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# Toward a History of Copyright for Periodical Writings: Examples from Nineteenth-Century America

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“Toward a History of Copyright for Periodical Writings:  
Examples from Nineteenth-Century America”<sup>1</sup>

Will Slauter

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With respect to copyright law, periodicals have followed a different trajectory than books. Newspapers, journals, and magazines were not mentioned in the first copyright statutes in Great Britain (1710) or the United States (1790). Whereas the first explicitly protected only books, the second promised a limited-term copyright for ‘maps, charts, and books’. Periodicals, including magazines and reviews, came under British copyright law in 1842, though newspapers were not explicitly mentioned in the statute until 1911. In the U.S., the Copyright Act of 1909 promised protection for ‘all the writings of an author’ and included special provisions for the registration and deposit of periodicals (Bently and Kretschmer).

Given this chronology, it may be tempting to stress the importance of material form in determining a work’s eligibility for copyright during a given period. Novels, philosophical

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treatises and sermons all qualified for copyright under the statutes of 1710 and 1790 so long as publishers and judges recognized them as ‘books’. Following this logic, a printed engraving had to await its own law (1735 in Britain and 1802 in the U.S.) because contemporaries saw it as something different than a book. But within the realm of printed texts, why were periodicals treated differently than stand-alone publications? Copyright disputes have sometimes involved debates over the definition of a ‘book’, and the word ‘periodical’ is also problematic, but here it will be used interchangeably with ‘serial’ to mean any publication issued in parts that are numbered, dated, or otherwise presented as part of an on-going series (Wald 422). What features of periodicals—and the writings they contained—kept them outside the bounds of copyright law for so long? And to what extent did the absence of explicit statutory protection shape the practices of authors and publishers?

Studies of the production, distribution and reception of periodicals constitute an important strand of scholarship within the field known as ‘history of books’ or ‘book history’. The centrality of the book in these labels has advantages and drawbacks, but few would dispute that studies of periodicals can and should contribute to major debates shaping the field. Nevertheless, the scholarship on copyright remains book-centred. For eighteenth-century Britain, exemplary studies have explored contemporary debates about literary property and the evolving customs of writers, printers and booksellers (Rose; St. Clair; Suarez). Since most of the court cases and published debates about literary property in the eighteenth century revolved around books, this scholarship has also focused on books. For the nineteenth century, specialists of American and British publishing have recognized that periodicals provided authors with an important outlet and made literature available to a wider readership (Johanningsmeier; Law and Patten). But most studies of periodicals pay little attention to questions of copyright, and most studies of copyright barely mention periodicals.

This neglect is perhaps understandable given the small number of court cases or debates about copyright for periodical writings during the eighteenth and nineteenth centuries. Yet the pages of newspapers and magazines provide plenty of evidence that the ownership of texts in serials was not unproblematic for contemporaries. Moreover, records of copyright registration and printed copyright notices reveal that some publishers asserted ownership of serial works long before they were explicitly protected by statute. Conversely, just because a law was on the books did not mean that a majority of authors or publishers made use of it. A systematic study of efforts to copyright periodical writings in all their variety is beyond the scope of this essay, but the examples discussed here reveal the need for an approach to copyright history that moves beyond the chronology of legislation and case law to consider the changing practices of writers, editors, and publishers.

This essay focuses on the nineteenth-century United States. A study of nineteenth-century Britain may reveal differences as well as similarities with the American case, and no claim is being made that the question of copyright for periodicals first arose in nineteenth-century America. In fact, periodicals were registered for copyright in eighteenth-century Britain (despite the fact that the statute mentioned only books) and members of the trade debated the extent to which individual articles could be fairly reprinted. However, the culture and economics of journalism ultimately worked against the idea of copyright for periodical writings (Slauter). During the nineteenth century, the status of periodical writings became more problematic on both sides of the Atlantic. Despite the lack of specific provisions for periodicals in the American statute, proprietors began to register individual texts and entire issues for copyright. The timing of the first copyright claims varied by genre, with fiction being treated differently than poetry, political essays, price lists, and telegraphic dispatches. In the twentieth century, periodicals obtained blanket copyrights that covered all of their contents, but this logic did not apply in the

much more fluid textual universe of the nineteenth century. During this period, periodicals were forums for a range of texts, the legal and cultural status of which varied according to genre and subject matter.

