

Property in Print:

Copyright Law, Cultural Conceptions of Authorship, and the American Magazine Industry

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23 October, 2013

Abstract

We study one dimension of property-rights law, copyright law, and its reciprocal relationship with cultural conceptions of authorship in Britain and America from the early eighteenth to the mid nineteenth century. We assess the joint impact of these forces on the market for literary texts in America and the organizations that published those texts. Because magazines, not books, were the primary forum for literary expression in America during this time, our analysis focuses on magazines. We find that copyright law had limited direct effects on magazines. Very few sought copyright protection for their contents, and the few copyright claims that did exist were not tested by the courts. Instead, magazines freely reprinted work from domestic sources, including other magazines. Because there was no copyright protection in U.S. law for foreign authors during this time, magazines also freely reprinted material from foreign sources. The development of copyright law spurred the emergence of a cultural conception of the author as a paid professional; in turn, this altered the nature of the market for literary texts, as magazines began to pay authors for their original work and compete intensely over the work of the most popular authors. Thus, most of copyright law's effects on the magazine industry occurred "in the shadow of the law."

This research was funded by grants to the first author from the NSF (SES-0727502 and SES-0096016), the Ewing Marion Kauffman Foundation, and the Institute for Research on Labor and Employment at the University of California, Berkeley.

By creating and enforcing laws, the state both enables and constrains economic actors (Scheiber 1981). In particular, laws governing property rights are foundational legal-economic institutions (Campbell and Lindberg 1990; Swedberg 2003). By creating property-rights law, the state determines the technical possibilities of and limitations on economic action (Polanyi 1944): it defines the rules that set the conditions of ownership and control over the means of production, as well as over economic products themselves. But by creating property-rights law, the state also shapes culture by giving rise to new cognitive schemas about the roles economic actors play, novel understandings of their power vis-à-vis their exchange partners, and innovative conceptions of the nature of their exchanges (Edelman and Suchman 1997; Fligstein 2001). Thus property-rights law constitutes both the technical and institutional environments within which economic actors operate: it determines both what is feasible and what is acceptable.

Cultural conceptions of both economic actors and their practices, in conjunction with actual economic practices, also shape property-rights law. These cultural and economic institutions construct in the minds of both legal actors (lawyers, legislators, and judges) and economic actors (owners, managers, employees, and customers) understandings of what kinds of things can be owned, who can own them, and under what conditions (Patterson 1968; Feather 1980; Rose 1993; Fisk 1998; MacLeod 1998; Khan 2005; Buinicki 2006).

In this paper, we examine one dimension of property rights law, copyright law, and its reciprocal relationship with cultural conceptions of literary property rights and authorship in Britain and America. We then assess their joint effects on the market for literary texts and the organizations that selected, printed, and disseminated those texts. Because copyright law, cultural conceptions of authorship, and modern markets for literature first developed in English-speaking societies in the eighteenth and nineteenth centuries, we focus our analysis on that time period. Much of the extant literature on the relationship between copyright law, authorship, and markets for literature focuses on books, not periodicals (*e.g.*, Feather 1980; Davidson 1986; Jaszi 1991; Saunders 1992; Buinicki 2006). We study magazines instead because in eighteenth- and nineteenth-century America, they were the primary forum for literary expression, overshadowing books (Cairns 1898: 35-63; Kribbs

1977; McGill 2003; Gardner 2012). As poet, short-story writer, essayist, and magazine editor Edgar Allan Poe noted:

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

Even those writers who preferred to publish in books rather than in magazines recognized the central role magazines played in the development of American literature (Charvat 1968: 86-87; Sedgwick 2000).

Many American magazines – not just those devoted to literature, but also general-interest magazines – served as proving grounds for new forms of fiction, such as the sketch and the short story (Lehmann-Haupt 1951: 113). Perhaps the most notable contribution American magazines made to literature was to foster the development of the detective story. Edgar Allan Poe invented this genre (which he termed “tales of ratiocination”) when he published “Murders in the Rue Morgue” in *Graham’s Lady’s & Gentleman’s Magazine* in 1841 (Magistrale and Poger 1999). Magazines also fostered the flourishing of poetry in the early republic (Charvat 1968: 11). Finally, magazines were platforms for many forms of philosophical, historical, scientific, and other non-fiction writing (Mott 1930; Marti 1979; Hatch 1989), genres that in the late eighteenth and early nineteenth century constituted the main forms of “polite literature” (Warner 1990: 122-138).

In this paper, we argue that copyright law and cultural conceptions of authorship jointly shaped the American magazine industry and the market for literature. As we show, the development of and use of copyright law, together with evolving cultural conceptions of authorship, both created opportunities for magazines and imposed constraints on them. We also show that until at least the 1840s, copyright law had limited *direct* effects on magazines. The lack of copyright protection for foreign authors allowed magazines to appeal to broad audiences by reprinting the work of foreign authors. But concerning domestic literary work, very few magazines claimed copyright over the original material they published; moreover, those copyright claims were not tested by the courts. The strongest effects of copyright law on the magazine industry were *indirect* and occurred “in the

shadow of the law” (Mnookin and Kornhauser 1979): the development of copyright law spurred the emergence of a cultural conception of the author as a paid professional; in turn, the emergence of this cultural conception altered the nature of American magazines’ competition over literary texts.

To ground our analysis in historical context, we begin by detailing two institutional changes that created a ready supply of essays, poems, tales, short stories, and novels for the pages of magazines, and allowed the industry to thrive: the gradual creation of literary property rights through copyright law and the emergence of twin cultural conceptions of the author, first as creative force, then as professional. We begin with copyright law because it fundamentally shaped the culture of literary life (Foucault 1979 [2003]; Saunders 1992). Next, we chart how the conception of authorship in Britain and America evolved in response to the development of copyright law and the emergence of markets for printed work; in doing so, we demonstrate the impact of conceptions of authorship on the law itself. With the core legal and cultural background in place, we then examine their impact on the magazine industry in America: the lack of use of copyright law to protect magazine’s contents; the widespread practice of reprinting previously published work, both foreign and domestic; and the development of the practice of paying authors for their original contributions. We conclude by considering the implications of our analysis for intellectual property rights in the twenty-first century, which are being reconfigured by new communication technologies and by the novel economic practices and cultural understandings those technologies engender. We also consider the impact of our empirical findings for sociological theories of property rights, cultural conceptions of economic action, and economic actors and their practices.

The Development of Copyright Law in the Eighteenth and Nineteenth Centuries

Because American law is based, in large part, on English law, we begin by tracing the development of copyright law in Britain before turning to its development in America. Our analysis of both legal traditions focuses on their philosophical underpinnings – the grounds for legal protection of literary property. There are two opposing philosophies of copyright (Abrams 1983; Bracha 2008a). First, it may be conceived as a natural right that arises from common law, rooted in

the idea that the author, as creator, has perpetual ownership rights over his or her literary property. Second, it may be conceived as a temporary monopoly granted by the state to the author and justified as benefitting the public by motivating him or her to create literary works. The history of copyright hinges on the balance struck by state authorities between these two philosophies, a balance that shifted from the eighteenth to the mid nineteenth century.

The Development of Copyright Law in Britain

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

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

WHEREAS Printers, Booksellers and other Persons have of late frequently taken the Liberty of printing, reprinting and publishing, ... without the Consent of the Authors or Proprietors of such Books and Writings, to their very great Detriment, and too often to the Ruin of them and their Families: For preventing therefore such Practices for the future, and for the Encouragement of learned Men to compose and write useful Books... (Statute of Anne 1710)¹

¹ Of course, in practice, publishers (as “proprietors”) usually attained copyright protections by assignment when they purchased manuscripts from authors and thus were often the real beneficiaries of copyright protection. For this reason, some scholars question the extent to which the drafters of the Statute of Anne adhered to a natural-rights view of authorship (*e.g.*, Kaplan 1967: 7-9).

Copyright gradually came to mean the exclusive right of an author or a printer to publish a text, with the aim of preventing literary piracy and encouraging authors to provide the public with beneficial works (Patterson 1968; Abrams 1983; Rose 1993).²

With the passage of the Statute of Anne, two competing philosophies underpinning copyright came to the fore. First, the Act's limited term for copyright (14 years, with the opportunity to renew for a second 14-year term) exemplified the statutory philosophy of copyright as a state-granted monopoly that benefitted the public by motivating the creation of new literary work. This came into conflict with the common-law philosophy of copyright as an author's natural and perpetual right in his or her creative property. This conflict was not resolved for six decades – not until the House of Lords issued their decisions in *Millar v. Taylor* (1769) and *Donaldson v. Becket* (1774). In *Millar*, the House of Lords recognized a perpetual common-law copyright and ruled that the Statute of Anne's limited duration did not pre-empt that common-law right. This was a major victory for the authors who created literary works and the publishers and booksellers to whom authors assigned copyright when they sold their works (Patterson 1968: 172; Abrams 1983: 1153-54). More broadly, the case was a bold endorsement of the notion that the author was a creator who had property rights in his or her literary work, and it set the course for subsequent legal treatment of copyright as foremost a matter of the author's rights (Patterson 1968: 169; Abrams 1983: 1156; Saunders 1992: 63-64; Rose 1993).

Millar's recognition of a common-law copyright did not last long, however: the *Donaldson* decision overturned *Millar* just five years later, ruling that authors had no common-law copyright *once their work was published*; instead, the Statute of Anne governed published work.³ Despite their opposite rulings on common-law *versus* statutory copyright, both *Millar* and *Donaldson* made clear that

² Scholars disagree about whether the mention of authors in the Statute was a tactic used by stationers to bolster their claim (e.g., Feather 1994) or by their opponents to break their monopoly (e.g., Patterson 1968).

³ For analyses of *Donaldson* and its subsequent interpretations, see Abrams (1983: 1128-29, 1156-71; Rose 1988: 69; Saunders 1992: 65-69). Abrams (1983) convincingly argues that most American legal scholars, due to an error in how the case was originally reported and an overemphasis on the judges' advisory opinions rather than the vote of the House of Lords, have misinterpreted *Donaldson* as recognizing a common-law copyright that is subject to pre-emption by the Statute of Anne, rather than an outright rejection of the existence of a common-law copyright.

the starting point for the legal treatment of copyright is a question of the rights of an individual – the author – and not the act of publishing (printing and disseminating) texts.

