

**The Literary Unconscious:
Rereading Authorship and Copyright with Kant's
'On the Wrongfulness of Reprinting' (1785)**

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Declaration

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Abstract

This thesis undertakes an extended rereading of Immanuel Kant's 1785 periodical essay, *Von der Unrechtmäßigkeit des Büchernachdrucks* ('On the Wrongfulness of Reprinting'), that attends closely to the transactions between its material form and rhetorical content. In so doing, this thesis supplements recent attempts in Kantian copyright scholarship to rethink the institution of copyright and its relationship with authors, works, and the public through recourse to the essay's non-proprietary concept of the book and proposed regime of authors' and publishers' rights. Though the law of copyright qua intellectual property pertains to this thesis as a hegemonic institutional form that has enshrined the myth of the proprietary author, it is rather the question of authorship, namely, our cultural and legal understandings of who and what an author is; how the author relates to the book and the realities of literary production; and how such received notions interact with the materiality of the book; that most concerns this thesis. It contributes to accrued cross-disciplinary efforts to so reread the past(s) and present(s) of the author-function as to foreground not just its legal structures of implementation, but also its medial-material matrices. From this perspective, the materialities of authorship, particularly the visual-corporeality of the printed book and its surrounding practices in late-eighteenth-century Germany, hold the key to disclosing the limits of contemporary copyright law, which remains attached to the figure of the author as creator, and first owner, of the literary work even as it is seemingly threatened by such digital practices as the mass digitisation of books. To begin to grasp how our received understandings of authorship and copyright might, and perhaps should, change in digital culture, we revisit a late-eighteenth-century text that indexed its own share of complex interactions between literary actors and technologies no less affected by evolving conditions of literary (re)production. In so moving between these two times of authorship, that in the German Enlightenment and that in contemporary copyright regimes, we engage in a shared practice of so rereading Kant's text and the historical event in which he participated as to better understand and negotiate our present uncertainties.

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1. Introduction: A Medial Perspective on Authorship and Copyright

Authorship: History, Law, Medium

In 1967, Roland Barthes observed a curious paradox concerning authorship in Western culture that, to an extent, persists to this day.¹ The materialist poetics of Stéphane Mallarmé, and related literary practices of other nineteenth- and twentieth-century French writers for whom intentional speech was inevitably subordinated to the materiality of language, has contributed to a ‘desacralization of the image of the Author’.² Instead of a conscious subject who demonstrated mastery over his speech, it was the unconscious of language that came to the fore in those literary practices as their basic determinant. And yet, in mainstream culture and much of literary criticism, the figure of the author endured as a focal point around which practices of reading and writing were organised. ‘The image of literature to be found in ordinary culture is tyrannically centred on the author, his person, his life, his passions, while criticism still consists for the most part in saying that Baudelaire’s work is the failure of Baudelaire the man, Van Gogh’s his madness, Tchaikovsky’s his vice’.³ Though literature feverishly pointed to ‘the death of the Author’,⁴ the authorial figure still reigned unabated in much of Western culture, as if the death knells only assured the public hearers of its longevity.

More than half a century having passed since Barthes’ landmark contribution to authorship studies, the field has grown to recognise the limits of author-centrism in Western culture, with numerous studies resuming, qualifying, and transposing Barthes’ inquiry.⁵ Despite such advances in the essay’s suspicions and insights, the figure of the author has continued to hold sway in our contemporary world, including in our legal regulation of literature and other cultural goods. If we turn to the front matter of the 1977 anthology of Barthes’ translated essays from which the work was cited, we shall find a copyright notice that at once affirms, denies, and reasserts the centrality of authors in our legal understanding of books. The notice states: ‘Copyright © Roland Barthes

¹ Roland Barthes, ‘The Death of the Author’, in *Image Music Text*, trans. Stephen Heath (London: Fontana, 1977), 142–48.

² Barthes, 144. Other than the poetry of Mallarmé, Barthes briefly discusses the works of Paul Valéry, Marcel Proust, and the Surrealists. On the question of how far the latter works cohere with Mallarmé’s ‘anti-authorialism’, see Seán Burke, *The Death and Return of the Author: Criticism and Subjectivity in Barthes, Foucault and Derrida* (Edinburgh: Edinburgh University Press, 2008), 8–18.

³ Barthes, ‘The Death of the Author’, 143.

⁴ Barthes, 148.

⁵ Other than the works by Foucault, Rose, Woodmansee, and Chartier discussed below, see Jacques Derrida, ‘Signature Event Context’, in *Limited Inc* (Evanston: Northwestern University Press, 1988), 1–23. On Foucault and Chartier, see chapter 5, ‘(After)lives of I. Kant’.

1977 / English translation copyright © Stephen Heath 1977'. Barthes, whose name recurs in the book's cover and title pages as its author, is affirmed to own a copyright in the literary works embodied in the book, first published in Great Britain, under the Copyright Act 1956.⁶ The rights to reproduce, publish, and use the works in other ways listed under the Act are part of the copyright ascribed to Barthes as author.⁷ At the same time, the translator Stephen Heath owns a copyright in his translations of Barthes' essays, each of which constitutes an 'adaptation'⁸ of Barthes' work. After the requisite permission to translate Barthes' essays had been given, Heath's translations would constitute original literary works in which the latter, as author, held copyright. Despite recognising the involvement of one other actor than Barthes in the production of the translated essay, then, the copyright notice still depended on the figure of the proprietary author as its bedrock. In contemporary parlance, as worded in the Copyright, Designs and Patents Act 1988, the author of a work is understood as 'the person who creates it',⁹ the originating activity of which grants the author a 'property right'¹⁰ in it. Despite the challenges posed to the authorial figure in literary studies, the understanding of authors as creators and first owners of literary works endures as a basic tenet of copyright law.

The proprietary character of modern authorship was noted by Foucault in 1969 to be one of four 'most obvious and important'¹¹ features of the 'author-function',¹² the latter being Foucault's term for the role of the authorial figure in discourse. In Foucault's brief discussion about the status of modern authors as owners of literary property, both the historicity of this understanding of authors and its correlation with legal-institutional practices are foregrounded. Authors have not always been regarded as proprietary creators standing over and against their literary creations, but instead extend from a historically contingent 'system of ownership'¹³ with 'strict copyright rules'¹⁴ that were perhaps only established 'toward the end of the eighteenth and beginning of the nineteenth century'.¹⁵ Foucault's dating of the origins of proprietary authorship could be, and indeed has been, questioned. Not only was it in 1710 when England enacted the world's first copyright statute recognising authors as possible owners of literary property, the seventeenth-century publishing contracts entered into by such dramatists and writers as Ben Jonson and John

⁶ Copyright Act 1956, section 2(2).

⁷ *ibid* section 2(5).

⁸ *ibid* section 2(6)(a)(iii).

⁹ Copyright, Designs and Patents Act 1988, section 9(1).

¹⁰ *ibid* section 1(1).

¹¹ Michel Foucault, 'What Is an Author?', in *Language, Counter-Memory, Practice: Selected Essays and Interviews: Selected Essays and Interviews by Michel Foucault*, ed. Donald F. Bouchard (Ithaca, New York: Cornell University Press, 1977), 130.

¹² *ibid* 125.

¹³ *ibid*.

¹⁴ *ibid*.

¹⁵ *ibid*.

Milton suggest that, even within the old system of privileges, some authors had already acted as if they had owned their works.¹⁶ Contestable as Foucault's historical claim is, his theorisation of the author-function profitably ushered in the historical study of authorship and its relationship with copyright law.

In law and literature scholarship of the early 1990s, we can find two significant monographs that, in their own ways, mobilised Foucault's work on the author-function to clarify the historical evolution of authorship as indexed in law and culture. In *Authors and Owners: The Invention of Copyright* (1993), Mark Rose traced the historical emergence of the representation of authors as originators and owners of works in eighteenth-century Britain, particularly through a review of an extended debate over the status of literary property in British copyright law.¹⁷ Though such traditional legal authorities as legislation, case reports, and the works of barristers were examined for their pronouncements on the significance of authorship in copyright law, other literary and cultural texts were also studied as key contributions to the developing discourse of proprietary authorship in which notions of property, originality, and personality coalesced. 'Legal' sources, including the inaugural Statute of Anne 1710, the bipolar judgements of *Millar v Taylor* (1769)¹⁸ and *Donaldson v Becket* (1774),¹⁹ and the juristic writings of William Blackstone and Francis Hargrave were read alongside 'non-legal' texts ranging from Joseph Addison's and Daniel Defoe's essays on literary property to Samuel Richardson's and Edward Young's correspondence and conjectures on the interconnection between the originality of works and authorial personality.²⁰ The resultant image of copyright history, and that of proprietary authorship in particular, is one that admits transactions between the institution of copyright and the wider discursive practices surrounding, penetrating, and subsisting alongside it. Just as in Foucault's study, there are certain propositions and decisions in Rose's, including his reading of *Donaldson v Becket* as having climactically secured

¹⁶ See Roger Chartier, 'Foucault's Chiasmus: Authorship between Science and Literature in the Seventeenth and Eighteenth Centuries', in *Scientific Authorship: Credit and Intellectual Property in Science*, ed. Mario Biagioli and Peter Galison (London and New York: Routledge, 2003), 18–20.

¹⁷ Mark Rose, *Authors and Owners: The Invention of Copyright* (Cambridge, Massachusetts: Harvard University Press, 1993).

¹⁸ 4 Burr. 2303, 98 ER 201.

¹⁹ 4 Burr. 2408, 98 ER 257; 2 Bro PC 129, 1 ER 837.

²⁰ Indicatively, see William Blackstone, *Commentaries on the Laws of England*, 4 vols (Chicago: The University of Chicago Press, 1979); Francis Hargrave, *An Argument in Defence of Literary Property (1774): Four Tracts on Freedom of the Press (1790-1821)*, ed. Stephen Parks (New York: Garland Publishing, Inc, 1974); Joseph Addison, *The Spectator*, ed. Donald F. Bond, 5 vols (Oxford: Clarendon Press, 1965); Joseph Addison, *The Tatler*, ed. Donald F. Bond, 3 vols (Oxford: Clarendon Press, 1987); Daniel Defoe, *An Essay on the Regulation of the Press (1704)* (Oxford: Basil Blackwell for Luttrell Society, 1948); Samuel Richardson, *English Publishing, the Struggle for Copyright, and the Freedom of the Press: Thirteen Tracts 1664-1774*, ed. Stephen Parks (New York: Garland Publishing, Inc, 1975); Edward Young, *Conjectures on Original Composition: In a Letter to the Author of Sir Charles Grandison* (London: A. Millar and R. and J. Dodsley, 1759); Edward Young, *The Correspondence of Edward Young 1683-1765*, ed. Henry Pettit (Oxford: Clarendon Press, 1971); all cited in Rose, *Authors and Owners*.

the proprietary understanding of authorship in the literary property debate,²¹ that call for critical qualification so as to better reflect the complexity and fluidity of the common law.²² The plurality of positions taken in the debate over literary property, both by the presiding judges of the pertinent cases and other discussants in the wider public discourse, would caution against overstating the significance of the 1774 decision.²³ For all its limits, Rose's project sounded, and responded to, the demand for interdisciplinarity in the history of authorship and copyright, whose complexity exceeds the scope of doctrinal approaches to law. Being 'both culturally constituted and culturally constitutive',²⁴ copyright law and its relationship with authorship could be adequately understood only when reconnected with its densely contextual conditions of emergence and enforcement.

