explicitly supported the practice of reprinting (Kielbowicz 1989). Under the 1792 Postal Service Act, newspaper printers could “send one paper to ... every other printer of newspapers within the United States, free of postage” (U.S. Congress 1792, § 21).

This encouraged newspapers to reprint the contents of other papers (Smith, Cordell, and Dillon 2013). Since many magazine publishers had previously published newspapers (Haveman, Habinek, and Goodman 2012), it is not surprising that the culture of reprinting spread from newspapers to magazines. Like newspapers, magazines were frequently exchanged by publishers, even though, unlike newspapers, magazines had to pay for postage (Mott 1930; Kielbowicz 1989; Jackson 2008).

Editors often solicited reprinting. For example, the *Farmer's & Planter's Friend* invited others to republish its original essays:

The writer respectfully requests that the printers of news-papers throughout the United States who are devoted to the general welfare of the nation, but particularly to the interests of the farmers and planters, will insert the above... (Guatimozin 1821: 5)

Similarly, the *Minerva* was comfortable with having its contents reprinted, even without attribution:

Editors throughout the United States are respectfully requested to notice this publication, and the favour will be reciprocated when the opportunity offers. If they avail themselves of our labours, by republishing any of the articles, and acknowledge the source of information, this will be duly appreciated; but if the title of the *Minerva* should be omitted, we shall never find fault with this, as it is our wish, that every thing contained in its pages, calculated to increase the stock of human knowledge, should be extensively circulated. (Houston and Brooks 1822: 7)

Even some authors appreciated this practice. For example, one lauded the fact that a short tale by William Leggett, "The rifle," was reprinted widely:

...the tale being a good one, it was widely copied, and the name and merits of the *Souvenir* [which originally purchased and published it] were at the same time spread before an audience of at least a million readers... (*Ariel* 1828: 124)

Similarly, Poe said that when literary works were widely reprinted in magazines, "taking hold upon the public mind they augment the reputation of the source where they originated" (Poe 1835).

Still, editors struggled to balance the benefits they perceived from having their contents reprinted in other periodicals and their desire to control what they had labored to create. For example, the editor of the *Panoplist* declared:

We have secured the copy-right of the *Panoplist*. This is not done from any selfish design; but merely to prevent barefaced mutilations and piracies of original articles, of which not a few instances have occurred hitherto, *other similar aggressions having been contemplated on a systematic plan*. Permission is freely given to [five other magazines] ... to extract any articles from the *Panoplist*, provided they give credit for each article, and publish a general notice that, though the copy-right of the *Panoplist* is secured, they have our express permission to

make selections without restraint; it being understood, that this permission may be revoked in the same public manner in which it is now given. ... It has given us pleasure to see some of the most valuable articles in our work reprinted in respectable publications; but it ought to be known, that more time and expense have been laid out upon the *Panoplist* than upon any similar magazine in the country. (Evarts 1816: 48)

When this magazine ceased publication four years later, the editor blamed unauthorized reprintings for its failure, claiming that subscriptions dwindled “in consequence of having so great a part of our most interesting material immediately taken from us, and published in all the religious newspapers of the day” (Evarts 1820: 357).

Bibliographic research reveals that reprinting was often reciprocal. For example, the *Balance & Columbian Repository* exchanged much material with the *Impartial Gazetteer*. Of the 210 articles published in the first three volumes of the *Balance*, 50 were published in both magazines – 17 first in the *Gazetteer* and then in the *Balance*; 30 first in the *Balance* and then in the *Gazetteer*; and three first in the *Gazetteer*, then in the *Balance*, and again in the *Gazetteer* (Pitcher 2000: 151-181). Another 48 articles printed in the first three volumes of the *Balance* from other periodicals or books. For its part, the *Gazetteer* exchanged much material with the *Philadelphia Repository*: some 400 articles appeared in both journals, 90% within one year of their first appearance (Pitcher 2000: 183-205).

The large volume of domestic reprinted material indicates that most magazines ascribed to an informal norm that allowed sharing of contents (McGill 2003). They did not mind rivals lifting material from their pages because they did the same thing. Most viewed this practice as existing outside of any market. Some, like the *Farmer's & Planter's Friend*, even printed notices explicitly offering to exchange material with other magazines. Such co-operation may have been sustained by a belief that magazines' subscriber bases did not overlap very much, if at all, because of geographic limits on magazine distribution, so that reprinting material from one magazine in another would not undermine either's readership (Mott 1930).

Many magazines openly advertised their willingness to reprint (“select” or “extract”) material from books and other periodicals. For example, one stated that “such articles and documents of various kinds and upon all proper subjects, will be selected, as shall be thought most worthy of preservation” (*Balance & Columbian Repository* 1802: 1). Another declared “it is our aim ... to be *useful*

rather than original and ... we shall not hesitate to select from worthy sources” (*Cincinnati Literary Gazette* 1824: 13; emphasis in the original). This happened even with religious, professional, and scientific journals. For example, one noted that it was “a leading object to republish from other Magazines such productions as shall appear best calculated to promote useful knowledge, sound morality and vital piety” (*Religious Instructor* 1810: 3).

To investigate trends in reprinting over time, we analyzed magazine prospectuses and early editorial statements from 1741 to 1825. As Figure 1 shows, there were few discernable trends. Statements expressing the intent to publish original material rose slowly, peaking at 49% of magazines founded 1801 to 1800, then declined slowly to 38% of those founded 1821 to 1825. Solicitations for contributions from readers were made by 60% of magazines founded 1741 to 1790, then fluctuated between 40% and 56%. Statements expressing the intent to publish reprinted material rose from 53% of magazines founded 1741 to 1780 to of 64% those founded 1791 to 1800, then fell to 48% of those founded 1811 to 1825. These data indicate that the practice of reprinting previously published material was always widespread. They also indicate that although most magazine founders consistently valued original material, they struggled to find it.

[Figure 1 about here]

*Foreign work.* Until long after the Civil War, American magazines benefitted from the lack of copyright protection for foreign authors. For example, *New York Magazine* reprinted 86 articles from the venerable *Edinburgh Magazine*, including travel stories, articles about new inventions, essays on morality and science, short stories, and biographies (Pitcher 2000: 129-149). Only in 10 instances did the American magazine note that this material had originally been published elsewhere.

