Law in the Domains of Culture

Edited by
AUSTIN SARAT
and
THOMAS R. KEARNS

Ann Arbor
THE UNIVERSITY OF MICHIGAN PRESS
2000

The Cultural Work of Copyright: Legislating Authorship in Britain, 1837–1842

Martha Woodmansee

A bill is pending in the United States Congress to extend copyright protection from the present term of an author's life plus fifty years to life plus seventy years postmortem.[1] The Senate committee handling the bill, the Judiciary Committee, is chaired by Orrin Hatch, and one of the expert witnesses he invited to testify several months ago on September 20, 1995, was Alan Menken. Menken is the house composer for the current generation of Disney animations—*The Little Mermaid* (1989), *Beauty and the Beast* (1991), *Aladdin* (1992), and *Pocahontas* (1995)—and he testified on behalf of authors. Menken spoke ardently in favor of term extension. Reading from a prepared statement, he explained to the Committee that he "literally grew up with music," got a college degree in it (after switching from "pre med"), and then went out to seek his fortune:

The research for this paper, begun at the invitation of Austin Sarat, was carried out at the Newberry Library with generous support from the National Endowment for the Humanities. It profited from conversations there with Paul Gehl and James Turner, as well as with my collaborator Peter Jaszi, who participated in its composition in all but the narrow Romantic sense that the paper seeks to place in critical relief. The footnotes that follow use shortened references; full source citations appear in the list of Works Cited at the end of the chapter.

1. "Copyright Term Extension Act of 1995" (H.R. 989, S. 483). Since this writing, the 104th Congress has ended without acting on the bill, but term extension is certain to be back on the legislative agenda for the 105th Congress in 1997.

> The world of American music was at my doorstep, and with the optimism of youth, I set out to claim its legacy. As anyone who sets out in the music business knows, the path is neither smooth nor direct. My early years were spent, not in concert halls but in ballet classes and cabaret studios where I earned my money as an accompanist while struggling for recognition as a song writer. I often wondered if I would ever realize my dream of writing music that would be sung and loved by people the world over. But I never doubted, if I did realize this dream, that as an American I would be supported by a system of laws in copyrights that would secure my creations not only for me but for my children and their children after that.[2]

Copyright is an "exclusive right" to exploit an intellectual property economically—a right that, because it prevents others from making any kind of economic use of the property, has traditionally been granted for only very "limited times" as an incentive to induce creative individuals to make valuable new ideas public by guaranteeing them a portion of the profits of their industry.[3] So the Judiciary Committee was eager to ascertain the incentive value of tying intellectual property up for an additional twenty years. How, committee members wished to know, might an exclusive right of life plus seventy years be expected to spur "authors" like Menken on to *more* new creative ventures than did the present term of life plus fifty years postmortem?

Menken, however, addressed the committee's concerns in a language of entitlement rather than of incentive. "It's ironic," he observed, "that this great country which has spawned cultural treasures unsurpassed in the world should deny the creators of those treasures protections commensurate with those guaranteed by 'creators' rights' in Europe." The European Union has recently adopted the German term of life plus seventy years. That the United States should hesitate to follow suit Menken found "unjustifiable to all Americans, particularly at a time when we are positioning ourselves as the world leader on the global information superhighway. And this is unjustifiable to song

2. *Hearing of the Senate Judiciary Committee*, 18.

3. United States copyright law has its source in the U.S. Constitution, art. 1, sec. 8, clause 8 of which grants Congress the power "to Promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."

writers such as myself and to our children and grandchildren, who will be deprived of their legacy unless we extend our term of copyright."[4]

The vision of authorial entitlement to which Menken thus gave expression has become pervasive in copyright in recent times, to the great detriment of the "public domain," or intellectual "commons," on which all of us must continuously draw in the production of new works, for this vision has operated to justify longer and longer terms of protection, against more and more kinds of unauthorized uses, to more and more different kinds of creative works. In this chapter I explore the genesis of this vision of authorial entitlement in the history of copyright. I then return to the present to examine recent developments like the push for term extension somewhat more fully. The moment in copyright history that I examine was one of intense dialogue between the legal and literary cultures, but such dialogue has since ceased almost completely. An overarching aim of the chapter is thus to suggest why dialogue urgently needs to be reopened.[5]

The authorial ethos to which Menken gave expression is commonly believed to have its source in the 1710 Act of Anne, the first British copyright statute, and the subsequent history of copyright is thought to be one of progressive recognition of authors' rights in legal culture.[6] I want to take issue with this narrative. "Authorship" entered the domain of law with Anne, to be sure, but only as the stalking-horse of a book trade concerned to shore up its historic monopoly in the face of competition from domestic and foreign "pirates."[7] The book trade remained the key player in the subsequent development of British copyright law down through the eighteenth century. The decisions of the courts—the eighteenth century saw no further important legislation—contain only scattered and relatively indistinct traces of this vision. It was not until the nineteenth century that authorship acquired the powerful charge that so transfixes lawmakers today. Specifically, I

4. *Hearing of the Senate Judiciary Committee*, 19.

5. A first step in reopening dialogue may be found in the collaborative interdisciplinary work of the Society for Critical Exchange (see Woodmansee and Jaszi, eds., *Construction of Authorship;* and Woodmansee and Jaszi, "The Law of Texts").

6. This is the thrust of recent studies like Mark Rose's *Authors and Owners* (1993) and John Feather's *Publishing, Piracy and Politics* (1994) as well as of the classics of Drone (1879) and Birrell (1899).

7. See Woodmansee, "The Genius and the Copyright," 437–38; and Woodmansee and Jaszi, *Construction of Authorship*, 6–7.

want to suggest that it acquired this charge in the extended parliamentary debate that culminated in the Copyright Act of 1842.

This legislation, only the second major revision of British copyright since the Act of Anne, is extraordinary in having been largely the work of authors. It was sponsored by an accomplished author-judge who was the MP for Reading, Sergeant Thomas Noon Talfourd, acting on the inspiration as well as intermittent advice and encouragement of the soon to be poet laureate, William Wordsworth, its object was to secure "just" remuneration for *authorial* service to the nation, and it consisted largely of the telling and retelling of the *lives* of authors, living and dead.

When Talfourd introduced the bill in May 1837, books were protected from unauthorized reprinting for twenty-eight years from publication, extendable automatically for the life of the author. This was the term established in the Copyright Act of 1814, the first major reform of the Statute of Anne.[8] Now, in a second reform, Talfourd proposed to extend this term to the author's life plus sixty years postmortem. This proposal represented a very substantial extension, especially since the bill provided for living authors to recover copyrights they had sold to publishers at the expiration of the twenty-eight-year term, and then to enjoy the very same protection they could expect on new books—the life of the author plus sixty years. The bill met substantial opposition both inside and outside Parliament. Action on it dragged on for more than five years, and when the bill finally passed into law in July 1842, it had been whittled down to a term of forty-two years or the author's life plus seven years postmortem, and the "reversion" clause had been dropped. The new law nevertheless represented a substantial victory for proponents, for one of its chief objectives was to confer dignity on the profession of authorship, and five years of parliamentary attention accomplished that and more.

