

# COPYRIGHT AND INTELLECTUAL PROPERTY



The State of the Discipline

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Twenty-first-century scholars have grown accustomed to having their research and teaching hedged about by concerns over intellectual property. Signing onto a library gateway web page or course-management software, clicking through a digital licensing agreement for an upgrade to an operating system or application, scanning a book chapter to circulate to a class, downloading a podcast, or simply linking to an image on a personal blog, we are vaguely aware that there are property rights at stake in our actions. While in many cases we thoughtlessly consent to sharp restrictions to our rights as the price of access, scholars also often disregard the letter of the law, either through ignorance or on the assumption that the nonprofit, educational circulation of texts ought be exempt from strict adherence to copyright (under a generous, if inaccurate, definition of fair use). Our everyday experience of the opportunities and confusion produced by media shift, and our awareness of the imposition but limited traction of the law ought to raise questions about how we think about the historical nexus of media, cultural practices, and legal regimes. What is the relationship of popular discourse about intellectual property to our everyday practices, and our practices to the laws that ostensibly govern them? Is it law, social custom, or professional norms that set the parameters of our behavior as authors, readers, and teachers? Is it the economy of prestige, conditions of labor, ignorance, inertia, or the inverse relationship of scarcity to value that keeps scholars from exploiting digital media's radical potential for the global circulation of our ideas?

In this essay, I survey recent book history scholarship on copyright and intellectual property with an eye to the difficulty of describing the relations between law and culture at any one point in time. For historical as well as theoretical reasons, I discuss scholarship on copyright and intellectual property alongside one another, without assimilating the first term to the second.

Whereas copyright emerged in the early eighteenth century as an instrument for regulating the print trades, intellectual property, an umbrella term encompassing copyright, patent law, trademarks, trade secrets, and industrial design, did not come into common use until the mid-twentieth century.<sup>1</sup> Until then, copyright, patent, and trademark law were considered distinct and even incompatible bodies of law, with differing rationales, doctrines, procedures, and bureaucracies. While the generalization of copyright to cover nonprint objects and its subsumption into the larger category of intellectual property is a relatively recent historical phenomenon, eighteenth- and nineteenth-century writers gestured to some of the territory currently covered by intellectual property through the use of the term “literary property.” Literary property could refer to rights claims and violations that fell outside the formal copyright system (such as plagiarism or trade courtesy); to rights that advocates hoped would ultimately be embraced by the statutes and defended by the courts (such as rights of translation or dramatic performance); or to the general and controversial concept of property in ideas. Opening up space between copyright and intellectual property can help us resist reading legal history as a prelude to or anticipation of contemporary norms, while also acknowledging the range of extralegal practices that have been used to stake out and defend property in printed texts under narrower definitions of copyright. As scholarship on copyright and intellectual property abundantly shows, the history of print has been powerfully shaped by the law and by what the law fails or refuses to protect as property.

## Copyright, Authors’ Rights, and the History of the Book

A brief overview of the history of copyright should provide cardinal points for newcomers to use in navigating this relatively new interdisciplinary field. Copyright law is not coincident with the introduction of printing, but rather emerges at the beginning of the eighteenth century as a tool for governments to use to limit the power of print monopolies. In early modern Europe, monarchs regulated the print trades through prepublication censorship and monopoly grants or “privileges” designed to align the technology of print with state interests. The first copyright law, the British Statute of Anne (1710), marks the beginning of a transition from royal privileges to commercial rights and a shift from a patronage system to a market for books. The Statute of Anne separated literary property from censorship, granting authors

and publishers exclusive publication rights for limited terms. It took until the end of the century, however, for British courts to establish that copyright was a statutory right that superseded rights claimed under the common law, and that, upon expiry of the term of state protection, copyrighted works would become open to all who wished to reprint them. In the late eighteenth century, the United States and revolutionary France adopted copyright laws based on public-good rationales, while over the course of the nineteenth century pressure gathered for the passage of bilateral and multilateral treaties that would extend the reach of copyright beyond national borders. The signing of the Berne Convention by nine nations in 1886 helped to standardize copyright as a tool of trade regulation. The adoption in the United States of a protectionist international copyright law in 1891 and the gradual extension of copyright to cover an ever-wider range of objects laid the groundwork for a decisive shift from a public-good to an author-centered rationale for copyright. The twentieth century saw major recodifications of copyright law in the United Kingdom and the United States under the pressure of new technologies such as film, photocopying, and digital media; it also saw the transformation of the United States from a reluctant participant in multinational treaties to a global enforcer of intellectual property law.

Literary critics and historians have long looked to legal history for reliable benchmarks of social and cultural transformation. And yet identifying changes to statutory law and high court decisions with cultural consensus can misrepresent the pace and nature of social change. Backed by the power of the state, the decisions of courts and legislatures allow us to pinpoint where abstract ideas take on real-world force. But the law often lags behind business practices, and legal discourse is often at a considerable remove from ordinary citizens' assumptions about the world they inhabit.

Take, for instance, the relationship between the study of book history and late twentieth- and early twenty-first century copyright law. The same thirty-five years in which book history established itself as a discipline witnessed far-reaching changes in the nature, term, scope, and reach of copyright protection, both in the United States and across the globe. The U.S. Copyright Act of 1976 transformed copyright from a form of legal protection that was contingent upon formal registration to the default state of all "original works of authorship fixed in any tangible medium of expression."<sup>2</sup> Since 1976, American law has significantly expanded the scope of copyright protection, stretching the idea of authorship to encompass computer software and architectural works, and possibly even the imitative world of fashion design.<sup>3</sup> Alongside the broadening of copyright's domain, American law has also significantly lengthened the period of protection so that au-

thors' rights normatively extend to a second or third generation.<sup>4</sup> In 1989 the United States became a full signatory of the Berne Convention, the most important multilateral copyright treaty, and in 1994 the protection of intellectual property was made a threshold condition of global trade through the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights. In less than twenty years, American copyright law underwent nothing short of a revolution, as state protection became keyed to creation, not publication; a right with a clear expiry date was transformed to one that, for living authors, is of incalculable duration; and the national legal peculiarities that had shaped and limited international rights were reconciled and assimilated into a global norm backed by considerable political and economic force. All of these changes happened prior to the passage of the 1998 Digital Millennium Copyright Act, the central piece of American legislation shaping the digital transmission of texts.

Despite these radical changes in the law, however, the impact of late twentieth-century copyright on the direction of book history has taken decades to be felt, suggesting that changes in the law and changes in scholarly discourse have not run in tandem. Indeed, the founding texts of book history demonstrated little interest in copyright. The historical center of gravity of Elizabeth Eisenstein's landmark study of the impact of print in early modern Europe, *The Printing Press as an Agent of Change: Communications and Cultural Transformations in Early Modern Europe* (1979), predates the emergence of copyright law; moreover, the pan-European scope of her book meant that she could address the effect of royal privileges on the dissemination of print only in passing.<sup>5</sup> Robert Darnton's microhistory of Diderot's *Encyclopédie* (1751–1772) takes its bearings from the limited effect of censorship and royal privilege on the popular circulation of this banned and dangerous book. However, in documenting the spread of enlightenment ideas through the publication and sale of editions of the *Encyclopédie* "beyond the boundaries of French law," Darnton shifts his focus away from state regulation to the illegal and quasi-legal practices of smuggling, cartel diplomacy, and the bribery and extortion common to publishers' trade wars.<sup>6</sup> Much of the business of the *Business of Enlightenment* (1979) takes place in the interstices or at the limits of state and guild authority in the waning decades of the Old Regime. In what turned out to be a field-defining essay, "What Is the History of Books?" (1982), Darnton extrapolated a model of "the communications circuit" from this research. But this model leaves no place for state investment in and control of the circulation of texts, perhaps because of Darnton's insistence that each station in the cir-

cuit be occupied by persons.<sup>7</sup> Similarly, the field-shaping scholarship coming out of the bibliographical tradition did not bring copyright and intellectual property to the fore. D. F. McKenzie's 1985 redefinition of bibliography as "the sociology of texts" everywhere shows the impress of the expansion of librarianship to include nonprint texts, from sound recordings to film and electronic media—an expansion closely allied to the expanding purview of copyright. And yet McKenzie's defense of the expressive properties of the material text and his bid for the applicability of bibliographical method to a wide variety of cultural artifacts do not open up the question of what difference the property status of a text might make to its transmission. Although bibliographers have long been experts in the changing terms and conditions of copyright, consulting copyright records to establish the priority of editions and to sort out payment agreements between publishers and authors,<sup>8</sup> neither the older nor the newer, more inclusive version of the discipline took as a primary responsibility the systemwide analysis of the disposition of property rights in texts.

It would take until the late 1980s and early 1990s, when cultural studies and critical legal studies converged on a critique of the authorial subject, for momentum to gather behind the interdisciplinary study of copyright. Martha Woodmansee's essay "The Genius and the Copyright: Economic and Legal Conditions of the Emergence of the 'Author'" (1984) could be said to have initiated this turn. Woodmansee's essay was followed in quick succession by two important essays published in the leading interdisciplinary journal *Representations*: Mark Rose's analysis of the decisive eighteenth-century British copyright cases *Millar v. Taylor* (1769) and *Donaldson v. Becket* (1774), and Carla Hesse's history of debates over copyright in revolutionary France.<sup>9</sup> All three essays would later be published as part of book-length studies,<sup>10</sup> but they arguably had more impact as journal articles that drew attention to copyright as a vital subject at the intersection of literary, intellectual, and legal history.

Woodmansee's essay tracks the development of the idea of authorial originality in the writings of authors such as Klopstock, Fichte, and Herder, arguing that the Romantic debate over the nature of authorship responded to the chaotic state of the German book market and lay the groundwork for the recognition of authors' rights in German law. Woodmansee's essay actually has little to say about the technicalities or the legislative history of copyright in Germany. Rather, her aim is to place Romantic ideas about literary property in socioeconomic context and to argue more broadly for interdisciplinary attention to the "interplay between legal, economic and social

questions . . . and philosophical and esthetic ones” (440). Woodmansee’s author-centered approach to copyright and her subsequent collaborations with legal scholar Peter Jaszi did much to galvanize the interdisciplinary study of copyright law. While the uptake into legal studies of her approach would prove controversial,<sup>11</sup> it is worth noting that her claim that the Romantic idea of the author, as advanced by philosophers and poets, stood at the origin of copyright makes sense—but may only make sense—in the context of German publishing, where a law that could be enforced across the jurisdictions of multiple, independent, competing states took until German unification in 1870 to be passed.<sup>12</sup>

Mark Rose similarly seeks the origin of modern authorship in legal debates, arguing that the idea of the author-as-proprietor emerged out of the eighteenth-century British struggle over interpretation of the Statute of Anne. Rose credits London booksellers with elaborating the Lockean idea that an author had a natural right to his labor as part of their attempt to maintain the monopoly publishing rights they had held under royal patronage. Threatened by provincial publishers, whose sale of cheap reprints of works with expired copyrights had begun to undercut them, the London publishers argued in these closely followed cases that an author’s perpetual right to his copy under the common law preceded and thus outlasted any statutory limitation of that right. In their view, the statute was no more than secondary protection, a supplementary enforcement of preexisting rights and not the foundation of these rights. Although the London booksellers ultimately lost this battle, Rose argues that their rhetoric had far-reaching effects, establishing the logic that underwrites contemporary copyright law. Importantly, for Rose, the modern proprietary author is not an authorial invention but rather the by-product of a commercial struggle. While Rose argues that “the simultaneous emergence in the discourse of the law” (65) of the idea of the author as owner and the text as commodity proved crucial for the development of a market for books, he allows for the possibility that legal discourse and socioeconomic conditions can run at odds with one another. Indeed, in his account, authors’ rights are forged not in an embrace of the new order but rather in the London publishers’ retrogressive bid to solidify royal privilege as monopoly power.

Carla Hesse’s essay takes up political dimensions of the eighteenth-century struggle over copyright that neither Woodmansee nor Rose addresses directly. Hesse locates the origins of French authors’ rights in an attempt by the Royal Administration to curb the power of the Publishers’ Guild. For Hesse, “the author was a creation of the absolutist police state, not the

liberal bourgeois revolution" (113); moreover, proprietary authorship was an idea that faced substantial resistance in the revolutionary assemblies that sought to redraw the laws that governed textual circulation, including laws concerning property, sedition, and libel. Hesse maintains that the crucible of authors' rights in France was a political and not simply a commercial struggle, and that French revolutionary rhetoric was aimed squarely at the author as an inheritor of royal privilege. She describes the origins of French copyright as an "unstable legal synthesis" (130) that acknowledged an author's natural right to the product of his labor, but insisted that such rights needed to be limited for the sake of the public good.