American magazines were not shy about taking advantage of the absence of foreign copyright. Dozens explicitly signaled their intention to reprint work from foreign sources by mentioning in their titles or subtitles “foreign publications” or “foreign masters,” or explicitly stating the source countries. Many more laid out their intentions to reprint foreign work in prospectuses or editorial statements. For example, the *American Mercury* promised to publish “regular extracts from Cook’s last voyage (published by Authority in London, and lately come to hand)” (Barlow and

Babcock 1784). The *Philadelphia Magazine & Review*, noting the “extreme folly” of those who did not reprint material from European publications out of a sense of American nationalism, promised to avoid that mistake and publish selections from European publications (The Editors 1799: ii). Fifty years later, one magazine pledged to “present to the public ... the best of those works in popular literature” from Europe (*International Weekly Miscellany* 1850: 1).

Expressed motivations for borrowing material from foreign sources varied. Some claimed to save subscribers money by making it unnecessary for them to subscribe to many foreign magazines or purchase expensive foreign books. For example, the *Baltimore Medical & Philosophical Lyceum* remarked:

...the utility of such a [domestic medical periodical] work is greatly enhanced, by the exorbitant price of imported books.... arrangements have been made for procuring from Europe the best periodical works, and a summary of their contents will be exhibited in the *Lyceum*, as succinctly and promptly as possible. (Potter 1811: 2)

Others averred that much that was published in Europe was not of interest to Americans, and that they would provide a valuable service by sifting out and reprinting only the most interesting and worthy pieces. For example:

Journals, Magazines, and Reviews, have been established in Europe. ... They abound with the speculations of men of genius, which deserve to be separated from the wretched effusions which disgrace their pages. ... The editors of the present compilation propose ... to present to their countrymen, a mass of sound literature, which, while it will aid the man of science in his researches, and the student in his closet, will enable the desultory reader to place in his parlour window a book that will cheat some life of its cares. (Ewing 1809: 2-3)

Similarly:

[European] sources of instruction and amusement are ... scattered through scores and hundreds of magazines and journals, intermingled with much that is of merely local and transient interest. (*Harper's New Monthly Magazine* 1850: 1)

Still others reasoned that reprinting material from other publications was a sounder strategy than relying on original contributions:

To give the public confidence in the stability and permanence of this work, the editors announce it as their intention to assume as the basis of their publication, the selecting and arranging from foreign periodical publications ... thereby securing an inexhaustible fund of the most entertaining articles from those sources, and superseding the necessity of a steady reliance on the tardiness of paucity of editors and contributors, and also enabling the



publishers to appear with the utmost punctuality at the stated day of publication. (Goodrich 1819: 1)

Many magazines used the lack of international copyright protection to reprint British novels in serial form before American publishers issued them as books. Perhaps most prominent among these was *Harper's New Monthly Magazine*. As explained above, only a few large publishers (including Harpers) paid anything at all for foreign novels, and what they did pay was well below true market value.

Reprinting of foreign work was not limited to fiction and poetry: religious, medical, scientific, and agricultural magazines also reprinted much foreign material. For example, one stated that “Europe offers an inexhaustible fund” of medical research (*Medical Repository* 1797: v), while another proposed to reprint a combination of material from domestic and foreign sources (*Connecticut Evangelical Magazine* 1800: 3). Three decades later, the *Cultivator* published excerpts of Humphrey Davy’s 1813 text *Elements of Agricultural Chemistry*, which was not widely available to American farmers (Rossiter 1975: 9-11).

Perhaps most brazen about reprinting foreign literature was the *Corsair*, launched in 1839 by Nathaniel Parker Willis, who announced it would:

... take advantage ... of the privilege assured to us by our piratical law of copyright; and in the name of American authors (for our own benefit) ‘convey’ to our columns ... the cream and spirit of everything that ventures to light in France, England, and Germany. (quoted in Beers 1885: 240)

Willis started this periodical because he felt harmed by the absence of international copyright law:

“People will say, ‘Why, damme, Willis can’t get paid for his books because the law won’t protect him, so he has hauled his wind, and joined the people that robbed him.’ (quoted in Beers 1885: 241). Willis was not alone in his anger:

The American author has had to contend against two rivalries – both formidable – first, that of his native competitor; and second, that of the foreign writer. And in respect to the latter, he enters the lists under the additional disadvantage, that while his own works must be paid for by the publisher, those of the foreigner are furnished like the showman’s wonders, ‘free gratis and for nothing.’ .... Who will buy domestic goods when he can import foreign goods without price? ...the slight *per centage* allowed to foreign writers by our American publishers ... is virtually nothing. (*Putnam's Monthly* 1853: 26)

As explained above, the lack of copyright protection for foreign authors, through its contribution to the slow development of the market for books by American authors, pushed many American authors to write for magazines. Poe's career exemplifies this: although he was "book-minded" (Charvat 1968: 86-91), valorizing publishing in books over periodicals, Poe earned much of his living by editing six different magazines over the course of his literary career. In an attempt to gain control over content and finances, he even tried, unsuccessfully, to launch a magazine. His writing appeared in scores of other magazines, ranging from mass-circulation weeklies like the *New York Mirror & Ladies' Literary Gazette* to respected literary quarterlies like the *New York Review*.

### 6.3. The Dearth of Original Material in Magazines

Because magazines did not use copyright law, editors freely reprinted material published elsewhere. But this situation also hampered the industry: authors could neither be sure they would reap the economic or reputational benefits of publication nor maintain control over the integrity of their words, so they were reluctant to contribute original material to magazines (Haveman 2004). In this, law provided a significant technical constraint on the market for literature.

Many magazines valued original material because it would attract readers and make magazines both financially and reputationally successful. For example:

It is with some degree of diffidence that I venture to solicit the patronage of the public for the present undertaking, destitute as it is of originality, which, in the opinion of many, is indispensable in any periodical publication whatever. (Carey 1787: 14)

Another explained: "some portion of original matter seems necessary to give respect to the magazine, that it may be something more than a mere compilation" (*Religious Instructor* 1810: 3). At the end of its first year, yet another thanked readers who contributed original work and attributed to them a "considerable share" of the celebrity that the magazine had obtained (*New York Weekly Magazine* 1796).

Other magazine editors, however, felt forced to substitute reprinted material for original work:

...if this Magazine should not consist entirely of original Composition, either of Poetry or Prose, the Publick may depend on the most judicious selection from Works of this kind and other ingenious productions published in Europe and America. (Russell 1785: 2)

We hope from the promises we have received from several of literary abilities, to offer some originals, but when those may fail, we shall be cautious to select such subjects from the best authors as may be acceptable to our friends. (Lookers-On 1807: 1)

We cannot promise that the work shall be wholly original, but we wish to make it so much as possible. (The Editors 1822: 2)

One editor lamented the overabundance of material reprinted from European sources and calculated that only one in a thousand magazines could justly claim to publish original material (Crito 1812).