Talfourd's bill, as it came to be known, also generated a substantial body of writing—petitions from well-known authors and from representatives of the book trade, pamphlets and articles in newspapers and

8. How the copyright term came to be extended in this way remains a mystery, for the legislation was apparently introduced to clarify the mechanisms of legal deposit—the requirement imposed on printers and booksellers by the Act of Anne to supply nine libraries in England and Scotland with a free copy of all new publications—and deposit seems to have been the focus of the debate that led up to the bill's passage. See Feather, *Publishing, Piracy and Politics*, 97–121.

periodicals, and transcripts of parliamentary debates and committee reports, not to mention private correspondences about the bill. In locating documents, we are fortunate to be able to draw on John Feather's fine bibliographical work[9] in addition to the standard histories of copyright all the way back to John J. Lowndes's contemporaneous *Historical Sketch of the Law of Copyright; with Remarks on Serjeant Talfourd's Bill* (1840; 2d ed. 1842).[10] In this chapter, part of a longer study in progress, I intend to focus on parliamentary debate of the bill.[11]

The Case for Extension

Talfourd argues in three major addresses to the House of Commons (May 18, 1837; April 25, 1838; and February 28, 1839) that the existing copyright law prevents writers from making a fair profit on the fruits of their labor. Demand for most literary offerings may flag before protection lapses—indeed, in the vast majority of cases, it will be satisfied within months or even days of publication—but some literature may still be, or may just be becoming, profitable. This is what is occurring, according to Talfourd, to much of the nation's best literature. It begins to become profitable only after the author's death, with the result that even as the public is benefiting most from his work, his descendants go penniless. For as the law currently stands, Talfourd points out, when an author dies, his writings enter the public domain. Thus it is with the descendants of Milton and Coleridge, Burns, Scott, and Defoe, to name but a few. Talfourd relates the *life* of each to drive home his point—that in stipulating that their writings enter the public domain when they die, existing law has prevented the nation's most revered authors from providing for their families in the style they deserve.

This patrimonial argument for extending the term of copyright—the notion that authors have earned the right, accordingly, are entitled

9. "Publishers and Politicians, Part II"; also reprinted in Feather, *Publishing, Piracy and Politics*, 122–48.

10. See Drone, *A Treatise on the Law of Property in Intellectual Productions*, 144–64. See also Barnes, *Authors, Publishers, and Politicians*, 116–37. For some further contemporaneous discussions, see John Lockhart's essay review, "The Copyright Question," Archibald Alison's "The Copyright Question," Thomas Tegg's *Remarks on the Speech of Sergeant Talfourd*, and the anonymous works *A Few Words on the Copyright Question, Observations on the Law of Copyright*, "The Copy-right Law," and "The New Copyright Bill."

11. The official records of the debate are collected in *Parliamentary Debates*. References will be given in the text.

to establish families on a secure financial footing, to create estates—is reiterated frequently by supporters of the bill, suggesting not only that authorship was on the way to becoming a respectable bourgeois profession, but that as a group authors had come to represent an important enough national resource to warrant nurturing by the state.[12] Talfourd goes so far as to compare them in this regard to Britain's military heroes, asking fellow members of Parliament whether they would treat them as shabbily as they treat authors.

> Did we tell our Marlboroughs, our Nelsons, our Wellingtons, that glory was their reward, that they fought for posterity, and that posterity would pay them? We leave them to no such cold and uncertain requital; we do not even leave them merely to enjoy the spoils of their victories, which we deny to the author—we concentrate a nation's honest feeling of gratitude and pride into the form of an endowment, and teach other ages what we thought, and what they ought to think, of their deeds by the substantial memorials of our praise. Were our Shakspeare and Milton less the ornaments of their country, less the benefactors of mankind? (May 18, 1837, vol. 38, col. 874)

If authors' service to the nation compares with that of its great military heroes, Talfourd asks, does it not at least owe them "the spoils of their peaceful victories"—opportunity to enjoy the profits produced by their writings? Rather than remunerate authors thus minimally, however, Talfourd contends, Britain expropriates them: seizes the patrimony of their children by turning their writings over to the public upon their demise.

Once in the public domain, according to Talfourd, their works are at the whim of ignorant and/or unscrupulous entrepreneurs who, in the interest of turning a profit, reprint, excerpt, anthologize, and abridge them without the least regard for authors' intentions. Thus, whereas their descendants might be expected to protect the integrity of their work—so as to ensure their revered ancestor's reputation—current law allows their work to be "garbled," "mangled," "disfigured."

12. For overviews of the history of the profession of authorship during this period in Britain, see Collins, *The Profession of Letters;* Bonham-Carter, *Authors by Profession,* 33–90; and Cross, *The Common Writer.*

Authors not only lose out financially, but their pride of workmanship, their reputation, is also assaulted.

This situation has global consequences, according to Talfourd, for colonial expansion has vastly extended the audience of British authors:

> The great minds of our time have now an audience to impress far vaster than it entered into the minds of their predecessors to hope for: an audience increasing as population thickens in the cities of America, and spreads itself out through its diminishing wilds, who speak our language, and who look on our old poets as their own immortal ancestry. And if this our literature shall be theirs; if its diffusion shall follow the efforts of the stout heart and sturdy arm in their triumph over the obstacles of nature; if the woods stretching beyond their confines shall be haunted with visions of beauty which our poets have created, let those who thus are softening the ruggedness of young society have some present interest about which affection may gather, and at least let them be protected from those who would exhibit them mangled or corrupted to their transatlantic disciples. (April 18, 1837, vol. 38, cols. 878–79)

In this imperialist vision—a rich commingling of political, theological, and hermeneutical as well as patrimonial registers—Britain's authors have replaced its admirals, and British dominance is postulated to depend upon direct, or pure, dissemination of the Authorial Word—dissemination unadulterated by colonial admixture. Such transmission depends in turn on a substantially extended copyright term being vested postmortem in the only individuals who may be counted on to ensure it—authors' descendants.

At the center of Talfourd's case is a *life* of a living author that warrants the copyright reform he proposes:

> Let us suppose an author, of true original genius, disgusted with the inane phraseology which had usurped the place of poetry, and devoting himself from youth to its service; disdaining the gauds which attract the careless, and unskilled in the moving accidents of fortune—not seeking to triumph in the tempest of the passions, but in the serenity which lies above them—whose works shall be scoffed at—whose name made a by-word—and yet, who shall persevere in his high and holy course, gradually impressing thought-

> ful minds with the sense of truth made visible in the severest forms of beauty, until he shall create the taste by which he shall be appreciated—influence[,] one after another, the master-spirits of his age—be felt pervading every part of the national literature, softening, raising and enriching it; and when at last he shall find his confidence in his own aspirations justified, and the name which once was the scorn admitted to be the glory of his age—he shall look forward to the close of his earthly career, as the event that shall consecrate his fame and deprive his children of the opening harvest he is beginning to reap. As soon as his copyright becomes valuable, it is gone. (May 18, 1837, vol. 38, col. 877)

"This is no imaginary case," Talfourd concludes, "I refer to . . ."—and then, having left them hanging a little longer, he pronounces the name of William Wordsworth. Many House members would already have guessed his identity, for Wordsworth's (in)famous prefaces are the source of Talfourd's key ideas here and even of several of his formulations.[13] We will return briefly to the poet's intensive involvement in—his virtual orchestration of—the legislation subsequently. Of interest in the present context is what his *life* tells us about Talfourd's bill, and that is—in the words of an opponent—that it is an "author's bill" in the high romantic sense, for what he here sketches is the making of a kind of secular prophet—a writer, to be sure, but a writer who disdains to place his genius in the service of the expressed human needs that we associate with the everyday business—and pleasures—of life in favor of a "high and holy course" that involves making the truth "visible." The object of Talfourd's bill is to reward, and in this way encourage, authorship in this exclusive—indeed, grandiose—sense.