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In the early American republic, there was perhaps no greater champion of copyright than Noah Webster. Webster was particularly concerned with protection for his spelling book (first published in 1783) and he and his friends helped to secure copyright statutes in several states (Monaghan 27-29). But as the owner and editor of the *American Magazine* (1787-88), Webster was also one of the first Americans to assert literary property in a periodical. The U.S. did not yet have a federal copyright statute and the state laws in existence could not be enforced in other states. Webster, who had trained as a lawyer, acknowledged the absence of the federal statute but claimed that authors had a common law right to stop the unauthorised reproduction of their 'books, pamphlets, &c'. Although he hoped that costly lawsuits could be avoided, he also threatened to sue those who reprinted from his periodical. In making his property claim, Webster stressed the intellectual and physical labour expended in gathering, studying, and editing texts as well as the money spent obtaining manuscripts:

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 decypher [*sic*] ancient manuscripts, or purchased copies of three thousand per cent. above the usual price of books, is indubitably entitled to the exclusive advantages resulting from his exertions and expenses (Webster).

Webster's claim was unusual for two reasons. First, although justifications of literary property based on labour and financial outlay had become common in the eighteenth century (Rose), they were rarely made in the context of periodical publishing. Second, as Jared Gardner

has recently pointed out, Webster did not appeal to his effort or originality as an author, even though he wrote many of the texts that appeared in his magazine. Instead, he stressed his work as an editor (Gardner 72-74). Many printers and editors of the period presented themselves as compilers of texts from disparate sources, a crucial role in the decentralized publishing culture of the early republic. Such decentralization made it difficult to argue for—let alone enforce—copyright for periodical writings. Most magazines, including Webster's, contained a mix of original and copied material. Newspapers, which were much more numerous, copied freely from each other to obtain non-local news. Indeed, the unrestricted circulation of news, legislative summaries, and political essays was explicitly defended as crucial for the functioning of democracy in a vast territory like the U.S. (John 30-37).

Webster also had a national project in mind, but instead of a decentralized model in which articles from other places were reprinted locally, he sought to distribute his own publication nationally. Gardner has suggested that Webster did not seek exclusive rights over individual texts so much as control over the integrity of his compilation. Partisan newspapers detached texts from his magazine and printed them alongside political opinion and rumour, undermining Webster's goal of a national publication that remained open to reader participation while avoiding local politics (Gardner 72-77). Webster wanted it both ways: a publication that brought together contributions from different regions (and depended in part on reprinting) but which circulated nationally (and had to avoid being cannibalised by local publications). His warning to printers revealed the difficulty of claiming property over texts while actively promoting their *circulation*. He wrote, 'the Printers throughout the United States are requested to observe, that this publication circulates as the Editor's property'(Webster). Throughout the nineteenth century, writers, editors, and publishers would struggle with this problem: how to circulate texts in a way

that increased visibility and attracted paying customers without seeming to go against the democratic ethos associated with American publishing during this period.

As Meredith McGill has shown, political arguments in favour of wider access to literature were repeatedly used to oppose an international copyright agreement (*American Literature*). The debate centred on reprints of British novels in book form, but what McGill termed the ‘culture of reprinting’ was even more pronounced for periodicals. Not only did newspapers and magazines reprint works by foreign authors not protected by American copyright, but they also copied frequently from each other. Those who sought to claim exclusive rights over periodical writings needed more than a clarification of copyright law. Like Noah Webster, they had to persuade editors, publishers and readers to adhere to new norms related to the republication of texts without seeming to restrict the flow of information and ideas.

Copyright was not the most obvious solution to this problem. In fact, very few editors or publishers expressed an interest in copyright for periodicals in the early nineteenth century.<sup>2</sup> Although some complained about reprinting, they tended to highlight the need to give ‘credit’ for copied material (more on this below). Only a systematic examination of copyright records would reveal when writers and publishers first began to register periodical works for copyright and how such practices changed over time, and this must await a later study. But some indication of the chronology can be had from copyright notices attached to newspapers and magazines. Notice of copyright on the work itself was required from 1802, but it was only one formality among several. One also had to deposit a printed copy of the title in the district court (after 1870 at the

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<sup>2</sup> See also Haveman and Kluttz, which appeared after the present article was in press and therefore could not be integrated into the discussion.

Library of Congress), pay a fee, and deposit a copy (after 1870 two copies) of the completed work within a specified period of time (McGill, 'Copyright' 160-63). The existence of a copyright notice does not confirm that all of these steps were taken, let alone that the copyright was enforceable at law, but it does show that someone tried to claim copyright and to communicate that claim publicly. The first copyright notice I have seen attached to an American periodical is from 1819, when *P.P.F. DeGrand's Boston Weekly Report of Public Sales and of Arrivals* (1819-28) included the official line, 'entered according to Act of Congress' at the head of each issue (25 September 1819). DeGrand no doubt sought to deter other newspapers from reprinting time-sensitive commercial and financial information, but it would have been very difficult to use copyright law to do so, as the case of *Clayton v. Stone* (1829) revealed.