Although significantly different in argument, emphasis, and national tradition, these essays share an intellectual lineage and a focus on authors' rights discourse. Provoked by Michel Foucault's suggestion that "the coming into being" of the idea of the author could be located historically, and that this shift "constitutes the privileged moment of individualization in the history of ideas, knowledge, literature, philosophy, and the sciences,"<sup>13</sup> they seek out origins, emphasize continuities between founding moments and the present day, incline toward formal debates in which contesting positions on authorship are clearly articulated, and identify landmarks in the legal recognition of authorial property. My own scholarship on the resistance to authors' rights in the antebellum United States is heavily indebted to this tradition, shaped in particular by Hesse's call for renewed attention to the political economy of print. And yet from the perspective of book history, the range of sources these scholars draw on can feel limited, the binary positions they identify exaggerated by a reliance on formal debate, and their focus on authors undermined by the accumulating evidence that authors exercised little agency over the development of copyright law, at least until the middle of the nineteenth century.

The 1991 Society for Critical Exchange conference, "Intellectual Property and the Construction of Authorship," helped to form a consensus around the idea that a critique of authorial originality should stand at the center of the interdisciplinary study of copyright. Organized by Martha Woodmansee and Peter Jaszi, the conference brought literary critics, historians, and legal scholars into sustained discussion with one another and resulted in the publication of selected essays, first as a special issue of the *Cardozo Arts & Entertainment Law Journal* (1992) and then as a book published by Duke University Press, *The Construction of Authorship: Textual Appropriation in Law and Literature* (1994). The dual sites of publication speak to the editors' hope that the collection would mark a point of convergence between

a literary criticism animated by poststructuralist critiques of the author and critical legal studies' interest in the inseparability of law from relations of power and inequality. The essays are remarkably diverse: many seek to recover collective, corporate, or collaborative practices that resist solitary authorship; others seek to shift critical attention from authorial originality to writing practices that depend on imitation, intertextuality, copying, bricolage, and sampling. Only a few, including essays by John Feather, N. N. Feltes, and Jeffrey Masten, take up copyright's intimate relation with the book trades.<sup>14</sup> The diverse aims and archives of the essays are not particularly well served by the polemical thrust of the volume, the editors' call for a thorough critique of the Romantic author in order to break "the hold of authorship on the American legal imagination" (10). The public policy goals of this collaboration, which produced follow-up conferences, an outpouring of scholarship, and the "Bellagio Declaration" (a call for a revision of copyright law to protect collectively produced works such as folklore, cultural heritage, and indigenous knowledge<sup>15</sup>), may have required this narrowing of focus and the simplifying and foreshortening of the history of copyright. And yet these political goals might arguably have been better served by acknowledging that history offers numerous alternatives to tightening control over circulation in the name of the author, a process that was strengthening its grip in the mid-1990s. If authors' rights were from the start a legal fiction, a tactic used in a struggle between powerful political and economic interests, disclosing the author's fictive status does not promise to do much to dispel its power.

In his polemical overview of modern copyright systems, *Authorship and Copyright* (1992), legal historian David Saunders was quick to decry copyright critics' obsession with authorship, which he saw as symptomatic of a misguided, "subject-centered schema of cultural history."<sup>16</sup> Saunders is sharply critical of the tendency to route legal history through the figure of the author, imagined—even when critiqued—as the idealized form of human subjectivity. He calls for attention to the specificity of national copyright systems, suggesting that the general critique of the authorial subject distracted scholars precisely at the point when they needed to attend to the harmonization of discordant systems in the service of a global intellectual property regime.

Saunders lamented in 1992 that "authorship as a legal institution awaits a comprehensive history" (1); twenty years later, a number of scholars have stepped into the breach, giving us a far better picture of the diversity, intricacy, and limitations of copyright systems across history. The first wave

of interdisciplinary copyright scholarship generally relied on one or two legal histories: Benjamin Kaplan's *An Unhurried View of Copyright* (1967), which offers an incisive, philosophical account of landmarks in British and American copyright jurisprudence from the Stationers Company charter to the draft bills for the Copyright Act of 1976; and Lyman Ray Patterson's *Copyright in Historical Perspective* (1968), which gives a more detailed account of much of this terrain, including an analysis of printing patents, the close ties between copyright and censorship, and the early American adoption of select elements of British law.<sup>17</sup> While Kaplan sought to draw the general reader into the legal, cultural, and technological challenges prompting the 1976 recodification, Patterson's history was written for lawyers and judges in order to dispel misunderstandings that had crept into litigation. Patterson also sought to redirect attention to the problem of publishers' monopolies that lay "screened behind the idea of copyright as only an author's right" (226). In 1994 John Feather published an overview of copyright law from the perspective of the British book trades, *Publishing, Piracy, and Politics: An Historical Study of Copyright in Britain*.<sup>18</sup> In its focus on the practical consequences of legislative change, Feather's survey is particularly helpful for book historians; it includes a valuable chapter on the law pertaining to deposit copies, and a survey of copyright reform in the nineteenth and twentieth centuries. Brad Sherman and Lionel Bently's *The Making of Modern Intellectual Property Law: The British Experience, 1760–1911* (1999) locates the origin of the contemporary conjunction of laws governing copyright, patent, trademark, and design in nineteenth-century British law's handling of claims to intangible property. Keying off of the arguments of eighteenth-century opponents of literary property, Sherman and Bently note a mid-nineteenth-century shift in emphasis from the author's labor to the work and weigh the effect on legal doctrine of registration requirements, the bureaucratic systems that permit the identification and management of intangible property.<sup>19</sup>

In a welcome shift away from a preoccupation with origins, Catherine Seville's *Literary Copyright Reform in Early Victorian England: The Framing of the 1842 Copyright Act* (1999) zeroes in on the six-year period leading up to the passage of the Copyright Act of 1842, a hitherto neglected law that extended the term of copyright protection and brought copyright advocates and opponents into dialogue with the broader culture of Victorian reform. Seville's narrow temporal focus allows her to draw on a wide range of sources, including public petitions by tradesmen, publishers, and authors' associations; newspaper debates; and the twists and turns of the legislative

process.<sup>20</sup> Worth noting amid a recent outpouring of legal scholarship on the history and doctrine of intellectual property are two large-scale challenges to the consensus narratives of Anglo-American copyright law. In linked studies, Ronan Deazley attempts to place the long history of concern with the free dissemination of ideas back into the story of British copyright. In one book, he offers an account of the legislative history that preceded the passage of the Statute of Anne and an analysis of the case law surrounding *Donaldson v. Becket*; in the other, he shows how copyright historiography has shaped modern understandings of the law.<sup>21</sup> In an important essay that revises the founding assumption driving the 1990s scholarship on copyright, Oren Bracha offers a nuanced account of the place of authorship in American copyright doctrine, documenting a split between authors' rights rhetoric and the minimalist understanding of originality that came to dominate the case law.<sup>22</sup> Bracha argues convincingly that it took most of the nineteenth century for judges to shift from treating copyright as a publisher's privilege to regarding it as an author's right. Equally important to his careful handling of this interpretive crux is his vision of a copyright law that develops by fits and starts, one that is full of muddled as well as transformative decisions, fraught with generative contradictions as well as the slow erosion of what had been clear rules for judgment.

The contribution of legal scholars to the history of copyright is not confined to their writing. Along with four other scholars, Deazley and Bracha serve as national editors for Lionel Bently and Martin Kretschmer's *Primary Sources on Copyright (1450–1900)*, a digital archive that makes widely available some of the most important documents pertaining to the law in Italy, France, Germany, Spain, the United Kingdom, and the United States.<sup>23</sup> This still-expanding digital archive includes laws, treaties, treatises, petitions, and influential reflections on literary property, framed by editorial headnotes that help contextualize these documents. This web site is a welcome improvement on earlier bound collections of sources, such as the three-volume *Decisions of the United States Courts involving Copyright and Literary Property, 1789–1909 with an Analytical Index* (1980), which, although it contains a terrific analytical index, lacks a chronological listing of cases.<sup>24</sup> Arranging cases alphabetically by case name suggests an imagined readership that would track cases according to citation, not one that reads historically. Indeed, the lawyer's need to establish precedents for contemporary cases can build a bias into legal scholarship toward rulings that remain authoritative, burying reversed or overruled decisions under succeeding ones, subsuming dissent and division into the coherence of doc-

trine. Luckily, many of the differences between the historian's and the lawyer's approach to these resources are made moot by the agility of the digital interface.

Nonetheless, legal scholars' understandable attention to what Sherman and Bently call "the grammar or logic of the law" (99) often eclipses the materiality of the text. The limited usefulness for book history of a focus on copyright doctrine is apparent even in as marvelous a resource as Jane C. Ginsburg and Rochelle C. Dreyfuss's *Intellectual Property Stories* (2006), one in a series of textbooks designed to help law professors place landmark cases in historical context.<sup>25</sup> In each of these narratives, a prominent legal scholar revisits a classic case, tells the story of how the parties came to pursue legal action, evaluates the legal reasoning, and weighs both the immediate impact and the ongoing importance of the ruling. These are well-researched and grippingly told narratives of Supreme Court cases, each of which pushed the limits of existing law. However, that the aim of these stories is to transmute history into abstract principle, example into doctrine, becomes clear once you try to imagine a volume that might work this alchemy in reverse. For instance, Pamela Samuelson's retelling of *Baker v. Selden* (1879) shows how a dispute over copyright in blank accounting forms crystallized the idea-expression dichotomy and clarified the differences between copyright and patent law. But a book historian might turn to the case instead for evidence of the keen competition over accounting systems designed for use by municipal governments, a book market that took off as a result of Progressive Era financial reforms. Or, as Lisa Gitelman has done, for evidence of the importance of ruled forms to job printing, understood as a specialized labor practice crucial to the growth of modern bureaucracy.<sup>26</sup> Similarly, while *Wheaton v. Peters* (1834) (a dispute over property in law reports) and *Folsom v. Marsh* (1841) (concerning an abridged *Life of Washington* [1840]) both establish lasting tenets of American law, they also open up windows into the importance of law books and abridgements to antebellum publishing, the threat to eastern publishers of expanding western markets, and the popularity of biographies of the founders, both as schoolbooks and as texts that managed to find the commercial sweet spot between learned and popular culture. Book historians interested in intellectual property would do well both to read legal histories and to read them against the grain.

In what follows, I focus on scholarship that both engages and contributes to the field of book history,<sup>27</sup> beginning with a cluster of recent books on copyright and intellectual property in Great Britain. I then survey recent

work on American copyright and the struggle over international copyright, the terrain with which I am most familiar. Finally, I provide a brief overview of exciting new work on topics that cry out for further study, including the history of the public domain, science, technology and intellectual property, anonymity and pseudonymy, labor history and copyright, copyright across national boundaries, and the cultural property of indigenous peoples.

## The Place of the Law in British Publishing

In recent years, historians and literary critics have broadened and deepened the study of British copyright, shifting attention from the Statute of Anne to the turbulent political and commercial struggles that preceded it; examining the relations between guild practices and various forms of state regulation; linking the emergence of property rights in printed texts with those in type-faces, pharmaceuticals, and inventions; and considering the effect of the limited monopoly rights conferred by copyright on the availability of books. Although the general drift of this scholarship has been to move beyond the question of authors' rights to a consideration of the larger economic, institutional, and cultural forces shaping the growth of print, the various roles played by the law, by authors, and by books themselves in these histories remain a productive point of contention.

Joseph Loewenstein's two intimately related books on copyright in early modern England—*The Author's Due: Printing and the Prehistory of Copyright* (2002) and *Ben Jonson and Possessive Authorship* (2002)<sup>28</sup>—exemplify the difficulty of shifting back and forth between a large-scale account of the protection of literary property in the book trades and the study of an individual author's maneuverings within and reflections on this business. One might describe the relationship between *The Author's Due* and *Ben Jonson* as socioeconomic to literary history, institutional to individual account, hypothesis to case study, or wide-angle to zoom, except for the fact that Loewenstein's thinking about Jonson is integral to his broader history. Indeed, he tucks a summary of the argument of his Ben Jonson book a third of the way through *The Author's Due*, offering Jonson as a sure mark of the rise of authorial prestige and a kind of hinge between the commercial monopolies of the late sixteenth century and the antimonopolistic energies and struggle over press freedoms characteristic of the seventeenth century.

Loewenstein situates the regulation of the English print trades within the context of European mercantilist practices, connecting English experiments

with licensing, printing patents, and guild enforcement with the larger political problem of press control shared by early modern states. In telling the story of the emergence of proprietary authorship—a “revolution in the idea of property” made manifest through a “slow modification of traditional structures of behavior” (25)—Loewenstein traces a long historical arc, from the chartering of the London Company of Stationers in 1557, through the gradual attachment of proprietary force to the system of license and registration, to the mid-seventeenth-century struggle over prepublication censorship and the attempts of the Stationers to regain monopoly rights in negotiations over the Statute of Anne. His more focused study on Jonson offers a fine-grained account of the kinds of property produced and defended in the rivalrous but intersecting worlds of the theater and the press. Much like publishers, acting companies sought to control competition within their ranks, using licensing to stake out property in manuscript playbooks and experimenting with the dual markets of performance and print. Whereas Shakespeare sought property within the theater, converting the writing of plays into a proprietary share of the acting company itself, Jonson exemplifies what Loewenstein calls “the bibliographic ego” (3), turning away from the collaborative practices and imitative aesthetic of the theater in order to produce revised, corrected, and embellished editions of his plays, relishing the superior control offered by editorial authorship. Loewenstein’s attention to the variety and efficacy of extralegal claims to authorial property sets new parameters for what counts as evidence in the study of copyright and intellectual property, making it possible to imagine a future digital archive of primary sources on copyright that would include the title pages of printed play texts as well as the uneasy, self-protective addresses to the audience delivered as prologues to many of these plays.