Even pieces that claimed to be original were in fact reprinted: one editor claimed that “at least three fourths of what is communicated to him as original are copied from other works” (Condie 1812: 1).

Still, many magazines valued reprinted material. For example, one Quaker magazine sought to “compile and preserve ... current intelligence connected with the Society” and to republish “standard works entire or ... what is worthy of preservation” (*Friends’ Intelligencer* 1838: 2, 3). Others declared reprinted material to be superior to original compositions: “We shall always prefer judicious selections ... to originals below mediocrity” (*American Universal Magazine* 1797). Another was even more explicit:

Depending upon the assistance of literary friends, for original matter, will often be inviting disappointment .... It has, however, been a custom, perhaps too much cherished by periodical Editors, to look upon original, or new-fangled matter, as the only thing which can give excellence and respectability to a work of this nature; and accordingly we see, some embody into their publications, every thing which bears the name of original, however awkward may be the style, or contemptible the sentiments. The present Editors of this work has [sic], therefore, determined to prefer judicious selection from published works, to the trivial labours of importunate inanity... (*Monthly Magazine* 1809: 2).

Similarly: “Original matter, to any great extent, is neither expected by us, nor is it, we presume, desired by our Patrons” (*Monthly Magazine & Literary Journal* 1812: 4).

During the earliest years of the industry, editors and their friends provided all of their magazines’ original material. For example, Brown wrote almost everything original that appeared in his *Literary Magazine*, as did Joseph Buckingham for his *Polyanthos*. Others found willing contributors in literary clubs or gentlemen’s societies. The *Monthly Magazine & American Review* and the *American Review & Literary Journal*, for example, were affiliated with the New York Friendly Club, while the

*Monthly Anthology* was launched by the Anthology Club. Early in the nineteenth century, literary magazines affiliated with the burgeoning number of colleges, including the *Literary Miscellany* (Harvard) and *Academic Recreations* (Columbia) began to appear, which could depend on students and faculty for original prose and poetry.

Even when early magazine editors did manage to persuade writers to contribute original material, those writers often remained anonymous in an effort to preserve their dignity and privacy, two characteristics of the author-as-gentleman-scholar (Charvat 1968).<sup>6</sup> For example, one essay argued the virtue of anonymity (“the mark of invisibility”) for the budding author:

[S]hould he at length find that he has mistaken his abilities ... he may at once relinquish his plan, without discredit to himself, and have the satisfaction to know that his performances have defrauded him of but little time. (Quince 1805: 1(1): 1-2)

Another explained why this practice persisted into the 1830s:

It is the characteristic of genius to sequester itself from the impudent gaze and slanderous tongue of the noisy throng: nor with less horror has it usually risked exposure to the envenomed shaft of the critic, whose name carries a greater dread, even, than the vociferous rabble, since it is his *profession* ... to spy out every blemish, while he ingeniously conceals his beauty.... It is from a deference to this feeling of modesty and distrust, so often a constituent in the character of the man of genius, that anonymous publications lay a strong claim to our candor. (*Literary Tablet* 1833; emphasis in the original)

Even many of those running early magazines preferred to cloak their identities. For instance, the *Lady's Magazine & Repository of Entertaining Knowledge* was edited by “a literary society,” the *Aeronaut* was edited by “an association of gentlemen,” and the *Baltimore Literary Magazine* was edited by “a gentleman of known literary abilities.” (Of course, these abilities could not really be “known” if this gentleman remained anonymous!) Others hid their identities behind pseudonyms. For example, “Robert Rusticoat” founded the *Wasp*, while “An American Patriot” edited *Periodical Sketches*. Figure 2 shows that the practice of hiding identities was most common in the first two decades of the nineteenth century: 18% of magazines founded in the 1800s had anonymous or pseudonymous founders, editors, or publishers, as did 15% of those founded in the 1810s.

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<sup>6</sup> The practice of anonymous and pseudonymous authorship was not limited to magazines. Books were also published anonymously or pseudonymously. For instance, James Fenimore Cooper and Washington Irving kept their names off the title pages of their books until the early 1840s.

Anonymity and pseudonymity declined dramatically after that, to 4.7% of magazines founded in the 1820s and less than 4% for the rest of the antebellum era.<sup>7</sup>

[Figure 2 about here]

#### 6.4. *Magazines Begin to Pay Contributors*

The slow cultural-cognitive shift from author-as-gentleman-scholar to author-as-professional was impelled by and reflected in an economic innovation by magazines: in 1819, the *Christian Spectator* pioneered the practice of paying contributors, offering \$1 per page (Mott 1930) and arguing the necessity of this innovation:

It has been the misfortune of our country that the efforts made to establish and conduct periodical publications, especially those of a religious character, have been divided. These publications have, therefore, received but a partial support, have been of circumscribed usefulness, and of short continuance. To avoid these evils, an attempt will now be made to attain a concentration of labors. A method in which it is supposed this object may be effected is to allow a compensation to those who contribute to the pages of the proposed work. To make such compensation, is not only necessary, but just. Those who will thus labour for the public good, are not rich, and will need the reward to which they are entitled. (*Christian Spectator* 1819: iii)

Although this was an economic breakthrough, the sums involved were not enough to earn a living. The average monthly income of white-collar workers in the Northeast between 1821 and 1825 was about \$34 (Margo 2000). To earn at this level, a magazine writer would need to be paid for at least 30 pages of text each month. With 60 pages per monthly issue, including news items, the *Christian Spectator* could not support even two writers full-time.

Despite the small sums involved, this innovation had enormous impact, as more and more magazines adopted it. The first large-circulation magazine to pay contributors was the *Atlantic Magazine* in 1824; over the next decade, many others followed suit, notably *Godey's Lady's Book* and *Knickerbocker*. Even august literary reviews, whose contributors were most likely to view themselves as gentlemen-scholars, adopted this market-oriented practice; for example, the *North American Review* did so in the mid-1820s.

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<sup>7</sup> The temporal pattern holds even after we excluded from analysis humorous and satirical magazines, whose founders, editors, and publishers were most likely to hide behind pseudonyms.