In that case, the *New-York Price Current* (1815-1901, with changes in title) sued the *New York Commercial Advertiser* (1797-1920) for republishing information it claimed as proprietary. To prove that their work qualified as a 'book' under the statute, the plaintiffs presented the court not with a single issue of their periodical but with a volume bound in leather. The defendants objected to this attempt to assimilate books and newspapers. They argued 'that a newspaper could neither in common nor legal parlance be denominated a book, and that both from its ephemeral nature, and from the objects to which it was devoted, it was utterly incapable of being the subject of a copy-right' ('Infringement of Copy-Right'). Justice Smith Thompson ultimately agreed with the plaintiffs that 'a book within the statute need not be a book in the common and ordinary acceptance of the word, viz., a volume made up of several sheets bound together; it may be printed only on one sheet' (Clayton 1000). In determining a work's eligibility for copyright, Thompson did not think it best to dwell on the 'size, form or shape' of a publication, nor did he think the question should be 'determined by reference to lexicographers, to ascertain the origin and meaning of the word book' (1002). Instead, he focused on the purpose of copyright as



outlined in Article I, section 8 of the U.S. Constitution, which empowered Congress ‘to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their writings and discoveries’. In his decision, Thompson referred not to ‘science’ but to ‘the sciences’, as if to recognize different branches of learning that should be encouraged by copyright. ‘It would certainly be a pretty extraordinary view of the sciences’, Thompson wrote, ‘to consider a daily or weekly publication of the state of the market as falling within any class of them. They are of a more fixed, permanent, and durable character. The term science cannot, with any propriety, be applied to work of so fluctuating and fugitive a form as that of a newspaper or price-current, the subject-matter of which is daily changing, and is of mere temporary use’(Clayton 1003-04).

As Justice Thompson’s statements revealed, it was not the material form (unbound sheets) that disqualified the price current from copyright, but nor was it the factual nature of its contents. For much of the nineteenth century, as Robert Brauneis has argued, American courts upheld copyright protection not only for the form of informational works, but also for the facts contained with them. Only one year before he decided *Clayton v. Stone*, Thompson held in *Blunt v. Patten* (1828) that copying directly from a nautical chart or land survey without doing one’s own research was a violation of copyright. He treated the price current differently because although its facts were useful for commerce they did not contribute to the ‘progress of science’. Unlike a map, a price current was continually updated, with the facts in one issue superseded by those in the next one (Brauneis 328-45).

What about written accounts of current events? The implications of *Clayton v. Stone* for general-interest newspapers remained unclear because no publisher claimed copyright in news reports during the first half of the nineteenth century. Doing so would have been unthinkable in a world where copying was what enabled the news to spread from one place to another. Reprinting

was encouraged by the Post Office Act of 1792, which allowed every printer to exchange a copy of his newspaper with every other printer, free of charge (John 35-41). In fact the Post Office Act of 1792 could be seen as a counterpart to the Copyright Act of 1790. Whereas copyright was meant to encourage the publication of useful ‘books, maps, and charts’, the postal policy for newspapers was designed to guarantee the diffusion of political information essential to a democratic society.

Still, attitudes toward the copying of newspaper texts began to change in the early nineteenth century. William Coleman, the editor of the *New-York Evening Post* (1801-1934) was among the first to articulate the notion of unfair competition in journalism. In 1805 he wrote, ‘the advantage belonging to newspaper editorial writing, is to multiply subscribers, when therefore, a man takes his scissors and cuts out my article, and gives it to the world as his own, he derives an unfair advantage from my productions, and multiplies his subscribers at my expense’<sup>3</sup>. William Duane of the Philadelphia *Aurora* (1794-1824) reprinted Coleman’s complaint with approval in an editorial entitled ‘scissors editors’. Thanks to the growth of country newspapers that reprinted extracts from the *Aurora*, Duane claimed to have lost 600 subscribers in five years. Insisting on the need for editors to ‘credit’ his newspaper by name, Duane rejected the long-standing custom of placing copied texts under geographic headings such as ‘Philadelphia’ or ‘New York’. ‘As these scissor-authors may well know’, Duane wrote, ‘the reader very rarely stops to take any notice of the place or date, and therefore, while by this contrivance they deprive the owner of the privilege of complaining they in fact secure the whole credit and advantage to themselves’(‘Scissors Editors’).