The Statute of Anne has long been thought to mark the separation of state surveillance from the protection of literary property; it is often pointed to as the moment when the regulation of the book trades was relieved of the burden of censorship. This narrative accords well with Michel Foucault’s suggestion in “What Is an Author?” that proprietary authorship “has always been subsequent to what one might call penal appropriation,” his claim that “texts, books, and discourses really began to have authors . . . to the extent that authors became the subject of punishment” (148). Loewenstein contests this sequential narrative, arguing that monopolistic competition was coeval with state censorship and did more to shape the rise of authorial property. In *The Trouble with Ownership: Literary Property and Authorial Liability in England, 1660–1730* (2005),<sup>29</sup> Jody Greene contends that, far from displacing penal appropriation, copyright shifted the locus of liability

from printers to authors. Beginning in the sixteenth century and stretching through the careers of the first generation of authors to take advantage of the Statute of Anne, Greene argues for a strong historical link between attribution, ownership, and accountability. For Greene, claiming agency for origination also brought with it responsibility for print's effects; the history of proprietary authorship is bound up with that of sedition, heresy, libel, and treason. Importantly, Greene attends to writers' wariness of both legal and extralegal reprisals for claiming authorship of their works; she describes authorial disavowal as the obverse side of the coin of proprietary authorship. Alive to the gendered complexities of authorial dispossession, Green analyzes John Gay's attempt to shield himself from the legal consequences of publishing his banned opera *Polly* (1729) by claiming the patronage of the Duchess of Queensbury, and Alexander Pope's use of a false imprint to deflect onto a woman printer responsibility for naming names in the *Dunciad* (1729). That authorial disavowal continues to trouble the conventions of literary criticism is readily apparent in Greene's book itself. One of the pivotal texts in her analysis, the anonymously published *An Essay on the Regulation of the Press* (1704), is attributed here (and elsewhere in the critical literature) to Daniel Defoe. It seems that the eighteenth-century desire for disavowal is no match for contemporary critics' need to determine responsibility and give credit for consequential writing.<sup>30</sup>

While early modernists have sought to mark the rise of proprietary authorship and explain its role in the shift from a patronage system to a market for literary works, William St. Clair worries that the attention paid to authors has obscured the impact of changes to the copyright law on the supply of books. In *The Reading Nation in the Romantic Period* (2004),<sup>31</sup> St. Clair argues that the Statute of Anne is far less important than the Lords' decision in *Donaldson v. Becket* to put an end to perpetual copyright, a ruling that in a single stroke transformed many of the most valuable titles from private into public property. Drawing on extensive research (presented in over 200 pages of charts and tables documenting print runs, prices, piracies, and abridgements), St. Clair argues that the end of the publishers' monopoly brought with it significant class stratification in British reading, with the "old canon" of freely reprinted works made widely available in a variety of cheap editions, while the "new canon"—what we generally consider to be the characteristic works of the Romantic period—limited by small print runs and high prices, was restricted to upper-class readers. St. Clair offers a substantial challenge to conventional literary periodization, indexing the Romantic era not to what was written but to what was read in the period

(making it the Age of Thomson and not of Wordsworth), and arguing that many of the classic works of Victorian literature failed to reach a general readership until the early twentieth century. St. Clair notes the importance of transchannel and transatlantic piracy to the popularization of authors whose works would otherwise have been locked up by copyright, but his focus on the book market may well underestimate the importance of periodicals as vehicles for circulation and for the creation and sustenance of literary reputation. Scholars who question whether an economic model of book distribution can adequately capture the generative dynamics of literary culture will nevertheless find St. Clair's charts, tables, and analysis of great value. St. Clair provides statistical evidence of copyright law's effect on the circulation of books; he also gives a thick description of the cultural lag that is produced by the uneven distribution of property rights in texts, an account of the staggered temporality of literary reception that cannot be glimpsed in literary histories and anthologies that are organized in chronological order of composition or first printing.

St. Clair is fascinated by the flourishing of cheap print in what he calls the "brief copyright window" (54) between the close of the "high monopoly" era in 1774 and the gradual extension of the term of copyright, which by 1842 stretched as far as the author's lifetime plus seven years (or forty-two years from the date of publication). In *The Copyrights: Intellectual Property and the Literary Imagination* (2003),<sup>32</sup> Paul K. Saint-Amour identifies the late nineteenth century as another pivotal period of copyright consolidation. Inaugurated by the Royal Copyright Commission's 1878 report, which entertained then put to rest viable alternatives to copyright, the triumph of copyright is ensured by the 1891 passage in the United States of an international copyright agreement that helped standardize and extend its reach. If St. Clair worries that author-centered accounts of copyright law have ignored the economics of the book industry, Saint-Amour is concerned that literary texts have not been taken seriously enough as evidence of copyright's expanding domain. Saint-Amour argues that late Victorian and modernist writers developed a sophisticated counterdiscourse to copyright, visible in popular "centos," or patchwork poems comprised entirely of lines taken from other poems; in Oscar Wilde's practice of plagiarism and preference for the publicity of talk over private property in writing; and in James Joyce's experiments with parody and appropriation in *Ulysses* (1922). Saint-Amour teases out the uncanniness of now-standard "postmortem" terms of copyright, arguing that the law creates fixed periods of time, now woefully overextended, "during which an author's estate remains in a

commemorative stasis, watched over by the legatees whom it benefits" (17). For Saint-Amour, the prevalence of ghosts, vampires, revenants, and the undead in the "figurative repertoire" (130) of copyright speaks to the law's problematic crossing of boundaries between public and private, commodity and gift, as well as that between life and death. In detailing how modernist literature capitalizes on and critiques a newly strengthened copyright regime, St. Amour invites us to regard literary works not simply as subject to copyright but also as crucial to understanding the instability of the law's foundational dichotomies.

Loewenstein, Greene, St. Clair, and Saint-Amour all benefited from the 1990s scholarship on copyright; they also reflect a twenty-first-century discomfort with copyright's overreach, its ever-wider scope and term extension. Book history and contemporary intellectual property discourse may be said finally to join forces with the publication of Adrian Johns's *Piracy: The Intellectual Property Wars from Gutenberg to Gates* (2009),<sup>33</sup> in which he recasts the history of print as shaped by a constant struggle with those who would violate the norms and laws that regulate commerce. Johns's very framing of the topic signals the subsumption of copyright into the broader field of intellectual property. He argues that copyright must be understood in the context of struggles over patent medicines and the ownership of mechanical inventions;<sup>34</sup> his capacious history also extends beyond print to encompass radio piracy, phone phreaking, and file sharing. Johns recovers piracy as a commonplace occurrence, not an exception or aberration, arguing that intellectual property law "often lagged behind piratical practices" and that "virtually all its central principles . . . were developed in response to piracy" (6). Johns's approach reflects the rise of the copyleft movement;<sup>35</sup> indeed, a more robust contemporary discourse of resistance to tight control over intellectual property has made us all more aware of copyright not simply as a property right but as one that works by limiting circulation. In *Piracy*, Johns returns to ground initially surveyed by Robert Darnton but this time from a bird's-eye view, one capable of viewing the border skirmishes of *The Business of Enlightenment* as part of a larger system: "Enlightenment traveled atop a cascade of reprints. No piracy, we might say, no Enlightenment" (50). Johns's powerful articulation of intellectual property as fundamentally shaped by geography—"a given book might well be authentic in one place, piratical in another" (13)—serves as a reminder of the patchwork of national and colonial systems that were harmonized only in the late twentieth century. His depiction of Ireland as a "land without property" (145) synthesizes work on the Irish reprint trade by Richard Cargill Cole and M. Pollard<sup>36</sup> to refute the common assumption that authorial rights

are a threshold condition for market growth (such growth may depend, however, on a proximate supply of texts written in a common language). He also takes up the problem of copyright's guarantee of authenticity (a line of argument that has been neglected since Susan Stewart's influential study of forgery, "fakelore," and literary imposture, *Crimes of Writing: Problems in the Containment of Representation* [1991]<sup>37</sup>), and reminds us that intellectual property systems bring with them the need for policing and surveillance. Raids on sheet music publishers and systems of detection that mimic the pirates' strategies, blurring the line between the law and outlaws, are also part of the history of copyright.

Johns's *Piracy* marks a watershed in the history of copyright and intellectual property: rather than hewing closely to statutory law and judicial interpretation, he tracks changes in extralegal systems of policing and enforcement; the engine of change in this history is found at the intersection of business practices and the history of science. Johns treats the idea of literary property's general applicability and the push for universal support for intellectual property principles as produced by this history and not as goals to which law or nations ought to aspire. Although the 400-year story he tells takes seventeenth-century England as its starting point and Europe as its center of gravity, the vast (though by no means exhaustive) geographic scope of the book reflects a decidedly provincial or postcolonial sensibility, casting the history of one of the central institutions of transnational capitalism as driven by struggles at the limits of its reach.

## Domestic and International Copyright in the United States

That copyright was a mixed blessing for those at the edges of empire was clear to the architects of the first U.S. copyright law (1790), which granted monopoly rights for short terms to citizens and residents but denied such protections to foreign authors, ensuring that valuable texts from Great Britain and Europe could be freely reprinted by anyone who sought to invest in them. A number of factors caused copyright law and the American print trades to develop according to different trajectories than in Great Britain: the lack of a guild system and a tradition of aristocratic patronage; the lack of a state church combined with a strong ideological emphasis on the free circulation of print; the existence of a scattered population that depended on cheap print for its reading material; and a significant temporal lag be-

tween the passage of the law and the development of a national market for books. While a *federal* copyright law ensured that American authors and publishers could control the distribution of their books across the vast expanse of the new republic, the statute secured this right more than fifty years before regional markets were successfully knit into a national book trade system. The decentralization of American publishing made it difficult for authors to profit from their copyrights (where the distribution of books is difficult, the right to control distribution by limiting copying is of precarious value). Scholars of nineteenth-century U.S. literature and culture have had to grapple with a number of facts that contradict or complicate common assumptions about the market benefits of intellectual property: copyright, while of real value to authors and publishers, was not a significant catalyst for growth in the American book industry; prior to the twentieth century, a remarkable amount of print remained in the public domain, with market competition kept in check through extralegal means; and far from leading the charge for tight controls over intellectual property, Americans were international copyright outlaws, refusing to sign multilateral treaties without significant protections afforded to domestic publishers.<sup>38</sup>

Much of what makes the history of American publishing distinctive, however, was obscured by the first wave of copyright history, which was written by reformers who gathered primary source materials first to promote and then to commemorate the United States' overcoming of its outlaw status—the 1891 passage of the Chace Act, the first international copyright law. In the run-up to this legislation, Richard Rogers Bowker published a series of his *Publishers Weekly* editorials as *Copyright: Its Law and Its Literature* (1886), an overview of the state of the law in Great Britain and the United States designed for the educated reader and working publisher. Bowker appended to this volume a “Bibliography of Literary Property” compiled by Thorvald Solberg, who, while working at the Library of Congress law department, gathered references to American and European legal treatises, polemics, and periodical debates on the nature and purpose of copyright.<sup>39</sup> George Haven Putnam published *The Question of Copyright* (1891) in the immediate wake of the passage of the Chace Act; this volume gathers together the 1878 British Copyright Commission report, the texts of a number of bills and schemes that failed to make their way through Congress, essays in favor of international copyright, and a summary of the votes in Congress for and against the successful bill.

Solberg is meticulous about including in his bibliography memorials, essays, and treatises that were opposed to international copyright, but this

is clearly history written by advocates and victors.<sup>40</sup> When mid-twentieth-century bibliographers and historians turned to the question of copyright, they hewed pretty tightly to what was by then a normative understanding of copyright as a universal principle; they tended to agree that it was a matter of justice to authors, a mark of national maturity, and an efficient means for the regulation of international trade. The standard legal histories of copyright in the early United States, written by Bruce Bugbee (1967)<sup>41</sup> and Lyman Ray Patterson (1968), align authors' rights with national self-determination, concluding (respectively) with the passage of the 1790 law and with the American legal settlement of the question of the nature of statutory copyright—the self-conscious restaging of *Donaldson v. Becket* in the 1834 Supreme Court case *Wheaton v. Peters*. But just as it is difficult to disentangle “piracy” from “legitimate publishing” (due not least to the fact that most firms included both American works and foreign reprints on their lists), so it will prove impossible to discuss the evolution of domestic copyright in the United States without regular reference to the shaping force of the resistance to international copyright.