The Development of Copyright Law in America

In colonial America, English law provided the template for legal consideration of literary property rights. The few copy privileges granted by colonial courts were done in a similar fashion to English printing patents for individual publications. These grants reflected a conception of copyright geared toward monopolies for publishers more than rights imbued in authors (Abrams 1983; Bracha 2008b, 2010). Moreover, because most colonial authors were gentlemen-scholars who did not seek to profit from their writing, it was publishers, not authors, who sought copyright privileges (Bugbee 1967; Bracha 2010). Thus, in essence, there was no meaningful protection for authors in colonial America (Bugbee 1967; Patterson 1968; Abrams 1983; Everton 2005).

Around the time of the Revolution, however, Americans began to view copyright as rooted in the creative author who writes a text rather than in the printer or bookseller who publishes it. For example, in 1772, the Connecticut colonial assembly granted copyright privilege to an author, rather than a printer or publisher (Silver 1958). Although the governor later vetoed that bill, its passage was an early indicator of the shift toward copyright as centered on the author (Bracha 2008c). After the Revolution, this shift toward authors gained more momentum as state legislatures took note of the Statute of Anne and the *Millar* and *Donaldson* decisions; a discourse about authors' rights gradually emerged (Bracha 2008c; 2010). American writers, such as spelling book author Noah Webster and poet Joel Barlow, helped further this transition by lobbying state legislators for copyright protection (Barlow 1783; Webster 1843; see Saunders 1992; Bracha 2008a, 2010). They argued that their writing deserved protection because it would unite the new nation and promote a national cultural identity; as we explain below, they pointed to authors' rights as justification for state copyright regimes; and they argued that copyright law was needed if the U.S. was to reach cultural parity with European powers (Barlow 1783; Webster 1843; see Charvat 1968; Bracha 2010: 1441-1444; Pelanda 2011).

The new federal government also became involved in copyright law. After petitioning by Joel Barlow, the Continental Congress adopted a resolution on May 2, 1783 mirroring the Statute of Anne and recommending that states craft legislation protecting authors' copyright privileges in their works (Continental Congress Resolution 1783; Webster 1843; Bracha 2008a, 2010).⁴ With authorial copyright legitimized by the Continental Congress, and with continued lobbying by authors such as Noah Webster, all states except Delaware had enacted copyright statutes by 1786 (Crawford 1975; Abrams 1983: 1173).⁵ The idea that copyright was meant to protect authors' rights was the dominant theme in these state statutes (Patterson 1968: 188; Abrams 1983: 1174). For example, all 12 state statutes mentioned "authors" as recipients of protection, while only two specifically mentioned or "publishers" or "purchasers" of copies.

On September 5, 1787, the Constitutional Convention adopted without debate the Copyright Clause of the U.S. Constitution. This clause granted Congress the power "to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Rights to their Writings and Discoveries" (U.S. Constitution, Art. I, § 8, cl. 8). This pronouncement, embedded as it is in the foundational document of the U.S. government, clearly reveals a national interest in promoting learning, while at the same time centering copyright squarely on the author (Patterson 1968: 193).

In 1790, Congress passed the first federal Copyright Act, entitled "An Act for the encouragement of learning, by securing copies of maps, charts, and books, to the authors and proprietors of such copies during the times therein mentioned" (U.S. Congress 1790). Like the Statute of Anne, but unlike most state statutes, the federal statute mentioned "proprietors" along with "authors." To secure copyright, an author or proprietor had to comply with statutory

⁴ The resolution reads: "Resolved, That it be recommended to the several States, to secure to the authors or publishers of any new books not hitherto printed being citizens of the United States, and to their executors, administrators and assigns, the copy right of such books for another term of time not less than fourteen years, such copy or exclusive right of printing, publishing and vending the same, to be secured to the original authors, or publishers, their executors, administrators and assigns, by such laws and under such restrictions as to the several States may seem proper." (Continental Congress Resolution 1783)

⁵ Connecticut, Massachusetts, and Maryland enacted statutes just prior to the Congressional resolution (Crawford 1975).

requirements, including paying a fee, depositing a copy of the title of the work in his or her local district court, having a copy of the record published in a newspaper for at least four weeks, and filing his or her copyright with the Secretary of State (U.S. Congress 1790).⁶ The inclusion of proprietors and the onerous procedural requirements indicate that the federal statute emphasized copyright as a statutory grant more than as an author's property right (Abrams 1983; Patterson 1968: 198; Bracha 2010).⁷

Just as the Statute of Anne had the *Donaldson* decision to hold that after publication, copyright is solely a statutory right, the Copyright Act had the *Wheaton v. Peters* decision (1834) to establish that after publication, there is no common-law copyright because the Copyright Act pre-empts all common-law copyright claims. In *Wheaton*, the Supreme Court recognized the existence of common-law copyright for unpublished works, and later courts recognized other state-specific claims to protect unpublished works and works not covered by the federal statute (Jorgenson and McIntyre-Cecil 1983). But regarding already published works covered by the federal statute, the decision was clear: copyright is solely a creature of statute, authors must strictly adhere to statutory requirements to gain protection, and protection is limited in duration to the terms specified by statute (Patterson 1968: 203-212; Abrams 1983: 1178-1185). The underlying philosophies balanced in *Wheaton* were the same as in *Donaldson* and the Constitution: on the one hand, copyright is afforded to authors to recognize their property interest in their creative work; on the other hand, copyright is designed to benefit the public and promote learning by granting limited monopolies to authors so they have economic incentives to publish their work. The *Wheaton* decision emphasized the importance of the public-interest philosophy, as Patterson (1968: 211) explained:

⁶ In combination, the onerous procedural requirements for securing copyright constituted a practical obstacle for many publications – not just cheap books, pamphlets, and sermons, but also magazines (Sprigman 2004).

⁷ The requirement of inserting a notice of copyright claim in a newspaper for a period of four weeks was dropped by the 1831 revision to the Copyright Act (U.S. Congress 1831). This made copyrighting more feasible for many publications, including magazines.

The majority [of justices], viewing copyright as a monopoly, were content to protect the author's property for a limited period under the conditions prescribed by the statute. To do otherwise would be contrary to the public interest.

Like *Donaldson*, *Wheaton* was a blow to the conception of copyright as a natural, unlimited right imbued in the author-as-creator and a triumph for the public-interest conception of copyright, as it reinforced the philosophy that copyright protection encourages authors to benefit the public by publishing their literary work (Abrams 1983: 1185). Thus, from the time of the first state statutes up to the *Wheaton* decision, the dominant philosophy underlying copyright law gradually shifted away from the creative author and toward the public interest (Patterson 1968)

The Problem of Foreign Authors

There was one glaring omission in American copyright law: it did not protect works by foreign authors until 1891 (Barnes 1974; Saunders 1992: 157). Indeed, the Copyright Act of 1790 explicitly excluded foreign works:

...nothing in this Act shall be construed to extent to prohibit the importation or vending, reprinting, or publishing within the United States, of any map, chart, book or books, written, printed, or published by any person not a citizen of the United States, in foreign parts or places without the jurisdiction of the United States. (U.S. Congress 1790)

This meant that texts by foreign authors could be reprinted and sold without royalties being paid to their authors. This situation was reinforced by the first major revision of federal copyright law in 1831, which explicitly barred foreign authors from copyright protection (U.S. Congress 1831). Although in the 1840s and 1850s, some large publishing houses, such as Harper & Brothers and Carey & Lea, observed the informal custom of paying British writers for the advance sheets of their works (Barnes 1974), such payment was still far below the real economic value of those works (Charvat 1968).

This situation benefitted American publishers to the detriment of authors everywhere: foreign authors received no royalties and American authors could not compete on price with “free” foreign prose and poetry (Griswold 1981). The lack of legal protection for foreign authors led other countries to retaliate by refusing to grant American authors copyright protection. Not surprisingly, this legal loophole was contended on both sides of the Atlantic. In 1837, American publisher

George Palmer Putnam founded the American International Copyright Association, with the aim of securing Americans copyright recognition overseas. Its members included the most famous American poet of that era, William Cullen Bryant, and the most popular American novelist, James Fenimore Cooper. But this organization never fulfilled its goal and it dissolved less than three years after it was founded. Also in 1837, Henry Clay presented a petition to Congress for an Anglo-American copyright agreement that was signed by 56 prominent British authors, including William Wordsworth, Benjamin Disraeli, and Maria Edgeworth, and by several luminaries in American publishing, including Washington Irving and John Quincy Adams (Petition of British Authors 1837). Despite its roster of star supporters, the bill failed to pass. Clay persevered, reintroducing the bill in 1838, 1840, and 1842, but he met with no success because Congress feared derailing the fledgling native book industry or, worse, angering constituents who preferred low book prices (Barnes 1974). No less a celebrity than Charles Dickens travelled across America in 1842 to urge the adoption of an international copyright law and the payment of royalties that were closer to true market value; in part because his visit occurred during an economic depression, his protests received mostly negative responses from those who expected international copyright to raise the price of books significantly. In 1843, famous American authors, including William Cullen Bryant and Edgar Allan Poe, formed the American Copyright Club to push for international copyright. They hired Rufus Griswold, a well-known anthologist and poet, to lobby Congress. But all these efforts failed.

For its part, the English parliament in 1838 passed an international copyright law that offered protection to foreign authors, if their home countries would pass reciprocal laws. English legislators hoped this would be a springboard for a series of bilateral international copyright agreements with Continental and American authorities (Barnes 1974). But although two more international copyright laws passed in England in 1844 and 1852 persuaded some European powers to reciprocate, they failed utterly with American legislators.

Evolving Conceptions of Authorship in the Eighteenth and Nineteenth Centuries

Cultural conceptions of authorship were reflected in and refracted by copyright law – both law on the books and law in use. Accordingly, we begin here by charting the rise of the idea of the author as the creator of literary work and therefore as someone who has property rights to that work, showing both how copyright law and society at large came to recognize the author’s individuality, creativity, and originality (Bracha 2008a). We also analyze the economic issues that were intertwined with legal issues, by tracing the rise of professional authors, people who earned at least part of their living by writing.⁸ We trace the situation in Britain first and then turn to America.

Cultural Conceptions of Authorship in Britain

To be an author today means to write and own what you write. But that meaning developed only slowly. As early as the fourteenth century, some English writers claimed a special status for themselves, using the term “auctor” to signify their right to the title of laureate, or literary master (Helgerson 1983). But this status did not confer ownership of texts because until the eighteenth century, people generally thought of texts as actions rather than things; they valued texts for their ability to move people to think or act (Rose 1993: 13). As actions, rather than objects, texts could not be owned.⁹

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

A person, is he, *whose words or actions are considered, either as his own, or as representing the words or actions of another man, or any other thing, to whom they are attributed, whether truly or by fiction.* When they are considered as his own, then he is called a *natural person*: and when they are

⁸ In allowing that professionals might earn some but not all of their living from writing, we follow Jackson (2008) rather than Charvat (1968). We adopted this expansive definition in recognition of the fact that even in the late twentieth century, when the market for and legal status of literary property were well developed, only 5% of American authors earned all of their income from writing (Kingston and Cole 1986).