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<sup>3</sup> New York *Evening Post* qtd. in ‘Scissors Editors’.

The word credit became central to discussions of journalistic practice in the nineteenth century. Eighteenth-century newspapers had used the word mainly to refer to the trustworthiness (or credibility) of the news, rather than as an acknowledgement (or reward) due to its author<sup>4</sup>. Duane paired the notion of credit as acknowledgement with the notion of advantage as financial reward. His economic argument was rare for the time, but his vocabulary became standard. With few exceptions, newspaper editors who complained about unacknowledged copying did not use the term plagiarism. Instead, they referred to a failure to give credit. The choice of terminology was significant: editors were interested in the ethical and financial connotations of credit. As the *New-England Galaxy* (1817-39) explained in 1818, not giving credit robbed a newspaper of its reputation, and this reputation was crucial for attracting subscribers ('Miseries of Editors'). As the word became more common, editors debated when credit should be given and what it meant to give credit. In 1822 the editor of the *Baltimore Patriot* (1812-59) distinguished between credit, which he described as 'a technical printer's phrase' for citing one's source, and approbation, which signalled an endorsement of the views expressed ('Misleading'). Naming the source relieved the copyist of certain burdens of authorship, such as responsibility for the views expressed. Conversely, paragraphs or essays that were not attributed to another publication might now be understood as having been written by the newspaper staff. As the *New-Bedford [Massachusetts] Mercury* (1807-95) explained in 1824, 'we shall uniformly give credit for every article we extract from other papers, and our readers will consider all pieces in this journal not thus accredited as editorial' (17 September 1824: 3). Although many paragraphs and essays still

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<sup>4</sup> e.g. 'We extract the following anecdote of the present king of Prussia, from a German newspaper of the first credit' (*State Gazette of South Carolina* [Charleston], 18 January 1787: 4).

remained unattributed, an increasing number of them were marked off as belonging to one periodical or another.

Editors' interest in receiving credit for copied material depended upon several factors: the growing separation between the printing and editorial functions of the newspaper, the ambitions of a new generation of more writerly editors, and the increasing competition among newspapers not only within the same city but also in overlapping circulation areas outside the city. Complaints about misattribution and failure to credit became more common in the 1840s, and copying was increasingly described as 'stealing'. At the end of the decade, the expense associated with telegraph news led some editors to publicly threaten to remove newspapers from their exchange lists unless proper credit was given<sup>5</sup>. Yet despite a tendency to mark off specific texts as proprietary there was still no attempt to copyright newspapers or the texts they contained. American news publishers only became interested in copyright in the 1880s, when press associations competed for a national market in news (more on this below).

In the meantime, magazine publishers began to experiment with copyright. For example, a copyright notice was attached to the *Ladies' Magazine* when it first appeared in Boston in 1828. The notice, which appeared on the back of the title page to the annual volume for that year, explained that on 18 January 1828 the firm of Putnam and Hunt had deposited in the office of the clerk of the district court for Massachusetts 'the title of a book, the right whereof they claim as

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<sup>5</sup> For examples of complaints see *Hudson River Chronicle* [Sing Sing, NY], 29 June 1841; *The Sun* [Baltimore], 12 August 1841; *The North American* [Philadelphia], 17 June 1841; *New Hampshire Patriot* [Concord], 24 February 1842; *Boston Evening Transcript*, 29 April 1842; *Ohio Statesman* [Columbus], 24 March 1848; *New York Herald*, 13 March 1848.

proprietors'<sup>6</sup>. The same notice, with the same deposit date, also appeared in the volume for 1829, suggesting that Putnam and Hunt only entered the title once, rather than fulfilling statutory requirements for each volume—let alone each monthly issue—of the periodical. Putnam and Hunt's motives for this early attempt to copyright a magazine remain unclear, and when new publishers took over in 1831 the copyright notices disappeared from the *Ladies' Magazine*. In 1837, Louis A. Godey of Philadelphia purchased the magazine and merged it with his existing *Lady's Book* (1830-98), retaining Sarah J. Hale as editor. Although some articles were labelled as 'Written for the Lady's Book', they did not have copyright notices. The few notices that appeared in the magazine during the 1830s and early 1840s were for musical scores, which tended to be entered by the composer or music publisher<sup>7</sup>.