William Charvat, a pioneer of economic approaches to the study of American literature, died before he could see his methods taken up by book historians, but his posthumously published *The Profession of Authorship in America, 1800–1870: The Papers of William Charvat* (1968; repr. 1992)<sup>42</sup> includes many insights into the devaluation of American writing by the popularity of cheap, reprinted British texts. Charvat provides a nuanced account of how particular American authors navigated a rapidly expanding, unevenly regulated market, but he regards international copyright's promise of universal respect for authors' rights as necessary for economic development: “Time would take care of population and transportation, but no literary profession was possible until law had given products of the mind the status of *property*” (6). James J. Barnes's still unparalleled *Authors, Publishers and Politicians: The Quest for an Anglo-American Copyright Agreement 1815–1854* (1974)<sup>43</sup> provides a fascinating cultural and diplomatic history of the failed mid-nineteenth-century attempt at a bilateral treaty. Barnes vividly sketches the conditions of American publishing in the wake of the 1837 depression and details numerous formal and backdoor attempts to influence Parliament and Congress. However, despite a healthy skepticism about the motives driving both sides of the debate, Barnes still tends to naturalize the authors' perspective; the struggle over the treaty is, finally, not about competing principles, but about how the cause of authors' rights ran up against publishers' interests. Nonetheless, Barnes provides a riveting account of at-

tempts to sway the course of copyright legislation, both through argument and through influence-peddling. For Barnes, international copyright advocacy is a formative episode in the history of American lobbying.

Michael Winship's 1995 study of the business records of Boston publisher Ticknor and Fields<sup>44</sup> offers empirical grounds for questioning the sufficiency of the argument on behalf of authors' rights, suggesting that historians' reflex adoption of the copyright advocates' perspective fails to capture the complexity of the law's effects on the trade. Winship tests the assumption that the popularity of British reprints discouraged publishers from investing in American books. Focusing on the period between 1840 and 1859, he provides detailed comparisons of the costs to the firm of printing works by American and foreign authors. Winship shows that although Ticknor and Fields cultivated a reputation for reprinting British belles lettres, they clearly took seriously their investments in copyrighted American texts, betting that their exclusive rights to these works would pay off over time. Ticknor and Fields also regularly sent payments to foreign authors, either for advance sheets (enabling them to beat their competitors to market), out of goodwill, or for the right to produce "authorized" editions. Winship's analysis of these customary practices, known as "courtesy of the trade," does much to deflate the remarkably durable caricatures of the impoverished American and unremunerated British author, twin victims of an ungovernable publishing free-for-all.<sup>45</sup> The extralegal allocation and protection of property in reprinted texts turns out to have been surprisingly effective; for instance, no other firm attempted to publish Tennyson's poems despite their popularity, either out of respect for Ticknor and Fields's informal prior claim or out of fear of retaliation.

In *American Literature and the Culture of Reprinting, 1834–1853* (2003),<sup>46</sup> I address head-on the seeming contradiction between the establishment of domestic copyright and its denial to foreign authors, arguing that international copyright legislation failed not because of publishers' greed or because Americans were indifferent to the authors' plight, but due to a complex consensus as to the limits of their claims, one borne of a sophisticated critique of British print monopolies. Examining debates over copyright in the courts, Congress, and periodicals, I argue that the decentralization of American publishing was the product of an ideological commitment to cheap print, not the sign of a market in a primitive stage of development. I initially turned to the history of nineteenth-century copyright to intervene in a scholarly debate about the half-life of republican ideology—in particular, to counter Grantland Rice's claim that the emergence

of market culture marked the decline of a meaningful politics of print. Rice argues in *The Transformation of Authorship in America* (1997)<sup>47</sup> that the eighteenth-century debates that culminated in the passage of the Copyright Act of 1790 were a harbinger of the privatization of a civic tradition of letters. For Rice, copyright signals the triumph of economic over political models of authorship, the displacement of the republican ideology of print by a utilitarian conception of the public good as an aggregate of individual interests. I argue, by contrast, that the politics and economics of print were inextricable—that the struggle over international copyright was bound up with debates over tariffs, internal improvements, and the defense of slavery, and that the decentralization of the book market was held in place by a typically Jacksonian suspicion of centralized power. While supporters of international copyright chiefly sought to bring order to the transatlantic book trade, those who defended the system of reprinting sought to protect an emergent mass culture that circulated in uncopyrighted newspapers, magazines, and pamphlets as well as in books. Rather than portraying authors as victims of these conditions, I sought to convey the vibrancy of the culture of reprinting, showing how Poe and Hawthorne embraced writing out of a cacophonous scene of literary production and reception, one in which their texts circulated beyond authorial and editorial control.

*American Literature and the Culture of Reprinting* recovers a literary culture that did not depend on the author's name for its principle of organization or means of circulation, but copyright has long been an important topic for critics who approach literary culture through the lives and works of authors. Perry Miller's *The Raven and the Whale* (1956, repr. 1997) reanimated the acrimonious debate among a group of New York literati over the promotion of a national literature, a dispute that fastened on international copyright as one of its points of contention. In *Charles Dickens' Quarrel with America* (1984), Sidney Moss examined Dickens's disastrous 1842 tour of the United States in which American readers' celebration of the social reform-minded author was threatened by Dickens's vocal defense of payments to foreign authors.<sup>48</sup> Martin Buinicki continues this line of inquiry in *Negotiating Copyright: Authorship and the Discourse of Literary Property Rights in Nineteenth-Century America* (2006), detailing how American authors responded to a popular discourse of literary property that depicted them as antidemocratic, their interests at odds with those of their readers. Buinicki describes the lengths to which James Fenimore Cooper, Harriet Beecher Stowe, Walt Whitman, and Mark Twain went in trying to align their support for international copyright with democratic principles.<sup>49</sup>

The best of recent Americanist literary scholarship on copyright has managed to use case studies of authors to gain purchase on the dynamic and shifting relations between law and culture. In *American Women Authors and Literary Property, 1822–1869* (2005), Melissa Homestead shows how literary property posed a particular challenge for women writers, whose ability to lay claim to property itself was limited by laws of coverture. Homestead builds on Susan Coultrap-McQuin's groundbreaking study of American women writers' professional careers in *Doing Literary Business: American Women Writers in the Nineteenth Century* (1990).<sup>50</sup> Coultrap-McQuin's analysis of women authors' complex relations with their publishers includes an account of Mary Abigail Dodge's very public quarrel with Ticknor and Fields over the firm's benevolent paternalism—their handling of payments to women authors on the authors' behalf. Homestead details a range of women writers' struggles with the gendered nature of the law, including Harriet Beecher Stowe's aggressive copyright suit over the unauthorized German translation of *Uncle Tom's Cabin* (1852) and Augusta Jane Evans's angling for proprietary authorship both in her fiction and in lobbying the Confederate Congress to protect international copyright. Coultrap-McQuin and Homestead both argue that coverture, while denying property rights to married women, left women authors room to maneuver economically. Claire Pettitt amplifies this observation in a chapter on the British novelists Elizabeth Gaskell and George Eliot in *Patent Inventions: Intellectual Property and the Victorian Novel* (2004). Pettitt contends that the distance coverture enforced between public and private enabled women authors to question authorial proprietorship, to identify with the commons (the public domain, or that which was held in common by authors and readers), and to imagine their novels as independent moral agents. Caren Irr's *Pink Pirates: Contemporary Women Writers and Copyright* (2010)<sup>51</sup> goes further in defining women's writing as by definition piratical, arguing that the quasi-legal status of nineteenth-century women's intellectual property founds a feminist literary tradition that seeks to operate at the limits of the law. Irr usefully documents nineteenth-century women authors' frequent entering into contractual relations with publishers despite the law of coverture. For Irr, the thematic interest in illicit property evident in the work of Kathy Acker, Leslie Marmon Silko, and Ursula LeGuin extends their foremothers' tactical negotiations, constituting, at least in the realm of the imagination, an alternative to copyright—a feminist commitment to the commons.

Given the allure of piracy—the fantasy of superior freedom and justice to be found outside the law—Michael Everton's return to the moral discourse

underwriting copyright reform in *The Grand Chorus of Complaint: Authors and the Business Ethics of American Publishing* (2011)<sup>52</sup> might seem staid or retrogressive. And yet Everton's analysis of the ethics of the book trade in the absence of an international copyright agreement represents a significant advance in how we understand both the extralegal regulation of print and publishers' ideas about the social significance of their work. He argues convincingly that moral propriety played a crucial role in the evolution of the trade, whether as a tool for conducting business relations, a resource for railing against mistreatment or disempowerment, or a post hoc justification for narrowly self-interested actions. Everton distinguishes between moral ideals—what he calls the “[dream] of a book trade governed by ethics rather than economics” (91)—and the morally compromising and difficult-to-parse world of mutual obligations and conflicting interests, the world in which publishers and authors actually operate. That antebellum authors and publishers continued to turn to ethical discourse to govern and understand the book business despite the widely perceived corruption of the trade makes newly salient the profound dislocation between the imagined gentility of publishing and the demands of capitalism.

Over the past fifteen years, historians have been drawn to the study of nineteenth-century copyright in part because the first wave of scholarship tended to jump directly from eighteenth-century British origins to late twentieth-century legal challenges, leaving the nineteenth century curiously neglected. But the period has also drawn attention from book historians by default: by the first decades of the twentieth century, print no longer occupied the center of copyright jurisprudence. In 1865 photographs and negatives were added to the list of works that could be protected by copyright; paintings, drawings, chromolithographs, and statues were added in 1870; and motion pictures, which had previously required registration as photographs, were included in 1911. Whereas the U.S. Constitution justified copyright as a tool “to promote the Progress of Science and useful Arts” (U.S. Const. art. I § 8) and the 1790 Copyright Act referred only to “maps, charts, and books,”<sup>53</sup> the 1909 recodification of the law identified authorship itself as the criterion for protection, expanding copyright to cover “all the works of an author.”<sup>54</sup> Two important 1990s books located at the intersection of legal and cultural studies show just how far a generalized conception of authorship could be extended. In *Contested Culture: The Image, the Voice, and the Law* (1991), Jane Gaines examines how copyright doctrine transforms and is transformed by the twentieth-century entertainment industry as the law is stretched to determine ownership rights in photographs, film,

sound recordings, television, and celebrity culture more generally. In *The Cultural Life of Intellectual Properties: Authorship, Appropriation and the Law* (1998), Rosemary Coombe adopts an ethnographic approach to “the constitutive role of intellectual property in commercial and popular culture” (5), focusing on trademarks both as signs of corporate authorship and as vital to the expressive practices of a consumer society.<sup>55</sup> Book historians working on late nineteenth- and twentieth-century copyright have needed both to think beyond the nation, taking into account how the competitive global market for books was realigned by the gradual standardization of international copyright, and to think beyond print, accounting for book and periodical publishers’ jockeying for position in relation to an increasingly powerful entertainment industry.

Bibliographer Simon Nowell-Smith’s still authoritative *International Copyright Law and the Publisher in the Reign of Queen Victoria* (1968) lays out some of the coordinates of a book history approach to turn of the twentieth-century Anglo-American copyright, understood as part of a global system. Provoked by an 1895 edition of a George Meredith novel marked “for Circulation in India and the Colonies only” (8), Nowell-Smith examines British publishers’ production of special overseas editions to compete with unauthorized American reprints in Canada, Australia, New Zealand, as well as India.<sup>56</sup> Such transnational publishing ventures were modeled on German publisher Bernhard Tauchnitz’s reprint series of British and American novels, which he sold throughout Europe to Anglophone readers and travelers. Nowell-Smith details Tauchnitz’s careful dealings with authors; he also describes how British and American publishers adapted to the 1891 international copyright agreement, working with and around its protectionist provisions. Catherine Seville’s *The Internationalisation of Copyright Law: Books, Buccaneers, and the Black Flag in the Nineteenth Century* (2006)<sup>57</sup> summarizes transatlantic debates over international copyright from a legal history perspective without venturing very far into the history of publishing. She does, however, offer a valuable account of Canadian copyright law and the role Canada played in treaty negotiations between Great Britain and the United States. Eva Hemmungs Wirtén’s *No Trespassing: Authorship, Intellectual Property Rights, and the Boundaries of Globalization* (2004)<sup>58</sup> goes further in imagining intellectual property as inseparable from global flows of capital, culture, and persons. Beginning with Victor Hugo’s advocacy on behalf of the Berne Convention, Wirtén treats twentieth-century law and publishing practice as everywhere shaped by an awareness of international markets, describing translation as a practice of cultural imperialism, the

role of the photocopier in provoking changes in international law, and the complex investments by transnational media corporations and the World Intellectual Property Organization in commercial and cultural properties.

If Wirtén brings into focus the global scale of twentieth-century intellectual property, Peter Decherney's *Hollywood's Copyright Wars: From Edison to the Internet* (2012)<sup>59</sup> provides book history with a gratifying echo and a significant challenge. Decherney scarcely deals with print, focusing instead on controversies concerning copyright in film, television, and digital media. And yet his account of Hollywood's management of intellectual property parallels much of what book historians have learned about the history of property in print. Decherney argues that rampant copying was crucial to the industry's formative years, creating a "golden age of plagiarism" (59). Like scholars who have described reprinting as generative and not simply a violation of legal or ethical norms, Decherney shows how duplication, remakes, and unauthorized adaptation were characteristic of an initial period of experimentation with the medium, arguing that such practices enabled film's assimilation within the broader media ecology.