Talfourd freely admits this intent. Responding a year later to petitions filed against the bill by members of the book trade, he admits that ensuring "to authors of the highest and most enduring merit a larger

13. In his famous "Preface" of 1800, Wordsworth sought to promote *Lyrical Ballads* by distinguishing them from the popular "magazine" poetry of the day, which he asserts to be vitiated by "gaudiness and inane phraseology" (*The Prose Works of William Wordsworth*, vol. 1, 123). His efforts failed to gain him a wide readership, however, and in the "Essay, Supplementary to the Preface" of 1815, he relates a self-serving history of English poetry in which he tells his readers that *all* of the great poets from Spenser to Percy met with similar fates during their lifetimes while lesser talents flourished. The lesson of his history, Wordsworth writes, is that "every Author, as far as he is great and at the same time *original*, has had the task of *creating* the taste by which he is to be enjoyed" (*Prose Works*, vol. 3, 80).

share in the fruits of their own industry and genius" is the bill's "main and direct object." "[W]hatever fate may attend the endeavour," he adds,

> I feel with satisfaction that it is the first which has been made substantially for the benefit of authors, and sustained by no interest except that which the appeal on their behalf to the gratitude of those whose minds they have enriched, and whose lives they have gladdened, has enkindled. The statutes of Anne and of George 3rd, especially the last, were measures suggested and maintained by publishers; and it must be consoling to the silent toilers after fame, who in this country have no ascertained rank, no civil distinction[,] in their hours of weariness and anxiety to feel that their claim to consideration has been cheerfully recognised by Parliament, and that their cause, however feebly presented, has been regarded with respect and with sympathy. (April 25, 1838, vol. 42, col. 556)

The Case against the Bill

> It is painful to me . . . to oppose my hon. and learned Friend on a question which he has taken up from the purest motives, and which he regards with a parental interest. These feelings have hitherto kept me silent when the law of copyright has been under discussion. But as I am, on full consideration, satisfied that the measure before us will, if adopted, inflict grievous injury on the public, without conferring any compensating advantage on men of letters, I think it my duty to avow that opinion and to defend it. (February 5, 1841, vol. 56, col. 344)

Thus did Thomas Babington Macaulay deliver the death blow to Talfourd's bill in February 1841. The bill had been debated in every session of Parliament since its introduction, and while a majority of the House of Commons probably favored it, it was opposed by a well-organized and determined minority—an alliance of radicals, utilitarians, and free traders that the then shaky Whig government could not afford to alienate. This minority could not defeat the bill, but through skillful manipulation of parliamentary procedure it had managed to obstruct the bill's progress for over three years.[14] Now Macaulay, who had yet to

14. Feather, "Publishers and Politicians, Part II," 56–57, 59.

contribute a word to the debate, threw his measured periods into the cause.

Although a necessary incentive to writers, copyright is a kind of monopoly, he argues, and "the effect of monopoly generally is to make articles scarce, to make them dear, and to make them bad" (col. 348). Unless books are an exception, therefore, the task is to keep the term of protection as short as possible without canceling the incentive it provides. Macaulay thinks sixty years postmortem is much too long: "[A]n advantage that is to be enjoyed more than half a century after we are dead, by somebody, we know not whom, perhaps by somebody unborn, by somebody utterly unconnected with us, is really no motive at all to action" (col. 349). Macaulay obviously does not share Talfourd's patrimonial sentiments—his dynastic urge.

To illustrate his point, Macaulay offers a *life* of Samuel Johnson:

> Dr. Johnson died fifty-six years ago. If the law were what my hon. and learned Friend wishes to make it, somebody would now have the monopoly of Dr. Johnson's works. Who that somebody would be it is impossible to say, but we may venture to guess. I guess, then, that it would have been some bookseller, who was the assign of another bookseller, who was the grandson of a third bookseller, who had bought the copyright from Black Frank, the Doctor's servant [and residuary legatee], in 1785 or 1786. Now, would the knowledge, that this copyright would exist in 1841, have been a source of gratification to Johnson? Would it have stimulated his exertions? Would it have once drawn him out of his bed before noon? Would it have once cheered him under a fit of the spleen? Would it have induced him to give us one more allegory, one more life of a poet, one more imitation of Juvenal? I firmly believe not. I firmly believe that a hundred years ago, when he was writing our debates for the Gentleman's Magazine, he would very much rather have had twopence to buy a plate of shin of beef at a cook's shop underground. Considered as a reward to him, the difference between a twenty years' term and a sixty years' term of posthumous copyright would have been nothing or next to nothing. But is the difference nothing to us? I can buy Rasselas for sixpence; I might have had to give five shillings for it. I can buy the Dictionary—the entire genuine Dictionary—for two guineas, perhaps for less; I might have had to give five or six guineas for it. (February 5, 1841, vol. 56, cols. 349–50)

Macaulay's Johnson casts doubt on the utility to writers of the extension proposed in Talfourd's bill while simultaneously suggesting that the bill will do disservice to the reading public by raising the price of books. That is because, finding themselves in need of money, authors like Johnson will sell their copyrights outright, handing over to publishers the full advantage of the extended term. As evidence Macaulay relates another *life*, that of Milton's granddaughter, chosen because her fate had been adduced by Talfourd to demonstrate the need for posthumous copyright. In Macaulay's hands the woman's poverty demonstrates just the opposite: it is the result rather of the perpetual copyright in force at the time. Milton's copyrights belonged to his publisher, Tonson, to whom he had sold them outright. Accordingly, Macaulay points out,

> everybody, who wants them, must buy them at Tonson's shop, and at Tonson's price. Whoever attempts to undersell Tonson is harassed with legal proceedings. Thousands who would gladly possess a copy of Paradise Lost, must forego that great enjoyment. And what, in the meantime[,] is the situation of the only person for whom we can suppose that the author, protected at such a cost to the public, was at all interested? She is reduced to utter destitution. Milton's works are under a monopoly. Milton's grand-daughter is starving. The reader is pillaged; but the writer's family is not enriched. Society is taxed doubly. It has to give an exorbitant price for the poems; and it has at the same time to give alms to the only surviving descendant of the poet. (February 5, 1841, vol. 56, cols. 352–53)

Macaulay also takes issue with Talfourd's claim that an author's works are best entrusted to his heirs. There is a greater danger that "valuable works will be either totally suppressed or grievously mutilated" when their copyrights remain in the hands of the family than when they are transferred to booksellers (col. 353). Macaulay is thinking of the censorship undertaken by families out of disagreement—moral, political, religious, and so forth—with an author's views. He

offers as illustration Richardson's novels and Boswell's *Life of Johnson.* In both cases, he argues, there is reason to doubt that the prudish heirs would have allowed their ancestors' works to be reprinted had they held the copyrights. But another kind of "mutilation" was already common and was becoming more so at this time: the kind of cannibalizing of a work for parts to be used in new works that advertising has exploited to such effect in our own times. That Talfourd was not able to imagine a family perpetrating such "acts of disrespect" against an ancestor is in keeping with the traditional, patriarchal politics that inform his position generally.

Macaulay's broadside was no doubt in part effective because he was a famous author. But he also summed up with customary economy and urbanity key points that more radical critics of the bill had been raising from the start. Literacy had continued to increase throughout the century, and several innovations in printing and papermaking had reduced the price of books.[15] Many MPs feared that the resulting "diffusion of knowledge"—to use the radical Joseph Hume's term (February 27, 1839, vol. 45, col. 934)—would be slowed, even disrupted, by the legislation. For it would retain in, or return to, copyright books in or about to enter the public domain and become available for reprinting in inexpensive editions. Their fears are neatly summed up by Hume:

> Of all means of public instruction and education, cheap publications were the most important and the most effectual, and the main cause of the diffusion of information in them for the last ten years, had been the cheap publications which had been produced . . . . The present object appeared to be, to drive the country back to those barbarous times, when information was conferred to but a small section of the community. (February 19, 1840, vol. 52, col. 421)

Radical opponents of the bill take the side of the user, casting their objections in a rhetoric of divergent class interests. They even charge

15. The invention of the Fourdrinier papermaking machine and development of stereotyping in the first decade of the century were followed by the invention and development of the power press, revolutionizing printing and publishing. Distribution was also facilitated by the growth of the railroad. See Feather, *A History of British Publishing,* 129 ff. For the evolution at this time of our modern "mass" reading public, see Altick, *The English Common Reader.*

the House with authorial collusion—with taking the part of authors in complete disregard for the welfare of the public. Are not many MPs themselves authors, opponents of the bill ask (with good reason). "It was a genteel thing to be an author," Warburton is recorded as observing, "and for that reason they found protection in that House" (February 19, 1840, vol. 52, col. 404). Wakley had earlier made the same point with more wit when he quoted before-and-after prices of books by members that had passed into the hands of the bookseller Thomas Tegg for remaindering: Bulwer-Lytton's two-volume *England and the English,* originally priced at 1£ 11s 6d, was being remaindered by Tegg for 1s a volume; and Benjamin Disraeli's *Vivian Grey,* also published at 1£ 11s 6d, had been bought by Tegg for 8d a volume (May 9, 1838, vol. 42, col. 1060–61). Tegg, who specialized not only in remainders but also in abridgments and inexpensive reprints of books in the public domain, had been a vocal opponent of the bill from the beginning.[16] In the course of the long debate, he came to symbolize the processes of distribution that the bill addressed and thus appears as the hero or scourge of the trade, depending on the viewpoint of a given speaker.