⁹ It is true that during the sixteenth century, the spread of printing presses prompted the development of a norm whereby printers obtained writers’ permission to publish. This norm, which was congruent with the conception of authors as actors, was intended to safeguard their honor and reputation from “the stigma of print” (Saunders 1951), not to secure any economic interest they might have had in printed texts (Rose 1993: 18-22, 81).

considered as representing the words and actions of another, then he is a *feigned or artificial person*.... Of persons artificial, some have their words and actions *owned* by those whom they represent. And then the person is the *actor*; and he that owneth his words and actions is the AUTHOR: in which case the actor acteth by authority. For that which in speaking of goods and possessions, is called an *owner*, ... is called the author. And as the right of possession, is called dominion; so the right of doing any action, is called AUTHORITY. (Hobbes 1651 [1962]: 125; emphasis in the original)

Hobbes's argument, which linked authorship (the act of creating a text) with authority (power over that text), meshed with John Locke's justification of ownership of property through labor (Yen 1990):

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

Hobbes's argument was also compatible with Locke's conception of the mind as a blank page (a *tabula rasa*) on which experience writes a self (Macpherson 1962; Davidson 1986):

All ideas come from sensation or reflection. Let us then suppose the mind to be, as we say, white paper, void of all characters, without any ideas:—How comes it to be furnished? Whence comes it by that vast store which the busy and boundless fancy of man has painted on it with an almost endless variety? Whence has it all the materials of reason and knowledge? To this I answer, in one word, from *experience*. (Locke 1690 [1999]: 87; emphasis in the original)

Further development of the notion of author-as-owner was, however, hindered by the economics of publishing. Until the eighteenth century, most British writers, like their counterparts in the rest of Europe, depended for their livelihood on patrons, either wealthy aristocrats or powerful printers, who claimed ownership of the texts produced by their writer-clients. Aristocrat-patrons received honor and status through their writer-clients' service, while printer-patrons received from their writer-clients goods they could sell for a profit in the developing marketplace; in return, both kinds of patrons offered their writer-clients cultural and material rewards (Febvre and Martin 1976 [1990]; Lucas 1982; Rose 1993). The notion that writers "owned" what they wrote was simply not congruent with this economic and social system (Rose 1993).¹⁰ Moreover, as explained above,

¹⁰ In many ways, this economic system was akin to the situation facing staff writers of newspapers and magazines now: they work for an entity, such as a publishing company, that pays them a wage and, in return, claims ownership of the texts they write.

the legal system was also not congruent with the idea of the author as owner of literary work because until 1694 members of the Stationers' Company had a legal monopoly on the right to copy the texts they purchased from writers and registered in their lists.

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

The Genius in both these Classes of Authors may be equally great, but shews itself *after* a different Manner. In the first it is like a rich Soil in a happy Climate, that produces a whole Wilderness of noble Plants rising in a thousand beautiful Landskips, without any certain Order or Regularity. In the other it is the same rich Soil under the same happy Climate, that has been laid out in Walks and Parterres, and cut into Shape and Beauty by the Skill of the Gardener. (Addison 1711: no page number)

For his part, Defoe escalated the debate by casting it in moral terms, decrying the "theft" of literary property caused by unauthorized printing:

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

He went on to propose a law that would make it easier to prosecute such practices, arguing that:

...for every Author being oblig'd to set his Name to the Book he writes, has, by this Law, an undoubted exclusive Right to the Property of it. The Clause in the Law is a Patent to the Author, and settles the Propriety of the Work wholly in himself, or in such to whom he shall assign it; and 'tis reasonable it should be so: For if an Author has not the right of a Book, after he has made it, and the benefit be not his own, and the Law will not protect him in that Benefit, 'twould be very hard the Law should pretend to punish him for it. (Defoe 1704: 27)

Note that Defoe centered property-rights claims to literary work on the author, not the printer; the printer was merely the one to whom the author might assign his ownership rights in a literary work.

In his *Review of the Affairs of France*, a literary-*cum*-political journal published from 1704 to 1713, Defoe

frequently blasted those who reproduced works without authorization by writers as “land pirates,” a morally charged characterization that became common in the second half of the eighteenth century (Temple 2003). In the same vein, Addison (1709: 40) castigated rogue printers as moral deviants: “miscreants...rascals, plunders, robbers, [and] highway-men.” Addison went on to complain that authors were treated far worse than skilled workers, as the law allowed “theft” of authors’ output, but not that of artisans, even though authors sacrificed to develop the erudition required of all good writers:

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

The new metaphors invoked by Addison and Defoe, which required that the author be accepted as a *possessive individual* (Macpherson 1962) and recognized as the creator of an object rather than the driver of an action, was elaborated over the next half-century (Patterson 1968; Woodmansee 1984; Rose 1993). In 1747, an influential pamphlet by Anglican bishop and literary critic William Warburton provided the first theoretical treatment of literary property in the legal literature and took the first steps toward conceiving of the writer as an exalted figure whose ownership of his work merited protection in the law. Warburton explained why the author’s ownership rights were paramount:

[I]f there be *degrees of right*, that of *Authors* seemeth to have the advantage over most others; their property being, in the truest sense, their *own*, as acquired by a long and painful exercise of that very faculty which denominateth us MEN: And if there be *degrees of security* for its enjoyment, here again they appear to have the fairest claim, as *fortune* hath been long in confederacy with *ignorance*, to stop up their way to every other kind of acquisition. (Warburton 1747 [1811]: 405-406; emphasis in the original)

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

... is not confined to the original MS. but extends to the *doctrine* contained in it; which is, indeed, the true and peculiar property in a book. The necessary consequence of which is, that the owner hath an exclusive right of transcribing or printing it for gain or profit. (Warburton 1747 [1811]: 408; emphasis in the original)

This nascent conception of author-as-owner was fostered by the Romantic movement in literature and art, which emerged in the second half of the eighteenth century. The Romantics began to incorporate the notion that individuals could be the authors of their lives, and thus of all the artistic works they produced (Abrams 1953; Woodmansee 1984; Jaszi 1991; Saunders 1992; Rose 1993). They held that to assert one's ownership of original creations was to assert one's self, one's unique personality. Thus, the conception of authorship in Britain evolved in parallel with basis of literary property rights: both shifted from effort to "personality," which was revealed in "originality" (Rose 1993: 114). The Romantic movement facilitated widespread acceptance of Hobbes's argument that authors become owners of literary property through action and Locke's justification of authors' ownership of literary property through their labor.

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

An emerging group of "literary" writers had to *acquire* an expressible interiority, such that a certain mode of printed work could be recognised and experienced as both "mine" and "me." ... [A]n emerging category of "literary" writing in print ... had to *become* a specialised ethical and aesthetic activity using print. A new manner of relating to one's self had itself to *establish* a manner of relating to print replication and dissemination.... [This] required nothing less than a new form of ethical-literate persona (Saunders 1992: 73; emphasis in the original)

For example, in 1759 the poet-cleric Edward Young argued that creativity and originality were superior to the mere mastery of the rules of classical literature, which had been valorized in the Renaissance and neoclassical periods: "Originals are the fairest flowers: Imitations are of quicker growth, but fainter bloom" (Young 1759: 6). He derided imitations and argued that the author of even the best imitation, because he built on prior writing, must share whatever glory comes his way with the original author, while the author of original work "enjoys an undivided applause" (Young 1759: 7). For Young, inspiration for original writing emanated from within the writer himself, so it

was the product and property of the writer – a very Lockean conception. Any man who “prefer[s] the native growth of [his] own mind” will discover that “his works will stand distinguished; his the sole Property of them; which Property can alone confer the noble title of *Author*” (Young 1759: 24). Moreover, as in Hobbes’s analysis, Young linked authorship to authority, arguing that those whose writings were original merited the title of master, rather than mere student of the ancients (Young 1759: 31-32). Echoing Young, Francis Hargrave made explicit the connection between literary property, originality, and personality in an essay originally written as a case for common-law copyright in an appeal of *Donaldson v. Becket*:

Every man has a mode of combining and expressing his ideas peculiar to himself. The same doctrines, the same opinions, never come from two persons ... cloathed wholly in the same language. ... a literary work *really* original, like the human face, will always have some singularities, some features, to characterize it, and to fix and establish its identity... (Hargrave 1774: 6-7; emphasis in the original)

The slow conceptual shift from author-as-actor toward author-as-owner was also enabled by the emergence of a market-oriented society in the late seventeenth and early eighteenth centuries, which directed authors’ economic and social relations away from patronage ties to wealthy elites and toward market ties to booksellers and, through them, to a growing reading public (Febvre and Martin 1976 [1990]; Feather 1988).¹¹ Perhaps the most famous example is Samuel Johnson’s 1755 letter rejecting Lord Chesterfield’s patronage for his *Dictionary*, which has been called “the *Magna Carta* of the modern author” (Kernan 1987: 105):

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

This letter signaled that professional authorship as we understand it today – as someone who views writing as a vocation, an expert who creates and sells texts in a market (Larson 1977) – was becoming both economically feasible, at least for a few notable writers, and culturally acceptable.

¹¹ This cultural-cognitive shift was analogous to the changing conception of the painter in late nineteenth-century France from learned man under the Academic system to middle-class professional under the dealer-critic system (White and White 1965).

Johnson could reject Chesterfield's patronage because the development of a market for books in Britain made it possible for him to earn a profit from his dictionary. In turn, his claim of sole authorship, which was widely publicized in literary circles, helped spread acceptance of authorial ownership.