As Luther Mott explained in his classic study of American magazines, the mid 1840s was a turning point in terms of author pay and copyright (503). From at least 1842, select stories and essays in *Godey's Lady's Book* had notices indicating that their authors had registered them. The copyright symbol was not used until the early twentieth century, so these notices were quite long, e.g. 'Entered according to Act of Congress, in the year 1842, by C.M. Sedgwick, in the Clerk's Office of the District Court of the Eastern District of Pennsylvania'(C. Sedgwick). Godey also began to register individual contributions in his own name, and in 1845 he sought to protect the

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<sup>6</sup> The notices appear in *Ladies' Magazine* [Boston: Putnam and Hunt] 1 (1828): ii; and 2 (1829): ii.

<sup>7</sup> Musical scores were explicitly protected by the Copyright Act of 1831 (Bently and Kretschmer). For examples see *Godey's Lady's Book* 6 (1833): 164, 190; and 20 (1840): 42, 434.

entire magazine by attaching a copyright notice to the beginning of each volume<sup>8</sup>. Around the same time, George R. Graham also began to copyright *Graham's American Monthly Magazine* (1840-58, also based in Philadelphia)<sup>9</sup>.

The reason that Godey and Graham began to see copyright as worth the trouble was that they were now paying contributors much more than before. Compensation had been extremely rare before the 1820s and remained irregular during that decade. During the 1830s, a few periodicals paid \$1 or \$2 per page, but most continued to rely on unpaid submissions and reprints (Mott 504-12). Some editors, including Thomas Willis White of the *Southern Literary Messenger* (1834-64), became adept at obtaining stories and book reviews in exchange for friendship, praise, and gifts (Jackson). In the early 1840s, *Graham's* began paying \$2-\$7 per page for most contributions and much more for well-known authors like James Fenimore Cooper and Nathaniel Park Willis (E. Sedgwick 404). As it became possible for some writers to make a living as

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<sup>8</sup> The notice appears on the verso of the title page of vols. 30 (Jan.-June 1845), 31 (July-Dec. 1845), and 32 (Jan.-June 1845) after which point it no longer appears in that place during the 1840s. Thanks to James N. Green for this information based on an examination of copies held at the Library Company of Philadelphia. Whether Godey stopped registering whole issues or simply changed the placement of the notice (to wrappers on individual issues?) remains unclear. Yet he clearly continued to copyright individual contributions in his name, e.g. vol. 35 (Oct. 1847): 195.

<sup>9</sup> The earliest notice I have found is attached to a contribution by J. Fenimore Cooper (in the author's name) in *Graham's American Monthly Magazine* 26, no. 6 (Dec. 1844): 270. The comments of newspaper editors suggest that Graham began claiming copyright over the whole magazine, perhaps on the wrappers to the monthly issues (which have not been found). The annual volumes consulted do not contain any such blanket notices.

‘magazinists’ (a term coined by Edgar Allen Poe), publishers thus began to view reprinting differently.

The appearance of copyright notices on magazines in the 1840s led some newspaper editors to complain. *Graham’s* responded by asking ‘why should we pay four or five hundred dollars for a single number, without having the advantage of the outlay of capital? Indeed, a great detriment to the circulation of the monthlies in country towns has been, that the large city weeklies supply the choicest stories of the Magazines to their subscribers’<sup>10</sup>. Godey also acknowledged the objections of newspaper editors, but like Graham he claimed that exclusivity was necessary to guarantee a return on investment. Godey insisted that the goal was not to prohibit reprinting, but rather to ensure that other periodicals wait a month before running its stories. In May 1845 he gladly quoted a local editor who understood the need for copyright:

We perceive that our neighbours, Godey and Graham, have both taken out a copyright for their respective magazines. This is rather new, but on looking at the matter carefully, we think it entirely correct. The articles in each magazine costs, we suppose, from \$300 to \$500. These are frequently taken out bodily, and before Godey's Book or Graham's Magazine reach half their subscribers, their contents have been made familiar to the community through the daily or weekly papers(‘Our Copyright’).

While mocking or criticizing copyright notices, newspapers nonetheless acknowledged that such notices changed the rules of the game. After perusing *Graham’s* issue for September 1845, the Philadelphia *North American* explained to its readers, ‘the literary contents tempt our scissors strongly, but the copyright prohibition guards the rich pages from newspaper desecration’ (26 August 1845: 2).

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<sup>10</sup> *Graham’s American Monthly Magazine*, 27, no. 5 (May 1845): 239, qtd. in Mott, 503.