Compromise

Talfourd barely responded to Macaulay's eleventh-hour intervention. Audibly stunned by the way in which the latter "had thrown the weight of his authority, the grace of his eloquence, and the fascination of his style into the scale, in opposition to th[e] measure," Talfourd spoke only briefly, concluding his rather random remarks with the hope that "the voices of Wordsworth, Southey, of Moore and Rogers, of Coleridge, speaking, as it were, from the grave, and of the son of Sir Walter Scott—would weigh against all the powers and genius of his right hon. Friend's address" (February 5, 1841, vol. 56, col. 360). But they did not, and in the question that followed, the second reading of the bill was deferred for six months by a vote of 45 to 38. This was the last that was seen of his bill, for the Whig government fell in June 1841, and in the subsequent election Talfourd was not returned to Parliament.

A Tory victory in the election created conditions that were more conducive to the legislation, for its strongest supporters now sat on the

16. See Tegg's *Remarks on the Speech of Sergeant Talfourd.*

government side. Moreover, its sponsors—in addition to Viscount Mahon (Philip Henry Stanhope), who initiated the bill, William Gladstone, who was to join the cabinet the next year, and the reactionary Tory Robert Inglis—were better politicians than Talfourd. Compromise is everywhere audible when Mahon takes the floor to introduce the bill, but most notably in the methodical way in which he takes up, one by one, the questions Macaulay had raised over a year earlier. In the process several *lives* get retold—those of Boswell's delicate son and Richardson's prudish grandson, and, for the nth time, the life of Dr. Johnson. Macaulay's Johnson, it will be recalled, demonstrated the complete uselessness of term extension to authors: he would have preferred "a plate of shin of beef" to the knowledge that the heirs of his footman, "Black Frank," would derive benefit from his works long after he died. Now, in Mahon's hands, Johnson's life proves just the opposite. I again quote liberally to convey the extraordinary fascination that authors held for these politicians at the dawn of Victoria's reign.

> It will be recollected, that he had married very early, that he had lost his wife ere he had passed the prime of manhood, and that he had toiled through the remainder of his life mainly in mournful seclusion, amidst the gloom of constitutional melancholy. . . . Why was he doomed to that gloom and that seclusion? Why, but from the effect of that very law which denied him adequate property in his own productions, or sufficient rewards for his labours, and forbid him to surround himself once more with the charities of home. Why might he not have hoped, under another law, to have some one dearer and nearer than "Black Frank" to soothe his dying moments, or receive his parting breath? How unfair to urge the desolate state of Dr. Johnson—the very evil produced under the present law, as an argument against a change of that law! How painful would have been the feelings of that great and good man, had he foreseen that the circumstances of his distress would be distorted into an argument for prolonging the distresses of others! (April 6, 1842, vol. 61, col. 1355)

Mahon constructs for Johnson a *life* of morbid isolation for which the inadequacy of copyright was the prime cause. Had he just had the kind of postmortem protection now under parliamentary consideration, Johnson would have been on a financial footing to remarry after the death of his wife, to start a family, and in this way, Mahon implies, to turn his life around. With a healthy investment in the future, Johnson would not have suffered the melancholy for which he is remembered. Authors need a patrimony.

Mahon's defense of the bill culminates in the imperial considerations of Talfourd's very first speech. Having, in the interest of compromise, proposed a much reduced term of twenty-five years *post mortem auctoris*, Mahon says that he considers it his duty to inform the House that more dramatic progress may be occurring elsewhere in the world: "From Russia down to Spain—from the states most attached to ancient customs, down to those chiefly rent asunder by civil strife—attempts have been successfully made to increase the encouragements to men of letters" (April 6, 1842, vol. 61, col. 1360). In France, Mahon notes, action is under way to extend the term of protection from the current ten (twenty if an author leaves kindred) to fifty years postmortem. The rationale for the extension will be of interest to the House, he thinks, for it appears to lie in the crucial role that France assigns authors in its global agenda. Mahon reads aloud from a report that the "great poet and upright statesman" Lamartine had laid before the Chamber of Deputies the previous year:

> The whole of Europe is at this moment inspired by one common thought and care for the protection of literature. It is the part of France to take the lead of Europe. Her high station in the civilised world has been won for her by the hand of her artists, and by the pen of her poets and historians, even more than by the sword of her soldiers. After so many other victories, could France leave to neglect or to spoliation those powers of thought that have achieved a mighty and pervading empire over all time and all space? Let it be the part of France to take the lead of Europe. (April 6, 1842, vol. 61, col. 1360)

Lamartine asserts French preeminence in terms certain to stir rivalry in the British Parliament: for all its military defeats, France still holds worldwide cultural preeminence. To remain competitive, Mahon suggests, Britain will need to adopt a copyright bill that does greater justice to its eminent authors. Winding down, he notes that these authors' prominence in former debates makes it unnecessary to name them again here. "[T]hey will perhaps most be felt" if each member of Parlia-

ment "recall[s] them in silence to his own recollection. Like the statues of the ancient heroes withheld from a solemn procession, 'Praefulgebant eo ipso quod effigies eorum non visebantur' [They were distinguished by the very fact that their images were not seen]" (April 6, 1842, vol. 61, col. 1361).

Lest this means of contributing to Britain's global aspirations seem nebulous, Mahon concludes his case for the new bill by celebrating a simpler, more direct contribution: that of a book like Southey's *Life of Nelson* to the superiority of Britain's navy.

> [P]erusal of the *Life of Nelson* has kindled, has cherished, and has kept alive the feelings of professional pride and honourable emulation. . . . Depend upon it, many a young heart has, in the hour of danger, beat high with the recollection which that book inspired . . . . But, further still, may not many a young man who would otherwise have preferred a life of safe and quiet application, and certain profit at home in trade or commerce, have been impelled to the service of the country by these glowing pages? (April 6, 1842, vol. 61, col. 1362)

In this final flourish, *The Life of Nelson* displaces Admiral Nelson, symbolically wresting cultural superiority away from France.

It must have come as a surprise to many in the House of Commons when Macaulay thereupon rose in support of the bill. In the fourteen months since his dramatic intervention against Talfourd's bill, Macaulay had evidently devoted some attention to copyright because he was now armed with a proposal of his own and with a barrage of facts and figures to demonstrate its advantages. Instead of the twenty-five years postmortem that Mahon proposed adding to the twenty-eight-year term authors already enjoyed, Macaulay proposes that the latter term of twenty-eight years just be extended another fourteen years: an author should enjoy "copyright for life, or for forty-two years, whichsoever shall be the longer" (April 6, 1842, vol. 61, col. 1364). He therewith launches into a dizzying comparison of the way in which the two proposals dispose of the literature not only of England but of ancient Greece and Rome, of France, Spain, and Germany. The ostensible object of the performance, which runs to over four printed pages, is to show how much greater justice his own proposal does. Following an elaborate comparison of the fortunes of "Madame D'Arblay and Miss

Austen"—the only mention of women writers in the entire debate, even though by this time at least one-third of all "polite" literature (i.e, novels, poems, plays, and literary essays) was being written by women[17]—Macaulay concludes that in contrast with Mahon's plan, his own plan tends to reward "the best books":