Cultural Conceptions of Authorship in America

In the eighteenth century, most of the tiny number of Americans who produced literature were gentlemen-scholars whose output was an avocation, a byproduct of their learning. For example, lawyer-polemicist William Livingston and minister-essayist Aaron Burr Sr. wrote solely for their social equals. Through their writing, these patricians sought to further their own political, artistic, religious, or scientific objectives, not to make money (Charvat 1968; Dauber 1990). For this reason, eighteenth-century American authors were generally unconcerned with claiming property rights over their writing – indeed, they generally shunned publicity. As a result, their writings were usually published anonymously or pseudonymously. Perhaps most notable is the case of Thomas Jefferson, who publicly disavowed and threatened to burn the entire first edition of his only book, *Notes on the State of Virginia*, when it was published in 1781: “Do not view me as an author, and attached to what he has written,” he cautioned James Madison (quoted in Ferguson 1984: 34). Two decades later, Washington Irving and James Kirke Paulding evinced the same understanding of their social position in the introduction to their periodical, *Salmagundi*: “We are critics, *amateurs, dillitanti, and cognoscenti*” (Irving and Paulding 1807: 4; emphasis added).

The twin conceptions of author-as-gentleman and author-as-amateur (meaning someone who writes for the love of it, not someone who is unskilled in writing) were reinforced by the economics of authorship in the colonies and young republic. There were neither wealthy aristocrats to flatter with prose and poetry nor powerful printers who could turn profits by selling books. Even in the nineteenth century, only a tiny fraction of authors found wealthy patrons to underwrite their literary aspirations. Most notably, a half-dozen Transcendentalist writers, including Margaret Fuller and Henry David Thoreau, were supported by Ralph Waldo Emerson (Dowling 2011: 96-98), while

Herman Melville's wealthy father-in-law, Judge Lemuel Shaw, settled a large dowry on his daughter that allowed Melville to eschew paid employment and write full-time (Charvat 1943). A few others, including political essayist Robert Walsh, historian George Bancroft, and novelist Nathaniel Hawthorne, received remunerative political appointments that freed them to write – a distinctly American form of political-literary patronage that persisted throughout the nineteenth century (Charvat 1968; Brubaker 1975). The historical record is obscure on this point, but the earliest example of this kind of political-literary patronage may be Benjamin Franklin's appointment in 1753 as deputy postmaster of the colonies. Such political patronage appointments, however, were insufficient to foster professional authorship in eighteenth- and early nineteenth-century America, as they supported only four or five dozen men (Brubaker 1975).

Given the dearth of wealthy patrons, Americans who lacked personal fortunes and who sought to earn a living by their pens were often disappointed. For example, Charles Brockden Brown, one of the earliest professional novelists in the U.S., complained: "I should enjoy a larger share of my own respect at the present moment if nothing had ever flowed from my pen, the production of which could be traced to me" (Brown 1803: 4). The lack of a market for his novels led Brown to view authorship as a sacrifice (Dauber 1990: 39-41).

American understandings of what it meant to be an author changed fundamentally as America became a more market-oriented society and as literature evolved to connote commodities created by professionals and traded for profit. Poet Joel Barlow, in his 1783 petition to the Continental Congress, made grand claims about the "genius" of authorship and argued for copyright law to protect authors' rights to their literary property; he sought "positive statutes securing the copy-rights of Authors, & in that way protecting a species of property which is otherwise open to every invader" (Barlow 1783). Echoing Addison, Barlow emphasized the benefits of nurturing literary genius to society at large, "which might serve to elevate the sentiments & dignify the manners of a nation." He also used "the rhetoric of commercial nationalism" (Warner 1990: 118) to appeal to the desire of many at the Convention to make America not just a single nation, but a great one:

A literary reputation is necessary in order to complete her national character; and she ought to encourage that variety & independence of genius, in which she is not excelled by any nation in Europe. As we have few Gentlemen of fortune sufficient to enable them to spend a whole life in study, or enduce [*sic*] others to do it by their patronage, it is more necessary, in this country than in any other, that the rights of authors should be secured by law. (Barlow 1783)

Barlow's plea mirrored Addison's conception of literary property as emanating from authors' own brains and his contention that societies required secure, legal rights to encourage the considerable effort it took to cultivate literary genius:

There is certainly no kind of property, in the nature of things, so much his own, as the works which a person originates from his own creative imagination: And when he has spent great part of his life in study, wasted his time, his fortune & perhaps his health in improving his knowledge & correcting his taste, it is a principle of natural justice that he should be entitled to the profits arising from the sale of his works as a compensation for his labor in producing them, & his risque of reputation in offering them to the Public. (Barlow 1783)

A decade later, Joseph Dennie's letters reveal a conception of authorship as a potentially lucrative profession: "My grand object ... was money. The ways & means were Authorship" (Dennie 1795; in Pedder 1936: 145). Despite their mercenary theme, a concern forced on Dennie by his lack of personal fortune, these missives reveal a fervent desire to emulate great British authors such as Addison and Johnson. For example, defending his foray into writing a series of essays for *The Tablet*, collectively titled "Farrago", Dennie wrote:

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

Two years later, Dennie was hired to edit the *Farmer's Weekly Museum*. In its pages, he echoed Addison's (1709) comparison of authors to skilled artisans – this time, he claimed that it was *editors* who merited fair compensation for their skilled labor:

Like every industrious workman, he [the editor] has a right to *bread*, and sometimes, to write "all cheerily," he ought to have *wine*. The incumbrance of excessive wealth is scarcely to be dreaded by an author, but for the decent recompense of literary labor he has an importunate claim. If the public will merely *compensate* that labor, the task shall be fulfilled by the Editor, with his best possible exertions. (quoted Buckingham 1850: 180; emphasis in the original)

Even Charles Brockden Brown and Edgar Allan Poe, who had uneasy relationships with the literary marketplace, recognized it as a hard fact. Brown stated that “...pecuniary profit is acceptable ... this is the best proof which [he, the editor] can receive that his endeavours to amuse and instruct have not been unsuccessful” (Brown 1803: 5). For his part, Poe declared that “to be appreciated you must be *read*” (Poe 1835; emphasis in the original); his correspondent was the publisher of the *Southern Literary Messenger* (1834-1864), which he was editing at the time. Poe argued that the quality of the tale he had submitted for publication should be judged on economic, not aesthetic, grounds, and claimed that the effect of tales like these “will be estimated better by the circulation of the Magazine than by any comments upon its contents” (Poe 1835).

Although the conception of author-as-professional emerged in the young republican era, professional writers were not held in high esteem. For example, one essay denigrated those who wrote for pay as possessing a “degenerate ambition” that “would work no good” (*Museum of Foreign Literature, Science, and Art* 1828: 92). Another piece ranked four motives for becoming an author in descending order of value: “benevolence, emolument, conceit, and animosity” (Herbert and Patterson 1833: 3). The top rank, the amateur or gentleman author, was lauded as a “public benefactor” who spreads his “knowledge and attainments” that “may be beneficial to the rest of mankind.” The second rank, the professional author, included “many praiseworthy, estimable individuals, and persons possessing talents of even high rank” but “the writings of this second class are worth ‘as much as they will bring’” – which, the authors admitted, “is frequently and deservedly a high price.”

The social ranking of amateur and professional author reversed by the 1840s, as this article by critic William A. Jones demonstrates:

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

Jones went on to argue the superiority of the professional over the amateur:

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

This article reveals a conception of the professional author as someone who possesses specialized expertise, which confers upon him an exclusive authority over literature (Larson 1977), echoing Addison’s (1709) argument that erudition is required of all good writers. It also reveals a change in the meaning of the amateur author – no longer someone who writes purely for the love of it, but rather someone who produces “faulty and deficient” literary work (Bledstein 1976: 31). In the same vein, essayist and critic Edwin Percy Whipple declared in a speech given in 1844 that “Authors are ... entitled to a prominent rank among the producing classes” (Whipple 1849 [1899]: 12). He went on to note that “authors are compelled like other men, to labor for a subsistence” (Whipple 1849: 15-16).

There were, of course, reactions against acceptance of the author-as-professional. In the 1830s and 1840s, the Transcendentalist circle around Ralph Waldo Emerson maintained a stalwartly anti-commercial stance (Dowling 2011: 91-96). Emerson himself characterized the task of serious literary men as “the slow, unhonored, and *unpaid* task of observation” and said that such scholars “must relinquish display and immediate fame” (Emerson 1837; emphasis added). As late as the 1850s, the members of New York’s Knickerbocker group, which included Washington Irving, Fitz-Greene Halleck, William Cullen Bryant, and James Kirke Paulding, conceived of themselves as “gentlemen who wrote, not writers” (Bender 1987: 131; see also Charvat 1968: 292-293). Ironically, all of these men were deeply embedded in the literary marketplace: all of them sold their work to magazine and book publishers, and several of them (Emerson, Irving, Paulding, and Bryant) founded magazines.

Despite professional authors’ improved social standing, their economic situation remained precarious. Only Americans with independent means or sinecures that were remunerative but not strenuous could indulge in writing in this period. One anecdote made this point humorously:

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

In the same vein, an article titled “Professional miseries no. II – the author” (*Minerva* 1825) depicted the routine, day-to-day, toilsome job of a playwright contracted to a theatre. It noted the drudgery of having to write what he deemed to be unworthy pieces simply because he was ordered to do so. The writer described a dream he had when “first turned Author,” in which he was told that his destiny consisted of “Poet, Fame, and Poverty.” He then explained how he grappled with the idealistic conception of the Romantic author (Poet, Fame) and the reality of the professional author (Poverty; writing to provide for his family). Another essay lamented:

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

In the 1840s, Nathaniel Parker Willis (one of the best-paid authors of the time!) complained that authors were not compensated fairly for their skilled labor. Echoing Addison’s (1709) comparison of authors to skilled artisans, Willis likened authors to watchmakers:

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

Comparing Britain and America. In the development and acceptance of the conception of the author as professional, someone should be paid for his or her work, America differed from Britain in two respects: timing and publication medium. With regard to timing, the cultural-economic transition toward the author as paid professional occurred several decades later in America than in Britain (Charvat 1968). Americans were well aware of their country’s backwardness, as this article in the *American Monthly Magazine* demonstrates:

[N]o one sets himself down to write literature; it is never thought of by poor men as a means of getting along in the world. The muses are courted as the pleasant companions of a leisure

hour, not as the constant partners of life. There is scarcely a professed author in the United States. America has been such a busy world of itself, that men have hitherto employed their talents in the practical concerns of life, and have been content to receive their literature at second hand from the old world, together with other new importations. (K.K. 1829: 589-590)

In the 1800s, some Britons like Lord Byron and Walter Scott began to write engaging fiction and poetry, and popular British authors discovered they could sustain themselves financially by their writing. By contrast, in America at that time, the situation of any aspiring professional author was bleak. Consider the example of Charles Brockden Brown, who was unable to earn a living from the seven novels he published between 1798 and 1801 and so was forced to work in his brothers' export firm for several years, until he found an outlet for his literary ambitions by publishing, editing, and writing for magazines (Dauber 1990). Not until the 1830s could even a handful of Americans like Washington Irving and James Fenimore Cooper earn reasonable livings as professional writers (Charvat 1968; Dauber 1990; Jackson 2008).