If Rose's genealogy of copyright still granted a focal priority to the British legal fora that received, ratified, and relayed their culture's proprietary understandings of authorship, Martha Woodmansee's genealogy of aesthetics, where the emergent law of copyright qua intellectual property featured as but one of its six chapters,²⁵ more resolutely decentred law in her inquiry into authorship and art. In *The Author, Art, and the Market: Rereading the History of Aesthetics* (1994), the shift from a system of printing privileges to that of authorial ownership of works in nineteenth-century Germany was presented as having taking place amidst evolving economic, technological, and other material conditions to which philosophers, jurists, civil servants, publishers, printers, and writers had been responding in their publications and private correspondence since the previous century. The professionalisation of authors, expansion of the book trade, proliferation of print, and purported transformations in the reading habits of the public, all occurring without copyright regulations nor adequate qualitative checks on the marketed literary commodities, contributed to much vocational and cultural anxiety amongst eighteenth-century German writers and scholars.²⁶ The German debate over the nature of books and the associated rights of authors

²¹ See Rose, *Authors and Owners*, 92–112. See also the preceding article, 'The Author as Proprietor: *Donaldson v. Becket* and the Genealogy of Modern Authorship', *Representations* 23 (1988): 51–85.

²² See Kathy Bowrey, 'Law, Aesthetics and Copyright Historiography: A Critical Reading of the Genealogies of Martha Woodmansee and Mark Rose', in *Research Handbook on the History of Copyright Law*, ed. Isabella Alexander and H. Tomás Gómez-Arostegui (Cheltenham, UK: Edward Elgar Publishing, 2016), 37–43.

²³ *ibid.*

²⁴ Rosemary J. Coombe, 'Challenging Paternity: Histories of Copyright', *Yale Journal of Law & the Humanities* 6, no. 2 (1994): 400.

²⁵ See Martha Woodmansee, *The Author, Art, and the Market: Rereading the History of Aesthetics* (New York: Columbia University Press, 1994), 35–56. See also the preceding article, Martha Woodmansee, 'The Genius and the Copyright: Economic and Legal Conditions of the Emergence of the "Author"', *Eighteenth-Century Studies* 17, no. 4 (1984): 425–48.

²⁶ See Johann Hoche, *Vertraute Briefe über die jetzige Lesesucht und über den Einfluß der-selben auf die Verminderung des häuslichen und öffentlichen Glücks* ('Intimate Letters: The Current Reading Addiction and Its Influence on the Reduction of Domestic and Public Happiness') (Hanover: Ritscher, 1794); Johann Georg Heinzmann, *Appel an Meine Nation: Über die Pest der deutschen Literatur* ('A Plea to My Nation: On the Plague of German Literature') (Bern, 1795). On print proliferation and the ensuing anxieties in late-eighteenth-century Germany, see chapter 3, 'From Paratexts to Print Machinery'.

and publishers, which occurred between 1773 and 1794, ensued from, drew upon, and responded to these altering material conditions.²⁷ In Johann Gottlieb Fichte’s contribution to the debate, it was the original ‘form’²⁸ granted to the ideas in a book by an authorial mind that made such form the perpetual property of its author. For Woodmansee, ‘the copyright laws [*Urheberrecht*] enacted in the subsequent decades turn on Fichte’s key concept, recognizing the legitimacy of this claim by vesting exclusive rights to a work in the author insofar as he is an *Urheber* [originator, creator]—that is, insofar as his work is unique or original [*eigentümlich*], an intellectual creation that owes its individuality solely and exclusively to him’.²⁹ In step with other scholars who have revisited Fichte’s essay, we may want to unpack and qualify Woodmansee’s claim about the continuity between proprietary copyright and Fichte’s understanding of literary property, the latter of which is strictly inalienable.³⁰ But alongside or even more so than Rose, Woodmansee attended to the interpenetration of philosophical and legal idioms, and traced their extension from, and involvement in, a material history bound up with the print medium and its public reception.

The materiality of authorship encompasses not just the capital movements that displace the producers and consumers of literary commodities, but also the perceptible forms of books and their techniques of making and use that afford particular understandings of authors and works. Foucault understood that the author-function was ‘not defined by the spontaneous attribution of a text to its creator, but through a series of precise and complex procedures’,³¹ including the authorial names affixed to books, which grouped them with and under their purported makers. In the field of book history, Roger Chartier has made a series of key contributions that illuminated the involvement of the material form of books in the recording, modulation, and transmission of received understandings of authorship.³² In *The Author’s Hand and the Printer’s Mind* (2014), a collection of twelve essays on the production and circulation of such sixteenth- and seventeenth-century print publications as those authored by William Shakespeare and Miguel de Cervantes,³³

²⁷ Woodmansee, *The Author, Art, and the Market: Rereading the History of Aesthetics*, 47.

²⁸ ‘Fichte: Proof of the Unlawfulness of Reprinting, Berlin (1793)’, Primary Sources on Copyright (1450-1900), eds L. Bently & M. Kretschmer, accessed 30 April 2022, http://www.copyrighthistory.org/cam/tools/request/showRecord.php?id=record_d_1793.

²⁹ Woodmansee, *The Author, Art, and the Market: Rereading the History of Aesthetics*, 52.

³⁰ See Friedemann Kawohl and Martin Kretschmer, ‘Johann Gottlieb Fichte, and the Trap of *Inhalt* (Content) and *Form*: An Information Perspective on Music Copyright’, *Information, Communication & Society* 12, no. 2 (2009): 205–28; Mario Biagioli, ‘Genius against Copyright: Revisiting Fichte’s Proof of the Illegality of Reprinting’, *Notre Dame Law Review* 86, no. 5 (2011): 1847–68. On Fichte’s essay, see chapter 4, ‘Materiality of Type’.

³¹ Foucault, ‘What Is an Author?’, 130.

³² Other than Chartier’s book discussed in this paragraph, see Roger Chartier, ‘Figures of the Author’, in *The Order of Books: Readers, Authors, and Libraries in Europe between the Fourteenth and Eighteenth Centuries*, trans. Lydia G. Cochrane (Stanford, California: Stanford University Press, 1994), 25–59; Chartier, ‘Foucault’s Chiasmus: Authorship between Science and Literature in the Seventeenth and Eighteenth Centuries’.

³³ Most of the essays were first written between 2001 and 2010: see Roger Chartier, *The Author’s Hand and the Printer’s Mind*, trans. Lydia G. Cochrane (Cambridge: Polity Press, 2014), xii–xiii.

Chartier foregrounded a methodological assumption that underpinned each study: ‘all texts – even *Hamlet* or *Don Quixote* – have a material form, a “materiality”,³⁴ including ‘the materiality of their printed inscription in books (or booklets) on the pages that made them available to readers of their day’,³⁵ which affords attempts by contemporary readers like himself ‘to decipher the significations constructed by the various forms of these inscriptions’.³⁶ Despite such limits of the text as its marking of only the muteness of the oppressed (‘the silences of those who never wrote; the silences of those whose words, thoughts and acts the masters of writing thought unimportant’³⁷), the material form of the book endures as a privileged index of the historical processes from which it emerged, including those pertaining to the socio-technological system of print, the regimes of print regulation and financing, and their interactions with subsisting ideas of authorship. For instance, as Chartier clarified in his return to various front matter and paratexts of *Don Quixote*, the typographical form and placement of the proper names of author, patron, printer and publisher on the original 1605 title page of Part I of the book point to the techno-institutional network in which multiple print actors contributed to its production in early-seventeenth-century Spain: ‘the visual space of the title page shows the three things that commanded all literary practice in the Golden Age: a claim to a paternity of the text that the prologue, and then the fiction of Cide Hamete Benengeli, ironically deny; the patronage relationship linking the writer to the duke of Béjar, whose various titles occupy four lines of type; the economic realities of the edition that implied the royal authorization [*Con privilegio*], the work of the printshop (represented on the title page by Juan de la Cuesta’s imposing device) and the enterprise of the bookseller/publisher who had financed the edition and sold the copies (“*Vendese en casa de Francisco de Robles, librero del Rey nuestro Señor*”)³⁸. Well before the first copyright laws of Europe, texts such as *Don Quixote* have attributed texts to authors as their creators whilst also evidencing the assemblage of actors and technologies involved in their production. Far from being irrelevant or secondary in importance to the history of authorship and copyright, the material form of books matter as indices of the concrete practices that shape and reproduce such phenomena. As Chartier put it sharply in an earlier study, ‘the author-function is not only a discursive function, but also a function of the materiality of the text’.³⁹

³⁴ *ibid* ix.

³⁵ *ibid*.

³⁶ *ibid*.

³⁷ *ibid* xi.

³⁸ *ibid* 139. On Chartier’s earlier analysis of the title page in ‘Figures of the Author’, see chapter 5, ‘(After)lives of I. Kant’.

³⁹ Chartier, ‘Foucault’s Chiasmus: Authorship between Science and Literature in the Seventeenth and Eighteenth Centuries’, 28.

Kant with/against Intellectual Property

In spite of all the accrued attempts to reveal the historical contingency of the modern regulation of literary works as intangible goods created and owned by authors, the law of copyright qua intellectual property has continued to expand in scope and preside over our interactions with books at national, regional and international levels.⁴⁰ As Anne Barron has noted, copyright expansion has proceeded along four main axes: ‘the range of acts restricted to the copyright owner has widened, the range of circumstances in which secondary liability will be found has also widened, the likelihood that courts will find partial or non-literal takings ‘substantial’ (and so infringing) has increased, and the reach of defences and exceptions has narrowed’.⁴¹ If we turn to the history of legislative amendments regarding the term of copyright protection in the United States alone, we shall see that the applicable duration has been extended eleven times between 1963 and 1998, leading up to the present longest term of seventy years in addition to the author’s lifetime for works created after 1 January 1978.⁴² High levels of involvement of copyright industries and trade associations in the periodic revisions of copyright legislation has led to ‘an ever-expanding set of copyright holder rights, riddled with narrow exceptions for various interested parties present at the bargaining table’.⁴³ Accompanying and legitimating the rapid growth of intellectual property is the rise of what Mark Lemley has called an ‘absolute protection’⁴⁴ or a ‘full value’⁴⁵ paradigm of intellectual property in legal scholarship and juridical discourse. On this view, cast in the idiom of economic theory with its underpinning assumptions about the behaviour of rational market actors, strong intellectual property rights are said to be needed to internalise the ‘externalities’⁴⁶ associated with the uses of intellectual property and to minimise ‘free riding’⁴⁷ on the investments of owners. Construed as a species of private property, even of real property rights, intellectual property would require a similar fortification of the exclusionary rights of owners,

⁴⁰ See Mark A. Lemley, ‘Property, Intellectual Property, and Free Riding’, *Texas Law Review* 83 (2005): 1031–75; Neil W. Netanel, ‘Why Has Copyright Expanded? Analysis and Critique’, in *New Directions in Copyright Law*, ed. Fiona Macmillan, vol. 6 (Cheltenham, UK: Edward Elgar, 2007), 3–34; Neil W. Netanel, *Copyright’s Paradox* (New York: Oxford University Press, 2008), 54–80; Anne Barron, ‘Copyright Infringement: “Free-Riding” and the Lifeworld’, in *Copyright and Piracy: An Interdisciplinary Critique*, ed. Lionel Bently, Jennifer Davis, and Jane C. Ginsburg (Cambridge: Cambridge University Press, 2010), 93–127.

⁴¹ Barron, ‘Copyright Infringement: “Free-Riding” and the Lifeworld’, 98.

⁴² Lemley, ‘Property, Intellectual Property, and Free Riding’, 1042. See Title 17 of the United States Code, section 302(a).

⁴³ Netanel, ‘Why Has Copyright Expanded? Analysis and Critique’, 5.