> Take Shakespeare. My noble friend gives a longer protection than I should give to Love's Labour's Lost, and Pericles, Prince of Tyre; but he gives a shorter protection than I should give to Othello and Macbeth.
>
> Take Milton. Milton died in 1674. The copyrights of Milton's great works would, according to my noble friend's plan, expire in 1699. Comus appeared in 1634, the Paradise Lost in 1668. To Comus, then, my noble friend would give sixty-five years of copyright, and to the Paradise Lost only thirty-one years. Is that reasonable? Comus is a noble poem: but who would rank it with the Paradise Lost? My plan would give forty-two years both to the Paradise Lost and to Comus.
>
> Let us pass on from Milton to Dryden. . . . Of all Pope's works, that to which my noble friend would give the largest measure of protection is the volume of Pastorals, remarkable only as the production of a boy. Johnson's first work was a Translation of a Book of Travels in Abyssinia, published in 1735. It was so poorly executed that in his later years he did not like to hear it mentioned. . . . To this performance my noble friend would give protection during the enormous term of seventy-five years. To the Lives of the Poets he would give protection during about thirty years. Well; take Henry Fielding; it matters not whom I take, but take Fielding. His early works are read only by the curious, and would not be read even by the curious, but for the fame which he acquired in the later part of his life by works of a very different kind. What is the value of the Temple Beau, of the Intriguing Chambermaid . . . ? Yet to these worthless pieces my noble friend would give a term of copyright longer by more than twenty years than that which he would give to Tom Jones and Amelia.
>
> Go on to Burke. . . . (April 6, 1842, vol. 61, cols. 1365–68)[18]

17. See Cross, *Common Writer*, 166–67.

18. As Macaulay's speech is reported in the third person in Hansard's *Parliamentary Debates*, I quote here from Macaulay, *Prose and Poetry*, 747.

We need not follow Macaulay to the ancient world or even to contemporary Europe to grasp the point he is arguing—or to sense that this registry of authordom somehow exceeds the requirements of the task at hand. He concludes:

> To Lear, to Macbeth, to Othello, to the Fairy Queen, to the Paradise Lost, to Bacon's Novem Organum and De Augmentis, to Locke's Essay on the Human Understanding, to Clarendon's History, to Hume's History, to Gibbon's History, to Smith's Wealth of Nations, to Addison's Spectators, to almost all the great works of Burke, to Clarissa and Sir Charles Grandison, to Joseph Andrews, Tom Jones and Amelia, and, with the single exception of Waverley, to all the novels of Sir Walter Scott, I give a longer term of copyright than my noble friend gives. Can he match that list? Does not that list contain what England has produced greatest in many various ways, poetry, philosophy, history, eloquence, wit, skilful portraiture of life and manners? I confidently therefore call on the Committee to take my plan in preference to the plan of my noble friend. (April 6, 1842, vol. 61, col. 1371)[19]

So excessive a display surely could not have been necessary—or, indeed, sufficient—to demonstrate the preferability of his own proposal to Mahon's and would seem to be intended in part to convey Macaulay's conversion, if not to the bill's animating principle, then to the cause of authorship.[20]

This is how Mahon understood it, and after briefly restating his case for the term that he himself proposed, he invites some kind of compromise: "if [Macaulay] were prepared to adopt, with his term of forty-two years, a diminished term after life, he would willingly accede to such a proposal" (April 6, 1842, vol. 61, col. 1393). The required proposal is put forward by Peel, who had been returned to office as prime minister in the elections the previous year. Speaking for the first time in the long debate, Peel expresses hope that it will prove "possible to combine the two propositions, and besides the forty-two years of the amendment to give an author's family a right for seven years after his death" (col. 1394). In the ensuing vote, this weighty voice of compromise prevails.

19. Ibid., 750.

20. His nephew writes that Macaulay "enjoyed the satisfaction of having framed according to his mind the Statute which may fairly be described as the charter of his craft" (Trevelyan, *The Life and Letters of Lord Macaulay*, vol. 2, 38). In the statute's designation as an act "to afford greater Encouragement to the Production of Literary Works of lasting Benefit to the World," Macaulay's contribution would seem to find explicit acknowledgment.

But not before a last salvo is fired by the opposition. Although he will support Macaulay's proposal "as the least of two evils," the radical Wakley explains, he cannot resist calling attention to its paucity of argument—Macaulay's failure to support his statements with facts that would show a need for the House to take any action at all. Wakley's intervention will have no impact on the outcome of the debate, which is palpably decided, but this final salvo nevertheless merits our attention because it helps place the debate as a whole in perspective. At the center of Wakley's remarks is a dramatic reading of several poems by Wordsworth, performed not to contribute to the celebration of authorship begun by Mahon and Macaulay, but to expose its pretensions. By placing before the House poems that "anyone might have written," he proposes to reduce authorship to somewhat more human proportions, raising the question why parliamentary measures should be warranted. "The extracts he was about to read to the House were from the works of a very distinguished poet, Mr. Wordsworth," Wakley is reported as saying.

> This course had been forced upon him. He had never done anything of the kind before; but surely, if hon. Gentlemen were anxious to give an extended protection to authors, they could not object to hear what were the kind of works which they proposed to protect. The first poem he would read was entitled *Louisa:*—
>
> I met Louisa in the shade,
> And, having seen that lovely maid,
> Why should I fear to say
> That she is ruddy, fleet, and strong,
> And down the rocks can leap along,
> Like rivulets in May?
>
> And she hath smiles, to earth unknown,
> Smiles that, with motion of their own,
> Do spread, and sink, and rise,
> That come and go, with endless play,

And, ever, as they pass away,
  Are hidden in her eyes.

  She loves her sire, her cottage home,
Yet o'er the moorland will she roam
  In weather rough and bleak;
And when, against the wind, she strains,
O, might I kiss the mountain rains
  That sparkle on her cheek!

  Take all that's mine beneath the moon,
If I with her but half a noon
  May sit beneath the walls
Of some old cave, or mossy nook,
When up she winds along the brook
  To hunt the waterfalls.

This was a gem! He assured the House he did not read these extracts with any invidious purpose. No man entertained a higher respect for Mr. Wordsworth than he did; but if the House was prepared to give protection to works containing matter of that description, he did contend that men of science, who had conferred the highest blessings on the human race, had a strong claim on the Legislature [as well], and some [more] protection ought certainly to be bestowed upon them. The next poem he would read was addressed *To a Butterfly:* —

  I've watched you now a full half-hour,
Self-poised upon that yellow flower,
And, little butterfly! indeed
I know not if you sleep or feed.
  How motionless!—Not frozen seas
More motionless! and then
What joy awaits you, when the breeze
Hath found you out among the trees,
  And calls you forth again!

  This plot of orchard ground is ours;
My trees they are; my sister's flowers;

  Here rest your wings when they are weary;
Here lodge, as in a sanctuary!
Come often to us, fear no wrong,
  Sit near us on the bough!
We'll talk of sunshine and of song,
And summer days when we were young,
Sweet childish days, that were as long
  As twenty days are now.

> If they gave a poet an evening sky, dew, daises, roses, and a rivulet, he might make a very respectable poem. Why, anybody might do it. [Another member interjects "try it."] Try it! he had tried it. . . . He thought, however, a member of society might employ his talents to much better advantage than in the composition of such productions as he had quoted. Who could not string such lines together by the bushel? He could write them by the mile. (April 6, 1842, vol. 61, cols. 1380–82)

After reading one further poem, *The Stock-Dove,* Wakley asks whether his fellow MPs believe that "any act of Parliament they could frame would ever give to such authors a pecuniary advantage."

Wakley speaks as if these poems had only recently been published, but in fact they had appeared in 1807 in *Poems, in Two Volumes*—as had disparaging comments very like Wakley's, in the reviews that appeared at that time. The reviews had savaged the work: it consisted by and large of "common-place ideas" clothed "in language not simple, but puerile . . . namby pamby" (to quote Byron).[21] But thirty-five years of accomplishments had made such remarks sound unseemly—or so we may gather from the care taken by subsequent speakers to dissociate themselves from them. Yet Wakley's remarks call attention to a feature of the poems that is being effaced by the legislation—as also by its animating spirit Wordsworth. And that is their collective, corporate, even collaborative roots.