With regard to medium of publication, British authors earned their livings by publishing novels and essays in book form, but in America, it was the proliferation of magazines, not books, that provided much-needed outlets for aspiring writers (Cairns 1898; Wroth and Silver 1951: 113; Kribbs 1977; McGill 2003; Jackson 2008; Gardner 2012). The book trade could not support American authors because the lack of copyright protection for the work of foreign authors led to a flood of cheap reprints of established British authors such as George Eliot, Charles Dickens, and Sir Walter Scott (Barnes 1974). American authors, especially those who were just embarking on their careers, could not compete with the output of British authors, many of whom had long-established literary reputations (Griswold 1981). As we explain below, in the 1820s magazines began to pay at least some writers handsomely for the essays, tales, short stories, serialized novels, and poetry they wrote. In making their (admittedly meager) livings by writing for and editing magazines, Joseph Dennie and Charles Brockden Brown were the pioneers.¹² The trail they blazed was followed by

¹² Dennie founded and edited *The Tablet* (1795), edited the *Farmer's Weekly Museum* (1797-1810; his term ran 1797-1799), and founded and edited the *Port-Folio* (1801-1827; his term ended 1811). For his part, Bryant founded and edited the *Monthly Magazine & American Review* (1799-1800), the *American Review & Literary Journal* (1801-1802), the *Literary Magazine & American Register* (1803-1810).

many others, such as William Cullen Bryant and Edgar Allan Poe, who made careers as professional authors in the magazine industry (Charvat 1968; Dauber 1990).¹³ As late as the 1840s and 1850s, even the most celebrated American authors had trouble earning a living from book sales; they were sustained only by the fees paid by magazines. For example, in 1842, Henry Wadsworth Longfellow earned \$517 from his writing – 40% from books and 60% from magazines (Robbins 1949).

Authors themselves recognized that the magazine industry made the profession of authorship possible in America. As Edgar Allan Poe explained:

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

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

Analyzing American Magazines: Data Sources and Empirical Strategy

Given the importance of magazines in the American market for literature, we turn to assess the impacts of copyright law and cultural conceptions of authorship on the magazine industry. To trace these impacts, we analyzed data on over 5,000 American magazines published between 1741, when the industry began, and 1860, the eve of the Civil War. These data come from a list encompassing virtually every magazine published in America from colonial times to the Civil War (Haveman 2004, 2013). The first author gathered these data from several primary sources: the American Periodical Series Online (for documentation, see Hoornstra and Heath 1979); the American Antiquarian

¹³ Bryant cofounded and coedited the *New York Review & Atheneum Magazine* (1825-1826); he edited the *United States Magazine & Literary Gazette* (1826-1827) and *Tales of Glauver-Spa* (1832). Poe worked for *Broadway Journal* (1845-1846), *Southern Literary Messenger* (1834-1864; his term ran 1835-37), *[Burton's] Gentleman's Magazine* (1837-1840; his term ran 1839-1840), *Alexander's Weekly Messenger* (1837-1848; his term ran 1839-1840), and *Graham's Magazine* (1841-1858; his term ran 1841-1842).

Society's online catalogue; microfilm archives covering scores of magazines in the Cornell, Columbia, and New York Public Libraries; and Internet searches of archives in other universities and scholarly institutes. Two sets of online sources were particularly useful: Readex Corporation's *Archives of Americana* (*Early American Imprints, Series I: Evans, 1639-1800* and *Early American Imprints, Series II: Shaw-Shoemaker, 1801-1819* and *America's Historical Newspapers*) and a joint venture by the Library of Congress, the University of Michigan, and Cornell University, *The Nineteenth Century in Print: The Making of America in Books and Periodicals*. For the many magazines that left no physical trace of their existence or for which there was only a partial record in the archives, the first author tapped into a wide variety of secondary sources: 16 book-length histories of the industry; 28 checklists and catalogues prepared by historians, bibliographers, and librarians; 36 book-length descriptions of specific types of magazines or magazines in specific locations; and 10 articles focusing on particular types of magazines.

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

Empirical strategy. We analyzed magazine prospectuses and editorial statements to assess their founders' and editors' attitudes toward the practice of reprinting material from previously published sources, and their concern with copyright protection. We also searched the early issues of

magazines for formal copyright notices. Most of these documents came from the American Periodical Series Online; others from Readex Corporation's *Archives of Americana*; still others from Internet searches conducted using keywords such as the magazine's title, its founding year, and terms like "prospectus" and "to the public." We augmented the information contained in these documents with information from other articles published in magazines.

Analysis of magazine pages was concentrated on the years 1741 to 1825, inclusive, because after 1825, when the industry entered its "first golden age" and the number of magazines in print exploded, the archives cover an increasingly small fraction of magazines. Editorial statements and prospectuses were available for 59% (87/148) of magazines founded in the eighteenth century and 51% (387/760) of those founded in the first quarter of the nineteenth century. After that point, the fraction of magazines with this kind of documentary evidence plummeted as the industry expanded rapidly: 13% for magazines founded 1826 to 1840 and only 3.3% for magazines founded 1841 to 1860.

We also analyzed the signals about literary property rights sent by magazines through their titles because these are easily observable and therefore powerful symbols of their identities and goals. As one scholar remarked, "to many people, corporations are 'nothing but a name'" (Boddewyn 1967: 39). Organizations' names project images for which legitimacy is granted or withheld, and upon which decisions are made to supply resources or withhold them (Glynn and Abzug 1998; Phillips and Kim 2009). Therefore, we expect magazines' goals; *i.e.*, whether they planned to publish original or reprinted work, to be expressed in their titles. We also analyzed signals about cultural conceptions of authorship by analyzing how often magazine founders, editors, and publishers hid their identities behind pseudonyms. Because we had a virtually complete list of magazines up to 1860, this analysis covers the entire pre-Civil-War history of the magazine industry.

We augmented our analysis of primary data by close readings of research by historians and literary scholars. These secondary sources improved our ability to investigate the magazine industry from 1826 to 1860, when our primary sources were spotty. They also provided information about the fees magazines paid to authors and editors.

How Copyright Law and Cultural Conceptions of Authorship Affected American Magazines

The American magazine industry was affected jointly by law on the books, law as it was interpreted in practice, and cultural conceptions of authorship. As these forces evolved through the eighteenth and nineteenth centuries, the practices and economics of the magazine industry changed greatly.

Use of Copyright Law by Magazines

Magazine publishers seldom used copyright law to secure a monopoly over the original material they published; until well into the 1820s, most publishers assumed that American literary property was not commercially valuable (Charvat 1968), and until the last few decades of the nineteenth century, very few magazines copyrighted their contents.¹⁴ To determine the prevalence of copyrighting among magazines, we pored over the early issues of all magazines published from 1741 to 1825 that were available in the American Periodical Series online and Readex Corporation's *Archives of Americana*. We found only 40 magazines published in this time period that printed copyright notices in their first issues – and one of these did not print a notice of copyright until its third issue. This constitutes just 7.3% of the 545 magazines in the archives.

The first copyright notice ever to appear in an American magazine was in the *Children's Magazine*; it appeared in 1789, one year before the first federal copyright law was enacted and six years after Connecticut, where this magazine was published, passed a copyright statute. On the title page, underneath the printers' names, the founders noted simply '[With Privilege of Copy-Right],' with no further explanation. The few copyright notices that were printed in magazines became standardized by the 1810s: they were signed by the clerk of the nearest district court and stated that a title of the "book" had been deposited there, in conformity with copyright law. Figure 1 reproduces two examples of such standard-form notices, one from a general-interest magazine founded in 1817, the other from a medical magazine founded in 1828.

¹⁴ In this, magazines were not very different from books: the vast majority of books published between 1790 and 1820 were not copyrighted (Starr 2004: 122).

[Figure 1 about here]

Although they may not have published formal copyright notices, a few magazine editors and publishers nevertheless claimed property rights in the contents of their periodicals. For example, Noah Webster, founder-editor of the *American Magazine*, claimed copyright over his periodical, forbade the reprinting of its contents by other magazines, and threatened lawsuits against those who continued reprinting his literary property:

The Printers throughout the United States are requested to observe, that this publication circulates as the Editor's property. A man who has devoted the most valuable period of life to the acquisition of knowledge; who has grown 'pale o'er the midnight lamp;' who labors to decipher ancient manuscripts, or purchases copies at three thousand percent above the usual price of books, is indubitably entitled to the executive advantages resulting from his exertions and expenses.

The rights of literary property have not yet been clearly ascertained and established in this country; and since the unequivocal rights of individuals and of public bodies have been so frequently the sport of party interest, and in almost every state in the union, what security has a man for the possession of a right less clearly defined by the loss? ...

Several trespasses upon the property of the Editor, in different parts of the country, have been already committed – and will be passed without further notice. But a repetition of the injuries, will call, before the proper tribunal, a legal question of considerable importance; and produce some trouble and expense, which every man of a specific disposition would wish to prevent. (Webster 1788: 2)

Note the parallel between Webster's description about the effort he exerted to acquire knowledge (growing "pale o'er the midnight lamp") and arguments by British authors that ownership rights in literary property were "the due Reward of Industry, the Prize of Learning, and the Benefit of their Studies" (Defoe 1704: 25; see also Addison 1709: 42).

Notwithstanding these early claims to copyright, the evidence available in the archives indicates that very few magazines launched up to 1825 tried to use copyright to protect their literary property. After that date, the archives are so spotty that we must rely on analyses of legal decisions and on news reports. There were no federal court decisions concerning magazines and copyright between 1790 and 1850 (Ginsburg 1990; Brauneis 2008). The only decision in this time period that might have affected magazines, *Clayton v. Stone* (1829), denied copyright protection to daily and weekly newspapers on the grounds that their contents were "too ephemeral" to merit the protection

that copyright law afforded to books, which were viewed by the judge as making more-permanent contribution to society. But there is no evidence that this decision affected magazine-industry practices; specifically, that it deterred magazines from claiming copyright protection. Legal action over copyright remained quite rare even after 1850 – at least until after the 1870 Copyright Act was passed, which simplified the process of registering texts. Comprehensive legal database searches reveal only 17 infringement actions brought in federal courts between 1850 and 1860; none of those pertained to a magazine. Because copyright was rarely claimed and never litigated by magazines, a “culture of reprinting” (McGill 2003) prevailed in the industry, which created a “literary commons” (Tomc 2012) in which all could share.