⁴⁴ Lemley, ‘Property, Intellectual Property, and Free Riding’, 1031. On this competing paradigm of copyright, see chapter 2, ‘Two Ways of Looking at a Printed Book’.

⁴⁵ *ibid.*

⁴⁶ *ibid.* 1032

⁴⁷ *ibid.*

which might well contradict the traditional utilitarian paradigm of copyright and its concern with balancing the interests of authors and users.⁴⁸

In the present context where the global expansion of copyright and intellectual property rights is calling for a rigorous questioning of our received justifications for these instituted norms, the work (and name) of the German philosopher Immanuel Kant has, at times, been summoned in arguments both for and against intellectual property. Robert Merges' project of *Justifying Intellectual Property* (2011) involves an extension of Kant's property theory, advanced in Kant's *Rechtslehre* ('Doctrine of Right') (1797), from the domain of physical objects to so-called intangibles such as literary or artistic works.⁴⁹ On Merges' reading, Kant was a liberal philosopher who recognised the importance of property rights and obligations to the individual's exercise of will. 'As a legal right, the essence of property for Kant is this: other people have a duty to respect claims over objects that are bound up with the exercise of an individual's will'.⁵⁰ Property rights in objects are necessary to affirm the autonomy of individuals, who rely on their use of such objects to carry out their projects in the world. Whilst recognising Kant's focus on physical property in the doctrine of right, Merges lays claim to the presentist freedom to extend Kant's insights to such 'intellectual creations' and 'intangible media' as literature and other cultural works: 'We are...free to apply Kant's idea to the building blocks of intellectual creations, just as we do for other assets such as blocks of marble or land. Many people in the modern world may choose to express themselves in intangible media'.⁵¹ For Merges, Kant's idea of property and its relationship with autonomy could be reconciled with, and used to enrich our understanding of, the contemporary enterprise of intellectual property. In this respect, Merges is not alone: Kant has likewise been portrayed as an intellectual property advocate or forerunner elsewhere, both in legal scholarship and in the humanities.⁵²

⁴⁸ On the balance metaphor in utilitarian justifications for copyright, see Abraham Drassinower, *What's Wrong with Copying?* (Cambridge, Massachusetts: Harvard University Press, 2015), 17–53; Abraham Drassinower, 'From Distribution to Dialogue: Remarks on the Concept of Balance in Copyright Law', *Journal of Corporation Law* 34, no. 4 (2009): 991–1007; Glynn S. Lunney, 'Reexamining Copyright's Incentives-Access Paradigm', *Vanderbilt Law Review* 49, no. 3 (1996): 483–656. On utilitarian copyright, see chapter 2, 'Two Ways of Looking at a Printed Book'.

⁴⁹ Robert P. Merges, *Justifying Intellectual Property* (Cambridge, Massachusetts: Harvard University Press, 2011), 72. Merges refers to the translation in Immanuel Kant, 'The Metaphysics of Morals (1797)', in *Practical Philosophy*, ed. Paul Guyer and Allen W. Wood, trans. Mary J. Gregor (Cambridge: Cambridge University Press, 1996), 353–603. Other than to Kant's philosophical works, Merges refers to those of John Locke, John Rawls, Robert Nozick, and Jeremy Waldron in the initial half of the book dedicated to 'a search for foundations' of intellectual property law: Merges, *Justifying Intellectual Property*, 2. On Merges' discussion of Kant, see chapter 5, '(After)lives of I. Kant'.

⁵⁰ Merges, *Justifying Intellectual Property*, 72.

⁵¹ *ibid* 73–74.

⁵² Other than Merges' work, see Riccardo Pozzo, 'Immanuel Kant on Intellectual Property', *Trans/Form/Ação, São Paulo* 29, no. 2 (2006): 11–18; William Fisher, 'Theories of Intellectual Property', in *New Essays in the Legal and Political Theory of Property*, ed. Stephen R. Munzer (Cambridge: Cambridge University Press, 2001). Chartier himself, perhaps somewhat hastily, interpreted a passage in Kant's *Die Metaphysik der Sitten* ('The Metaphysics of Morals') as conceiving the book to be 'a discourse addressed to a public, which remains the property of its author': see Chartier, *The Author's Hand and the Printer's Mind*, 11. A similar observation about this tendency to misread Kant was made by Maria Chiara Pievatolo: see Maria Chiara Pievatolo, 'Freedom, Ownership and Copyright: Why Does Kant Reject the Concept of Intellectual Property?', *Società Italiana di Filosofia Politica*, 2010, 2.

Merges' and like-minded assimilations of Kant to the idioms of liberal individualism and intellectual property have been criticised by Barron for doing violence to Kant's thought.⁵³ In particular, Merges' position has been dismissed in an incisive footnote for being a hotchpotch of ideas from other philosophical systems: 'It is difficult to discern the logic of Merges's thinking here, but it is certainly not Kant's. The 'autonomy' to which he refers is clearly the personal autonomy around which contemporary liberal individualism is organized, yet the notion that property is the central platform for the realization of this autonomy seems to add an infusion of Hegel (drained of the latter's metaphysics of Spirit) to the mix.'⁵⁴ Further, she takes issue with Merges' neglect of a 1785 periodical essay in which Kant proposed a non-proprietary solution to the problem of reprinting in late-eighteenth century. In *Von der Unrechtmäßigkeit des Büchernachdrucks* ('On the Wrongfulness of Reprinting'), Kant had eschewed the language of literary property, opting instead to see the printed book as a communicative medium to be regulated according to a system of publishers' and authors' rights that was grounded in the author's 'innate right in his own person'.⁵⁵ For Kant, a print publication did not consist in an intangible object of property owned by its author, but rather served to relay to the public a speech spoken 'simply and solely in the author's name'.⁵⁶ It was from the perspective of public communication, not literary property, that Kant argued against the unauthorised reprinting of books and other texts in his time.

Critical of the hegemonic rule of intellectual property law (and the orthodoxy's absorption of Kant), Barron and other Kantian copyright scholars have revisited the 1785 essay and other parts of Kant's philosophical oeuvre to rethink books and copyright in non-proprietary terms.⁵⁷ Emphasising Kant's construal of books as forms of public address, these scholars have variously re-imagined the copyright sphere as an instituted space in which ideals of egalitarian authorship,

⁵³ Barron aligns Merges' work with those by Leslie Kim Treiger-Bar-Am and Abraham Drassinower: see Leslie Kim Treiger-Bar-Am, 'Kant on Copyright: Rights of Transformative Authorship', *Cardozo Arts & Entertainment Law Journal* 25, no. 3 (2008): 1059–103; Abraham Drassinower, 'Authorship as Public Address: On the Specificity of Copyright Vis-A-Vis Patent and Trade-Mark', *Michigan State Law Review* 1 (2008): 199–232; Anne Barron, 'Kant, Copyright and Communicative Freedom', *Law and Philosophy* 31, no. 1 (2012): 9.

⁵⁴ Barron, 'Kant, Copyright and Communicative Freedom', 41.

⁵⁵ Immanuel Kant, 'On the Wrongfulness of Unauthorized Publication of Books (1785)', in *Practical Philosophy*, ed. Paul Guyer and Allen W. Wood, trans. Mary J. Gregor, The Cambridge Edition of the Works of Immanuel Kant (Cambridge: Cambridge University Press, 1996), 35. For a digitised version of the fifth volume of the *Berlinische Monatsschrift* with Kant's essay stored in the Bavarian State Library, see: <https://www.digitale-sammlungen.de/en/view/bsb10926844?q=%28berlinische+monatsschrift+1785%29&page=1> (accessed 30 April 2022). See also 'Kant: On the Unlawfulness of Reprinting, Berlin (1785)', Primary Sources on Copyright (1450-1900), eds L. Bently & M. Kretschmer, accessed 30 April 2022, http://www.copyrighthistory.org/cam/tools/request/showRepresentation?id=representation_d_1785.

⁵⁶ *ibid* 30.

⁵⁷ Other than Barron's work, see Drassinower, *What's Wrong with Copying?*; Maurizio Borghi, 'Copyright and Truth', *Theoretical Inquiries in Law* 12, no. 1 (2011): 1–27. Though Barron rightly points out Drassinower's ambivalence towards proprietary copyright in his articles, it is also true that his more recent monograph (published after Barron's article) articulates a firmer position against it: see Barron, 'Kant, Copyright and Communicative Freedom', 41, footnote 137; Drassinower, *What's Wrong with Copying?*, 56.

truth-seeking, and collective emancipation could be realised.⁵⁸ In particular, Barron has read the essay's system of publishers' and authors' rights as the juridical arrangement for securing the public use of reason which Kant had theorised as the practice of enlightenment in another essay published in the *Berlinische Monatschrift* just a year ago.⁵⁹ A non-proprietary system of rights in literary (re)production was one of the legal-empirical conditions of possibility for ensuring the 'communicative freedom'⁶⁰ of authors and a culture of 'free public criticism'.⁶¹ For Barron, though Kant's idea of author's rights was proposed as a solution to a specific problem in eighteenth-century Germany, it nonetheless paves the way for our re-evaluation of contemporary copyright regimes, which remain bound to utilitarian and proprietary modes of organisation.

Insofar as Barron's contribution affirms law's embeddedness in the wider social order, it joins hands with Woodmansee's, similarly attesting to the need to counteract the tendency to approach copyright from narrowly disciplinary, mostly doctrinal, perspectives.⁶² Though Woodmansee could have delved deeper into the legal practices surrounding the book trade in eighteenth-century Germany and Britain for their implications on the development of aesthetics theory, Woodmansee nonetheless succeeded in clearing the ground for a *holistic* consideration of ostensibly philosophical and legal questions of authorship, copyright, and art, that is, a study of these as *historical* phenomena that depended on, and interacted with, the social and material conditions of their time.⁶³ In so tracing the emergent Romantic notion of the author as original genius to the book privilege system, expanding book trade, and professionalisation of authors, Woodmansee historicised eighteenth-century theorisations of authorship and art, demonstrating the necessity and profitability of considering the 'interplay between legal, economic, and social questions on the one hand, and philosophical and aesthetic ones on the other'.⁶⁴

Whilst primarily interested in situating Kant's 1785 essay within his wider philosophical oeuvre, Barron does note the historicity of Kant's proposed regime alongside his

⁵⁸ On Kantian copyright scholarship, see chapter 2, 'Two Ways of Looking at a Printed Book'.

⁵⁹ Immanuel Kant, 'An Answer to the Question: What Is Enlightenment? (1784)', in *Practical Philosophy*, ed. Paul Guyer and Allen W. Wood, trans. Mary J. Gregor (Cambridge: Cambridge University Press, 1996), 15–22.

⁶⁰ Barron, 'Kant, Copyright and Communicative Freedom', 39.

⁶¹ *ibid.* 38.

⁶² For example, see Shyamkrishna Balganesh and Taisu Zhang, 'Book Review: Legal Internalism in Modern Histories of Copyright', *Harvard Law Review* 134 (2021): 1066–130. 'Legal internalism', which prioritises the ways in which 'insiders' of law, presumably lawyers, judges and other practitioners within the establishment, perceive and act in relation to the legal order, is but one recent theoretical standpoint that has attempted to diminish the value of interdisciplinary studies in authorship and copyright history whilst professing to recognise their importance. If the law is not a fortified castle, but instead an indistinct zone of contestation, perhaps always already within society, co-evolving with, constituted by, and interacting with the practices, technologies, and other societal phenomena, it is difficult to sustain any priority granted to disciplinary perspectives on law by and for disciplinary practitioners.

⁶³ Kathy Bowrey has made a similar observation in her assessment of Woodmansee's importance to copyright history: see Bowrey, 'Law, Aesthetics and Copyright Historiography: A Critical Reading of the Genealogies of Martha Woodmansee and Mark Rose', 28–37.