Prices for literary work varied greatly. Between 1837 and 1858, prices paid to contributors by magazines ranged from \$1 to \$5 per page (Robbins 1949; Jackson 2008); using a historical price index (McCusker 2001), this translates to between \$30 and \$115 in 2013 dollars. By the 1830s, mass-market magazines began to compete intensely for essays, poems, and fiction. As a result, prices, especially for work by popular authors, escalated after 1830 (Robbins 1949; Jackson 2008). For example, in 1840, Longfellow was paid by *Burton's* (later *Graham's*) *Gentleman's Magazine* \$15 to \$20 for each poem (\$400 to \$500 in 2013 dollars); by 1843, his price had risen to \$50 (\$1,500 in 2013 dollars), as the magazine sought to make him a regular contributor (Mott 1930; Robbins 1949; Charvat 1968). This magazine's standard prices for essays and fiction ranged from \$4 to \$20 per printed page over the same time period, which translated to \$20 to \$100 for a 5,000-word article (\$600 to \$3,000 in 2013 dollars). To put these prices in perspective, average monthly wages for white-collar workers were about \$35 in the late 1820s and about \$43 in early 1840s (Margo 2000); thus by 1843, Longfellow could earn an above-average income by selling a single poem per month and prose writers could do the same by selling one essay or short story every two months.

In 1847, one magazine estimated that popular authors such as Poe and Cooper were paid \$50 per essay, poem, story, or novel chapter (*Literary World* 1847) – over \$1,300 in 2013 dollars. Even female authors benefitted from this new practice. For example, in 1843, *Graham's Magazine* paid Emma Embery up to \$40 per story (\$1,200 in 2013 dollars) (Robbins 1949). With prices like these, popular writers could supplement what little they earned from publishing books by selling their work to magazines.<sup>8</sup> Authors could further increase their incomes by publishing and editing magazines (Tomc 2012). For example, Hawthorne earned \$500 per year (\$12,000 in 2013 dollars) while editing the *American Magazine of Useful & Entertaining Knowledge* (Mellow 1980: 71). And

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<sup>8</sup> Notwithstanding the impressive prices paid for the work of the most popular authors, the vast majority of authors earned little, if anything, from their submissions to magazines (Sedgwick 2000; Tomc 2012), although new authors could earn good sums from the many writing contests that magazines sponsored (Jackson 2008). Moreover, many magazines, especially in specialist genres, continued to rely on voluntary contributions from their readers. For example, the largest agricultural magazines had hundreds of correspondents throughout the country (Demaree 1941), while educational journals solicited contributions from teachers (Davis 1970).

America's most popular antebellum author, Timothy Shay Arthur, published six magazines in the 1840s and 1850s, three of them with eponymous titles that highlighted his own contributions.

As competition for literary submissions intensified, a significant cognitive-linguistic shift became apparent: magazines were increasingly likely to view their activities in market terms (Haveman 2004). For example, the editor of the most prominent literary review of the era commented on this nascent market for literary work:

Literature begins to assume the aspect and undergo the mutations of trade. The author's profession is becoming as mechanical as that of the printer and the bookseller, being created by the same causes and subject to the same laws. ... The publisher in the name of his customers calls for a particular kind of authorship just as he would bespeak a dinner at a restaurant. (*North American Review* 1843: 110)

Similarly, a book review compared the business of literature to that of commercial enterprises:

Both must be regulated, to some extent, by the vulgar law of supply and demand, and their profits, by the same law, cannot be forced beyond the natural level of cost and competition. (*Putnam's Monthly Magazine* 1853: 24).

One prominent critic also used the language of supply and demand, asserting that this law "operates in literature as in trade" (Whipple 1849: 16). Even authors who had earlier opposed this market turn benefitted from the rising prices paid by magazines. For example, in 1857 Ralph Waldo Emerson was paid \$50 for a poem (almost \$1,300 in 2013 dollars) by the *Atlantic Monthly* (Bradsher 1920).

The rising value of literary property led magazines to trumpet their most popular authors, and this marketing of literary property finally laid to rest the custom of literary anonymity. In 1824, one argued against allowing editors, publishers, or contributors to hide behind pseudonyms because "it savours of roguery" (*Atlantic Magazine* 1824: 8). Another declared "The author's name must accompany all communications" (Campbell 1822: 3). As Figure 2 shows, just 3.4% of magazines founded in the 1830s, 3.3% of those founded in the 1840s, and 2.4% of those founded in the 1850s had anonymous or pseudonymous founders, editors, or publishers, compared to 15% of magazines founded in the 1810s. Moreover, virtually all contributions to magazines published during these later decades, except very short items, were signed.

A new occupation – the *magazinish*, denoting those who were paid to write for magazines – emerged as the practice of paying contributors spread and as the idea of author-as-professional displaced the earlier conception of author-as-gentleman-scholar. By the early 1840s, this occupation had achieved considerable acceptance (Haveman 2004). For example, in 1843 Horace Greeley urged Henry David Thoreau to publish in mass-market magazines rather than small-circulation periodicals that were read only in elite circles:

This is the best kind of advertisement for you. Though you may write with an angel's pen yet your work will have no mercantile value unless you are known as an author. Emerson would be twice as well known if he had written for the magazines a little just to let common people know of his existence. (quoted in Wood 1971: 60)

Following this prompting, Greeley helped Thoreau sell essays to several large-circulation magazines, including *Graham's*, *Putnam's*, and the *Union Magazine*.

In sum, economic and cultural factors influenced each other: changes in the magazine industry (paying authors for contributions and competition for popular authors) influenced and were influenced by changes in magazine culture (cognitive-linguistic shifts toward market terms and legitimation of the *magazinish* occupation). Law was an omnipresent factor, “imbricated” at all levels of social life (Thompson 1978: 130): the lack of copyright enforcement for magazines and the absence of copyright protection for foreign authors helped American magazines expand by impeding the American book trade and pushing the growing cadre of professional authors to write for or edit magazines (Tomec 2012). Together, these trends ushered in the first “golden age” of magazines in 1825 (Mott 1930; Charvat 1968; Tebbel and Zuckerman 1991).

### *6.5. Magazines Grapple with Intellectual-Property Rights*

It would seem that paying popular authors for their contributions to magazines, which was widespread by 1840, would have compelled a shift in magazine publishers' views about literary property rights. Competition between large-circulation magazines drove up prices for literary work, especially by established authors. Yet even in the mid-nineteenth century, very few magazines copyrighted their contents to defend this increasingly expensive property (McGill 2003), as



macroeconomic conditions deterred the use of copyright to protect magazines' contents. The panic of 1837 and depression of 1840-1843 forced many book publishers out of business. During this period of flux, cheap weekly magazines, most notably the *New World* and *Brother Jonathon*, found it easy to reprint material from books and other magazines without fear of lawsuit from authors or publishers (Charvat 1968; Barnes 1974).

Not until after the depression ended did copyright law offer publishers leverage to effectively punish, or at least intimidate, "borrowing" by rival periodicals (McGill 2003). Leading large-circulation magazines began to demand exclusive rights to "their" authors' work, as *Graham's Magazine* did for Longfellow's (Charvat 1968; Barnes 1974). Such demands for exclusivity discouraged reprinting by direct rivals in the largest cities. But small-circulation regional publications continued to reprint material from New York's and Philadelphia's mass-market magazines. Even the dramatic expansion of railroads, which made magazine distribution through the mails fast, reliable, and cheap, did not stop reprinting – in fact, it made reprinting more common, by facilitating the transmission of new material from the publishing-industry centers to the rest of the nation (Smith, Cordell, and Dillon 2013).