Magazines Reprint Material Published Elsewhere

Copyright law not used by magazines: Magazines reprint domestic work. The fact that few publishers and editors claimed copyright protection for their literary property in the eighteenth and early nineteenth centuries both benefitted and hindered magazines. Without explicit recognition and use of laws governing the ownership and use of literary property, magazine publishers could – and often did – reprint material previously published in government documents, books, pamphlets, newspapers, and other magazines without fear of lawsuit (McGill 2003).

Postal regulations explicitly supported the practice of reprinting (Kielbowicz 1989). Under the 1792 Postal Service Act, newspaper printers could “send one paper to each and every other printer of newspaper within the United States, free of postage” (U.S. Congress 1792, § 21). This provision encouraged newspapers to reprint the contents of other papers. Since many magazine publishers had previous experience publishing newspapers (Haveman, Habinek, and Goodman 2012), it is not surprising that the “culture of reprinting” (McGill 2003) spread from newspapers to magazines. Like newspapers, magazines were frequently exchanged by their publishers, even though, unlike newspapers, magazines had to pay for postage (Mott 1930; Kielbowicz 1989; Jackson 2008).

The practice of reprinting was welcome – sometimes even solicited. For example, the founder of the *Farmer's and Planter's Friend* invited others to reprint the original essays he published:

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

Similarly, the editor of the *Minerva* seemed comfortable with having his magazine's contents reprinted, even without attribution:

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

Even some authors appreciated this practice. For example, one article lauded the fact that a short tale by William Leggett, "The rifle," which took him three days' work to craft, was reprinted widely:

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

Edgar Allan Poe revealed the same sentiment: he said that when literary works were widely reprinted in magazines, "taking hold upon the public mind they augment the reputation of the source where they originated" (Poe 1835).

Some magazine editors and publishers worked hard to balance the benefits they perceived from having their contents reprinted in other periodicals and their desire to control what they had labored to create. Most eloquent on this is an article by Reverend Jeremiah Evarts, the editor of the Congregational monthly *Panoplist*, who declared:

We have secured the copy-right of the *Panoplist*. This is not done from any selfish design; but merely to prevent barefaced mutilations and piracies of original articles, of which not a few instances have occurred hitherto, *other similar aggressions having been contemplated on a systematic plan*. Permission is freely given to the Connecticut Evangelical Magazine, the Vermont Adviser, the Christian Monitor,... the Christian Monitor,... the Recorder, the Weekly Recorder,... and the Religious Remembrancer,... to extract any articles from the *Panoplist*, provided they give credit for each article, and publish a general notice that, though the copy-right of the *Panoplist* is secured, they have our express permission to make selections without restraint; it being understood, that this permission may be revoked in the same public manner in which it is now given. ... It has given us pleasure to see some of the

most valuable articles in our work reprinted in respectable publications; but it ought to be known, that more time and expense have been laid out upon the Panoplist than upon any similar magazine in the country. (Evarts 1816: 48)

This Congregational periodical ceased publication a mere four years later; Evarts blamed pirating for his venture's failure, claiming that his subscription list had dwindled "in consequence of having so great a part of our most interesting material immediately taken from us, and published in all the religious newspapers of the day" (Evarts 1820: 357). He went on to detail the widespread theft of his magazine's contents:

A friend of ours, in a neighboring state, said to the publisher of a magazine, "There are four religious magazines in this state, all of which live by stealing from the Panoplist." The printer of one of these four determined to republish our whole work without our consent, or even our knowledge. He used it as an argument with his patrons, that he should present them with matter, which cost the editor of the Panoplist much labor and expense; but as it cost him nothing, and he printed his work cheap in the country, and on inferior paper, he could afford it at an inferior price. (Evarts 1820: 358)

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

The high volume of domestic reprinted material in American magazines indicates that in the late eighteenth and early nineteenth centuries, most American magazine editors and publishers ascribed to an informal norm that allowed sharing of contents. They did not mind rivals lifting material from their pages because they did the same thing. Most viewed this practice as existing outside of any market. Some magazine editors even printed notices in their periodicals, explicitly offering to exchange material with other magazines, as in the example of the *Farmer's and Planter's*

Friend above. Such co-operation may have been sustained by a belief that magazines' subscriber bases did not overlap very much, if at all, because of geographic limits on magazine distribution, so that reprinting material from one magazine in another would not undermine either's readership (Mott 1930)

Many magazines openly advertised their willingness to reprint ("select" or "extract") material from books and other periodicals. For example, the founders of the *Balance* stated: "such articles and documents of various kinds and upon all proper subjects, will be selected, as shall be thought most worthy of preservation" (*Balance & Columbian Repository* 1802: 1). This happened even with august professional and scientific journals.

Magazines sometimes signalled their intention to reprint already-published materials through their use of titles like "*Select Reviews*" and "*Gleaner*." The tendency to signal reprinted contents was most pronounced in the 1780s and 1790s, as 13.7% of magazines founded in those two decades stated in their titles or subtitles that their contents were "selected" or "extracted" from other sources. That fraction declined to 4.3% for magazines founded in the 1800s and 1810s, then to 3.9% for magazines founded in the 1820s, 2.4% for magazines founded in the 1830s, and less than 1% for magazines founded in the 1840s and 1850s.

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

American magazines were not shy about taking advantage of this loophole in American copyright law. Between 1786 and 1855, 40 of them explicitly signalled their intention to reprint work from foreign sources by mentioning in their titles or subtitles "foreign publications" or "foreign masters," or explicitly stating the source countries. Many, many more laid out their

intentions to reprint foreign work in their prospectuses or editorial statements. For example, the prospectus of Joel Barlow and Elisha Babcock's *American Mercury*, which had a format in-between magazine and newspaper, promised to publish "regular extracts from Cook's last voyage (published by Authority in London, and lately come to hand)" (Barlow and Babcock 1784). Similarly, the editors of the *Lady's & Pocket Magazine of Literary & Polite Amusement* pledged to publish the "most approved Magazines and other periodical publications" from Europe (The Editors 1796: iv), and the editors of the *Philadelphia Magazine & Review*, noting the "extreme folly" of magazine editors who did not reprint material from European publications out of a sense of American nationalism, promised to avoid that mistake and publish selections from European publications (The Editors 1799: ii).

Expressed motivations for borrowing material from foreign sources varied. Some claimed to save their subscribers money by making it unnecessary for them to subscribe to many foreign magazines. Others averred that much of the material published in European magazines was not of interest to Americans, and that they would provide a valuable service by sifting out and reprint only the most interesting and worthy pieces. For example, one editor told his readers:

Journals, Magazines, and Reviews, have been established in Europe, and particularly in Great Britain, with the design of presenting a general and condensed view of the state of literature, and of directing the researches of those who have not leisure to be students. ... They abound with the speculations of men of genius, which deserve to be separated from the wretched effusions which disgrace their pages. ... The editors of the present compilation propose ... to present to their countrymen, a mass of sound literature, which, while it will aid the man of science in his researches, and the student in his closet, will enable the desultory reader to place in his parlour window a book that will cheat some life of its cares. (Ewing 1809: 2-3)

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

To give the public confidence in the stability and permanence of this work, the editors announce it as their intention to assume as the basis of their publication, the selecting and arranging from foreign periodical publications, such matters as comport with the plan of this work, thereby securing an inexhaustible fund of the most entertaining articles from those sources, and superseding the necessity of a steady reliance on the tardiness of paucity of editors and contributors, and also enabling the publishers to appear with the utmost punctuality at the stated day of publication. (Goodrich, 1819: 1)

Ironically, some American magazines even reprinted from foreign sources articles about copyright itself. For example, in 1824, both the *Museum of Foreign Literature, Science, & Art* and the *Athenaeum* reprinted an article that originally appeared in *Blackwood's Magazine* titled “English copy-rights.”

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

Such reprinting of foreign work was not limited to poetry and fiction; religious, medical, scientific, and agricultural magazines also reprinted much that had been published by foreign authors. For example, the preface of the *Medical Repository* stated that “Europe offers an inexhaustible fund” of medical research (*Medical Repository* 1797: v), while the *Connecticut Evangelical Magazine* proposed to reprint a combination of material from domestic and foreign sources (*Connecticut Evangelical Magazine* 1800: 3). In the 1830s, the large-circulation agricultural magazine *Cultivator* published excerpts of Sir Humphrey Davy's 1813 text *Elements of Agricultural Chemistry*, which was not widely available to farmers in the U.S. (Rossiter 1975: 9-11).

Perhaps most brazen about reprinting foreign literature was the *Corsair*, launched in 1839 by Nathaniel Parker Willis and Dr. T.O. Porter. Its original prospectus announced it would:

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

Parker's biographer explained that Willis started this periodical because “he felt very bitterly the absence of an international copyright” (Beers 1885: 241). In Willis's own words:

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

Willis was not alone in his anger over the lack of international copyright law. George Palmer Putnam's eponymous magazine complained loudly:

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

Similarly, an article in a New York-based literary monthly grumbled that “a poor woman who steals a herring is confined and sentenced to a month’s hard labor; while the same law protects the printer and bookseller in their wholesale spoliation of the works of authors” and compared the easy wealth of the printer and bookseller to the utter poverty of the author (*Arcturus* 1842: 241).

The Dearth of Original Material in Magazines

Although the initial lack of copyright law freed magazines to reprint material published elsewhere, it also hindered American magazines by deterring writers from contributing original material. For instance, just before the Revolution, Robert Aitken and Thomas Paine bemoaned the fact that few Americans had the time or inclination to contribute original materials to their

Pennsylvania Magazine. A later editor lamented the same problem at length:

The trade of literature is but young in this country: it is not here as in England, where the market is constantly so overstocked with the commodity of authorship, and the dealers in it are so numerous and eager to sell, that any one who wants a small quantity may go to the next shop and purchase by retail. Most of the leading literary characters in America are professional gentlemen, who write for amusement only; while the few who follow it as an exclusive business are generally employed in a way that forbids their undertaking so inconsiderable an office as that of writing a few pages once a month. (Cullen 1810: 6)

One pseudonymous author lamented the overabundance of material in American magazines reprinted from European sources and calculated that only one in a thousand magazines could justly claim to publish original material (Crito 1812). Although editors and publishers might prefer original material, they were often forced to substitute reprinted material instead. For instance, one introductory statement admitted:

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

One reason for this sorry state was that writers could neither be sure they would reap the economic or reputational benefits of their efforts through publication nor maintain control over the integrity of their words, so they were understandably reluctant to contribute original material to magazines.