⁶⁴ Woodmansee, *The Author, Art, and the Market: Rereading the History of Aesthetics*, 47.

contemporaneous comments on enlightenment practice, recognising them to be strategies devised to deal with the expansion of the book trade and its social effects in late-eighteenth-century Germany. In the last pages of Barron's article, we find two crystallised insights into what Kant's 1785 essay discloses about the empirical conditions of modern (and contemporary) authorship, particularly a cluster of interlinked communicative, economic, legal-institutional, and social conditions: 'First, the 1785 Essay on authorized reprinting reflects Kant's recognition that communication between speakers in modern conditions is inevitably *channelled* – by technologies and media of communication (print and books in Kant's day; software and networks in ours), by commercial intermediaries (Prussian publishers in Kant's context; global information and entertainment corporations in ours), and by institutional structures (book markets then; information markets generally now) – in ways that may shape the form and content of communication and so the nature of the communication community itself. The Essay can therefore be understood as thematizing these mediations and their propensity to enhance, but also perhaps to compromise, extant possibilities for mature communication interactions; and as reflecting upon the legal framework that ought to regulate these mediations so as to realise their capacity. The second insight speaks directly to that aspect of the legal framework that protects the rights of authors. It poses a challenge to the premise of the standard liberal perspective on the relationship between authors' rights and a free culture: that marketable property rights in authors' works, by protecting individual expression, serve as motors of progress towards a fully competitive marketplace of ideas. For Kant, by contrast, progress towards an enlightened culture can *only* be achieved through the critical intellectual activity that communication – the free use of reason in public – demands.'⁶⁵ Not unlike Woodmansee, Barron demonstrates a critical awareness of the cultural life of authorship and copyright, an awareness which eighteenth-century writers like Kant had shared, similarly shaping their contributions to the debate over the nature of books and the limits of their regulatory regime.

As much as Barron and other Kantian copyright scholars have helped construct more socially involved imaginings of copyright based on Kant's non-proprietary concept of the book, they have also tended to focus on the rhetorical content of the 1785 essay (and other related works), and even then, only on those parts concerning the book's operation as a public speech act (*opera*). If we revisit the essay for what it 'says', we shall find that it oscillates between two senses of the printed book, the other of which has tended to be suppressed in contemporary interpretations of the text.⁶⁶ Not only was the book understood to be a communicative act (*opera*) in which the

⁶⁵ Barron, 'Kant, Copyright and Communicative Freedom', 40.

⁶⁶ On these two senses of the printed book, see chapter 3, 'From Paratexts to Print Machinery'.

personhood of the authorial speaker was involved, it was also recognised to be a manufactured object (*opus*) whose printed letters afforded its reading. Kant referred to the book as a ‘mute instrument’,⁶⁷ distinguishing it from acoustic media such as the ‘megaphone’⁶⁸ or ‘mouth’⁶⁹ that ‘delivers speech by sound’,⁷⁰ and underscoring its status as an optical medium that operated ‘by letters’.⁷¹ Since it is by means of the visible letters of Kant’s essay that it is read for what it ‘says’, this material dimension of the text could be seen as that which affords the production of its meaning. Even at the level of its ‘content’, Kant’s essay registered the visual-corporeal basis on which printed texts like itself operated during the late eighteenth century (and beyond it). And yet, the medial-materiality of the 1785 essay was not discussed by its contemporary legal readers, as if it had nothing to do with our understanding of the text and its place in the history of authorship and copyright. Ceding priority to (parts of) its ostensible ‘message’, the medium of the text, along with its conscious turn to its own mediality, would seem to have slipped into the readers’ unconscious.

Between Digital and Print Cultures

Since the original publication of Kant’s 1785 essay in the *Berlinische Monatsschrift*, German and global culture have, without a doubt, undergone major changes relating to the ways in which books are made, published, regulated, copied, and used. In the present, not only has it become a wide-reaching norm for books and other texts to be first presented to the public in digital format with copyrights held or assigned by their first owners, often their authors, print publications have also tended to be scanned, processed by optical recognition software, and then made available for search and view, whether wholly or in part, by digital user-consumers; which is a practice that may not require the permission of their rights-holders in contemporary copyright law. The Google Books project, a leading instance of the mass digitisation of printed matter undertaken pursuant to bilateral agreements between the technology company and its partner libraries, has been judicially legitimated in the United States as falling within the fair use exception to copyright under Title 17 of the United States Code.⁷² Granted to authors under the copyright system to incentivise their production of works for public consumption, the so-called ‘exclusive control over copying

⁶⁷ Kant, ‘On the Wrongfulness of Unauthorized Publication of Books (1785)’, 30.

⁶⁸ *ibid.*

⁶⁹ *ibid.*

⁷⁰ *ibid.*

⁷¹ *ibid.*

⁷² See *Authors Guild v Google, Inc* No. 13-4829 (2d Cir. 2015); Title 17 of the United States Code, section 107. On the Google Books project, see chapter 2, ‘Two Ways of Looking at a Printed Book’.

of their works’,⁷³ statutorily prescribed as including ‘exclusive rights...to reproduce the copyrighted work in copies...[and] to distribute copies...of the copyrighted work to the public’,⁷⁴ did not restrict Google’s generation and exploitation of a universal database of digitised books. Whereas it was in response to the mechanical reprinting of books with hand presses amidst an expanding book trade sans copyright in late-eighteenth-century Germany that Kant had proposed his non-proprietary system of rights, it is in the global context of the digital (re)mediation of literary and other cultural forms, and the challenges these practices pose to established regimes of copyright qua intellectual property, that authors, publishers, and readers now operate.

Confronted by ongoing and imminent digital transformations of literary culture and its pertaining regulatory regimes, it may be tempting to regard textual artefacts of the past, such as an eighteenth-century hand-printed book, as being of limited value to our understanding of contemporary practices of literary (re)production and their demands on copyright law and policy. To reckon with Google Books and the project’s implications on our proprietary treatment of literary and other cultural works, for instance, we may direct our attention to the constitutive practices of mass digitisation, including but not limited to those of digital photographic scanning, applying optical character recognition software to texts, and automated data mining for commercial purposes, and consider how far these digitally mediated processes instantiate or necessitate a ‘paradigm shift’⁷⁵ in copyright law. Our analysis of copyright could be largely restricted to the current legislative and judicial articulations of proprietary norms and principles, which are to be assessed based on their (in)capacity to accommodate such recent technologies and their effects on literary culture. On this pragmatic view, recommendations for legal reform and new regulatory frameworks for the use of copyrighted works could be proposed without substantial recourse to the past nor to technologies other than those presently under scrutiny. Whilst previously central to the questions of legal regulation, rights and ownership, ‘print culture’⁷⁶ of the eighteenth and nineteenth centuries is seen as having given way to ‘digital culture’: the present

⁷³ *Authors Guild v Google, Inc.*, 12.

⁷⁴ Title 17 of the United States Code, sections 106(1) and 106(3).

⁷⁵ Maurizio Borghi and Stavroula Karapapa, *Copyright and Mass Digitization* (Oxford: Oxford University Press, 2013), 15. Borghi and Karapapa have identified three “‘head-turning’ traits of mass digitization’, including the transformation of ‘works’ into ‘data’, the inversion of copyright from an ‘opt-in’ to ‘opt-out’ system, and the recentralisation of powerful intermediaries in contemporary informational circuits: Borghi and Karapapa, 1–18. On Borghi-Karapapa’s study, see chapter 2, ‘Two Ways of Looking at a Printed Book’.

⁷⁶ For two early and influential accounts of print culture, see Marshall McLuhan, *The Gutenberg Galaxy* (Toronto: University of Toronto Press, 2017); Elizabeth L. Eisenstein, *The Printing Press as an Agent of Change: Communications and Cultural Transformations in Early-Modern Europe Volumes I and II* (Cambridge: Cambridge University Press, 1979). See also Elizabeth L. Eisenstein, *The Printing Revolution in Early Modern Europe* (Cambridge: Cambridge University Press, 1983). For two critiques of the concept of print culture and its associations, see Adrian Johns, *The Nature of the Book: Print and Knowledge in the Making* (Chicago and London: The University of Chicago Press, 1998), 1–57; Multigraph Collective, *Interacting with Print: Elements of Reading in the Era of Print Saturation* (Chicago and London: The University of Chicago Press, 2018), 1–14.

dominance of the digital medium in our global medial ecology, where it threatens to absorb its mechanical and analogue predecessors.⁷⁷

By contrast, recognising the demands imposed on our thinking of authorship and literary property by digital technology, Chartier and other literary and media scholars have insistently returned to book and print history for assistance to understand and intervene in the present.⁷⁸ Present mutations in our ways of making, reproducing, circulating, and reading books are not removed from Chartier's inquiries into the pasts of the written word, but rather animate and haunt them simultaneously as their conditions of possibility and *raison d'être*.⁷⁹ As Chartier foregrounds in his opening book chapter, a 'more lucid'⁸⁰ diagnosis of the cultural and relational effects of the prolonged digital revolution, one that does not succumb to its tendency to 'seduce'⁸¹ or 'frighten'⁸² our contemporaries, would require a patient study of those pasts involving the material objects of rolls and codices that, whilst appearing to be outmoded by the electronic book, might constitute the latter in some respects or disclose the distance between them. Consider, for instance, the visibly fragmentary experience of reading from screens: Chartier reminds us that, prior to the digitisation of books, already prescribed by and in relation to the codex are some techniques for moving between passages located in different parts of the book.⁸³ These would include tables of content, indices, and related indexical marks such as page numbers, all of which afford the extraction, copying and comparison of parts of the text. In spite of this suggested continuity, it is also true that on-screen reading is not perceptually conditioned by the visual unity of the book-object (the 'textual totality contained by the written object'⁸⁴), but instead a dispersed experience that leads us to regard the text as being less defined by the values of coherence and integrity associated with the predecessor. In order to understand the (dis)continuities between the so-called 'dematerialised'⁸⁵ practices of digital forms and the more visibly material instantiations of the written word, it is necessary to preserve and study the inherited book-objects and resist the tendency to regard their

⁷⁷ For a classic eschatological account of digital technology as 'a Pentecostal condition of universal understanding and unity', see Marshall McLuhan, *Understanding Media: The Extensions of Man* (Cambridge, Massachusetts: The MIT Press, 1994), 80.

⁷⁸ Other than the works by Chartier, Kittler and Wellmon discussed below, see Multigraph Collective, *Interacting with Print: Elements of Reading in the Era of Print Saturation*. The multigraph reflects a cluster of perspectives that question the supersession hypothesis in early print studies, emphasising instead the enduring interactions between print and other multiple medial forms and practices.

⁷⁹ See Chartier, *The Author's Hand and the Printer's Mind*, 5–7.

⁸⁰ *ibid* 7.

⁸¹ *ibid*.

⁸² *ibid*.

⁸³ *ibid* 6.

⁸⁴ *ibid*.

⁸⁵ For an account of the irreducibly material bases of digital forms, see Friedrich Kittler, 'There Is No Software', *Ctheory*, 1995, https://web.stanford.edu/class/history34q/readings/Kittler/There_is_No_Software.html (accessed 30 April 2022).

mass digitised forms, often limited to the ‘main’ text to which the prevailing data-processing software applies, or else treated without sufficient care,⁸⁶ as definitive of what the books are. Similarly, it is by engaging closely with the (re)production of the printed book-object and the historical debates surrounding it that we may sharpen our understanding of the limits of the legal concept of literary property, which is presently strained by the ease with which digital texts could be replicated, revised, and disseminated by users. Far from being irrelevant, book history has much to offer to our understanding of digital textuality and its place in law and culture.