## 7. Discussion and Conclusion

This analysis has shown that the development of copyright law was both an enabling and a disabling device for American magazines and the American market for literature in the first 120 years of the industry's history. As an enabling device, the fact that few magazines claimed copyright protection for their contents allowed magazines to freely reprint material published elsewhere in the U.S., which resulted in low production costs. Moreover, the lack of copyright protection for foreign authors allowed magazines to reprint the work of foreign authors without paying fees. But as a disabling device, magazines' failure to use copyright law to protect domestic work and their reprinting of foreign work made it difficult for them to attract original contributions from American writers. This, in turn reduced the appeal of their publications during this era of fervent American nationalism.

The emergence of the cultural conception of author-as-professional, which was both reflected in and spurred by copyright law, generated an increasing supply of original material for the pages of magazines. The changes wrought by the evolution of this cultural conception were accentuated by the spread of the practice, starting in 1819, of magazines paying authors for their contributions, which began in an effort to solicit original material. The result was a growing cadre of professional magazinists who fuelled the first golden age of the magazine industry, starting in 1825. But these changes also increased costs for magazines, raising barriers to entry into the industry and consolidating the power of mass-market magazines, which could easily afford to pay higher prices for original material.

The implications of our findings for theories of law and markets are clear. In this era, the strongest effects of copyright law were *cultural* rather than *technical*. Although the lack of copyright protection for foreign authors did allow magazines to cheaply reprint foreign work, and so offer low-cost products that would appeal to large audiences, very few magazines claimed copyright over the original material they published and no copyright claims were adjudicated by the courts. The development of copyright law was bound up with the decline of a conception of author-as-gentleman-scholar and the rise of a conception of author-as-paid-professional. In turn, the economic practices consonant with this conception – the growth of the practice of paying authors for their contributions and the trumpeting of popular authors – fundamentally altered competition over literary work. This pattern of findings is congruent with sociological theory (Campbell and Lindberg 1990; Edelman, Uggen, and Erlanger 1999; Fligstein 2001) but not economic theory (Becker 1968). Moreover, the effects of copyright law on the market for literature were constitutive rather than instrumental (Gordon 1984), occurring “in the shadow of the law” (Mnookin and Kornhauser 1979) rather than in formal legal institutions.

Our analysis also advances theories of culture and the economy. We traced one instance of the modernization of America, the gradual transition from a traditional economic system, in which writers were gentlemen-scholars who did not seek to profit from their writing, to a modern capitalist system, in which writers sold their work in impersonal markets and augmented their income by

working as magazine editors. This transition was made possible by a cultural shift – one first noted by Weber (1904-05), who pondered how the commercial self-interest and material acquisitiveness expressed in Benjamin Franklin’s autobiography could have become morally accepted, rather than denounced as it had been in traditional societies. Weber’s analysis pointed to a larger cultural-economic shift, of which the rise of the author-as-paid-professional and the demise of the author-as-gentleman-amateur is only a small part. Our analysis showed that this cultural-economic shift occurred in conjunction with the evolution of legal thought and practice. Future research on this shift – during this time period in the US or in later time periods in developing nations – must recognize that the law fundamentally shapes economic and cultural systems, while also reflecting such systems (Polanyi 1944; Campbell and Lindberg 1990; Edelman and Suchman 1997; Fligstein 2001).

Finally, our analysis has implications for literary property rights in the twenty-first century. The practice of reprinting previously published work continues to the present. Consider *Reader’s Digest*, which began in 1922 by publishing condensed versions of articles from a variety of mass-market magazines, or the *Utne Reader*, which selects its contents from the pages of over 1,000 alternative and independent-press periodicals. Of course, modern print magazines, unlike their eighteenth- and nineteenth-century predecessors, pay for this privilege. In contrast, online news aggregators like the *Huffington Post* and the *Drudge Report* republish material that first appeared in other news sources – and, like their predecessors, they do so without compensating these sources. The legality of this practice is currently under dispute. Perhaps more fundamental are challenges to copyright from the “copyleft” movement, which allows users freedom to reproduce and distribute texts but requires them to pass that same freedom to subsequent users (Dusollier 2003), and the Creative Commons licensing system, which provides standardized copyright licenses that enable authors to choose which rights they reserve and which they waive instead of the conventional and more restrictive “all rights reserved” approach (Lessig 2004; Creative Commons 2013).