It is not simply that, as Wakley complains, Wordsworth has reworked "common-places"—inherited ideas and forms that have been worked and reworked by poets before him. The poems are the result of a process that was collaborative in a narrower sense. As has more

21. Quoted in Gill, *William Wordsworth,* 266.

recently come to light with the publication of the journals of Wordsworth's sister Dorothy, the entire family participated in the preparation of *Poems, in Two Volumes.* A more famous poem from the collection, "Daffodils," illustrates the collaborative procedure dramatically.[22] Recording the sights and sounds of an after-dinner walk with William in her journal, Dorothy notes:

> When we were in the woods beyond Gowbarrow Park we saw a few daffodils close to the water-side. We fancied that the lake had floated the seeds ashore, and that the little colony had so sprung up. But as we went along there were more and yet more; and at last, under the boughs of the trees, we saw that there was a long belt of them along the shore, about the breadth of a country turnpike road. I never saw daffodils so beautiful. They grew among the mossy stones about and about them; some rested their heads upon these stones as on a pillow for weariness; and the rest tossed and reeled and danced, and seemed as if they verily laughed with the wind, that blew upon them over the lake; they looked so gay, ever glancing, ever changing. This wind blew directly over the lake to them. There was here and there a little knot, and a few stragglers a few yards higher up; but they were so few as not to disturb the simplicity, unity, and life of that one busy highway.[23]

A good deal of both the letter and the spirit of this entry is assimilated into William Wordsworth's later poem, but without any reference to its author. Dorothy's substantial contribution—indeed, her very participation—has been completely effaced—her five "we's" assiduously replaced by "I's," transforming the couple's collective experience into a solitary one. The resulting poem relates the poet's moving experience of a phenomenon of nature that produces renewed pleasure whenever it is relived in memory:

> I wandered lonely as a cloud
> That floats on high o'er vales and hills,

22. While I draw different conclusions, I learned about this collaboration from David Gewanter's paper, "'Daffodils' and Authority: Wordsworth's Collaborative Lyric," presented in April 1991 at a conference that the Society for Critical Exchange organized on "Intellectual Property and the Construction of Authorship." A selection of the conference papers is contained in Woodmansee and Jaszi, *Construction of Authorship.*

23. Dorothy Wordsworth, *The Grasmere Journals,* 84–85.

> When all at once I saw a crowd,
> A host, of golden daffodils;
> Beside the lake, beneath the trees,
> Fluttering and dancing in the breeze.
>
> Continuous as the stars that shine
> And twinkle on the milky way,
> They stretched in never-ending line
> Along the margin of a bay:
> Ten thousand saw I at a glance,
> Tossing their heads in sprightly dance.
>
> The waves beside them danced; but they
> Out-did the sparkling waves in glee:
> A poet could not but be gay,
> In such a jocund company;
> I gazed—and gazed—but little thought
> What wealth the show to me had brought:
>
> For oft, when on my couch I lie
> In vacant or in pensive mood,
> They flash upon that inward eye
> Which is the bliss of solitude;
> And then my heart with pleasure fills,
> And dances with the daffodils.[24]

In the final stanza, the poet's pleasurable recollection of his experience of the daffodils becomes a metaphor for the poetic process per se, constructing it as an operation not of several minds in collaboration but of a single individual mind in interaction with the natural world. Ironically, the very lines in which this vision is set forth were supplied—as William elsewhere confirms—by his wife, Mary Hutchinson: "They flash upon that inward eye / Which is the bliss of solitude."[25]

"Daffodils" exposes the element of truth in Wakely's irreverent protest against term extension. A corporate, collaborative work, the poem calls our attention to the element of collaboration at the heart of

24. William Wordsworth, *Poems, in Two Volumes,* 207–8.

25. Wordsworth ascribed these lines to Hutchinson in a note dictated to Isabella Fenwick (*Poems, in Two Volumes,* 418).

creative production generally even as it dramatizes the process by which such collaboration gets denied. We inevitably draw upon the work of others in our creative activities—if not contemporaries working in the close proximity of the Wordsworths, then those working at some temporal remove whom we may or may not acknowledge as "influences." Copyright encourages us to deny others' contributions to our creative production by awarding the exclusive right to exploit it economically to "authors"—to essentially *solitary* originators. Although a profoundly collaborative work, "Daffodils" was confirmed as William's property upon publication, and nobody, not even Dorothy or Mary, could have reproduced it in whole or in part without his permission. Today Dorothy would even run the risk of being charged (albeit erroneously) with infringement of William's copyright for publishing her (prior) prose description of the daffodils, so dramatically has the scope of the "work" to which an author may claim legal protection expanded in the century and a half since passage of the 1842 bill.

Copyright owes this rapacious ethos in significant measure to Wordsworth himself, and his hand may be discerned throughout the parliamentary debates. Wordsworth had long been interested in copyright. At the time of the 1814 reform, he had felt that the extension being contemplated was much too short, and in anticipation of its debate in Parliament, he had complained in a letter to Richard Sharp that

> it requires much more than [twenty-eight years] to establish the reputation of original productions, both in Philosophy and Poetry, and to bring them consequently into such circulation that the authors, in the Persons of their Heirs or posterity, can in any degree be benefited, I mean in a pecuniary point of view, for the trouble they must have taken to produce the works.[26]

To benefit writers the "originality" of whose work forces them to look to posterity for recognition, copyright would need to extend well beyond the term being contemplated, Wordsworth believes. Only "useful drudges," he complains to Sharp, may expect to realize a profit from their investment within twenty-eight years—

26. Letter to Richard Sharp, September 27, 1808 (William Wordsworth, *Letters: Middle Years*, 266).

> flimsy and shallow writers, whose works are upon a level with the taste and knowledge of the age; while men of real power, who go before their age, are deprived of all hope of their families being benefited by their exertions.[27]

It would be many years before Wordsworth got involved in copyright reform, but when he did, it was to implement the ideas sketched in this letter of 1808.

There is no subsequent record of intervention until three decades later, when Wordsworth succeeded in interesting Talfourd in the cause.[28] Talfourd, who entered Parliament in 1831, had been an admirer of Wordsworth since 1813 and a friend since 1815, when they were introduced by Charles Lamb. That year Talfourd, who was then a law student of twenty, wrote a fifty-eight-page "Estimate [of] the Poetical Talent of the Present Age" for *The Pamphleteer* that diverged sharply from contemporary opinion to pronounce Wordsworth "the greatest genius of the age."[29] Several more substantial appreciations of the poet, including "On the Genius and Writing of Wordsworth" for the *New Monthly Magazine* in 1820, figured among Talfourd's very considerable literary and critical output.[30]

Wordsworth was sixty-seven when Talfourd introduced his bill, and his poetry was just beginning for the first time to produce substantial income. "[W]ithin the last three years or so my poetical writings have produced for me nearly 1500 pounds," he wrote Gladstone in 1838, but he then went on to complain that under existing copyright "much the greatest part of them either would be public property tomorrow, if I should die, or would become so in a very few years."[31] From letters like this, it appears that the prospect of copyrights lapsing just as they were becoming valuable is what finally goaded Wordsworth into action. When he became involved, he not only

27. Ibid., 266.

28. On Talfourd, see in addition to the substantial entry in the *Dictionary of National Biography*, vol. 19, 343–46: *A Memoir of Mr. Justice Talfourd. By a Member of the Oxford Circuit;* and Ward, "An Early Champion of Wordsworth."