Ahead of more recent literary and media scholars, Friedrich Kittler suggested that present digital formations, such as computer graphics, binary digits, and algorithms, could well be more indebted to print than we have tended to presume.⁸⁷ Against the usual diagnosis of print’s extinction or obsolescence in the rapid digitisation of Western and global culture, Kittler directed us instead to select junctures in the histories of print and the image that attest to their mutual entanglement and anticipation of digital media. In Kittler’s provocative formulation, ‘[print] was a singular medium that had the power to facilitate its own technology supersession; and that particular power (and the source of much of Europe’s political power) was not derived from its printed words alone, but from a technologically sophisticated media link that joined these words to printed images’.⁸⁸ As Kant did with respect to print publications in eighteenth-century Germany, Kittler recognised print’s place in Western history as an optical medium that interacted with the eyes and bodies of its users. Gutenberg’s letterpress did not generate any pure or ideal form of writing, but instead implemented a ‘spatial geometry’⁸⁹ of letters that continues to be reflected in the typography of today’s books, whether in print or electronic format: ‘Each lead letter was located in relation to its neighbour to the right, left, top and bottom, in other words, each letter filled an empty space that was already waiting for it’.⁹⁰ Not only was the printed text itself an image that impressed on its readers some material combination of characters, the print medium acted as the means by which the techniques for making images, and images themselves, were disseminated.⁹¹ The technique of linear perspective, which involves the perspectival generation of three-dimensional depth in two-dimensional surfaces, was recorded and transmitted by Leon Battista Alberti, by means of both manuscript and printed books.⁹² Subsequently, Albert Dürer

⁸⁶ For a critique of Google’s claim that its mass digitisation efforts are directed at conserving literary culture, see Siva Vaidhyanathan, *The Googolization of Everything (And Why We Should Worry)* (Berkeley and Los Angeles: University of California Press, 2011), 149–73.

⁸⁷ See Friedrich Kittler, ‘The Perspective of Print’, trans. Geoffrey Winthrop-Young and Michael Wutz, *Configurations* 10, no. 1 (2002): 37–50.

⁸⁸ *ibid.* 37.

⁸⁹ *ibid.* 38.

⁹⁰ *ibid.*

⁹¹ *ibid.*

⁹² Leon Battista Alberti, *On Painting*, trans. Rocco Sinigalli (Cambridge: Cambridge University Press, 2011).

included in his printed manual for painters technical drawings illustrating the technique of linear perspective.⁹³ In Kittler's reading, not only did the rhetoric of Dürer's accompanying instructions, which were subject to 'conditional jumps and loops',⁹⁴ reflect an 'algorithmic perspective'⁹⁵ consistent with that of computer programming, the technical drawings further exemplified print's role in disseminating and advancing inventions. Woodcuts and copper engravings of illustrations included within printed books, including the technical drawings of machines, facilitated progress in the science of engineering that led up to the invention of computers.⁹⁶ As Kittler clarified elsewhere: 'Print technology made the autodidact possible – that is the point upon which everything depends. The book became a medium in which technical innovations as such could take place. They could be stored, shared, and even advanced with the help of technical drawings in the text.'⁹⁷ Digital media's evolution was traced back to print's operation as an optical medium whose 'place-value logic',⁹⁸ the logic of locating elements in relation to one another within a common space, anticipated the binary system of 1s and 0s in which virtual realities are constituted. We may or may not agree with Kittler's theoretical proposition that the history of Western technology has unfolded pursuant to an immanent dialectical logic that had little to do with human decisions and interventions.⁹⁹ Kant, for instance, affirmed the need for human beings to act responsibly in the face of print proliferation during the eighteenth century.¹⁰⁰ But in so suggesting that there could be prior and enduring links between digital and print media, which coexist in a medial ecology that has evolved across the centuries, Kittler disclosed the insufficiency of accounts narrowly centred on contemporary digital forms.

Perhaps no less than in contemporary times, authorship in eighteenth-century Germany was bound up with the materialities of literature, if by the latter phrase we include both the medial object of the book and the cultural techniques of reading, writing, hearing and speaking.¹⁰¹ *Aufschreibesystem* ('Discourse network') was a term refashioned by Kittler to study literature as an information system, that is, as a communicative system involving the storage, processing, and

⁹³ Albrecht Dürer, *The Painter's Manual: A Manual of Measurement of Lines, Areas, and Solids by Means of Compass and Ruler*, trans. Walter L. Strauss (New York: Abaris Books, 1977).

⁹⁴ Kittler, 'The Perspective of Print', 45.

⁹⁵ *ibid.*

⁹⁶ For an account of the 'agency of paper' in the rise of engineering in Europe, see Alain Pottage, 'Paper Prototypes', in *Knowledge, Technology and Law*, ed. Emilie Cloatre and Martyn Pickersgill (Abingdon, Oxon: Routledge, 2015), 228.

⁹⁷ Friedrich Kittler, *Optical Media: Berlin Lectures 1999*, trans. Anthony Enns (Polity, 2010), 67.

⁹⁸ Kittler, 'The Perspective of Print', 49.

⁹⁹ *ibid.* 50.

¹⁰⁰ On the relationship between the printed authorial name and responsibility, see chapter 5, '(After)lives of I. Kant'.

¹⁰¹ For an account of Kittler's work heuristically divided into three periods based on the key terms of 'discourse network', 'media', and 'cultural techniques', see Geoffrey Winthrop-Young, *Kittler and the Media* (Cambridge: Polity Press, 2011).

transmission of data.¹⁰² In Kittler's prefatorial positioning of his 1985 work, whereas literary studies in his time had tended to limit their attention to the meaningful content or representations of texts, his study attempted instead to produce a diagram or 'blueprint'¹⁰³ of the material basis of German (and, in respect of the latter period, Euro-American) literature in two historical periods: the literary networks circa 1800 and circa 1900.¹⁰⁴ Whereas Discourse Network 1800 ('DN1800') had largely focused on the predominant communicative medium of its time, namely, the printed book, Discourse Network 1900 ('DN1900') dealt with the profound rupture in literary history induced by the data-processing devices of typewriter, phonograph and film that arrived towards the end of the late nineteenth century.¹⁰⁵ As these references to key types of communicative media indicate, Kittler approached books not as ideal repositories of philosophical meaning, but rather as material objects located within broad networks of interacting actors. In this respect, the printed pages of eighteenth-century books are no less substantial than the digital hardware of screens on which today's electronic books are viewed. 'It is an elementary fact that literature (whatever else it may be) processes, stores, and transmits data, and that these acquisition, storage, and transmission systems, when they take on the appearance of texts, have the same technological positivity as computers'.¹⁰⁶ Crucially, in Kittler's study of DN1800, printed books did not feature as passive objects embodying ideal forms of literary property owned by authors. Whereas Fichte and other contemporary proponents of Romantic authorship had overlooked the material surface of the book in preference to the 'mind'¹⁰⁷ that generated it, Kittler recognised that books themselves were involved in the turning of persons into Romantic authors. For instance, it was through the mass printing, distribution and use of state-sanctioned ABC books or primers around the turn of the nineteenth century that German mothers were enlisted as primary instructors in their children's education.¹⁰⁸ Other than ensuring a general alphabetisation of future authors and readers, these primers from which German mothers read specifically contributed to the making of authors who,

¹⁰² Kittler borrows the term from Daniel Paul Schreber's memoir: see Daniel Paul Schreber, *Memoirs of My Nervous Illness*, ed. and trans. Ida Macalpine and Richard A. Hunter (Cambridge, Massachusetts and London: Harvard University Press, 1988); Friedrich Kittler, *Discourse Networks 1800/1900*, trans. Michael Metteer and Chris Cullens (Stanford: Stanford University Press, 1990), 265–346. Kittler's study was shaped by Shannon's information theory, a concise account of which may be found in his published lectures on optical media: see Kittler, *Optical Media: Berlin Lectures 1999*, 43–46.

¹⁰³ Friedrich Kittler, 'Unpublished Preface to Discourse Networks', trans. Geoffrey Winthrop-Young, *Grey Room* 63 (2016): 93.

¹⁰⁴ *ibid.* 94.

¹⁰⁵ For Kittler's book-length elaboration on the second discourse network, see Friedrich Kittler, *Gramophone, Film, Typewriter*, trans. Geoffrey Winthrop-Young and Michael Wutz (Stanford University Press, 1999).

¹⁰⁶ Kittler, 'Unpublished Preface to Discourse Networks', 92.

¹⁰⁷ 'Fichte: Proof of the Unlawfulness of Reprinting, Berlin (1793)'. On Fichte's concept of the book, see chapter 4, 'Materiality of Type'.

¹⁰⁸ See Kittler, *Discourse Networks 1800/1900*, 27–53.

like Fichte, were drawn to ‘a voice between the lines’.¹⁰⁹ Romantic authorship, a legacy that Woodmansee and Rose suggested to be the ideology underpinning today’s law of copyright qua intellectual property, was shown by Kittler to be a phenomenon mediated by print publications and print actors. Anticipating Chartier’s investigations into the materialities of the author-function, Kittler’s study of eighteenth-century Germany excavated the material basis of Romantic authorship, which revolved about the printed book.

Kant did not feature strongly in Kittler’s study. Amongst the prominent German philosophers of the period, it was instead Fichte and Hegel whose works and biographies were cited as examples of a philosophical idealism that collaborated and cohered with the Romantic-genius approach to books and authors advanced by Johann Wolfgang von Goethe and other poets.¹¹⁰ But as Chad Wellmon has shown more recently, Kant critically contributed to the cultural milieu’s negotiation of the problem of print proliferation and its impact on human society, which mirrors our present anxieties about information overload pursuant to the emergence of new digital channels of communication such as social media, blogs, and *Wikipedia*.¹¹¹ The contemporary epistemic crisis, in which the role of the modern research university as an institution that legitimates and authorises knowledge, could be productively compared to preceding concerns with print saturation in late-eighteenth-century Germany represented in and instantiated by the texts of German intellectuals such as Kant, Fichte, and Friedrich Wilhelm Joseph Schelling.¹¹² In the opening page of Kant’s essay on enlightenment, to which Wellmon has pointed on multiple occasions, we find Kant’s characterisation of the book-object, alongside other personal subjects of authority, as a threat to enlightenment culture: ‘It is so comfortable to be a minor! If I have a book that understands for me, a spiritual advisor who has a conscience for me, a doctor who decides upon a regimen for me, and so forth, I need not trouble myself at all.’¹¹³ Having thus identified the agency of print in obstructing the emancipatory process of the human being’s exit from immaturity, the essay proceeded to clarify what its proposed solution of the public use of reason entailed, which paradoxically relied on the same print medium that imperilled the freedom of its user. In Kant’s theorisation of enlightenment practice, we find an account of the book as a critical technology that addressed its own contribution to the problem of readers being unable to distinguish between

¹⁰⁹ *ibid* 34.

¹¹⁰ See *ibid* 124–73.

¹¹¹ See Chad Wellmon, *Organizing Enlightenment: Information Overload and the Invention of the Modern Research University* (Baltimore, Maryland: John Hopkins University Press, 2015), 1–19, 123–150.

¹¹² *ibid* 15–16.

¹¹³ Kant, ‘An Answer to the Question: What Is Enlightenment? (1784)’, 17. See Wellmon, *Organizing Enlightenment*, 15; Chad Wellmon and Brad Pasanek, ‘The Enlightenment Index’, *The Eighteenth Century: Theory and Interpretation* 56, no. 3 (2015): 357; Brad Pasanek and Chad Wellmon, ‘Enlightenment, Some Assembly Required’, in *The Eighteenth Centuries: Global Networks of Enlightenment*, ed. David T. Gies and Cynthia Wall (University of Virginia Press, 2018).