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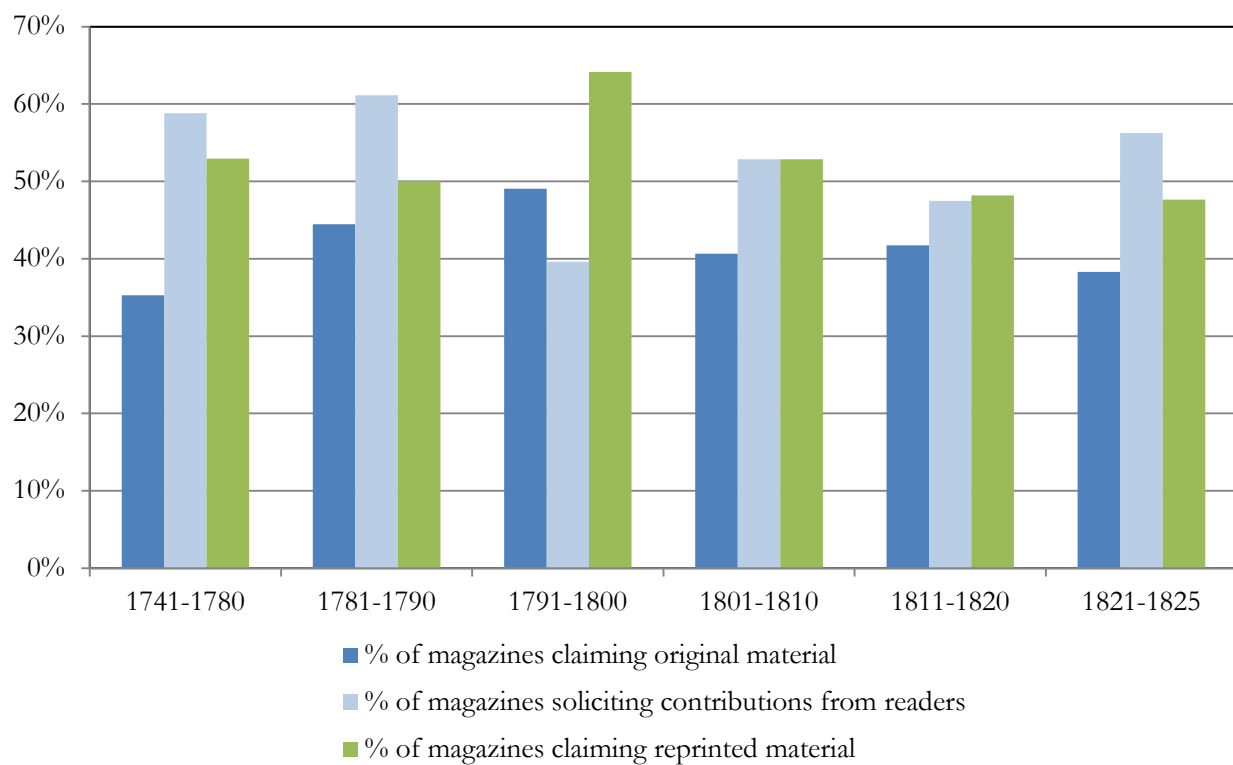
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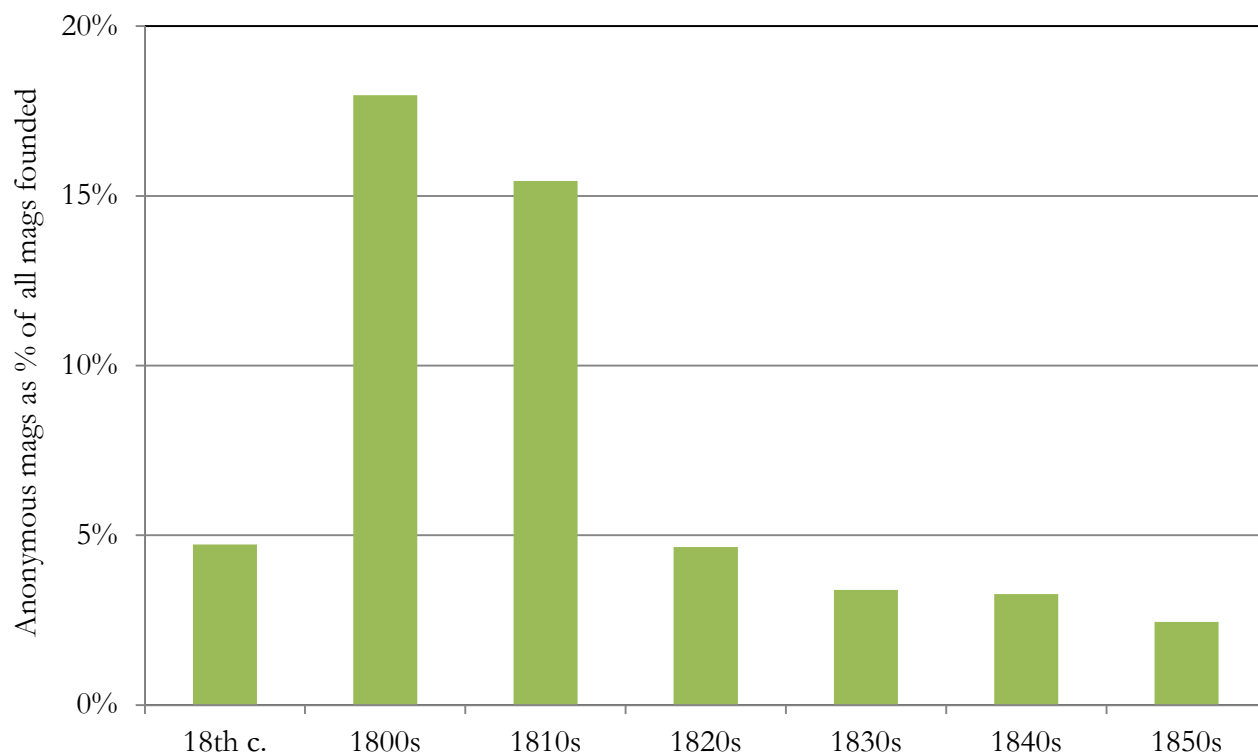
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**Figure 1: Percentage of Magazines Valuing Originality vs. Reprinting**



**Figure 2: Number of Anonymously and Pseudonymously Founded Magazines**



## Appendix 1: The Development of Copyright Law in Britain

The notion of any right to “copy” a text was originally rooted in the act of printing and selling copies, not in the act of creation by a writer. After the printing press was introduced to England in 1476 by William Caxton, the Crown held a monopoly over printing and distributing books; it granted printing privileges, exclusive rights to print a specified work for a limited period of time, mostly to printers but occasionally to authors (Rose 1993). In 1557, the Company of Stationers was chartered to regulate the book trade and its members were granted sole authority to print books entered in the Company’s register (Patterson 1968). From 1641 to 1694, a series of licensing statutes maintained the Stationers’ monopoly and continued the conception of copyright centered around the act of printing and the necessity of state censorship.

After losing their monopoly, the Stationers lobbied for statutory protection (Feather 1980; Saunders 1992; Deazley 2004). In 1710, they got what they wanted: the first parliamentary copyright law, the Statute of Anne. But with passage of this law, the focus of copyright law began to shift away from printers and toward authors as creators (Abrams 1983: 1139-1140). Consider the Act’s opening statement:

WHEREAS Printers, Booksellers and other Persons have of late frequently taken the Liberty of printing, reprinting and publishing, ... without the Consent of the Authors or Proprietors of such Books and Writings, to their very great Detriment, and too often to the Ruin of them and their Families: For preventing therefore such Practices for the future, and for the Encouragement of learned Men to compose and write useful Books... (Statute of Anne 1710)<sup>9</sup>

Copyright gradually came to mean the exclusive right of authors or printers to publish texts, with the aim of preventing literary piracy and encouraging authors to provide the public with beneficial works (Patterson 1968; Abrams 1953; Rose 1993).<sup>10</sup>

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<sup>9</sup> Of course, in practice, publishers (as “proprietors”) usually attained copyright protection when they purchased manuscripts from authors, and thus were the real beneficiaries of copyright protection. For this reason, some scholars question the extent to which the drafters of the Statute of Anne adhered to a natural-rights view of authorship (*e.g.*, Kaplan 1967: 7-9).

<sup>10</sup> Scholars disagree about whether the mention of authors in the Statute was a tactic used by stationers to bolster their claim (*e.g.*, Feather 1994) or by their opponents to break their monopoly (*e.g.*, Patterson 1968).