From the 1850s, magazines owned by book publishers, including Harper and Brothers, G.P. Putnam and Sons, Ticknor and Fields, and Little, Brown and Company, set the trends in terms of author pay and copyright (E. Sedgwick 405-08). *Harper's New Monthly Magazine* (1850- ) at first consisted almost entirely of articles reprinted from British periodicals, but by the end of 1851 *Harper's* highlighted its 'original' stories and essays, some of which carried the notice 'Entered, according to Act of Congress, in the year 1851, by Harper and Brothers'<sup>11</sup>. *Putnam's Monthly Magazine* (1853-70) and the *Atlantic Monthly* (1857- ) included such notices at the beginning of each semi-annual volume, thereby registering their periodicals as 'books'<sup>12</sup>. Such notices began to appear in the *North American Review* (1815- ) in 1850, shortly after Charles C. Little and James Brown took it over<sup>13</sup>. For publishing houses, the relationship between books and magazines was symbiotic. Reviews and excerpts from forthcoming books generated publicity, while serial novels and essays could be reissued in book form, in which case it was useful to already have the copyright (Lupfer 250-52).

Although the involvement of book publishers increased the number of copyright notices in periodicals, such notices were far from universal, and their purpose was not always clear. While some editors hoped that the notices would deter reprinting, others claimed that articles could be copied as long as credit was given. In her excellent study of how Fanny Fern (Sarah

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<sup>11</sup> The first notice was attached to Chapter 4 of John S.C. Abbott's 'Napoleon Bonaparte' (*Harper's New Monthly Magazine*, 3, no. 18 (Nov. 1851): 721). The first three chapters had appeared without copyright notices.

<sup>12</sup> Both magazines contained notices in their first volumes, e.g. *Putnam's Monthly Magazine* 1 (Jan.-June 1853): ii; *Atlantic Monthly* 1 (Nov. 1857-May 1858): ii.

<sup>13</sup> The first notice appeared in the *North American Review* 70 (Jan.-June 1850): ii.



Willis) navigated the world of periodical publishing in the 1850s, Melissa Homestead cited this example: ‘Each number of *The Musical World & Times* is copyrighted. Editors are at liberty, however, to copy from our columns if mindful of the courtesy of accrediting articles’ (Homestead 161). The *American Agriculturist* (1842-1964) similarly invited other periodicals ‘to copy any and all desirable articles’, claiming that ‘no use or advantage will be taken of the Copy-Right, wherever each article or illustration is duly accredited to the *American Agriculturist*’<sup>14</sup>. As Homestead has explained, such seemingly contradictory notices were not designed to secure royalties or to block reprinting; rather, the goal was to boost the reputation of a periodical (or an individual author) and thereby increase paid readership. Copyright notices and threats of lawsuits were used to encourage editors to adopt shared protocols of citation and acknowledgement. Authors like Fanny Fern and periodicals like the *Musical World* relied on reprinting to increase their visibility, but this strategy could only work in a specific ‘culture of reprinting’, one in which authors and editors credited each other (Homestead 154-63).

The first copyright notices to appear in newspapers were attached to works of serial fiction and non-fiction around 1850. When Harriet Beecher Stowe’s *Uncle Tom’s Cabin* appeared in the *National Era* in 1851-52, each instalment was accompanied by a copyright notice. As the editor explained to his readers, Stowe’s copyright indicated her intention to publish the novel in book form (Parfait 33). While in some cases authors secured copyright before submitting their manuscripts, in other cases the publisher obtained copyright. Robert Bonner, who ran the *New York Ledger* (1855-98) for more than three decades before turning it over to his sons, made more frequent use of copyright (and became much richer) than most newspaper publishers of the period. Bonner paid handsomely for fiction, essays and poetry, including contributions by well-

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<sup>14</sup> *American Agriculturist* 18, no. 1 (Jan. 1859): 1.

known authors such as George Bancroft, William Cullen Bryant, and Henry Ward Beecher. To boost his circulation, Bonner touted his exclusive contracts with authors and attached copyright notices (in his name) to contributions by Sylvanus Cobb Jr., Fanny Fern, and others<sup>15</sup>.

The sporadic appearance of copyright notices in newspapers beginning in the 1850s indicated that individual authors and publishers were beginning to change the ‘culture of reprinting’. Serial fiction was by no means the only genre to be accompanied by notices; from the 1850s, individual authors and publishers also marked off works of history, biography, and political commentary in newspapers<sup>16</sup>. Poetry seems to have circulated with fewer copyright notices than fiction in the middle decades of the century, but this had changed by 1890, when the *Chicago Inter-Ocean* (1872-1914) complained that copyright restrictions prevented it from reproducing more than a few lines of poetry from another newspaper (‘Bards of Old’).<sup>17</sup>

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<sup>15</sup> Robert Bonner Papers, New York Public Library. Although few of the surviving letters from authors mention copyright, two receipts from A.R. Calhoun, dated 3 October 1879 and 17 December 1879, explicitly acknowledge that Bonner had purchased it. For examples of notices see *New York Ledger* 19 April 1856, p. 4; and 17 May 1856, p. 1.