‘verities’ and ‘falsehoods’, ‘good’ and ‘bad’ knowledge practices. Coinciding with Kant’s appeal for persons to use their own understanding instead of reproducing dogma, the research university was re-imagined by his contemporaries, including Schelling, as an institution directed at cultivating subjects of knowledge competent to navigate the surfeit of print.¹¹⁴ Rather than being alien to present-day concerns with digital saturation and its impact on the university, Kant’s work and the wider discourse surrounding print proliferation in late-eighteenth-century Germany has much to add to our understanding of the relationship between technological change, institutional structures, and knowledge practices. All these interlinked vectors of society and culture are implicated in the thick problematic of authorship and its relationship with the law of copyright, which Kant’s work invites us to explore.

Print qua Literary Unconscious

Though responding to the exigencies of their own time, and to the concerns of their respective fields, the texts bearing the authorial last names of Chartier, Kittler, and Kant nonetheless present us with convergent ways of approaching the question of authorship. Whereas the historicity of our received understandings of who and what an author is has been consistently noted in the surrounding Foucaultian scholarship, it is in the three loci that we find the sharpest recognition of the printed book’s relevance, even centrality, to those understandings. Even as they foreground the book-materialities of authorship, these works recognise that the relationship between book and author is never straightforward nor free of ambiguity. For Chartier, the 1605 front matter of *Don Quixote* could simultaneously stage a paternal relationship between the text and its author whilst evidencing the systems of print, patronage and privilege that govern its production. Kant’s printed book oscillated between its status as object and operation as speech act. And in Kittler’s view, Romantic authorship proceeded both on the basis of and in spite of the typographical materiality of books. To misquote Barthes, it might be that ‘in the [materiality of authorship], everything is to be *disentangled*, nothing *deciphered*’.¹¹⁵

Whilst the possible text-objects for study are plenty, Kant’s essay on the rights of publishers and authors, published in the May 1785 issue of the *Berlinische Monatsschrift* and bound as part of fifth volume of the periodical, offers itself as a privileged point of entry into the time and place of

¹¹⁴ See Wellmon, *Organizing Enlightenment*, 169–75.

¹¹⁵ ‘In the multiplicity of writing, everything is to be *disentangled*, nothing *deciphered*’: Barthes, ‘The Death of the Author’, 147.

late-eighteenth-century Germany and its implications on our focal thematic.¹¹⁶ The power of Kant's non-proprietary concept of the book and system of rights to facilitate our rethinking of utilitarian copyright has already been partly tapped by Barron and other Kantian copyright scholars. With Kant, these scholars have pointed to a significantly richer understanding of the interrelation between authors, books, and the public; and between the book trade, pertinent regulatory regimes, and social projects of collective emancipation; than the proprietary and liberal-individualist vision of society reflected in today's copyright laws. Yet, much of the focus has been on the rhetoric or philosophical content of the essay. The material dimension of the text, which affords its very interpretation, is mostly left untouched, as if unseen or without consequence. What remains to be addressed is how the artefactuality of the 1785 essay, its status as *opus*, might shape its meaning and problematise the proprietary understanding of authorship that still predominates in law and culture today despite the challenges posed to it, both by the critical scholarship and the ongoing digital revolution.

In tandem with these preceding scholarly practices, this thesis undertakes an extended rereading of Kant's 1785 essay from a medial perspective that attends closely to the transactions between its material form and rhetorical content. In so doing, this thesis contributes to the accrued cross-disciplinary efforts to so re-read the past(s) and present(s) of the author-function as to foreground not just its legal structures of implementation, but also its medial-material matrices. Specifically, in conjunction with the stated propositions in Kant's essay, this thesis attends to three so-called peripheral aspects of the original edition, or what Gérard Genette has called the work's 'paratext',¹¹⁷ that indexed the material and historical conditions of its emergence. These include the peritextual specimens of catchwords, signature marks, and various front matter of the essay, issue, volume, and periodical journal, which are studied alongside the epitextual background of late-eighteenth-century Germany and contemporaneous publications. The thesis further turns to the Breitkopf Fraktur typeface in which the periodical essay was set, considering both the history of its making and the different ways it has (not) been perceived in the past and the present. Lastly, the form and placement of Kant's printed authorial name in various editions of the essay (and other pertinent texts) is analysed for what it suggests about the author-function in the German Enlightenment and beyond. Our study of each paratextual feature is preceded by a working reconstruction of pertinent terms, doctrines, and evidential rules in contemporary copyright

¹¹⁶ For a digitised version of the fifth volume stored in the Bavarian State Library, see: <https://www.digitale-sammlungen.de/en/view/bsb10926844?q=%28berlinische+monatsschrift+1785%29&page=,1> (accessed 30 April 2022).

¹¹⁷ Gérard Genette, *Paratexts: Thresholds of Interpretation*, trans. Jane E. Lewin (Cambridge: Cambridge University Press, 1997). On Genette's term, see chapter 3, 'From Paratexts to Print Machinery'.

regimes that either reproduce the proprietary understanding of authorship, or suppress the materiality of the book; oftentimes, they do both. Indicatively, these legal dogmata include the original requirement in European copyright law, published edition copyright in English copyright law, and varying statutory presumptions of authorship based on affixed authorial names across jurisdictions. Juxtaposing present-day copyright treatments of the book with the deeply historical processes indexed by the book helps disclose the limits of our legal perspectives and effect their displacement.

The argument of this thesis may be formulated under the auspices of psychoanalytic theory. Sigmund Freud's clinical practice led him to confront the limits of consciousness, both as a psychological system and as a paradigm of the mental apparatus.¹¹⁸ Dreams, parapraxes, and the neuroses of his patients could not be satisfactorily accounted for in the conventional equation of the psychological with the conscious. Accordingly, he posited the existence of a psychological dimension that exceeded consciousness, namely, 'the unconscious',¹¹⁹ as an explanation for those gaps in 'the data of consciousness'.¹²⁰ Despite being, in principle, barred from entering the conscious system pursuant to repression, the unconscious mental processes nonetheless have 'abundant points of contact with conscious mental processes',¹²¹ shaping and disrupting conscious events, and are themselves subject to de-cathecting and re-cathecting processes of displacement and condensation that afford their emergence in consciousness. Psychoanalytic therapy, in the form of the 'talking cure', involved the transformation of unconscious processes into conscious mental processes. Difficult and complex as such treatments tended to be, Freud's theorisation of psychological systems and processes evidenced an elegant lucidity, and was at one point compared to a corporeal act of perception: 'In psychoanalysis there is no choice for us but to declare mental processes to be in themselves unconscious, and to compare the perception of them by consciousness with the perception of the outside world through the sense-organs'.¹²² It was as if to write about and bring to light the unconscious required some kind of bodily perception.¹²³

¹¹⁸ For a late text that succinctly rearticulates Freud's account of the unconscious, see Sigmund Freud, 'The Unconscious (1915)' in *General Psychology Theory: Papers on Metapsychology*, ed. Philip Rieff, trans. Cecil M. Baines (New York: Collier Books, 1963), 116–50.

¹¹⁹ Freud, 'The Unconscious (1915)', 116.

¹²⁰ *ibid.*

¹²¹ *ibid.* 118.

¹²² *ibid.* 121.

¹²³ Later in the same paragraph, Kant would be cited as an authority whose warning about the difference between the subjectively conditioned perception of the thing (phenomenon) and the thing in itself (noumenon) aligned with Freud's caution against equating conscious perception with the unconscious psychological processes that conditioned it. But whereas the 'outer' noumenon was perhaps strictly unknowable, Freud suggested that the 'inner' unconscious might be less so because of dreams and other liminal psychological events: 'It is, however, satisfactory to find that the correction of internal perception does not present difficulties so great as that of outer perception—that the inner object is less hard to discern truly than is the outside world': *ibid.*

My contention is that print, as the dominant medium for disseminating literary works during the late eighteenth century and until quite recently, has acted as if it were the unconscious of literature in two related ways that bear profoundly on the question of authorship and copyright. The first pertains to its deep involvement in the constitution of social relationships, including but also exceeding that between authors and works. The making and circulation of a literary artefact such as Kant's 1785 periodical essay depended on a print machinery, a socio-technological assemblage of human actors (ranging from authors, publishers, compositors and printers to binders, advertisers, booksellers, and readers) and the objects with which they interacted (for instance, component parts of the printing press, or the wider postal infrastructure). Whereas Freud had to rely on his patients' recounting of dreams to determine their unconscious mental states, we only have to look at the printed book and its paratextual markings to learn of these mediated historical processes. The various paratexts of Kant's essay, including its typeface, indexically point to these surrounding processes of literary production that exceed the now-prevailing proprietary understanding of literary works as created and owned by authors. Indeed, the typographical (dis)placements of Kant's authorial name across various editions of the essay suggest that proprietary authorship was not the only author-function implemented by and in books. Literary and media theorists, Kant included, in their respective ways and to varying degrees, understood, pointed to, and participated in the material operations of literature within particular socio-historical contexts. The place of the printed book in the German Enlightenment, if adequately accounted for, could act as a useful counter-image against which to clarify that of literature (and other cultural forms) in contemporary copyright regimes.

The second way in which print features as the literary unconscious concerns, precisely, the tendency to underestimate its significance to authorship and copyright in Kantian copyright scholarship and other pertinent studies. In a gesture akin to Freud's with respect to liminal psychical events, Marshall McLuhan has illuminated the centrality of technological mediation in Western and global culture.¹²⁴ McLuhan's provocation, 'the medium is the message',¹²⁵ has ushered in important investigations into the psycho-social effects and implications of communicative media, including those of Kittler.¹²⁶ Elizabeth Eisenstein's studies of print culture, however rightly criticised for its overly static and rigid account of print,¹²⁷ have made manifest the need to take the

¹²⁴ See also Harold A. Innis, *Empire and Communications* (United States of America: Rowman & Littlefield Publications, Inc., 2007); Harold A. Innis, *The Bias of Communication*, 2nd ed. (Toronto: University of Toronto Press, 2008).

¹²⁵ McLuhan, *Understanding Media*, 70.

¹²⁶ As previously noted, see Eisenstein, *The Printing Press as an Agent of Change: Communications and Cultural Transformations in Early-Modern Europe Volumes I and II*; Eisenstein, *The Printing Revolution in Early Modern Europe*.

¹²⁷ See Johns, *The Nature of the Book: Print and Knowledge in the Making*, 1–57; Multigraph Collective, *Interacting with Print: Elements of Reading in the Era of Print Saturation*, 1–14.

agency of the medium seriously. Writing at a time of print proliferation in Königsberg, around two centuries before the literary and media scholars, Kant already recognised the threat that print posed to human autonomy and devised strategies to deal with it, including the critical use of his own authorial name. Despite recognising the historicity of Kant's intervention, contemporary legal readers of Kant's 1785 essay have tended to focus on its rhetorical content and ignore its material basis, as if Kant's 'speech act' were all that mattered. This is perhaps symptomatic of a wider tendency to neglect the medium of literature in legal and copyright scholarship, though there have certainly been attempts to resist and rectify this.¹²⁸ A more adequate understanding of Kant's essay and how it might illuminate the present digital transformation of authorship and copyright would require that we attend closely to its medial-materialities. This thesis is but an attempt to do so.