29. Talfourd, "An Attempt to Estimate the Poetical Talent of the Present Age," 465.

30. The only readily available collection of Talfourd's writings is Talfourd, *Critical and Miscellaneous Writings.*

31. Letter to William Ewart Gladstone, March 23, 1838 (William Wordsworth, *Letters: Later Years, 1835–1839*, 536).

coached Talfourd, supplying material for his speeches, but personally wrote to dozens of members of Parliament and other influential acquaintances to drum up support for the bill, fired off several anonymous letters to newspapers, organized a campaign of petitions from well-known authors, and, reluctantly, even petitioned Parliament himself.[32] Talfourd quotes from the petition in his third major speech of February 28, 1839.

A more thorough examination of Wordsworth's hand in the Copyright Act of 1842 is beyond the scope of this chapter. In conclusion I want rather to return to the present to sketch some of the ways in which the vision of authorial entitlement that triumphed there is making itself felt today.[33]

The Legacy of 1842

A convenient point of entry is provided by the copyright initiative with which I began—the term extension bill that is currently pending in Congress (as well as in the British Parliament).[34] In place of the poet-lobbyist Wordsworth we now have Alan Menken urging nearly the same term extension to the Senate Judiciary Committee that was contained in Talfourd's proposal. Menken also deploys the same rhetoric of authorial entitlement, but—and this is one of two crucial differences in these two moments in the history of copyright—Menken is in the employ of Disney, Inc. It is Disney and other such large entertainment and information industries that are the moving force behind this legislative initiative. This is not to say that Menken does not stand to gain from another term extension, just that he will gain only if Disney does.

What does Disney anticipate? As a "corporate author," it may currently expect to garner royalties from its productions for seventy-five

32. Wordsworth's writings on copyright are collected in *Prose Works*, vol. 3, 309–27. See in addition Zall, "Wordsworth and the Copyright Act of 1842"; Noyes, "Wordsworth and the Copyright Act of 1842: Addendum"; Moorman, *William Wordsworth*, vol. 2, 550–55; Feather, "Publishers and Politicians, Part II"; Eilenberg, "Mortal Pages"; and Woodmansee, *The Author, Art, and the Market*, 145–47.

33. The groundbreaking investigation of the impact of Romantic theory on twentieth-century American copyright law is my collaborator Peter Jaszi's article "Toward a Theory of Copyright." Further treatments of the impact of Romantic theory may be found in Woodmansee and Jaszi, *Construction of Authorship*, and "Law of Texts"; and Jaszi and Woodmansee, "Ethical Reaches of Authorship."

34. See note 1. Since this writing, the British Parliament has enacted term extension. This occurred in December 1995.

years—insofar as they remain popular. If the term extension bill passes, there will be an additional twenty years, or ninety-five years of royalties. It is of course impossible to say whether *The Little Mermaid, Beauty and the Beast, Aladdin,* or *Pocahontas* will still be in circulation nearly a century from now, so it is not certain that Menken's heirs will profit from the animations. But it is certain that if the bill does not pass, Mickey Mouse will enter the public domain within just a few years, because *Steamboat Willy,* the cartoon that introduced Mickey, was created in 1928. It would be interesting to know the annual profit produced by this figure globally and the profit Disney anticipates from it over the next twenty years as it begins to be distributed throughout the world electronically—assuming, that is, that another piece of copyright legislation that has just come before the Congress, the National Information Infrastructure (NII) Copyright Protection Act of 1995, becomes law, subjecting the domestic electronic environment, and by almost inevitable extension the global one as well, to rigorous regulation. But at what cost to the public?

To sketch first the cost of term extension, if the present bill passes—and passage is likely—this legislation will return to copyright hundreds of thousands of letters, manuscripts, out-of-print books, forgotten films, and the like created in the 1920s and 1930s that were about to enter the public domain, bringing to a halt countless creative projects, prospective as well as in progress, that make use of copyrighted materials—for example, biographies, textbooks, and critical editions, to name only the most obvious scholarly and educational projects that will be affected. One shudders for scholars like Patrick Parrinder, who has been working for years on a revised team-edition of H. G. Wells.[35] Wells was due to enter the public domain in 1996 but now will remain in copyright until 2016. The big loser, however, will be the reading public, for it will now be another twenty years before new, corrected editions of Wells and other such modern classics become available. As readers of Lawrence, Woolf, Joyce, Hardy, and Yeats are painfully aware, good editions generally coincide with the lapse of copyright, for there is little incentive for publishers to improve their editions as long as they are protected from competition. Although term extension stands to cost the public dearly, it has met little opposition in Congress. This is the second important difference between the present legislative

35. As reported by Sutherland in "The Great Copyright Disaster." See also Parrinder, "Who Killed Clause 29?"

moment and the deliberations that culminated in the Copyright Act of 1842. In a disturbing departure from the British precedent, there has emerged no Wakley, Hume, or Warbuton—least of all a Macaulay—to speak out against the Copyright Term Extension Act of 1995. The public has no advocate in the U.S. Congress.[36]

And what is likely to be the cost of the NII legislation that will subject the digital networks to the discipline of copyright?[37] Many of us have begun to view our professional lives as intimately bound up with the progress of electronic data technology—and particularly the technology of digital networks, whether the Internet or the promised electronic data superhighway of the future. As anyone knows who has used a network to send or receive E-mail, to access distant libraries, to tap into data bases, or to participate in electronic bulletin boards, the network environment of today is polyvocal, polymorphous, and even chaotic, characterized by the exchange of tremendous amounts of miscellaneous information with little apparent concern for claims of proprietorship. The network is like a gigantic hypertext, an ever changing work of collaborative authorship.

From our standpoint, the liberating potential of this development would seem to lie precisely in the networks' freedom from the sorts of controls—legal and otherwise—to which older information technologies such as print are subject. But to traditional proprietors of information such as Time-Warner and Disney, this vision is a profoundly threatening one. The very ease with which material can be copied and distributed digitally has made these copyright owners want to submit the Internet and the networks of the future to more rigorous copyright discipline.[38]

In short, the battle lines have been drawn over the future of the Internet and its successors. On one side are those who see its potential

36. The bill's single detractor in the hearing of the Senate Judiciary Committee from which I quote was my collaborator, the law professor, Peter Jaszi (see "Statement of Professor Peter Jaszi"). House testimony against the bill appears to have been equally "academic" (see Karjala). For more general reservations against term extension, see Ricketson, "The Copyright Term." See also Litman, "The Public Domain."

37. Like the term extension bill, the NII legislative initiative also bogged down in the 104th Congress, in this case due to opposition by a broad coalition including both information consumers (especially librarians and educators) and companies engaged in building the infrastructure of the NII; however, digital copyright too may be expected to be taken up again in the 105th Congress.

38. See Samuelson, "The Copyright Grab" and "Digital Media and the Changing Face of Intellectual Property Law."

as a threat to traditional notions of individual proprietorship in information and who perceive vigorous extension of traditional copyright principles to the new information environment as the solution. On the other side are those who believe that the network environment could become a new cultural "commons" if its development is not stifled by premature or excessive legal controls. Given the stakes, it is impossible that a network "commons" will be preserved as a pristine "proprietor-free zone." Some measure of regulation is inevitable, and it may even be essential if information proprietors are to participate fully in the networks. But users have a stake in assuring that the form of that regulation meets their needs as well as those of information proprietors. We need to insist that discussion of the legal future of the networks is informed by a considered balancing of competing interests rather than by the charged Romantic rhetoric of "authorship."

Works Cited

[Alison, Archibald.] "The Copyright Question." *Blackwood's Magazine* 51 (1842): 107–21.

Altick, Richard D. *The English Common Reader: A Social History of the Mass Reading Public, 1800–1900*. Chicago: University of Chicago Press, 1957.

Barnes, James J. *Authors, Publishers and Politicians: The Quest for an Anglo-American Copyright Agreement 1815–1854*. London: Routledge and Kegan Paul, 1974.

Birrell, Augustine. *Seven Lectures on the Law and History of Copyright in Books*. London: Cassell, 1899.