<sup>16</sup> For example, William Goodell’s serial ‘The Legal Tenure of Slavery’ was written ‘for *Frederick Douglass’ Paper*’ but with ‘Copyright Secured by the Author’ (*Frederick Douglass’ Paper*, 24 February 1854). ‘A Complete History of Kansas’ was ‘Written expressly for the *Herald of Freedom*’ [Lawrence Kansas] with copyright secured by the editors of that paper (*Herald of Freedom*, 17 January 1857).

<sup>17</sup> The circulation of poetry in newspapers deserves further study. For nineteenth-century Britain, see Hobbs and Januszewski.

Indeed, copyright notices became much more common in newspapers after the mid-1880s, when syndicates run by S.S. McClure, Irving Bacheller, and others solicited manuscripts from authors and arranged for copyright before distributing texts to their newspaper clients. For the syndicates, copyright provided a way to sell concurrent publication rights to periodicals across the country (Johanningsmeier). It was also in the mid-1880s that press associations in the U.S. first actively campaigned for a copyright in news reports. Beginning with the formation of the New York Associated Press in the late 1840s, press associations had gradually transformed the business of news: instead of exchanging news after publication (in which case ‘credit’ was what mattered) press associations distributed news to members *before* publication. The main threat of piracy came not from individual newspapers, but from rival news agencies that could copy (or steal) the news and wire it to their own clients (Silberstein-Loeb 467-68). In the mid 1880s, as they struggled to control the nationwide distribution of their news, the Associated Press (AP) lobbied Congress for a special copyright that would prohibit the reprinting of news stories for 8 hours after publication. Several bills were proposed, but they all failed after a vigorous campaign by small-town newspapers. The main argument was that a copyright in news would strengthen the monopoly of the AP at the expense of the local newspapers upon which American democracy depended. But some opposition also crystallized around the idea that news could not be copyrighted because it did not have an author in the true sense of the word (Brauneis 351-58).

Although the bill for a special copyright in news failed, some press associations—including the California Associated Press and the New York Associated Press—nonetheless began to attach copyright notices to individual paragraphs<sup>18</sup>. Some newspapers also registered

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<sup>18</sup> Examples of notices by these two associations can be found in the San Francisco *Evening Bulletin*, 23 July 1887, and the *Aberdeen [North Dakota] Daily News*, 5 January 1890.

stories and whole issues of their periodicals for copyright. The *Catalogue of Title Entries* (1891-1906), a weekly record of works entered for copyright with the Library of Congress, included individual articles such as ‘Latest News from Europe,’ ‘Sporting Forecasts (Six),’ and ‘Crowds at Aix, Aix-les Bains, August 10, 1891’ all registered as ‘books’(1, no. 6: 5). According to the *Catalogue*, the New York *Sun* began registering each daily newspaper (in weekly batches) in May 1892, a practice that some other newspapers also followed (2, no. 47: 13).

Yet American courts were not ready to uphold copyright for all the texts appearing in newspapers. In *Tribune Co. of Chicago v. Associated Press* (1900), the *Chicago Tribune* had registered the entire issue of its daily newspaper, in part to protect stories obtained through an exclusive contract with the London *Times*. The London correspondent of the AP had copied some of the same stories from the *Times* and these were then distributed to AP newspapers in the U.S. The *Tribune* sued to stop this practice, but the judge refused the injunction, claiming that ‘there can be no general copyright of a newspaper composed in large part of matter not entitled to protection’(qtd. in Swindler 292). In other words, he suggested that some but not all newspaper texts were eligible for copyright. Two years later the case of *National Tel. News Co. v. Western Union Tel. Co.* (1902) affirmed a distinction between ‘news’ and other forms of writing. Admitting that copyright law had expanded to cover a wider range of texts, the court insisted that there was some point ‘where authorship proper ends, and mere annals begin’(qtd. in Swindler 295-96). While insisting that copyright was not appropriate for news, the court nonetheless recognized that agencies had the right to protect their labour and investment against unfair competition. Such protection ultimately arrived in 1918, when the U.S. Supreme Court established the misappropriation doctrine, also known as the ‘hot news’ doctrine (Brauneis).