Thesis Roadmap

The next chapter, 'Two Ways of Looking at a Printed Book', reconstructs the contexts of mass digitisation and the Kantian copyright debate in which the task of (re)reading Kant's 1785 essay is presented. Both sites are seen as having issued, and responded to, fundamental challenges to our received understandings of authorship and copyright. After reviewing three copyright scholars' reliance on Kant's text(s) to critique the utilitarian-proprietary paradigm of copyright, we propose another mode of reading—the medial perspective outlined in the above—that draws upon works in media theory, bibliography, book history, print culture, and enlightenment studies. It is suggested that Kant's contribution to our rethinking of authorship and copyright could be more adequately understood through a close study of the 1785 essay as a print object.

The following three chapters revolve around certain paratexts of the 1785 essay and their indexical relationship with late-eighteenth-century Germany. Each chapter begins anew by recalling some conventional ways in which books and authors have been treated in contemporary copyright law, often by reviewing a selection of national and international legal authorities, before considering some theoretical or historical perspectives that exceed the legal orthodoxy. Guided by those alternative perspectives (and, to an extent, their doctrinal counterparts), we proceed to study the focal paratextual feature(s) and unpack their implications on both the historical significance of Kant's essay, and our prior and existing understandings of authorship in law and culture.

¹²⁸ See, for example, Cornelia Vismann, *Files: Law and Media Technology*, trans. Geoffrey Winthrop-Young (Stanford University Press, 2008); Alain Pottage, 'Literary Materiality', in *Routledge Handbook of Law and Theory*, ed. Andreas Philippopoulos-Mihalopoulos (London and New York: Routledge, 2019), 409–29.

Chapter 3, ‘From Paratexts to Print Machinery’, juxtaposes the myth of proprietary authorship embodied in the legal idiom of ‘work’, ‘author’ and ‘originality’ with the realities of print production in late-eighteenth-century Germany indexed in the margins of Kant’s text. Taking as an emblematic instance the 2009 ECJ decision of *Infopaq International A/S v Danske Dagblades Forening*,¹²⁹ it is suggested that across national and international copyright regimes, and between common law and civil law systems, there is a commonly ingrained approach to the literary work as an intellectual creation of its personal author. To problematise the conventional view, we revisit both Genette’s concept of paratext and Kant’s approach to the book, both of which point to the printed marks in the book as material indices of the complex processes and conditions that produced it. Accordingly, our historicisation of Kant’s 1785 essay includes not only the epitextual background of the German Enlightenment and the role therein played by periodicals such as the *Berlinische Monatschrift*, but also the peritextual features of catchwords, signature marks and front matter that appeared within and alongside Kant’s text. These paratexts lead us to a print machinery or socio-technological assemblage in whose operations the author and work were involved, the existence of which perturbs copyright law’s attachment to original authorship.

Chapter 4, ‘Materiality of Type’, both deepens and complicates our legal understanding of literature by attending to the perception and making of typefaces, particularly that of the Breitkopf Fraktur typeface in which Kant’s essay was set. Despite the centrality of authors in copyright law, we note that publishers and their contributions to the typographical layout of books are also protected under the doctrine of typographical copyright (more commonly referred to as ‘published edition copyright’). Close reading a 2001 House of Lords decision, *Newspaper Licensing Agency Ltd v Marks & Spencer Plc*,¹³⁰ allows us to see how copyright in the literary work and in the typography of published editions, though pertaining to the respective labours of authors and publishers, nonetheless converge by evidencing an ‘originalist’ aesthetics of the book that reaffirms the myth of proprietary authorship. Again, with a view to sharpening and, ultimately, dislodging this legal aesthetics of the book, we revisit and compare Fichte’s and Kant’s accounts of the printed book from late-eighteenth-century Germany. Whereas Fichte’s distinction between the content and form of books, to an extent, coheres with (but also departs from) the idea/form dichotomy of copyright law, Kant’s recognition of the visual-corporeality of the book, including the perceptibility of its typeface and typesetting, points to a historical domain of interactions between bodies that exceed the copyright perspective (and, arguably, also his own). The rest of the chapter explores two aspects of the material history of the Breitkopf Fraktur typeface: the history of its

¹²⁹ [2009] ECR I-06569 (Case C-5/08).

¹³⁰ [2001] UKHL 38.

production, and the history of its perception. These working images of the typeface's pasts, which attest to an array of criss-crossing interactions between human bodies and print technologies, evidence the finitude of copyright law's perspective on type, along with that of the two German philosophers'.

The final substantive chapter, '(After)lives of I. Kant', contests the diminished evidentiary role assigned to the authorial name in contemporary copyright law by reconstructing the ethical and social function of Kant's printed authorial name in the German Enlightenment. With the assistance of the 2019 English Court of Appeal decision of *Kogan v Martin*,¹³¹ we note that, in the United Kingdom and other jurisdictions, the authorial name affixed to a text serves a limited function of giving rise to a presumption of authorship that could nonetheless be rebutted to disclose a hidden reality of joint authorship. Alongside literary studies of anonymous publications, we further note the absence of legal requirement for the disclosure of authorial names for the most of English legal history, and consider the suggestion that the author-function might well operate without an authorial name affixed to the text. Our problematisation of these accounts begins with a return to Foucault's and Chartier's studies of the author-function, a close reading of which gives us a theoretico-methodological starting point from which to revisit Kant's essay for what it indicates about the author-function in late-eighteenth-century Germany. After considering how the name of the author is deployed on the rhetorical level of the text, we turn to some of the textual and typographical (dis)placements of Kant's name, within and without the May 1785 issue of the periodical, during and beyond the author's lifetime. It is demonstrated that Kant not only recognised the importance of printed authorial names to the enactment of authorial responsibility in his conception of enlightenment, but further so deployed his own authorial name as to hold himself and others accountable for the print publications that contributed to the public discourse of his time. This ethically and socially concerned author-function in late-eighteenth-century Germany discloses both the limits of the copyright perspective to understand the material constitution of authorship, and the contingent character of the myth of proprietary authorship that copyright law continues to preserve.

By way of conclusion, the thesis reflects on the implications of its printed-focused study on digital culture (and vice versa) and proposes some areas for further inquiry. Our sketch of the traffic between Kant's essay and the present moves from the evolving materialities of literature and ambiguities of authorship to the issue of authorial responsibility and the limits of the intellectual property idiom. Far from being 'deciphered', the question of authorship and its

¹³¹ [2019] EWCA Civ 1645; [2020] E.C.D.R. 3.

relationship with copyright law endures as an invitation to reimagine the ways in which we perceive and interact with literature (and other cultural forms), both as literary actors and scholars of law.

2. Two Ways of Looking at a Printed Book

Introduction

On 18 April 2016, the Supreme Court of the United States declined to hear the appeal against the Second Circuit Court of Appeals' decision in favour of Google's mass digitisation of books and other printed matter,¹ thereby conclusively affirming Google Books and the Library Project as involving the 'fair use'² of copyrighted works.³ As authors, the plaintiff-appellants owned copyrights in works that had been digitally scanned and made publicly available for search and snippet view without their permission pursuant to bilateral agreements between Google and its partner libraries. According to the decision, however, Google's copying of the literary works for those 'transformative purposes'⁴ fulfilled the copyright system's broad objective of advancing public knowledge by making available to the public significant information about those works without offering any effectively competing substitute for each of them. In other words, it was a fair use of works that did not require any authorisation from the copyright owners – a defence against alleged copyright infringement recognised in section 107 of Title 17 of the United States Code.⁵ The so-called 'exclusive control over copying of their works'⁶ granted to authors under the copyright system as an incentive to produce those works for public consumption did not restrict the technology company's creation and exploitation of a universal database of digitised books.

For readers drawn to a renewed Library of Alexandria, this authoritative recognition of Google's mass digitisation project as fair use might come as a relief from the strictures of modern copyright. In October 2009, when Google was still in the midst of negotiating a final settlement with the Authors Guild and the Association of American Publishers, its co-founder Sergey Brin had justified the project as fulfilling the double goals of preserving and improving accessibility to the world's cultural heritage in books.⁷ The thrice burning of the ancient Library was cited as one of the prime historical instances of the fragility of material books, which was a condition to be

¹ The decision is *Authors Guild v Google, Inc* No. 13-4829 (2d Cir. 2015).

² The doctrine of fair use is codified in Title 17 of the United States Code, section 107. For the Supreme Court's recent discussion of fair use as applied to Google's partial copying of a computer program, see *Google LLC v Oracle America, Inc* 593 U.S. ____ (2021).

³ Adam Liptak and Alexandra Alter, 'Challenge to Google Books Is Declined by Supreme Court', *The New York Times*, 18 April 2016.

⁴ *Authors Guild v Google, Inc*, 16. The meaning of 'transformative purpose' is based on the Supreme Court's discussion of the four statutory factors of fair use in *Campbell v Acuff-Rose Music, Inc* 510 U.S. 569 (1994).

⁵ Title 17 of the United States Code, section 107.

⁶ *Authors Guild v Google, Inc*, 12.

⁷ Sergey Brin, 'A Library to Last Forever', *The New York Times*, 8 October 2009.

overcome by Google's and its partners' assembly of 'a [digital] library to last forever'.⁸ Once mostly confined within elite academic libraries, the vast majority of literary works not yet in the public domain could now be scanned, indexed and made publicly searchable without any risk of infringing copyrights held by their authors or assignees. One of the most prominent legal scholars to have long argued for both the lawfulness and desirability of the Google Books search function is Lawrence Lessig.⁹ When the project still bore the early name of 'Google Print', Lessig already extolled its potential to radically democratise our access to knowledge and culture: 'Google Print could be the most important contribution to the spread of knowledge since Jefferson dreamed of national libraries. It is an astonishing opportunity to revive our cultural past, and make it accessible'.¹⁰ With all the world's books increasingly copied to a single database, Google promises to facilitate access to these books by any user in possession of a digital device, including those underserved by analogue copies for geographical, socio-economic, or other reasons. As understood by the techno-futurist Kevin Kelly, however, the mass digitisation of books is but preparatory for the expedited user-led processing of books, which has to some extent already been enabled by the digital innovations of link and tag: 'The real magic will come in the second act, as each word in each book is cross-linked, clustered, cited, extracted, indexed, analyzed, annotated, remixed, reassembled and woven deeper into the culture than ever before'.¹¹ In Kelly's view, the ultimate significance of Google Books extends from its potential to collapse the instituted boundaries between literary works: 'the universal library becomes one very, very, very large single text: the world's only book'.¹² Alexandria 2.0, 'a single liquid fabric of interconnected words and ideas',¹³ could seem less distant a future with the present balance struck between the putatively competing interests of proprietary authors and the public at large, which ostensibly favours the latter.

Nonetheless, Google's mass digitisation project has also been criticised for its fundamental challenges to the tradition of authorship, the copyright system, and the global economy of books, information and culture, which persist despite the latest judicial decision. Just a month after Kelly's essay was published in the supplementary magazine to *The New York Times*, John Updike's reply

⁸ *ibid.*

⁹ Lawrence Lessig, *Is Google Book Search Fair Use?* (YouTube, 16 January 2006).

¹⁰ Lawrence Lessig, 'Google Sued', *Lessig Blog Archives* (blog), 22 September 2005. Whilst initially endorsing the terms of the Google Book Search settlement for securing greater access to books than if the lawsuit were won by Google, Lessig withdrew his support for the revised proposal a year and a half later, mostly on the grounds that it excessively regulated and juridified our access to culture: compare Lawrence Lessig, 'On the Google Book Search Agreement', *Lessig Blog Archives* (blog), 29 October 2008; and Lawrence Lessig, 'For the Love of Culture', *The New Republic*, 26 January 2010.

¹¹ Kevin Kelly, 'Scan This Book!', *The New York Times Magazine*, 14 May 2006.