Yet, many magazine editors and publishers did value original material; they believed publishing new material would attract readers and make magazines successful, both in financial and reputational terms. For example, one group of editors declared that “*Originality* ... has been [the Editors’] aim” (*Massachusetts Magazine* 1789: no page number; emphasis in the original). At the end of its first year of operation, another magazine thanked readers who contributed original work and attributed to them a “considerable share” of the celebrity that the magazine had obtained (*New York Weekly Magazine* 1796: no pages). In the same vein, one editor-publisher apologized for relying solely on reprinted material in his magazine:

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

Given the value placed on original material it is not surprising that magazines often boasted about this in their titles. Among magazines founded in the 1780s and 1790s, 10% did so. That fraction declined to 4.3% for magazines founded in the 1800s, 1810s, and 1820s, then to 2.6% for magazines founded in the 1830s, and to less than 1% for magazines founded in the 1840s and 1850s.

Magazine editors sometimes regarded reprinted material as superior to original compositions. For example, one group of editors stated bluntly “We shall always prefer judicious selections ... to originals below mediocrity” (*American Universal Magazine*, 1797: no page number). One cynical contributor not only counselled editors that “the world sets a great value on everything *original*,” but also asserted that it did not really matter if material really was original because readers could be led to believe it was: “Nothing is more easy than to mislead the most wary and sagacious in this respect” because no single reader will have read every possible source of reprinted material (N.W. 1805: 301; emphasis in the original).

For truly original material, magazines were forced to rely on their editors and their editors' friends. For example, Charles Brockden Brown wrote almost everything original that appeared in his general-interest *Literary Magazine, and American Register*, as did Joseph Tinker Buckingham for his theatrical and literary magazine *Polyanthos*. Other magazines found willing contributors in the members of affiliated organizations, notably literary clubs or gentlemen's societies. The *Monthly Magazine & American Review* and the *American Review & Literary Journal*, for example, were both affiliated with the New York Friendly Club, while the *Monthly Anthology* was launched by the Anthology Club, and the satirical *Red Book* was sponsored by the Delphian Society. Early in the nineteenth century, literary magazines affiliated with the burgeoning number of colleges began to appear, which could depend on students and faculty for original prose and poetry.

Even when early magazine editors did manage to persuade writers to contribute original material, writers often demanded anonymity in an effort to preserve their dignity and privacy, two characteristics of the author as gentleman-scholar (Charvat 1968).¹⁵ *The Fly's* opening essay argued the virtue of anonymity ("the mark of invisibility") for the budding author:

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

A later article explained why this practice persisted:

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

Even many of the founders, publishers, and editors of early magazines preferred to cloak their identities. For instance, the *Lady's Magazine & Repository of Entertaining Knowledge* was edited by "a literary society," the *Aeronaut* was edited by "an association of gentlemen," and the *Baltimore*

¹⁵ The practice of anonymous and pseudonymous authorship was not limited to magazines. Books were also published anonymously or under pseudonyms. For instance, James Fenimore Cooper and Washington Irving kept their names off the title pages of their books until the early 1840s.

Literary Magazine was edited by “a gentleman of known literary abilities.” (Of course, these abilities could not really be “known” if this gentleman remained anonymous!) Others involved with early magazines hid their identities behind pseudonyms. For example, “Robert Rusticoat” was the founder, editor, and publisher of the *Wasp*, while the eminent firm of Goggles, Spectacles, & Co. edited the *Charleston Spectator & Ladies’ Literary Port Folio*, and “An American Patriot” edited *Periodical Sketches*. The practice of hiding magazine editors’ and publishers’ identities was most common in the first two decades of the nineteenth century: 18% of magazines founded in the 1800s had anonymous or pseudonymous editors or publishers, as did 13% of those founded in the 1810s. Anonymous and pseudonymous magazine editing and publishing declined dramatically over the next three decades, to 4.2% of magazines founded in the 1820s, 2.6% of magazines founded in the 1830s, and 1.8% of magazines founded in the 1840s. But some magazines continued to hide the names of their contributors until the mid-nineteenth century. For instance, Nathaniel Hawthorne and his sister were the unnamed authors of all material in the *American Magazine of Useful and Entertaining Knowledge* during 1836, and Longfellow objected to the use of his name on the mastheads of the magazines for which he wrote in the 1840s.

Magazines Begin to Pay Contributors

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

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

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

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

Prices for literary work varied greatly, both over time and across magazines. In 1837 the *United States Magazine & Democratic Review* paid contributors \$5 per page (Jackson 2008: 49); using a historical price index (McCusker 2001), this translates to just over \$90 in 2000 dollars. In 1838 the *American Magazine's* standard rate for poetry was \$2 per page and for prose \$1.50 per page (Robbins 1949) – \$37 and \$28, respectively, in 2000 dollars. In 1840, the *Southern Literary Messenger* paid \$1.50 to \$2 per page (Robbins 1949) – \$30 to \$40 in 2000 dollars. In 1845, the *North American Review's* standard rate was \$1 per page (Robbins 1949) – \$23 in 2000 dollars. Finally, in 1858, the *Odd Fellows' Literary Casket* paid \$2 per page (Robbins 1949) – \$42 in 2000 dollars.

As this new economic practice spread, mass-market magazines began to compete intensely for essays, poems, and especially fiction; as a result, prices for short stories and serialized novels, especially those from the pens of popular authors, escalated after 1830 (Robbins 1949; Jackson 2008). For example, in 1840, Longfellow was paid by the large-circulation *Burton's* (later *Graham's*) *Gentleman's Magazine* \$15 to \$20 for each poem (\$300 to \$400 in 2000 dollars); by 1843, his price per poem had risen to \$50 (over \$1,100 in 2000 dollars), as the magazine sought to make Longfellow a regular contributor (Mott 1930; Robbins 1949; Charvat 1968). This magazine's standard prices for essays and fiction ranged from \$4 to \$20 per printed page over the same time period, which

translated to \$20 to \$100 for a 5,000-word article (\$400 to \$2,000 in 2000 dollars). To put these prices in perspective, average monthly wages for white-collar workers were about \$35 in the late 1820s and about \$43 in early 1840s (Margo 2000); thus by 1843, Longfellow could earn an above-average income by selling a single poem per month and *Graham's* prose writers could do the same by selling one essay or short story every two months.

The editor of the most prominent literary review of the era commented on this nascent market for literary work:

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

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

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

A speech given by essayist and critic Edwin Percy Whipple in 1841 also used the language of supply and demand, asserting that this law “operates in literature as in trade” (Whipple 1849 [1899]: 16). Even authors who opposed this market turn benefitted from the rising prices paid by magazines. For example, in 1857, Ralph Waldo Emerson was paid \$50 for a poem (almost \$1,000 in 2000 dollars) by *The Atlantic Monthly* (Bradsher 1920).

In 1847, one magazine article estimated that popular authors such as Edgar Allan Poe, Mrs. Caroline Kirkland, Nathaniel Parker Willis, James Fenimore Cooper, and William Cullen Bryant were paid \$50 per essay, poem, story, or novel chapter (*Literary World* 1847) – just over \$1,000 in 2000 dollars. For example, in 1841 and 1842, *Graham's Magazine* paid Poe \$4 per page for the stories he published in that outlet, which averaged 5.5 pages in length (almost \$450 per story in 2000 dollars), amounts that were considered supplements to the \$800 annual salary (\$16,200 in 2000 dollars) that Poe drew as that magazine's editor (Ostrom 1982). With prices like these, popular writers like could supplement what little they earned from publishing books by selling essays, stories,

serialized novels, and poems to magazines. As the example of Poe and the earlier example of Charles Brockden Brown indicates, American authors could further increase their incomes by publishing and editing magazines (Tomc 2012). For example, Nathaniel Hawthorne earned \$500 per year (\$9,200 in 2000 dollars) while editing the *American Magazine of Useful and Entertaining Knowledge* (Mellow 1980: 71).

Even the “damned mob of scribbling women” (Hawthorne 1855; quoted in Mott 1947: 122) benefitted from this new practice, although they usually were paid far less than their male counterparts. For example, in 1843, *Graham’s Magazine* paid Mrs. Frances Osgood \$25 per story (almost \$580 in 2000 dollars) and \$10 per poem (\$230 in 2000 dollars) and Mrs. Emma C. Embery up to \$40 per story (\$925 in 2000 dollars) (Robbins 1949). Sadly, Harriett Beecher Stowe earned just \$400 (just under \$9,000 in 2000 dollars) when her immensely popular novel, *Uncle Tom’s Cabin*, was serialized in the *National Era* from June 1851 to April 1852 (Geary 1976). By far the best-paid female author in this era was essayist and novelist Sara Willis Parton (the sister of Nathaniel Parker Willis, better known as “Fanny Fern”): in 1855, she was paid \$100 per column (almost \$2,000 in 2000 dollars) by the *New York Ledger* for a serialized short story (*American Periodicals* 2010).

Notwithstanding the impressive prices paid for the work of the most popular essayists, poets, and fiction writers, the vast majority of would-be professional authors earned little, if anything, from their submissions to magazines (Sedgwick 2000; Tomc 2012). In 1851, Nathaniel Parker Willis told his sister that the general-interest magazine he cofounded with General George Pope Morris, *Home Journal*, received “a dozen applications a day from authors who merely wish to have the privilege of seeing themselves in print—writing for vanity only” (quoted in Tomc 2012: 110, n. 18).

Moreover, many magazines, especially those in specialist genres, continued to rely on voluntary contributions from their readers. For example, in the 1840s and 1850s, the four great New-York-based agricultural magazines – the *Cultivator*, *American Agriculturist*, *Rural New Yorker*, and *Country Gentleman* – each had hundreds of correspondents throughout the country (Demaree 1941); some 400 other, smaller-circulation agricultural magazines that were published before 1860 sought

to emulate their practices. Starting from the time the first religious magazine was founded in 1743, the vast majority of the over 1,200 magazines in this genre published before the Civil War solicited news, sermons, theological essays, uplifting and educational stories, and poetry from their readers (Nord 2004). Similarly, the over 300 magazines devoted to the many social reform movements that flourished in this era – including abolition, temperance, peace, women’s rights, labor and prison reform, help for orphans and the insane, and vegetarianism – literally incorporated their readers by printing letters to the editor as well as reader-contributed poems, stories, and news items (Haveman 2013). And most of the more than 400 medical magazines published in this era actively petitioned medical practitioners and medical-school faculty to submit articles about unusual cases, innovative equipment and techniques, symptoms of diseases, clinical lectures, descriptions of *materia medica*, details of scientific experiments, reviews of medical books, and news about medical schools, hospitals, and medical societies.