That story has been told elsewhere, but for the present purposes it is important to note that by 1900 publishers and judges were applying different standards to newspaper texts according to

their genre. Fiction, poetry, and essays seemed like reasonable subjects for copyright, whereas news reports did not. This distinction between ‘news’ and other forms of writing contained in periodicals also developed in an international context. According to the original Berne Convention for the Protection of Literary and Artistic Works (1886), all articles published in periodicals could be reproduced unless accompanied by a notice explicitly prohibiting republication. Journalists and publishers complained and when the Berne Convention was revised in 1896 periodical writings were treated differently depending upon their genre and subject matter. Whereas serial stories and novels could not be reproduced without permission, other articles could be reproduced unless such reproduction was expressly forbidden. Publishers were not allowed to prohibit republication of ‘articles of political discussion’, ‘news of the day’ or ‘current topics’. The 1908 revision allowed publishers to prohibit republication of newspaper articles on any subject, but continued to insist that ‘news of the day’ could always be copied<sup>19</sup>.

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The nineteenth century was a period of experimentation and negotiation with respect to copyright for periodical writings. As they complained about or encouraged copying, writers, editors, and publishers debated the shifting boundaries of the ‘culture of reprinting’. Much work remains to be done before a complete history of copyright for periodical writings can be written. A more systematic study of published copyright notices by period and genre would fill in the

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<sup>19</sup> I am grateful to Heidi Tworek for sharing her manuscript ‘Protecting News in an Interconnected World’, which explains how the language of the Berne convention came to exclude news from protection under the agreement. The relevant articles can be found in *International Copyright Union* 20, 35.

gaps left here. An examination of the copyright records housed in the Library Congress would reveal who sought copyright, for what kinds of writings, and when.

Yet the examples discussed here do suggest some preliminary conclusions. First, with the exception of those specializing in financial information, publishers only began to seek copyright for periodicals around mid-century, when economic and cultural changes began to transform American publishing. The overall shift was from a decentralized model, in which editors exchanged news, essays, poetry, and fiction, to a centralized model in which more financially sound magazines (often backed by publishing houses) and more highly capitalized newspapers (and associations of them) sought to control the national distribution of their texts. This overall shift happened gradually, and developments occurred at different moments for magazine publishers, press associations, and syndicates, but in each case attempts to exploit a national market underpinned the decision to seek copyright for periodical writings.

Second, the ‘culture of reprinting’ at the heart of periodical publishing evolved during the nineteenth century. Largely independent of technological change, newspaper and magazine editors became increasingly interested in receiving ‘credit’ for copied material. From mid-century the desire to establish shared protocols of citation and acknowledgment was complemented by the desire to guarantee a return on investment. Many writers and editors still claimed to be more concerned about ‘credit’ than about copying per se, but some began to look toward copyright to protect texts that they had purchased. Copyright notices for fiction and non-fiction began to appear in magazines and newspapers around mid-century, whether at the initiative of authors like Cooper and Stowe or publishers like Godey and Bonner.

Although copyright law had not changed to include explicit provisions for periodicals<sup>20</sup>, few authors or publishers doubted that stories, poems, or historical sketches could be claimed as literary property as long as the registration and deposit requirements for books were followed. Beginning in the 1880s, syndication services successfully used copyright to sell publication rights to newspapers around the country, thereby contributing to the proliferation of copyright notices. Copyright for news reports was much more controversial. Press associations struggled to redistribute the news gathered by their members before it could be copied by competitors. They tried and failed to obtain a special copyright for news. Yet a few publishers copyrighted news articles under the provisions designed for books, in some cases attaching copyright notices to individual paragraphs of news.

Whether or not other editors respected these marks of ownership was another question. Not everyone agreed about what could be copied, what deserved credit, and how such credit should be given. Yet by the end of the century the pages of newspapers and magazines had become more differentiated, with some texts being marked off as proprietary and others left open to copying. The legal validity and cultural acceptability of these notices remained contested, but everyone could see that the ‘culture of reprinting’ now involved many more warning signs and restricted areas than before. Changes in the copyright statute only came later (in 1909), after individual writers, editors and publishers had experimented with existing laws and tried to create new norms for the republication of texts. A more nuanced history of copyright for periodical writings would look beyond the chronology of legislation and case law to consider the changing attitudes and practices of authors and publishers. Such a history would begin by viewing

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<sup>20</sup> A copyright reform bill proposed in 1844 included specific provisions for periodicals, but this was not passed. For the text of the bill see the *North American* [Philadelphia] 1 February 1844.

periodicals as forums for a wide range of texts, the legal status of which evolved differently depending on their genre and subject matter and the efforts of those who wrote, edited, and published them.

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