Book historians will be struck by how frequently the film industry's struggle with copyright recalls episodes in the history of print, from Hollywood's reliance on guilds and experiments with compulsory licensing, to its attempt to regulate intellectual property internally, wary of the intervention of the state. Decherney's book demonstrates how much media history has learned from book history and what media history can offer in return. The accelerated life cycles of new media—from novelty through viability, normalization, and widespread adoption—have enabled us to perceive tensions between innovation and standardization, dissemination and centralized control, as characteristic and recurring phases of development. Setting book history within the larger framework of comparative media history might permit book historians to abandon linear narratives of origins and ends and look out instead for recurring patterns and shifting interests as print monopolies gather, wield, and lose hold of their power. Similarly, Decherney's book should remind us that copyright law's self-justifying rationales are produced retrospectively; the historical narratives that carry weight in the legal arena are often back-projections generated by panicked stakeholders desperately trying to defend their turf. Decherney describes just such a retrospective fiction in his account of corporate cinema's recourse to auteurism, its specification of a class of directors as responsible for the aesthetic integrity of their films (despite the fact that they did not hold copyrights to their work). Decherney argues that, far from a progressive attempt to adapt

a law designed for print so as to apply to film, the studios promoted the image of the vulnerable auteur as a defensive reaction to the pressing threat of the indiscriminate editing of film for broadcast on television. Rather than a reliable, external guide to the history of print, then, copyright law should be read as internal to the history of media. Book historians need to attend to the ways in which intellectual property law is shaped by the texts that come before it, ostensible objects of its governance that are nevertheless one of the motive forces in the transformation of the law. We also need to refine our sense of print's place in a mediascape that has always included other modes of communication, entertainment, invention, exchange, and profit.

## Investment Properties

Interdisciplinary scholarship on copyright and intellectual property has grown by leaps and bounds, but there are still numerous aspects of the subject that stand in need of further study, particularly by book historians willing to consider informal as well as formal control over textual properties, and to weigh practices against doctrines. In recent years, legal scholars and activists have documented the alarming shrinking of the public domain, but we know far too little of the *history* of how its boundaries were imagined, and about how authors and publishers exerted a measure of control over the circulation of works that were explicitly or by custom excluded from copyright. Scholarship animated by the contemporary crisis can, nonetheless, offer some helpful guideposts for a print history of the public domain. James Boyle, who has written widely on the contradictions that beset contemporary thinking about intellectual property, edited a special issue of *Law and Contemporary Problems* on the public domain that includes essays on its historical origins and constitutional foundations.<sup>60</sup> Lewis Hyde, perhaps best known for his work on noncommercial creative practices, draws trenchant comparisons between eighteenth-century and contemporary assumptions about the public domain in *Common as Air: Revolution, Art, and Ownership* (2010).<sup>61</sup> Lawrence Lessig's *Code: and Other Laws of Cyberspace* (1999)<sup>62</sup> focuses on attempts by regulators of digital commerce and communication to create virtual equivalents of real-world architectures of authentication, trust, and control. His emphasis on how markets, social norms, and architectures act as regulatory forces should prove helpful to book historians trying to describe how property in texts was staked out and defended outside of the formal legal system.

One way to measure the shifting dimensions of the public domain would be to consider classes of works that have historically been considered uncopyrightable. Oz Frankel's *States of Inquiry: Social Investigations and Print Culture in Nineteenth-Century Britain and the United States* (2006)<sup>63</sup> examines governments as publishers, calling attention to the numerous reports, official documents, and scientific surveys produced by the state, many of which circulated surprisingly widely as up-market reprints designed for middle-class readers. Frankel shows how governments built extensive distribution networks, sending their publications in large numbers to libraries and learned associations, both domestically and abroad. Government publications frequently blur the line between public and private ownership. Special provisions for compensating authors for their contributions to knowledge, such as the private act granting exclusive rights to Henry Rowe Schoolcraft for his work on American Indian history, placed such works in a gray area between government printing privileges and the copyright system.

In recent years, the history of science has proved an extraordinary growth area for book history. The emphasis in Science and Technology Studies on norms of practice has produced illuminating scholarship on the role of print in the production of scientific knowledge, while the premium placed on iterability, objectivity, public access, and the public good within scientific communities has often put science in conflict with intellectual property regimes. Adrian Johns's *The Nature of the Book: Print and Knowledge in the Making* (1998) includes an extensive treatment of plagiarism, piracy, and the problem of authority in early modern natural philosophy; indeed, these chapters appear to be the kernel from which his transhistorical study of piracy grew. James Secord's *Victorian Sensation: The Extraordinary Publication, Reception, and Secret Authorship of Vestiges of the Natural History of Creation* (2000) traces the reception of a controversial, anonymous work of evolutionary theory. Secord's exhaustive social and cultural history of reading does not devote much space to questions of intellectual property; rather, it suggests by the slow power of accretion how much we have yet to learn about attribution and anonymity, authority and controversy, in works of popular science. Mario Biagioli and Peter Galison's edited collection *Scientific Authorship: Credit and Intellectual Property in Science* (2003) addresses these questions directly in essays that range from the problem of anonymity and the public perception of science in the early modern period, to the complex attribution practices of contemporary scientists. Biagioli's recent publication, with Peter Jaszi and Martha Woodmansee, of another wide-ranging collection of essays, *Making and Unmaking Intellectual Prop-*

erty: *Creative Production in Legal and Cultural Perspective* (2011), suggests that the history of science and technology will likely play an important role in the next phase of scholarship on intellectual property. Some of the strongest essays in this volume draw their interpretive charge from problems surrounding the privatization of university-sponsored research. Historically framed essays in this collection treat, among other topics, the history of patents and patent law specifications, the assertion of property in folklore, and the business practices and ideologies that have enabled living organisms to be treated as legal property.<sup>64</sup>

If common property in the laws of nature has historically placed in doubt the grounds for claiming intellectual property in scientific research, so, too, has religious publishing hovered at the edge of various copyright regimes. Who, after all, can lay claim to property in the word of God, and why limit the circulation of texts such as hymns, sermons, tracts, prayer books, and catechisms, when their purpose is to knit together and to expand the community of believers? In a provocative 1983 essay, David Paul Nord argued that the idea of the mass media or “general supply” was first imagined by evangelical Christians largely outside of the market for literary goods. In his follow-up study *Faith in Reading: Religious Publishing and the Birth of Mass Media in America* (2004), Nord further claims that many of the technological innovations that transformed commercial publishing were pioneered by evangelicals who circulated tracts and Bibles free of charge, often to unwilling readers.<sup>65</sup> The common property status of Bibles and tracts—often anonymous stories of Christian conversion that steered clear of doctrinal controversy—was crucial to the success of these ventures. Kyle B. Roberts notes that over four million copies of the British tract *The Dairyman’s Daughter* (1809) were published before 1860; the text was translated into nineteen languages and circulated across the globe in a variety of formats keyed to different price points.<sup>66</sup> Paul Gutjahr’s history of the American Bible shows how common property in the Christian scriptures sparked publishers’ innovation in bindings, illustrations, marginal commentaries, and introductory material, all designed to distinguish competing texts from one another.<sup>67</sup> Although Candy Gunther Brown and others have begun to make inroads into the topic,<sup>68</sup> mapping the intersection of religious publishing with copyright and intellectual property is a formidable endeavor. It will require accounting for the structures that preserved authenticity and fidelity despite free translation, adaptation, and abridgement, as well as an analysis of the means by which religious organizations exerted centralized control over publication in scattered communities and across national borders.

The essays collected in James Raven's *Free Print and Non-Commercial Publishing since 1700* (2000)<sup>69</sup> give some sense of the wide range of kinds of print, in addition to religious publications, that commonly circulated outside the purview of copyright, including free newspapers, commemorative poetry, broadsides, and pamphlet propaganda of various kinds. Joanna Brooks has recently reminded us of the surprising number of early African American texts that were published as cheap pamphlets.<sup>70</sup> Amazingly, we still lack a comprehensive study of the property status of slave narratives, texts that are preeminently concerned with legal and ethical limits to the ownership of intangible property and that were frequently published with the assistance and for the benefit of charitable organizations.

Eighteenth- and nineteenth-century commercial newspapers, literary journals, and general interest periodicals also commonly circulated without copyright protection. Under American law, newspapers were considered too ephemeral to be considered property, and registration requirements made establishing copyright in magazine articles impracticable.<sup>71</sup> Moreover, the practice of gentlemanly anonymity in Britain and the United States, and the detachment of texts from their authors in American reprint culture, loosened the connection between periodical writing and the proprietary author. There has recently been an upsurge of interest in literary anonymity and pseudonymy, brought about in part by significant critical interventions by Catherine Gallagher and Robert J. Griffin,<sup>72</sup> and in part, I suspect, by our rediscovery of the benefits of such practices in our Internet-mediated lives. And yet the critical literature has yet to address the breadth and complexity of anonymity and pseudonymy in newspaper and periodical culture. Alexis Easley examines the importance of anonymous periodical authorship to literary women's careers in *First Person Anonymous: Women Writers and Victorian Print Media, 1830–70* (2004),<sup>73</sup> but there is considerable work left to do, particularly in tracing the complex relations between and among attribution, reputation, personae, exposure, celebrity, and the forms of ownership made possible through networks of affiliation and editorial authorship.

Obscene works are a final category of print and performance texts historically denied copyright protection. In *The Reinvention of Obscenity: Sex, Lies, and Tabloids in Early Modern France* (2002), Joan DeJean laments Molière's double disenfranchisement as laws of censorship and royal privilege both failed to protect his property in *L'École des Femmes* (1694): "since authors of obscene works could never hope to obtain a privilege for them, as soon as these works began to circulate, they were in the public domain; as long as those reproducing them were able to avoid prosecution, they were

able to pocket the profits.”<sup>74</sup> David Saunders has explored the logic underwriting the long history of refusing to grant copyright to obscene works in British and American law. Depicting authors of such works not as owners but as agents of significant harm to the public, the Anglo-American legal tradition nevertheless generates an escape clause for particular works that the courts, standing in as literary critics, judge to be redeemed by their literary merit.<sup>75</sup> And yet as nineteenth-century legal scholar Eaton S. Drone wryly noted, refusing copyright to obscene works actually grants vice a form of license: “in declining to interfere with the piratical publication and sale of an obnoxious book, [the court] removes an obstacle to its wider circulation.”<sup>76</sup> Further research on the relations between obscenity, property, and circulation would both contribute to the study of copyright and help to underscore the importance of pornography to the history of publishing more generally.

Another area calling out for further scholarship is print history’s entanglement with the territoriality of copyright: the limited reach of national laws and treaties across geographical space, and the gradual erasure of such differentials under the pressure of globalization. Both books and touring theater companies routinely cross such boundaries, but theatrical publishers, who have historically had to account for different laws governing print and performance, became particularly adept at leveraging the differences between and among national legal systems. Samuel French, whose firm’s paperback editions of classic plays remain a staple of American high school theatricals, offers a case in point. French, who struggled to make a living in New York printing play texts for regional theaters, joined forces in the 1870s with a British publisher who rented plays and costumes to aristocrats for private theatricals. From his expatriate’s perch in London, French was able to hire a stable of English writers to translate popular French melodramas—texts that were unprotected by copyright in Great Britain—and then to control the circulation of these translations in both Britain and the United States by virtue of his residency and his citizenship, respectively. Our best studies of the entwining of intellectual property and dramatic writing tend to be nationally based, such as Paulina Kewes’s *Authorship and Appropriation: Writing for the Stage in England 1660–1710* (1998), a book that includes substantial chapters on plagiarism, piracy, and the appropriation of plays. Julia Stone Peters’s *Theatre of the Book, 1490–1880: Print, Text, and Performance in Europe* (2000) is unusual in surveying the relations between printed drama and theatrical practice across Europe.<sup>77</sup> John Russell Stephens’s *The Profession of the Playwright: British Theatre 1800–1900* (1992) offers an invaluable account of the patchwork of laws that shaped nineteenth-century transatlantic performance. Stephens details the lengths

to which British theater companies had to go to secure national rights within the framework of a decidedly circum-Atlantic performance culture.<sup>78</sup>

This essay has focused on recent book history scholarship on Anglo-American copyright and intellectual property, but there is a large literature on the development of “moral rights” systems in France, across Europe via the Berne Convention, in Canada, Ghana, Egypt, and other nations.<sup>79</sup> Moral rights cover paternity (or attribution) and rights of integrity; in most European countries they are unassignable, unwaivable, and perpetual, in clear conflict with Anglo-American copyright’s emphasis on securing alienable, exclusive rights for limited periods of time. Jane Ginsburg’s “A Tale of Two Copyrights: Literary Property in Revolutionary France and America” (1990) provides a useful comparative history of the genesis of these two systems, arguing that they are less different from one another at the point of origin than they are often assumed to be.<sup>80</sup> The perceived incompatibility of these copyright systems, however, and the long history of negotiations leading to their harmonization offer fertile ground for comparative book history.