Bonham-Carter, Victor. *Authors by Profession*. Vol. 1. Los Altos, CA: William Kaufmann, 1978.

Collins, A. S. *The Profession of Letters: A Study of the Relation of Author to Patron, Publisher and Public 1780–1832*. London: Routledge and Kegan Paul, 1928.

"The Copy-right Law." *The Monthly Review* 145 n.s. (1838): 52–63.

Cross, Nigel. *The Common Writer: Life in Nineteenth-Century Grub Street*. Cambridge: Cambridge University Press, 1985.

Dictionary of National Biography. Vol. 19. Oxford: Oxford University Press, 1921–22.

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

Eilenberg, Susan. "Mortal Pages: Wordsworth and the Reform of Copyright." *English Literary History* 56 (1989): 351–74.

Feather, John. *A History of British Publishing*. London: Routledge, 1988.

———. "Publishers and Politicians: The Remaking of the Law of Copyright in

Britain 1775–1842. Part I: Legal Deposit and the Battle of the Library Tax." *Publishing History* 24 (1988): 49–76.

———. "Publishers and Politicians: The Remaking of the Law of Copyright in Britain 1775–1842. Part II: The Rights of Authors." *Publishing History* 25 (1989): 45–72.

———. *Publishing, Piracy and Politics: An Historical Study of Copyright in Britain.* London: Mansell, 1994.

A Few Words on the Copyright Question, Shewing It to Be One of Public Interest: With Some Objections to Mr. Sergeant Talfourd's Bill to Change the Present Law of Copyright. London: Scott, Webster, and Geary, n.d.

Gewanter, David. "'Daffodils' and Authority: Wordsworth's Collaborative Lyric." Paper presented at a conference arranged by the Society for Critical Exchange, "Intellectual Property and the Construction of Authorship." Cleveland, April 1991.

Gill, Stephen. *William Wordsworth: A Life.* Oxford: Clarendon, 1989.

Hearing of the Senate Judiciary Committee. Subject: Copyright Protections. Washington, DC, September 20, 1995. Unofficial transcript of U.S. Senate Judiciary Committee. Washington, DC: Federal News Service, 1995.

Jaszi, Peter, and Martha Woodmansee. "The Ethical Reaches of Authorship." *South Atlantic Quarterly* 95 (1996): 947–77.

Jaszi, Peter. *Statement of Professor Peter Jaszi. On S. 483, The Copyright Term Extension Act of 1995. Before the Senate Judiciary Committee,* September 20, 1995.

———. "Toward a Theory of Copyright: The Metamorphoses of 'Authorship.'" *Duke Law Journal* (1991): 455–502.

Karjala, Dennis S. *Written Testimony of Dennis S. Karjala. Representing United States Copyright and Intellectual Property Law Professors. House of Representatives Subcommittee on Courts and Intellectual Property. Hearings on H.R. 989,* July 13, 1995.

Litman, Jessica. "The Public Domain." *Emory Law Journal* 39 (1990): 995–1023.

[Lockhart, John G.] "The Copyright Question." *Quarterly Review* 69 (1842): 186–227.

Lowndes, John J. *Historical Sketch of the Law of Copyright; with Remarks on Serjeant Talfourd's Bill: and an Appendix of the Copyright Laws of Foreign Countries.* 2d ed. London: Saunders and Benning, 1842.

Macaulay, Thomas B. *Prose and Poetry.* Edited by G. M. Young. Cambridge: Harvard University Press, 1970.

A Memoir of Mr. Justice Talfourd. By a Member of the Oxford Circuit. London: Butterworths, 1854.

Moorman, Mary. *William Wordsworth: A Biography.* 2 vols. Oxford: Clarendon, 1957–65.

"The New Copyright Bill." *The Eclectic Review* 3 n.s. (1838): 693–704.

Noyes, Russell. "Wordsworth and the Copyright Act of 1842: Addendum." *Publications of the Modern Language Association* 76 (1961): 380–83.

Observations on the Law of Copyright in Reference to the Bill Introduced into the House of Commons by Mr. Sergeant Talfourd. London: Scott, Webster, and Geary, 1838.

Parliamentary Debates. 3d Series. Vols. 38–62. London: Thomas Curson Hansard, 1838–42.

Parrinder, Patrick. "Who Killed Clause 29?" *Times Literary Supplement* 4845 (9 February 1996): 16.

Ricketson, Sam. "The Copyright Term." *International Review of Industrial Property and Copyright Law* 23, no. 6 (1992): 753–85.

Rose, Mark. *Authors and Owners: The Invention of Copyright.* Cambridge: Harvard University Press, 1993.

Samuelson, Pamela. "The Copyright Grab." *Wired* (January 1996): 135–38, 188–91.

———. "Digital Media and the Changing Face of Intellectual Property Law." *Rutgers Computer and Technology Law Journal* 16 (1990): 323–40.

Sutherland, John. "The Great Copyright Disaster." *London Review of Books,* 12 January 1995, 3.

Talfourd, Thomas Noon. "An Attempt to Estimate the Poetical Talent of the Present Age, Including a Sketch of the History of Poetry, and Characters of Southey, Crabbe, Scott, Moore, Lord Byron, Campbell, Lamb, Coleridge, and Wordsworth." *Pamphleteer* 5 (1815): 413–71.

———. *Critical and Miscellaneous Writings of T. Noon Talfourd, Author of "Ion."* 2d American ed. Philadelphia: A. Hart, 1852.

———. "On the Genius and Writing of Wordsworth." *New Monthly Magazine* 14 (1820): 498–506, 648–55.

Tegg, Thomas. *Remarks on the Speech of Sergeant Talfourd.* London: Bradbury and Evans, 1837.

Trevelyan, George Otto. *The Life and Letters of Lord Macaulay.* 2 vols. London: Longmans, Green, and Co., 1878.

Ward, William S. "An Early Champion of Wordsworth: Thomas Noon Talfourd." *Publications of the Modern Language Association* 68 (1953): 992–1000.

Woodmansee, Martha. *The Author, Art, and the Market: Rereading the History of Aesthetics.* New York: Columbia University Press, 1994.

———. "The Genius and the Copyright: Economic and Legal Conditions of the Emergence of the 'Author.'" *Eighteenth-Century Studies* 17 (1984): 425–48.

Woodmansee, Martha, and Peter Jaszi. "The Law of Texts: Copyright in the Academy." *College English* 57 (1995): 769–87.

———, eds. *The Construction of Authorship: Textual Appropriation in Law and Literature.* Durham, NC: Duke University Press, 1994.

Wordsworth, Dorothy. *The Grasmere Journals.* Edited by Pamela Woof. Oxford: Clarendon, 1991.

Wordsworth, William. *The Letters of William and Dorothy Wordsworth: The Later Years, 1835–1839.* 2d ed. Vol. 6, Pt. 3. Edited by Ernest de Selincourt and Alan G. Hill. Oxford: Clarendon, 1982.

———. *The Letters of William and Dorothy Wordsworth: The Later Years, 1840–1853.* 2d ed. Vol. 7, Pt. 4. Edited by Ernest de Selincourt and Mary Moorman. Oxford: Clarendon, 1988.

———. *The Letters of William and Dorothy Wordsworth: The Middle Years, I:*

1806–1811. Edited by Ernest de Selincourt and Mary Moorman. Oxford: Clarendon, 1969.

———. *Poems, in Two Volumes, and Other Poems, 1800–1807*. Edited by Jared Curtis. Ithaca, NY: Cornell University Press, 1983.

———. *The Prose Works of William Wordsworth*. 3 vols. Edited by W. J. B. Owen. Oxford: Clarendon, 1974.

Working Group on Intellectual Property Rights of the Information Infrastructure Task Force. *Intellectual Property and the National Information Infrastructure*. Washington, DC: Information Infrastructure Task Force, 1995.

Zall, Paul M. "Wordsworth and the Copyright Act of 1842." *Publications of the Modern Language Association* 70 (1955): 132–44.