The rising value of literary property led magazines to trumpet their most popular authors. The marketing of literary property finally laid to rest the custom of literary anonymity. Just 1.8% of new magazines founded in the 1840s and 1850s (compared to 2.6% of magazines founded in the 1830s and 4.2% of those founded in the 1820s) had anonymous or pseudonymous editors or publishers, and most contributions to magazines published during these decades, except very short items, were signed.

A new occupation – the *magazinish*, a term coined by Edgar Allan Poe to denote those who were remunerated by magazines for their poetry, fiction, and essays – emerged as the practice of paying writers spread and as the idea of author as professional displaced the earlier conception of author as gentleman-scholar. By the early 1840s, this occupation had achieved considerable acceptance. Its legitimacy is evident in Horace Greeley’s advice in 1843 to Henry David Thoreau, urging him to publish his work in mass-market magazines rather than just in small-circulation periodicals, such as the Transcendentalist organ *Dial*, which were read only in elite circles:

This is the best kind of advertisement for you. Though you may write with an angel’s pen yet your work will have no mercantile value unless you are known as an author. Emerson

would be twice as well known if he had written for the magazines a little just to let common people know of his existence. (quoted in Wood 1971: 60)

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

As explained above, it was the slow development of a market for American books that pushed potential book authors away from books and toward magazines. Because few American authors could earn a living by publishing essays, novels, or poetry in book form before the Civil War, many turned to writing poetry, short stories, serialized novels, and essays for magazines (Wroth and Silver 1951: 113). The career of Edgar Allan Poe exemplifies the way magazines profited from the slow development of a market for books. Although Poe was “book-minded” (Charvat 1968: 86-91) in that he valorized publishing short stories and poems in books over publishing them in periodicals, he earned much of his meager living by editing and writing for six magazines over the course of his literary career. In an attempt to gain control over content and finances, he even tried, unsuccessfully, to launch a magazine. Poe’s writing appeared in scores of other magazines, ranging from mass-circulation weeklies like the *New York Mirror and Ladies' Literary Gazette* to highly respected literary quarterlies like the *New York Review*. Following in Poe’s footsteps, America’s most popular antebellum author, Timothy Shay Arthur, published six magazines in the 1840s and 1850s, three of them with eponymous titles that highlighted his own contributions.

In sum, an expanding American magazine market, combined with a slow-developing book market, pushed the growing cadre of professional authors to publish their work in magazines and to work for them as editors (Tomc 2012). This, in turn, helped usher in the first “golden age” of magazines, which began in 1825 and ran to 1850 (Mott 1930; Charvat 1968; Tebbel and Zuckerman 1991). A few of the most popular essayists, poets, and fiction writers could earn reasonable livings by writing, although most of those who tried to become professional authors earned little, if anything. The situation in the middle of the nineteenth century mirrors that of the late twentieth century, when only 5% of those who identified as authors earned all of their income from writing (Kingston and Cole 1986).

Magazines Grapple with Intellectual Property Rights

On the face of it, it would seem that the practice of paying authors for their contributions to magazines, which began in 1819 and had become widespread by 1840, should have compelled a shift in magazine publishers' views about literary property rights. As explained above, competition between large-circulation magazines over original essays, poetry, sketches, short stories, and serialized novels drove up prices for literary property, especially for work from the pens of established authors. Yet even in the middle of the nineteenth century, very few magazines copyrighted their contents to defend this increasingly expensive property, and to our knowledge, none of the few antebellum court decisions about copyright involved magazines (Brauneis 2008). Why? Most basically, macroeconomic conditions deterred the use of copyright to protect magazines' contents. The panic of 1837 and depression of 1840 to 1843 forced many American book publishers out of business. During this period of flux, cheap weekly magazines, most notably the *New World* and *Brother Jonathon*, found it easy to reprint material from books and other magazines without fear of lawsuit from authors or publishers (Charvat 1968; Barnes 1974). Not until after the depression ended did copyright law again offer book and magazine publishers leverage to effectively punish, or at least intimidate, "borrowing" by rival periodicals.

Leading large-circulation magazines began to demand exclusive rights to "their" authors' works, as *Graham's Magazine* for Longfellow's work (Charvat 1968; Barnes 1974). Such use demands for exclusivity discouraged reprinting by direct rivals in the largest cities. But until at least the late 1840s, it curbed – but did not end – literary larceny among magazines, as small-circulation regional publications continued to reprint material from New York's and Philadelphia's mass-market magazines (McGill 2003).

Discussion and Conclusion

This analysis has shown that two closely related trends – the development of copyright law and the emergence of an increasingly professional conception of authorship – were both enabling and disabling social devices for American magazines in the first 120 years of the industry's history.

As an enabling social device, the fact that few magazines claimed copyright protection for their contents allowed magazines to freely reprint material published elsewhere in the U.S., which resulted in low production costs. Moreover, the fact that the U.S. did not offer copyright protection for foreign authors allowed magazines to reprint the work of foreign authors without paying fees. But as a disabling device, magazines' failure to use copyright law and their reprinting of work by foreign authors made it hard for them to attract original contributions from American writers, which reduced the appeal of their publications. As an enabling social device, the emergence of the cultural conception of author-as-professional generated an increasing supply of original material for the pages of magazines.

The changes wrought by the co-evolution of copyright law and cultural conceptions of authorship were accentuated by the spread of the practice, starting in 1819, of magazines paying authors for their contributions. The result was a growing cadre of professional magazine contributors who penned the original material that fuelled the expansion of the magazine industry. But these trends also increased costs for magazine publishers, which raised barriers to entry into the industry and consolidated the power of the large mass-market magazines, which could well afford to pay higher prices for original material.


Our analysis has clear implications for literary property rights in the twenty-first century. The practice of reprinting previously published work continues to the present. Consider the popular *Reader's Digest*, which began in 1922 by publishing condensed versions of articles from a variety of mass-market magazines, or the *Utne Reader*, which selects its contents from the pages of over 1,000 "alternative" and independent-press periodicals. Of course, modern print magazines, unlike their eighteenth- and nineteenth-century predecessors, pay for this privilege. In contrast, online news aggregators like the *Huffington Post* and the *Drudge Report* republish material that first appeared in other news sources – and, like their predecessors in the antebellum magazine industry, they do so without compensating these sources. The legality of such republishing is currently under dispute – see, for example, the recent lawsuit *The Associated Press v. Meltwater U.S. Holdings, Inc., et al.* (2013). A federal judge ruled in favor of the plaintiff on 21 March, 2013, but on 29 July, 2013, the disputants

settled out of court, agreeing to co-operate on a joint venture (Vaughan 2013). Perhaps more fundamental are challenges to copyright that have emanated from the open-source software movement: the “copyleft” movement, which explicitly removes the authority of the author and so undermines the philosophical foundations of copyright law (Dusollier 2003), and the Creative Commons licensing system, which facilitates authors’ waiving property rights to the texts they create and which pushes for reform of copyright law across the globe (Sutton and Higgins 2013; Vollmer 2013).

Our analysis also has implications for sociological theories of culture and the economy. We traced one instance of the modernization of America, the gradual transition from a traditional economic system, in which writers had strong dependence ties to patrician or political patrons, to a modern capitalist system, in which writers sold their work in impersonal markets and augmented their income by working as magazine editors. This transition was made possible by a cultural shift – one first noted by Weber (1904-05 [1958]), who pondered how the commercial self-interest and material acquisitiveness expressed by Benjamin Franklin in his autobiography could have become morally accepted, rather than denounced as it had been in traditional societies. Weber’s analysis pointed to a larger cultural-economic shift, of which the rise of the professional author and the demise of the gentleman-amateur author is only a small part. Our analysis showed that this cultural-economic shift occurred in conjunction with the evolution of legal thought and practice. Future research on this shift – during this time period in the U.S. or in later time periods in developing nations – should recognize that the law fundamentally shapes economic and cultural systems, while also reflecting those systems (Polanyi 1944; Campbell and Lindberg 1990; Edelman and Suchman 1997; Fligstein 2001).

Figure 1: Examples of Copyright Notices in Magazines

Figure 1a: *American Register, or Summary Review of History, Politics and Literature* (1817)

District of Pennsylvania, to wit:
 BE IT REMEMBERED, That on the eleventh day of February, in the forty-first year of the Independence of the United States of America, A. D. 1817, Thomas Dobson and Son, of the said district, have deposited in this office, the title of a book, the right whereof they claim as Proprietors, in the words following, to wit:

“The American Register; or Summary Review of History, Politics, and Literature. Volume I. Σπάρταν ἑλαχίς, ταῦταν κόσμι.”

In conformity to the act of the Congress of the United States, intituled, “An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned.” And also to the act, entitled, “An act supplementary to an act, entitled, “An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies during the times therein mentioned,” and extending the benefits thereof to the arts of designing, engraving, and etching historical and other prints.”

D. CALDWELL,
 Clerk of the District of Pennsylvania.

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Source: American Periodical Series Online, retrieved 4 May, 2009.

Figure 1b: *Transylvania Journal of Medicine and the Associated Sciences* (1828-1839)

UNITED STATES OF AMERICA, }
 DISTRICT OF KENTUCKY. } TO WIT.



BE it remembered, that on the third day of November, in the year of our Lord, one thousand eight hundred and twenty-eight, and in the fifty-third year of the Independence of the United States, JOHN E. COOKE, and CHARLES W. SHORT, of the said District, have deposited in this office the title of a book, the right whereof they claim as proprietors, to wit:

“The Transylvania Journal of Medicine and the associate sciences: edited by John Esten Cooke, M. D. Professor of the Theory and Practice of Medicine in Transylvania University, and Charles Wilkins Short, M. D. Professor of Materia Medica and Medical Botany in the same institution.”

In conformity to the act of the Congress of the United States, entitled “An act for the encouragement of learning, by securing the copies of maps, charts and books, to the authors and proprietors of such copies, during the times therein mentioned.” And also the act entitled “An act supplementary to the act entitled “An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned, and extending the benefits thereof to the arts of designing, engraving, and etching historical and other prints.”

JOHN H. HANNA, Clerk of the District of Kentucky.

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Source: American Periodical Series Online, retrieved 21 March, 2009

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