The geographical limits of copyright and intellectual property become crystal clear in studies of governments’ and publishers’ attempts to trade in countries that reject Western ideologies of property. In *To Steal a Book Is an Elegant Offense: Intellectual Property Law in Chinese Civilization* (1995),<sup>81</sup> William Alford asks why there was no counterpart to intellectual property law in Imperial China and why failure attended European and American attempts to introduce such laws. Alford examines the effect of China’s political culture on its approach to copyright, the growth of Chinese science and technology in the absence of comprehensive protection for inventors, and the People’s Republic of China’s attempt to develop intellectual property laws that were better suited to Chinese culture. In his study of Shanghai-based printing and publishing in the late nineteenth and early twentieth centuries, Christopher Reed notes that the booksellers’ guild took responsibility for adjudicating property rights during the period of rapid modernization.<sup>82</sup> The resonances between early twentieth-century Shanghai and seventeenth-century England will immediately be evident to book historians, though a robust tradition of scholarship on indigenous peoples’ approach to intellectual property should alert us to the difficulty of comparing copyright systems without falling into the trap of ethnocentrism. Recent scholarship by Michael F. Brown, Rosemary Coombe, and others documents the curious counterpull of contemporary intellectual property and cultural property activism: whereas the copyleft movement has sought to limit or attenuate the hold of intellectual property over cultural creators, indigenous peoples have

sought to redefine cultural heritage as a proprietary resource.<sup>83</sup> The political and ethical complexities of these often overlapping and conjoined attempts to rethink our investments in intellectual property ought to inspire scholars working on print and intercultural contact in earlier historical periods. Recent studies by Philip Round and Matt Cohen of books and media in Native America show the impress of both copyleft and cultural heritage arguments; they recast intercultural conflict as a sustained contest over the circulation of information, both in and beyond print.<sup>84</sup>

One final area that ought to attract more scholarship might be dubbed the work of copyright. Despite the active participation of tradesmen in struggles for and against changes to the law, we lack a large-scale labor history of copyright. Catherine L. Fisk's *Working Knowledge: Employee Innovation and the Rise of Corporate Intellectual Property, 1800–1930* (2009)<sup>85</sup> offers an excellent opening onto the general subject of workers' stake in copyright and patent law, detailing how businesses wrested ownership of intellectual property from skilled laborers despite nineteenth-century traditions of craft control over technological innovations. Fisk tells the story of the emergence of corporate authorship through the "work for hire" doctrine, noncompetition agreements, laws concerning trade secrets, and the rise of contract, including the surprising role of the popular theater in the demise of free labor.<sup>86</sup> There is much work left to be done, however, to clarify the role of the print trades in the history of copyright, including efforts by typographers' unions first to oppose, and then to set the terms of an American international copyright agreement. Corynne McSherry's *Who Owns Academic Work? Battling for Control of Intellectual Property* (2001)<sup>87</sup> brings the question of corporate ownership of intellectual property uncomfortably close to home for many scholars, providing an incisive history and critique of "the bundle of rights the academy asserts with respect to intangible things" (3). McSherry focuses on the modern research university's complex position at the intersection of industry, government, and the public domain, teasing out the competing rationales underwriting struggles over the ownership of data, rights to university lectures, and property in the results of publicly financed scientific research.

Although there is probably no way to make the topic sound appealing, we also lack a comprehensive study of the administration of copyright, which is particularly important for the almost 200 years during which American law depended on formal registration. James Gilreath and Richard Felcone have published collections of early American copyright registration records, which are fascinating troves of information for book historians,<sup>88</sup> but few scholars ask whether authors and publishers actually filed the paperwork

necessary to secure their copyrights. False property claims are common in American periodicals, and seem to have inhibited copying despite their invalidity, but how many book publishers claimed copyright without fulfilling the letter of the law? Given the history of revisions to the registration requirements and the slow centralization of the administration of copyright, when exactly was the U.S. government able to test property claims against material evidence?<sup>89</sup> William A. Landes and Richard A. Posner's empirical study of copyright renewals intriguingly suggests that through the mid-twentieth century, only a small percentage of authors and proprietors went to the trouble of renewing their copyrights.<sup>90</sup> Is it too much to hope that a scholar interested in the digital humanities might be persuaded to apply data-mining techniques to the copyright registration records themselves or to the data collected in the *Annual Report of the Register of Copyrights*?

It is difficult to predict the future of the interdisciplinary study of copyright and intellectual property, a field that has sprung up so recently and that has experienced such phenomenal growth over the twenty-five years or so of its existence. It is more difficult still to weigh the effects of copyright scholarship's emphasis on intangible property on the field of book history, which has taken the material text as its stock in trade. It seems safe to predict, however, that both fields will be reshaped in the coming years as our real-time experience of media shift sharpens our understanding of the past and shakes loose topics and approaches we have yet to imagine. Meanwhile, the clock is ticking on the intellectual property agreements that undergird our daily use of print and digital media. The Copyright Extension Act of 1998 added twenty years to the copyright term for both individual and corporate works, establishing 2023 as the date when the earliest incarnation of Mickey Mouse, 1928's Steamboat Willie, ought to pass into the public domain. Will the Walt Disney Company and the Motion Picture Association of America allow this to happen? What will the next ten years of heated debate over the scope and terms of copyright bring us? Fasten your seatbelts; it's bound to be an interesting, if bumpy, ride.

## Notes

1. Brad Sherman and Lionel Bently argue that copyright began to be generalized and taken up into the more abstract concept of intellectual property in the mid-nineteenth century. See Brad Sherman and Lionel Bently, *The Making of Modern Intellectual Property Law: The British Experience, 1760-1911* (New York: Cambridge University Press, 1999). *The Oxford English Dictionary* backs them up, tracing the first use of the term in a legal context to 1847. And yet copyright, patent, and trademark law were considered separate branches of the law well into the twentieth century; in common parlance, "intellectual property" was often merely a

synonym for copyright. One benchmark of the shift toward understanding intellectual property as an umbrella term that covers rights to all intangible property is the founding of the World Intellectual Property Organization (WIPO) in 1967. Jason Hughes shows how WIPO's predecessor organization quietly rebranded itself so that the part of its acronym that referred to "industrial property" came to stand for "intellectual property" instead. See Jason Hughes, "A Short History of Intellectual Property in Relation to Copyright," *Cardozo Law Review* 33 (2011): 1293–1340.

2. Pub. L. 94–553, 90 Stat. 2541.

3. Copyright was extended in 1980 to give computer programs the status of literary works (Pub. L. No. 96–517, 94 Stat. 3015, 3028) and in 1990 to include architectural works (in addition to blueprints or plans) (Pub. L. 101–650, 104 Stat. 5133). Legislation to extend copyright protection to fashion design for an anomalously short period of three years was introduced in 2009. The Innovative Design and Piracy Prevention Act (H.R. 2511) was referred to the U.S. House Subcommittee on Courts, the Internet, and Intellectual Property on August 25, 2011.

4. The Copyright Act of 1976 extended the term of copyright from twenty-eight years, with the possibility of a twenty-eight-year renewal, to a period defined by the life of the author plus fifty years. The 1976 law also established a static seventy-five-year term for anonymous and pseudonymous works, and for works made for hire. The 1998 U.S. Copyright Extension Act, popularly called the Sonny Bono Act, extended both terms by twenty years, protecting individual works for the duration of the author's life plus seventy years and works of corporate authorship for 120 years after creation or ninety-five years after publication, whichever comes first.

5. Elizabeth L. Eisenstein, *The Printing Press as an Agent of Change: Communications and Cultural Transformations in Early Modern Europe* (New York: Cambridge University Press, 1979). Jean-Dominique Mellot addresses this oversight directly in an essay published in a collection devoted to Eisenstein's legacy, "Counterfeit Printing as an Agent of Diffusion and Change: The French Book-Privilege System and Its Contradictions (1498–1790)," in *Agent of Change: Print Culture Studies after Elizabeth L. Eisenstein*, ed. Sabrina Alcorn Baron, Eric N. Lindquist, and Eleanor F. Shevlin (Amherst: University of Massachusetts Press, 2007), 41–66. Elizabeth Armstrong provides a comprehensive history of early modern French book privileges, beginning with a survey of the practice across Europe, in *Before Copyright: The French Book-Privilege System 1498–1526* (New York: Cambridge University Press, 1990).

6. Robert Darnton, *The Business of Enlightenment: A Publishing History of the Encyclopédie, 1775–1800* (Cambridge, Mass.: Harvard University Press, 1979), 3. Quotations will henceforth be cited by page number in the text.

7. Robert Darnton, "What Is the History of Books?" *Daedalus* 111 (1982): 65–83. This essay has been reprinted widely, including in Robert Darnton, *The Kiss of Lamourette: Reflections in Cultural History* (New York: Norton, 1990), 107–135; and David Finkelstein and Alistair McCleery, eds., *The Book History Reader*, 2nd ed. (New York: Routledge, 2006), 9–26. See also Darnton's reevaluation of his influential model, "'What Is the History of Books?' Revisited," *Modern Intellectual History* 4, no. 3 (2007), 495–508, in which he discusses piracy as one of the ordinary aspects of publishing that had not been taken up in book history.

8. In his editorial preface to the *Bibliography of American Literature*, Jacob Blanck gives a succinct account of the range of British and American copyright records consulted, the incompleteness and questionable reliability of some of these records, and the complexities introduced into bibliography by the transatlantic reprint trade. See Jacob Blanck, comp., *Bibliography of American Literature*, 8 vols. (New Haven, Conn.: Yale University Press, Bibliographical Society of America, 1955), 1:xxxv–xxxvii. T. H. Howard-Hill's extraordinary *The British Book Trade, 1475–1890: A Bibliography*, 2 vols. (New Castle, Del.: Oak Knoll Press, 2009), includes extensive listings of bibliographic works and primary sources concerned with copyright cases, copyright deposit requirements, debates over international copyright, copyright

in particular kinds of works, and manuals and guides; see 2:1094–1120. Thorvald Solberg's "Bibliography of Literary Property," in R. R. Bowker, *Copyright, Its Law and Its Literature: Being a Summary of the Principles and Law of Copyright, with Especial Reference to Books* (New York: Publishers' Weekly, 1886), 1–60, is the best bibliographical resource for American writing on copyright through the late nineteenth century.

9. Martha Woodmansee, "The Genius and the Copyright: Economic and Legal Conditions of the Emergence of the 'Author,'" *Eighteenth-Century Studies* 17 (1984): 425–448; Mark Rose, "The Author as Proprietor: *Donaldson vs. Becket* and the Genealogy of Modern Authorship," *Representations* 23 (1988): 51–85; Carla Hesse, "Enlightenment Epistemology and the Laws of Authorship in Revolutionary France, 1777–1793," *Representations* 30 (1990): 109–137.

10. Carla Hesse, *Publishing and Cultural Politics in Revolutionary Paris, 1789–1810* (Berkeley: University of California Press, 1991); Mark Rose, *Authors and Owners: The Invention of Copyright* (Cambridge, Mass.: Harvard University Press, 1993); Martha Woodmansee, *The Author, Art, and the Market: Rereading the History of Aesthetics* (New York: Columbia University Press, 1994).

11. In addition to David Saunders, whose work I discuss in this essay, scholars who have questioned the centrality of the Romantic author to the history of copyright include Mark A. Lemley, "Romantic Authorship and the Rhetoric of Property," *Texas Law Review* 75 (1997): 873–904; and Simon Stern "Copyright, Originality, and the Public Domain in Eighteenth-Century England," in *Originality and Intellectual Property in the French and English Enlightenment*, ed. Reginald McGinnis (New York: Routledge, 2009), 69–101. My account of the American rejection of proprietary authorship as the ground of copyright first appeared in "The Matter of the Text: Commerce, Print Culture, and the Authority of the State in American Copyright Law," *American Literary History* 9 (1997): 21–59. Oren Bracha provides a comprehensive account of the role played by the "ideology of authorship" in copyright scholarship in "The Ideology of Authorship Revisited: Authors, Markets, and Liberal Values in Early American Copyright," *Yale Law Journal* 118 (2008): 186–271.

12. The Prussian Copyright Act of 1837 put the author at the center of copyright protection, while the 1837 Directive for Reciprocal Copyright helped to regulate the book trades within the German Confederation. Nevertheless, a series of copyright acts and bilateral treaties passed by member states kept the extent and range of German copyrights complex and confusing. Initially debated within the North German Confederation, the Copyright Act of 1870 took effect simultaneously with the constitution of the German Empire. For a capsule history and digital copies of the chief documents of German copyright, see Lionel Bently and Martin Kretschmer, eds., *Primary Sources on Copyright (1450–1900)*, [www.copyrighthistory.org](http://www.copyrighthistory.org).