With passage of the Statute of Anne, two competing philosophies underpinning copyright came to the fore. First, the Act's limited term for copyright exemplified the statutory philosophy of copyright as *a state-granted monopoly that benefitted the public* by motivating the creation of new literary work. This came into conflict with the common-law philosophy of copyright as *authors' natural and perpetual right* in their creative property. This conflict was not resolved until the Court of King's Bench issued their decisions in *Millar v. Taylor* (1769) and *Donaldson v. Becket* (1774). In *Millar*, the court recognized a perpetual common-law copyright and ruled that the Statute of Anne's limited duration did not pre-empt that common-law right. This was a victory for the publishers and booksellers to whom authors assigned copyright when they sold their works (Patterson 1968; Abrams 1983). More broadly, this was a bold endorsement of the notion that authors had property rights in their literary work, and it set the course for subsequent legal treatment of copyright as foremost a matter of authors' rights (Patterson 1968; Abrams 1983; Saunders 1992; Rose 1993).

Recognition of a common-law copyright did not last long, however: the *Donaldson* decision overturned *Millar* just five years later, ruling that authors had no common-law copyright *once their work was published*; instead, the Statute of Anne governed published work.<sup>11</sup> Despite their opposite rulings on common-law *versus* statutory copyright, both *Millar* and *Donaldson* made clear that the starting point for the legal treatment of copyright is a question of the rights of an individual – the author – and not the act of publishing (printing and disseminating) texts.

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<sup>11</sup> For analyses of *Donaldson*, see Abrams (1983; Rose 1988; Saunders 1992). Abrams (1983) convincingly argued that most American legal scholars, due to an error in how the case was originally reported and an overemphasis on the judges' advisory opinions rather than the vote of the House of Lords, have misinterpreted *Donaldson* as recognizing a common-law copyright that is subject to pre-emption by the Statute of Anne, rather than an outright rejection of the existence of a common-law copyright.

## Appendix 2: Cultural Conceptions of Authorship in Britain

To be an author today means to write and own what you write. But that meaning developed only slowly. As early as the fourteenth century, some English writers claimed a special status for themselves, using the term “auctor” to signify their right to the title of laureate, or literary master (Helgerson 1983). But this did not confer ownership of texts because until the eighteenth century, people generally thought of texts as actions rather than things, valuing texts for their ability to move people to think or act (Rose 1993). As actions, rather than objects, texts could not be owned.<sup>12</sup>

Building on the early-modern notion of authorial honor and reputation, and combining it with the medieval notion of author as actor, Thomas Hobbes in the mid-seventeenth century argued for authorial ownership of literary work:

A person, is he, *whose words or actions are considered, either as his own, or as representing the words or actions of another man, or any other thing, to whom they are attributed, whether truly or by fiction.* When they are considered as his own, then he is called a *natural person*: and when they are considered as representing the words and actions of another, then he is a *feigned* or *artificial person*.... Of persons artificial, some have their words and actions *owned* by those whom they represent. And then the person is the *actor*; and he that owneth his words and actions is the *AUTHOR*: in which case the actor acteth by authority. For that which in speaking of goods and possessions, is called an *owner*, ... is called the author. And as the right of possession, is called dominion; so the right of doing any action, is called *AUTHORITY*. (Hobbes 1651: 125; emphasis in the original)

Hobbes’s argument, which linked authorship (the act of creating a text) with authority (power over that text), meshed with John Locke’s justification of ownership of property through labor:

...every man has a property in his own person: this no body has any right to but himself. The labour of his body, and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property. (Locke 1690: Chapt. V, Sec. 27)

Hobbes’s argument was also compatible with Locke’s conception of the mind as a blank page on which experience writes a self:

Let us then suppose the mind to be, as we say, white paper, void of all characters, without any ideas:—How comes it to be furnished? Whence comes it by that vast store which the

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<sup>12</sup> It is true that during the sixteenth century, the spread of printing presses prompted the development of a norm whereby printers obtained writers’ permission to publish. This norm, however, was intended to safeguard authors’ honor and reputation from “the stigma of print” (Saunders 1951), not to secure any economic interest they might have had in printed texts (Rose 1993).

busy and boundless fancy of man has painted on it with an almost endless variety? Whence has it all the materials of reason and knowledge? To this I answer, in one word, from *experience*. (Locke 1690: 87; emphasis in the original)

Further development of the notion of the author-as-owner was, however, hindered by the economics of publishing. Until the mid-eighteenth century, most British writers, like their counterparts in the rest of Europe, depended for their livelihood on patrons, either wealthy aristocrats or powerful printers, who claimed ownership of the texts produced by their writer-clients. Aristocrat-patrons received honor and status through their writer-clients' service, while printer-patrons received from their writer-clients goods they could sell for a profit in the developing marketplace; in return, both kinds of patrons offered their writer-clients cultural and material rewards (Febvre and Martin 1976; Lucas 1982; Rose 1993). The notion that writers "owned" what they wrote was simply not congruent with this economic and social system (Rose 1993).<sup>13</sup> Moreover, as explained above, the legal system was also not congruent with the idea of the author as owner of literary work because until 1694 members of the Stationers' Company had a legal monopoly on the right to copy the texts they purchased from writers.

Early in the eighteenth century, two influential writers, Joseph Addison and Daniel Defoe, invoked two new, individualistic metaphors: literature as a landed estate and the author as a gentleman-farmer. In an essay published just before passage of the Statute of Anne, Addison referred to a writer's brain as his "estate" (Addison 1709: 41). Two years later, he compared two types of geniuses: the first refused to follow the rules of art, while the second accepted those rules but excelled in their application. He explained that both cultivate great works in the same way that a gardener cultivates his fields:

The Genius in both these Classes of Authors may be equally great, but shews itself *after* a different Manner. In the first it is like a rich Soil in a happy Climate, that produces a whole Wilderness of noble Plants rising in a thousand beautiful Landships, without any certain Order or Regularity. In the other it is the same rich Soil under the same happy Climate, that has been laid out in Walks and Parterres, and cut into Shape and Beauty by the Skill of the Gardener. (Addison 1711)

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<sup>13</sup> In many ways, this economic system was akin to the situation facing staff writers of newspapers and magazines now: they work for an entity, such as a publishing company, that pays them a wage and, in return, claims ownership of the texts they write.