13. Michel Foucault, "What Is an Author?," in *Textual Strategies: Perspectives in Post-Structuralist Criticism*, ed. and trans. Josué V. Harari (Ithaca, N.Y.: Cornell University Press, 1979), 141–160, 141.

14. See Martha Woodmansee and Peter Jaszi, eds., *The Construction of Authorship: Textual Appropriation in Law and Literature* (Durham, N.C.: Duke University Press, 1994). Peter Jaszi's poststructuralist analysis of contradictions in American copyright doctrine is instructive here: his influential essay "Toward a Theory of Copyright: The Metamorphoses of Authorship," *Duke Law Journal* 1991 (1991): 455–502, treats copyright as a "law of 'texts'" (458) and not of books. While Jaszi's aims are theoretical—he never claims to be writing a history of authorship—the historical framing of the essay and its insistence on placing authorship at the origin of American copyright helped to deflect attention from the book trades, keeping book history at the edge or outside of the framework of subsequent legal analysis. Oren Bracha's "The Ideology of Authorship Revisited" is a helpful corrective to this trend. I should note here, however, that Peter Jaszi's scholarship and intellectual leadership have been vital to the interdisciplinary study of copyright. His work with Pat Aufderheide to clarify and encourage artists to

embrace fair use principles has arguably done more to expand the public domain than decades of critique. See Peter Jaszi and Pat Aufderheide, *Reclaiming Fair Use: How to Put Balance Back in Copyright* (Chicago: University of Chicago Press, 2011).

15. Information on the Society for Critical Exchange's multiyear project on "intellectual property and the construction of authorship" can be found on its Case Western Reserve website, which also includes links to the Bellagio Declaration, an authorship collaborative, and the conference "Con/Texts of Invention": [http://www.cwru.edu/affil/scel/IPCA\\_main.html](http://www.cwru.edu/affil/scel/IPCA_main.html).

16. David Saunders, *Authorship and Copyright* (New York: Routledge, 1992), 235.

17. Benjamin Kaplan, *An Unhurried View of Copyright* (New York: Columbia University Press, 1967); L. Ray Patterson, *Copyright in Historical Perspective* (Nashville, Tenn.: Vanderbilt University Press, 1968).

18. John Feather, *Publishing, Piracy and Politics: An Historical Study of Copyright in Britain* (New York: Mansell, 1994).

19. Brad Sherman and Lionel Bently, *The Making of Modern Intellectual Property Law: The British Experience, 1760–1911*, (New York: Cambridge University Press, 1999).

20. Catherine Seville, *Literary Copyright Reform in Early Victorian England: The Framing of the 1842 Copyright Act* (New York: Cambridge University Press, 1999).

21. Ronan Deazley, *On the Origin of the Right to Copy: Charting the Movement of Copyright Law in Eighteenth-Century Britain (1695–1775)* (Oxford: Hart, 2004); Ronan Deazley, *Rethinking Copyright: History, Theory, Language* (Northampton, Mass.: Edward Elgar, 2006). See also Isabella Alexander, *Copyright Law and the Public Interest in the Nineteenth Century* (Oxford: Hart Publishing, 2010) for the influence of competing public interest rationales on the development of nineteenth-century British law, including a detailed account of debates over deposit requirements and a history of the radical shift over the course of the century in what judges, lawyers, and their clients thought constituted copyright infringement.

22. Oren Bracha, "The Ideology of Authorship Revisited: Authors, Markets, and Liberal Values in Early American Copyright," *Yale Law Journal* 118 (2008): 186–271.

23. <http://copy.law.cam.ac.uk/cam/index.php>.

24. *Decisions of the United States Courts Involving Copyright and Literary Property, 1789–1909 with an Analytical Index*. Bulletin Nos. 13–16, ed. Wilma S. Davis (Washington, D.C.: U.S. Government Printing Office, 1980).

25. Jane C. Ginsburg and Rochelle Cooper Dreyfuss, *Intellectual Property Stories* (New York: Foundation Press, 2005). See the Law Stories Series more generally: Foundation Press, [www.westacademic.com](http://www.westacademic.com).

26. See Lisa Gitelman, *Paper Knowledge: Toward a Media History of Documents*, forthcoming from Duke University Press.

27. This focus should explain why I neglect to discuss many fascinating law review articles and a handful of books that chiefly address the logic of the law—for example, Stephen Best's important meditation on the relationship of the American law of slavery to copyright doctrine, *The Fugitive's Properties: Law and the Poetics of Possession* (Chicago: University of Chicago Press, 2004). While I can imagine many ways in which Best's study might be tested by or put into the service of a book history approach to American and African American culture, the stakes of his argument pull him away from the material text and toward an intellectual history of the place of chattel slavery in American thinking about intangible property.

28. Joseph Loewenstein, *The Author's Due: Printing and the Prehistory of Copyright* (Chicago: University of Chicago Press, 2002); Joseph Loewenstein, *Ben Jonson and Possessive Authorship* (New York: Cambridge University Press, 2002).

29. Jody Greene, *The Trouble with Ownership: Literary Property and Authorial Liability in England, 1660–1730* (Philadelphia: University of Pennsylvania Press, 2005).

30. I am indebted to Mark Vareschi for this insight. See Mark Vareschi, "Everywhere and Nowhere: The Anonymous Text, 1660–1790" (Ph.D. diss., Rutgers University, 2011).

31. William St. Clair, *The Reading Nation in the Romantic Period* (New York: Cambridge University Press, 2004). A condensed version of his argument is readily available online; see St. Clair's John Coffin Memorial Lecture in the History of the Book, "The Political Economy of Reading" (2005, rev. 2012), [http://www.ies.sas.ac.uk/sites/default/files/files/Publications/Coffin%20lectures/StClair\\_PolEcReading\\_2012.pdf](http://www.ies.sas.ac.uk/sites/default/files/files/Publications/Coffin%20lectures/StClair_PolEcReading_2012.pdf).
32. Paul K. Saint-Amour, *The Copywrights: Intellectual Property and the Literary Imagination* (Ithaca, N.Y.: Cornell University Press, 2003).
33. Adrian Johns, *Piracy: The Intellectual Property Wars from Gutenberg to Gates* (Chicago: University of Chicago Press, 2009).
34. Claire Pettit makes a similar claim in her study of the impact on the Victorian novel of debates over patent law and property in labor. See Claire Pettit, *Patent Inventions: Intellectual Property and the Victorian Novel* (New York: Oxford University Press, 2004).
35. The copyleft movement is a loose alliance of organizations that seek to reform contemporary copyright law through critique, constructive policy proposals, and the creation of alternatives to copyright. The best known of these alternatives is the Creative Commons licenses, which enable individual, collective, and corporate authors to surrender some of the rights automatically granted to them by copyright; see <http://creativecommons.org/licenses/>. Peter Decherney provides a succinct history of the copyright reform movement as the conclusion to his *Hollywood's Copyright Wars* (New York: Columbia University Press, 2012), 236–242. See also Christopher Kelty, "Inventing Copyleft," in *Making and Unmaking Intellectual Property: Creative Production in Legal and Cultural Perspective*, ed. Mario Biagioli, Peter Jazsi, and Martha Woodmansee (Chicago: University Of Chicago Press, 2011), 133–148.
36. See Richard Cargill Cole, *Irish Booksellers and English Writers, 1740–1800* (Atlantic Highlands, N.J.: Humanities Press International, 1986); and M. Pollard, *Dublin's Trade in Books, 1550–1800*, Lyell Lectures, 1986–1987 (New York: Oxford University Press, 1989).
37. Susan Stewart, *Crimes of Writing: Problems in the Containment of Representation* (New York: Oxford University Press, 1991).
38. I discuss these points at greater length in my two contributions to the multivolume *A History of the Book in America*: "Copyright," in Vol. 2, *An Extensive Republic: Print, Culture, and Society in the New Nation, 1790–1840*, ed. Robert Gross and Mary Kelley (Chapel Hill: Published in association with the American Antiquarian Society by the University of North Carolina Press, 2010), 198–211, and "Copyright," in Vol. 3, *The Industrial Book, 1840–1880*, ed. Scott E. Casper et al. (Chapel Hill: Published in association with the American Antiquarian Society by the University of North Carolina Press, 2007), 158–177.
39. After his appointment as the first registrar of copyrights in 1897, Solberg published two compilations with the Government Printing Office that draw together primary sources for historical and official use: *Copyright in Congress, 1789–1904* (1905) and *Copyright Enactments of the United States, 1783–1906* (1906).
40. See Bowker, *Copyright, Its Law and Its Literature*. Sandwiched between Bowker's commentary and Solberg's bibliography is a thirteen-page reproduction of an authors' memorial in favor of international copyright, comprised mostly of reproductions of the florid signatures of statesmen and literati. It is hard to tell which of the three parts of the Bowker volume sets the tone for the whole: pro-international copyright editorials, autograph-album facsimiles, or scholarly bibliography.
41. Bruce Willis Bugbee, *Genesis of American Patent and Copyright Law* (Washington, D.C.: Public Affairs Press, 1967).
42. William Charvat, *The Profession of Authorship in America, 1800–1870: The Papers of William Charvat*, ed. Matthew J. Bruccoli (Columbus: Ohio State University Press, 1968; repr., New York: Columbia University Press, 1992).
43. James J. Barnes, *Authors, Publishers, and Politicians: The Quest for an Anglo-American Copyright Agreement, 1815–1854* (Columbus: Ohio State University Press, 1974).

44. Michael Winship, *American Literary Publishing in the Mid-Nineteenth Century: The Business of Ticknor and Fields* (New York: Cambridge University Press, 1995).

45. Such extralegal arrangements, enforced by campaigns of retaliation when printers broke with the custom of voluntary restraint, continued to regulate the reprint trade throughout this period despite a circuit court ruling in *Sheldon v. Houghton* (1865) that they were unenforceable at law. Jeffrey Groves discusses trade courtesy in his contribution to *The Industrial Book, 1840–1880*, 139–148. Robert Spoo's forthcoming book *Without Copyrights: Piracy, Publishing, and the Public Domain* (Oxford University Press) begins with a chapter on nineteenth-century trade courtesy and follows the practice up through the reception of transatlantic modernism.

46. Meredith L. McGill, *American Literature and the Culture of Reprinting, 1834–1853* (Philadelphia: University of Pennsylvania Press, 2003).

47. Grantland S. Rice, *The Transformation of Authorship in America* (Chicago: University of Chicago Press, 1997).

48. Perry Miller, *The Raven and the Whale: The War of Words and Wits in the Era of Poe and Melville* (New York: Harcourt, Brace, 1956), reprinted as *The Raven and the Whale: Poe, Melville, and the New York Literary Scene* (Baltimore: Johns Hopkins University Press, 1997); Sidney P. Moss, *Charles Dickens' Quarrel with America* (Troy, N.Y.: Whitson, 1984).

49. Martin T. Buinicki, *Negotiating Copyright: Authorship and the Discourse of Literary Property Rights in Nineteenth-Century America* (New York: Routledge, 2006); see also Siva Vaidhyanathan's discussion of Mark Twain's copyright advocacy in *Copyrights and Copywrongs: The Rise of Intellectual Property and How It Threatens Creativity* (New York: New York University Press, 2001).

50. Melissa J. Homestead, *American Women Authors and Literary Property, 1822–1869* (New York: Cambridge University Press, 2005); Susan Coultrap-McQuin, *Doing Literary Business: American Women Writers in the Nineteenth Century* (Chapel Hill: University of North Carolina Press, 1990).

51. Caren Irr, *Pink Pirates: Contemporary American Women Writers and Copyright* (Iowa City: University of Iowa Press, 2010).

52. Michael J. Everton, *The Grand Chorus of Complaint: Authors and the Business Ethics of American Publishing* (New York: Oxford University Press, 2011).

53. 1 Stat. 124 (1790).

54. 35 Stat. 1075 (1909).

55. Jane Gaines, *Contested Culture: The Image, the Voice, and the Law*, Cultural Studies of the United States (Chapel Hill: University of North Carolina Press, 1991); Rosemary J. Coombe, *The Cultural Life of Intellectual Properties: Authorship, Appropriation and the Law*, Post-contemporary Interventions (Durham, N.C.: Duke University Press, 1998).

56. Simon Nowell-Smith, *International Copyright Law and the Publisher in the Reign of Queen Victoria*, Lyell Lectures, 1965–1966 (Oxford: Clarendon Press, 1968). Priya Joshi discusses Macmillan's Colonial Library in *In Another Country: Colonialism, Culture, and the English Novel in India* (New York: Columbia University Press, 2002), 93–138. Although most of the critical attention, then and now, has been paid to American pirate publishers, nineteenth-century British publishers also reprinted American texts. For the surprisingly strong presence of American works in British periodicals and in cheap novel series designed for railway passengers, see Clarence Gohdes, *American Literature in Nineteenth Century England* (Carbondale: Southern Illinois University Press, 1944).

57. Catherine Seville, *The Internationalisation of Copyright Law: Books, Buccaneers, and the Black Flag in the Nineteenth Century* (New York: Cambridge University Press, 2006).

58. Eva Hemmungs Wirtén, *No Trespassing: Authorship, Intellectual Property Rights, and the Boundaries of Globalization* (Buffalo, N.Y.: University of Toronto Press, 2004).

59. Peter Decherney, *Hollywood's Copyright Wars: From Edison to the Internet* (New York: Columbia University Press, 2012).

60. See in particular Mark Rose, "Nine-Tenths of the Law: The English Copyright Debates and the Rhetoric of the Public Domain," *Law and Contemporary Problems* 66 (2003): 75–88; and Yochai Benkler, "Through the Looking Glass: Alice and the Constitutional Foundations of the Public Domain," *Law and Contemporary Problems* 66 (2003): 173–224. Boyle, who is perhaps best known for his study of knotty problems provoked by information society's investment in intellectual property, *Shamans, Software, and Spleens* (1996), has also published a book on what he calls "the second enclosure movement": *The Public Domain: Enclosing the Commons of the Mind* (New Haven, Conn.: Yale University Press, 2008). Boyle also codirects the Center for the Study of the Public Domain, which maintains a useful website: <http://web.law.duke.edu/cspdl>.

61. See Lewis Hyde, *The Gift: Imagination and the Erotic Life of Property* (1983); and Lewis Hyde, *Common as Air: Revolution, Art, and Ownership* (New York: Farrar, Straus and Giroux, 2010).

62. Lawrence Lessig, *Code: And Other Laws of Cyberspace* (New York: Basic Books, 1999). For a provocative account of the legal rules that govern the contemporary flow of cultural, technical, and personal information, see Julie E. Cohen, *Configuring the Networked Self: Law, Code, and the Play of Everyday Practice* (New Haven, Conn.: Yale University Press, 2012).

63. Oz Frankel, *States of Inquiry: Social Investigations and Print Culture in Nineteenth-Century Britain and the United States* (Baltimore: Johns Hopkins University Press, 2006).

64. Adrian Johns, *The Nature of the Book: Print and Knowledge in the Making* (Chicago: University of Chicago Press, 1998); James A. Secord, *Victorian Sensation: The Extraordinary Publication, Reception, and Secret Authorship of Vestiges of the Natural History of Creation* (Chicago: University of Chicago Press, 2000); Mario Biagioli and Peter Galison, eds., *Scientific Authorship: Credit and Intellectual Property in Science* (New York: Routledge, 2003); Biagioli, Jaszi, and Woodmansee, *Making and Unmaking Intellectual Property*.

65. David Paul Nord, "The Evangelical Origins of Mass Media on America, 1815–1835," *Journalism Monographs* 88 (May 1984): 1–30; David Paul Nord, *Faith in Reading: Religious Publishing and the Birth of Mass Media in America* (New York: Oxford University Press, 2004).

66. Kyle B. Roberts, "Locating Popular Religion in the Evangelical Tract: The Roots and Routes of *The Dairyman's Daughter*," *Early American Studies: An Interdisciplinary Journal* 4 (2006): 233–270. Roberts's *Evangelical Gotham: Religion and the Making of New York City 1783–1860* is forthcoming from the University of Chicago Press.

67. Paul Gutjahr, *An American Bible: A History of the Good Book in the United States, 1777–1880* (Stanford, Calif.: Stanford University Press, 1999). Hugh Amory's concept of "proprietary illustration" helps to explain why publishers invested heavily in illustrations when publishing works such as Bibles and popular novels that were available for reprinting. Amory argues that publishers used expensive illustrations to distinguish their texts from those of their competitors, to ward off wholesale reprinting, and to create a stable sense of value. See Hugh Amory, "'Proprietary Illustration': The Case of Cooke's *Tom Jones*," in *An Index of Civilization: Studies of Printing and Publishing History in Honour of Keith Maslen*, ed. D. R. Harvey, Wallace Kirsop, and B. J. McMullin (Clayton, Victoria, Australia: Centre for Bibliographical and Textual Studies, Monash University, 1993), 137–147.

68. Candy Gunther Brown, *The Word in the World: Evangelical Writing, Publishing, and Reading in America, 1789–1880* (Chapel Hill: University of North Carolina Press, 2004). Kevin Gilmartin explores the long half-life of Romantic-era evangelical tracts in "The Counterrevolution Is Not Over: Commemorating Legh Richmond," *Representations* 114 (Spring 2011): 129–156. For an account of the reprinting in Africa of Bunyan's *Pilgrim's Progress*, see Isabel Hofmeyr, *The Portable Bunyan: A Transnational History of The Pilgrim's Progress* (Princeton, N.J.: Princeton University Press, 2004). Ryan Cordell is currently developing a digital edition

that tracks the reprinting of Nathaniel Hawthorne's Bunyanesque allegory "The Celestial Railroad," predominantly in religious periodicals: <http://ryan.cordells.us/crr/>.

69. James Raven, ed., *Free Print and Non-Commercial Publishing since 1700* (Aldershot: Ashgate, 2000).

70. Joanna Brooks, "The Unfortunates: What the Life Spans of Early Black Books Tell Us About Book History," in *Early African American Print Culture*, ed. Lara Langer Cohen and Jordan Stein (Philadelphia: University of Pennsylvania Press, 2012), 40–52.

71. The key nineteenth-century case that determined that news could not be copyrighted is *Clayton v. Stone* (1829). Popular mid-nineteenth-century ladies' magazines experimented with copyrighting articles and entire issues, but faced significant pushback from publishers and readers. Control over property in periodical writing was effectively obtained only in the post-Civil War era through the rise of syndication. See Charles Johanningsmeier, *Fiction and the American Literary Marketplace: The Role of Newspaper Syndicates, 1860–1900* (New York: Cambridge University Press, 1997). In *News Piracy and the Hot News Doctrine: Origins in Law and Implications for the Digital Age* (New York: LFB Scholarly Pub., 2005), Victoria Smith Ekstrand reprises the history of the "hot news doctrine"—the U.S. Supreme Court decision in *International News Service v. Associated Press* (1918) that copyright *could* extend to cover the timeliness of the news. Douglas G. Baird tells the story of *INS v. AP* in Ginsburg and Dreyfuss, *Intellectual Property Stories*, 9–35; see also Richard Epstein, "International News Service v. Associated Press: Custom and Law as Sources of Property Rights in News," *Virginia Law Review* 78 (1992): 85–128.

72. See Catherine Gallagher, *Nobody's Story: The Vanishing Acts of Women Writers in the Marketplace, 1670–1820* (Berkeley: University of California Press, 1994); and Robert J. Griffin, *The Faces of Anonymity: Anonymous and Pseudonymous Publications from the Sixteenth to the Nineteenth Century* (New York: Palgrave Macmillan, 2003).

73. Alexis Easley, *First Person Anonymous: Women Writers and Victorian Print Media, 1830–70* (Burlington, Vt.: Ashgate, 2004).

74. Joan DeJean, *The Reinvention of Obscenity: Sex, Lies, and Tabloids in Early Modern France* (Chicago: University of Chicago Press, 2002), 121.

75. David Saunders, "Copyright, Obscenity, and Literary History," *ELH* 57 (1990): 431–444. Paul St. Amour brings intellectual property law to bear on the obscenity trial of James Joyce's *Ulysses* in *Copyrights*, 159–198.

76. Eaton S. Drone, *A Treatise on the Law of Property in Intellectual Productions in Great Britain and the United States* (Boston: Little, Brown, 1879), 181.

77. Paulina Kewes, *Authorship and Appropriation: Writing for the Stage in England, 1660–1710* (New York: Oxford University Press, 1998); Julie Stone Peters, *Theatre of the Book, 1480–1880: Print, Text, and Performance in Europe* (New York: Oxford University Press, 2000).

78. Prior to embarking on an American tour, British companies would stage "copyright performances" in provincial theaters, often with no more than a single member of the public present. They did this so they could retain British print and performance rights upon their return. See John Stephens, "Piracy and the Defence of Dramatic Property," in *The Profession of the Playwright: British Theatre, 1800–1900* (New York: Cambridge University Press, 2004), 84–115. Carolyn Williams includes a reading of Gilbert and Sullivan's *Pirates of Penzance* (1880) as a sustained mediation on legitimate and illegitimate theater in *Gilbert and Sullivan: Gender, Genre, Parody* (New York: Columbia University Press, 2011), 122–148.

79. Alain Strowel compares the two systems in "Droit d'auteur and Copyright: Between History and Nature," in Brad Sherman and Alain Strowel, eds., *Of Authors and Origins: Essays on Copyright Law* (New York: Oxford University Press, 1994). Elizabeth Adeney surveys the history of moral rights in France, Germany, the United States, Canada, the United Kingdom, and Australia in *The Moral Rights of Authors and Performers: An International and Comparative Analysis* (New York: Oxford University Press, 2006).

80. Jane C. Ginsburg, "A Tale of Two Copyrights: Literary Property in Revolutionary France and America," in Sherman and Strowel, *Of Authors and Origins*, 131–158. The United

Kingdom recognized moral rights in the Copyright, Designs, and Patents Act of 1988. The United States needed to stipulate that moral rights were addressed sufficiently by other statutes in order to become a full signatory to the Berne Convention in 1994. For an analysis of American law's slender protection of moral rights as compared to international norms, see Roberta Rosenthal Kwall, *The Soul of Creativity: Forging a Moral Rights Law for the United States* (Stanford, Calif.: Stanford Law Books, 2010).

81. William P. Alford, *To Steal a Book Is an Elegant Offense: Intellectual Property Law in Chinese Civilization* (Stanford, Calif.: Stanford University Press, 1995).

82. Christopher Reed, *Gutenberg in Shanghai: Chinese Print Capitalism, 1876–1937* (Vancouver: UBC Press, 2004).

83. See Michael F. Brown, *Who Owns Native Culture?* (Cambridge, Mass: Harvard University Press, 2003); Rosemary J. Coombe, "Cultural Agencies: The Legal Construction of Community Subjects and Their Properties," in Biagioli, Jaszi, and Woodmansee, *Making and Unmaking Intellectual Property*, 79–98; Elazar Barkan and Ronald Bush, eds., *Claiming the Stones/Naming the Bones: Cultural Property and the Negotiation of National and Ethnic Identity* (Los Angeles: Getty Research Institute, 2002).

84. Phillip H. Round, *Removable Type: Histories of the Book in Indian Country, 1663–1880* (Chapel Hill: University of North Carolina Press, 2010); Matt Cohen, *The Networked Wilderness: Communicating in Early New England* (Minneapolis: University of Minnesota Press, 2010).

85. Catherine L. Fisk, *Working Knowledge: Employee Innovation and the Rise of Corporate Intellectual Property, 1800–1930* (Chapel Hill: University of North Carolina Press, 2009).

86. For an incisive critique of the logic and consequences of corporate authorship that brings the story of the entwinement of authorship, property, and liability as far as the 2010 *Citizens United* decision, see chapter 7 of Jerome Christensen, *America's Corporate Art: The Studio Authorship of Hollywood Motion Pictures* (Stanford, Calif.: Stanford University Press, 2012).

87. Corynne McSherry, *Who Owns Academic Work? Battling for Control of Intellectual Property* (Cambridge, Mass.: Harvard University Press, 2001).

88. James Gilreath, ed., *Federal Copyright Records, 1790–1800* (Washington, D.C.: Library of Congress, 1987); Joseph J. Felcone, *New Jersey Copyright Registrations, 1791–1845* (Worcester, Mass.: American Antiquarian Society, 1994). See also Henry S. Parsons, *Dramatic Compositions Copyrighted in the United States, 1870 to 1916* (Washington, D.C.: Government Printing Office, 1918); and Roger E. Stoddard, "United States Copyright Deposit Copies of Books and Pamphlets Printed before 1820," *Publishing History* 13 (1883): 5–21 and "United States Dramatic Copyrights, 1790–1830: A Provisional Catalogue," in *Essays in Honor of James Edward Walsh: On His Sixty-Fifth Birthday*, ed. James Edward Walsh (Cambridge: Goethe Institute of Boston and the Houghton Library, 1983), 231–54.

89. In successfully arguing in 1870 that the administration of copyrights should be moved to the Library of Congress, Representative Thomas A. Jenckes (RI) observed that the prior system, requiring registration at district courts with deposit copies to be delivered to a central location, had put the law in force without material backing: "The result of the existing law has been to place in the store-rooms of the Department of the Interior from thirty to forty thousand volumes, beyond the reach of consultation, and which with difficulty can be found even with the most diligent inquiry. Some of them, and the greater portion, are in a room accessible only by clambering up a narrow staircase and over an archway—a room which has no light, and where, if the books are to be examined, they must be examined by candle-light." *Congressional Globe*, April 14, 1870, 2683.

90. William A. Landes and Richard A. Posner, "The Optimal Duration of Copyrights and Trademarks," in *The Economic Structure of Intellectual Property Law* (Cambridge, Mass.: Harvard University Press, 2003), 210–253. Landes and Posner calculate that "fewer than 11 percent of the copyrights registered between 1883 and 1964 were renewed at the end of their twenty-eight-year term, even though the cost of renewal was small" (212).