Defoe escalated the debate by casting it in moral terms, decrying the “theft” of literary property caused by unauthorized printing:

Thieving which is now in full practice in *England*, and which no Law extends to punish, *viz.* some Printers and Booksellers printing Copies none of their own. This is really a most injurious piece of Violence, and a Grievance to all Mankind; for it not only robs their Neighbour of their just Right, but it robs Men of the due Reward of Industry, the Prize of Learning, and the Benefit of their Studies... (Defoe 1704: 25)

He proposed a law that would make it easier to prosecute such practices, arguing that:

...for every Author being oblig'd to set his Name to the Book he writes, has, by this Law, an undoubted exclusive Right to the Property of it. The Clause in the Law is a Patent to the Author, and settles the Propriety of the Work wholly in himself, or in such to whom he shall assign it; and 'tis reasonable it should be so. (Defoe 1704: 27)

Note that Defoe centered property-rights claims to literary work on authors, not printers; printers were merely those to whom authors might assign their ownership rights in a literary work in exchange for publication. In his *Review of the Affairs of France*, a literary-*cum*-political journal published from 1704 to 1713, Defoe frequently blasted those who reproduced works without authorization by writers as “land pirates,” a morally charged characterization that became common in the second half of the eighteenth century (Temple 2003). In the same vein, Addison (1709: 40) castigated rogue printers as “miscreants...rascals, plunders, robbers, [and] highway-men.” He complained that authors were treated far worse than skilled workers, as the law allowed “theft” of authors’ output, but not that of artisans, even though authors sacrificed to develop the erudition required of all good writers:

All mechanic artizans [*viz.*] are allowed to reap the fruit of their invention and ingenuity without invasion; but he that has separated himself from the rest of mankind, and studied the wonders of the creation, the government of his passions, and the revolutions of the world, and has an ambition to communicate the effect of half his life spent in such noble enquires, has no property in which he is willing to produce, but is exposed to robbery and want, with this melancholy and just reflection, that he is the only man who is not protected by his country, at the same time that he best deserves it. (Addison 1709: 41-42)

The new metaphors invoked by Addison and Defoe, which required that authors be accepted as possessive individuals (Macpherson 1962) and recognized as creators of objects rather than drivers of actions, was elaborated over the next half-century (Patterson 1968; Woodmansee 1984; Rose 1993). In 1747, Anglican bishop and literary critic William Warburton provided the first

theoretical treatment of literary property in the legal literature and first conceived of the writer as an exalted figure whose ownership of his work merited protection in the law:

[I]f there be *degrees of right*, that of *Authors* seemeth to have the advantage over most others; their property being, in the truest sense, their *own*, as acquired by a long and painful exercise of that very faculty which denominateth us MEN: And if there be *degrees of security* for its enjoyment, here again they appear to have the fairest claim, as *fortune* hath been long in confederacy with *ignorance*, to stop up their way to every other kind of acquisition.  
(Warburton 1747: 405-406; emphasis in the original)

Warburton held that literary works were property because they were “useful to mankind,” which obligated society to give authors the right to protect them. Indeed, he viewed literary works as a special kind of property – the output of the mind. As such, he argued, literary property...

... is not confined to the original MS. but extends to the *doctrine* contained in it; which is, indeed, the true and peculiar property in a book. The necessary consequence of which is, that the owner hath an exclusive right of transcribing or printing it for gain or profit.  
(Warburton 1747: 408; emphasis in the original)

This nascent conception of author-as-owner was fostered by Romanticism, which emerged in the second half of the eighteenth century. Romantics began to incorporate the notion that individuals could be the authors of their lives, and thus of all the artistic works they produced (Abrams 1953; Woodmansee 1984; Jaszi 1991; Saunders 1992; Rose 1993). They held that to assert one’s ownership of original creations was to assert one’s self, one’s unique personality. Thus, the conception of authorship in Britain evolved in parallel with the basis of literary property rights: both shifted from effort to “personality” (Rose 1993). The Romantic movement facilitated widespread acceptance of Hobbes’s argument that authors become owners of literary property through action and Locke’s justification of authors’ ownership of literary property through their labor.

Yet achieving this Romantic understanding of author-as-creator, much less the more extreme idea of author-as-genius, was by no means inevitable. Instead, it required a series of conceptual inventions:

An emerging group of “literary” writers had to *acquire* an expressible interiority, such that a certain mode of printed work could be recognised and experienced as both “mine” and “me.” ... [A]n emerging category of “literary” writing in print ... had to *become* a specialised ethical and aesthetic activity using print. A new manner of relating to one’s self had itself to *establish* a manner of relating to print replication and dissemination.... [This] required

nothing less than a new form of ethical-literate persona (Saunders 1992: 73; emphasis in the original)

For example, in 1759 poet-cleric Edward Young argued that creativity and originality were superior to the mere mastery of the rules of classical literature, which had been valorized in the Renaissance and neoclassical periods: “Originals are the fairest flowers: Imitations are of quicker growth, but fainter bloom” (Young 1759: 6). He derided imitations and argued that authors of even the best imitations, because they built on prior writing, must share whatever glory comes their way with original authors, while authors of original work “enjoy ... undivided applause” (Young 1759: 7). For Young, inspiration for original writing emanated from within writers themselves, so it was the product and property of writers (Young 1759: 24) – a very Lockean conception. Moreover, as in Hobbes’s analysis, Young linked authorship to authority, arguing that those whose writings were original merited the title of master, rather than mere student of the ancients (Young 1759: 31-32).

The slow conceptual shift from author-as-actor toward author-as-owner was also enabled by the emergence of a market-oriented society in the late seventeenth and early eighteenth centuries, which directed authors’ economic and social relations away from patronage ties to wealthy elites and toward market ties to booksellers and, through them, to a growing reading public (Febvre and Martin 1976; Feather 1988).<sup>14</sup> Perhaps the most famous example is Samuel Johnson’s 1755 letter rejecting Lord Chesterfield’s patronage for his *Dictionary*, which has been called “the *Magna Carta* of the modern author” (Kernan 1987: 105):

Is not a patron my lord, one who looks with unconcern on a man struggling for life in the water, and, when he has reached ground, encumbers him with help? The notice which you have been pleased to take of my labours, had it been early, had been kind; but it has been delayed till I am indifferent, and cannot enjoy it: till I am solitary, and cannot impart it; till I am known, and do not want it... (Johnson 1755)

This letter signaled that professional authorship as we understand it today was becoming both economically feasible, at least for a few, and culturally acceptable. Johnson could reject Chesterfield’s patronage because the development of a market for books in Britain made it possible

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<sup>14</sup> This cultural-cognitive shift was analogous to the changing conception of the painter in late nineteenth-century France from learned man under the Academic system to middle-class professional under the dealer-critic system (White and White 1965).

for him to earn a profit from his dictionary. More importantly, his widely publicized claim of sole authorship helped spread acceptance of authorial ownership.

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