¹² *ibid.*

¹³ *ibid.*

would appear in the newspaper.¹⁴ In the novelist's view, Kelly's prophesised dissolution of the borders between books implied 'the end of authorship':¹⁵ a tradition of communication between authors and readers prescribed by the written word and print technology. Against the prospect of 'a huge, virtually infinite word stream accessed by search engines populated by teeming, promiscuous word snippets stripped of credited authorship',¹⁶ Updike affirmed the printed book's 'old-fashioned function of ... communication from one person to another'.¹⁷ The print medium affords an intimate relation between author and reader that threatens to be permanently disrupted by the next suggested phase of the digital revolution. 'The printed, bound and paid-for book ... is the site of an encounter, in silence, of two minds, one following in the other's steps but invited to imagine, to argue, to concur on a level of reflection beyond that of personal encounter'.¹⁸ Google Books is a medial event that spurs the obsolescence of our print-based understanding of authors and readers, no less than that of booksellers and other intermediaries on whom we have traditionally relied for the production and circulation of books.

Scholars of book history, media studies and law have questioned the desirability of Google's project by pointing to some of its anticipated adverse effects on the global information economy and the modern institution of copyright. In Robert Darnton's view, as prescribed by the terms of the initial settlement agreement, Google Books unduly consolidated power in one company, leaving open the possibility of Google's prioritisation of its own private interests over the public good in the long run.¹⁹ Notwithstanding the non-exclusivity of the agreements between Google and its partner libraries, Google would enjoy a *de facto* monopoly of access to information in the absence of real competitors. The company could favour profitability over access in the future, for instance, not only by charging for the use of its services, but further by setting high prices for institutional and consumer subscription licences. Siva Vaidhyanathan agreed with Darnton that public and university libraries were better suited for the mass digitisation and facilitation of public access to books.²⁰ Instead of letting Google secure an inordinate amount of competitive advantage in the global information economy, the public should finance and support libraries to accomplish the task of building the digital archive. For Maurizio Borghi and Stavroula Karapapa, the most

¹⁴ John Updike, 'The End of Authorship', *The New York Times*, 25 June 2006.

¹⁵ *ibid.*

¹⁶ *ibid.*

¹⁷ *ibid.*

¹⁸ *ibid.*

¹⁹ Robert Darnton, 'Google & the Future of Books', *The New York Review of Books*, 12 February 2009.

²⁰ Vaidhyanathan, *The Googlization of Everything*, 169. Other than the antitrust problem, Vaidhyanathan raised a series of objections to the project surrounding user privacy issues, its *de facto* compulsory licensing system, the further commercialisation of the library space, and the inadequacies of Google's search algorithms in regard to books: see *ibid.* 149–73.

troubling aspect of the project concerns not so much its colossal empowerment of a profit-seeking entity as its effective inversion of the copyright system.²¹ In so dispensing with the need to seek prior authorial consent for the copying and use of copyrighted works through licencing agreements with its partner libraries, Google has transformed copyright from an opt-in system of permissions into an opt-out system, where authors now have to ask for the exclusion of their works from digitisation and display. Google Books has, so to speak, ‘turned copyright on its head’.²² As suggested by Borghi and other commentators, if the case had been tried in other jurisdictions without any exception as broad as the United States doctrine of fair use, it would have been unlikely that Google would succeed.²³ That Google Books has now been judicially legitimated in one regime only accentuates a basic tension between mass digitisation and modern copyright: analogue modes of copyright protection might not be as effective in, nor even suited to, the digital environment.

As suggested by the contemporary debate surrounding Google Books, digital technology is in the midst of transforming our dominant cultural-legal understanding of authorship and copyright. It was not too long ago when the legal fiction of the proprietary author, emergent from the historical conditions of late-seventeenth to early-nineteenth-century Europe, was criticised for ignoring the manifold social realities of literary production.²⁴ The outcome of *Authors Guild v Google, Inc* might seem to reflect a further side-lining of the authorial figure, whose work can now be electronically duplicated, diced, displayed, and subjected to the mostly hidden practices of data-mining and computation without consent. Updike’s hostility towards the liquefaction of formerly distinct works palpably extends from the writer’s close attachment to the practices surrounding the more traditional media of writing and print. Instead of the innovative technology company offering its services to users via the shiny interfaces of digital screens, booksellers still manning the ‘lonely forts’²⁵ of stores filled with material books are the intermediaries lauded at the start and finish of Updike’s essay. Google Books is but an exemplary instance of mass digitisation projects launched since the turn of the new millennium to have

²¹ Borghi and Karapapa, *Copyright and Mass Digitization*, 1–18.

²² *ibid* 5.

²³ *ibid* 8. See also Paul Ganley, ‘Google Book Search: Fair Use, Fair Dealing and the Case for Intermediary Copying’ (Working Paper, 13 January 2006), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=875384 (accessed 30 April 2022).

²⁴ Other than the Foucaultian works by Rose and Woodmansee discussed in Chapter 1, ‘Introduction: A Medial Perspective on Authorship and Copyright’, see Peter Jaszi, ‘Toward a Theory of Copyright: Metamorphoses of “Authorship”’, *Duke Law Journal*, 1991, 455–502; Martha Woodmansee and Peter Jaszi, eds., *The Construction of Authorship: Textual Appropriation in Law and Literature* (Durham, North Carolina: Duke University Press, 1994).

²⁵ Updike, ‘The End of Authorship’.

destabilised our received notions of author, work, and copyright.²⁶ By converting printed works into electronic format through digital photographic scanning and their processing by optical character recognition software, these projects have sought to preserve, enhance access to, and compute those works, which are, to say the least, not undesirable ends in themselves.²⁷ And yet, the phenomenon of mass digitisation also attests to a massive disruption in the history of books, contributing to what Borghi and Karapapa have theorised as a three-fold paradigm shift.²⁸ To begin with, books are increasingly viewed not so much as ‘works’ or expressions of the author addressed to the public as ‘data’ to be mined and processed in order to achieve distinctive ends of the digital-corporate environment such as ‘[improving] web services, including advertisement and content personalization’.²⁹ The suggestion here is that books are now read not so much by human readers as by automatic computing machines programmed by adaptive algorithms. Put strongly, Roland Barthes’ well-known provocation about ‘the death of the author’³⁰ in postmodernity must now be qualified as implying the death of the reader in mass digitisation, the human having been replaced by artificial intelligence, which alone can process the massive amounts of data in the 40 million books digitised by Google.³¹ Further, as already discussed, copyright seems to be transforming from a regime of ‘*ex ante* authorizations’³² into an ‘opt-out system’³³ that significantly undercuts the intellectual-proprietary interests of authors. Broadened and emboldened by the Second Circuit Court of Appeals’ decision, the doctrine of fair use has become a sturdier legal defence against claims of copyright infringement, anticipating further incursions into the so-called exclusive control of authors over their creations. Thirdly, the centrality of powerful intermediaries maintaining the relevant digital databases such as Google is renewed and reasserted. The promise of ‘decentralized interaction’³⁴ amongst users of digital technologies of direct transfer such as peer-to-peer file sharing is, in the context of mass digitisation, threatened by potential *de facto* monopolies or oligarchies of access to information and culture. Amply borne out by the observations surrounding the controversy of Google Books, these three “‘head-turning’” traits of

²⁶ Other projects include the Internet Archive, the Open Library, the Carnegie Mellon Million Book project, the HathiTrust, and Europeana, and the Digital Public Library of America: see Borghi and Karapapa, *Copyright and Mass Digitization*, 3–8.

²⁷ See Karen Coyle, ‘Managing Technology: Mass Digitization of Books’, *The Journal of Academic Librarianship* 32, no. 6 (3 November 2006): 642–43; Borghi and Karapapa, *Copyright and Mass Digitization*, 11.

²⁸ Borghi and Karapapa, *Copyright and Mass Digitization*, 15–18.

²⁹ *ibid.* 15.

³⁰ Barthes, ‘The Death of the Author’. See chapter 1, ‘Introduction: A Medial Perspective on Authorship’.

³¹ Haimin Lee, ‘15 Years of Google Books’, *Google Blog* (blog), 17 October 2019.

³² Borghi and Karapapa, *Copyright and Mass Digitization*, 16.

³³ *ibid.*

³⁴ *ibid.* 17.

mass digitization³⁵ urgently necessitate our rethinking of authorship, copyright and their profound co-evolution with media technologies.

This chapter seeks to contribute to our present rethinking of authorship and copyright by revisiting another recent debate that raises very similar questions. The debate surrounds the dominant utilitarian-proprietary approach to copyright, particularly, its limits as suggested by three readers of Immanuel Kant's 1785 essay, *Von der Unrechtmäßigkeit des Büchernachdrucks* ('On the Wrongfulness of Reprinting').³⁶ Through principal recourse to Kant's concept of the book as communicative act, Abraham Drassinower, Maurizio Borghi, and Anne Barron have sought to rethink authorship and copyright along non-proprietary lines.³⁷ This chapter suggests that although these leading Kantian voices have demonstrated the power of Kant's essay to reshape our understanding of the thematic conjuncture, they have also underestimated the material dimension of the text that affords the production of its meaning. In order to generate a more adequate understanding of Kant's text and how it might illuminate the present digital transformation of authorship and copyright, we should look closely at the medial-material specificities of the literary work.

In what follows, we first consider the dominant utilitarian-proprietary model of copyright and some of its limits as identified by Drassinower, Borghi and Barron. Then, we review and compare the three scholars' rethinking of authorship and copyright through Kant's 1785 essay on author's rights. After that, we suggest an alternative media-theoretical way of looking at a printed book, taking as our example Brad Pasanek's and Chad Wellmon's reading of Kant's 1784 essay on enlightenment,³⁸ before proposing the task of rereading Kant's later essay.

Utilitarian Copyright

Authors Guild v Google, Inc happened despite, and in a sense also because of, the fairly recent global expansion of copyright and intellectual property rights, which has been much discussed and criticised.³⁹ For example, as Neil Netanel has argued, copyright expansion in the United States

³⁵ *ibid* 15.

³⁶ Kant, 'On the Wrongfulness of Unauthorized Publication of Books (1785)'. For a digitised version of the fifth volume of the *Berlinische Monatsschrift* with Kant's essay stored in the Bavarian State Library, see: <https://www.digitale-sammlungen.de/en/view/bsb10926844?q=%28berlinische+monatsschrift+1785%29&page=.1> (accessed 30 April 2022).

³⁷ The main referenced works are: Drassinower, *What's Wrong with Copying?*; Borghi, 'Copyright and Truth'; Barron, 'Kant, Copyright and Communicative Freedom'.

³⁸ Pasanek and Wellmon, 'Enlightenment, Some Assembly Required'.

³⁹ For example, see Lemley, 'Property, Intellectual Property, and Free Riding'; Netanel, 'Why Has Copyright Expanded? Analysis and Critique'; Barron, 'Copyright Infringement: "Free-Riding" and the Lifeworld'. As succinctly noted by Anne Barron, in the last few decades, copyright has expanded in scope along four main axes: 'the range of

is substantially owed to the high levels of involvement of copyright industries and trade associations in the periodic revisions of copyright legislation.⁴⁰ Extensive lobbying by the copyright interest groups and their negotiations with the United States Congress have led to ‘an ever-expanding set of copyright holder rights, riddled with narrow exceptions for various interested parties present at the bargaining table’.⁴¹ The history of legislative amendments relating to the term of copyright protection alone evidences such an industry-driven expansion of copyright. Mark Lemley has pointed to the eleven-time extension of the copyright term between 1963 and 1998, leading up to the present longest term of seventy years in addition to the author’s lifetime for works created after 1 January 1978.⁴² For Lemley, the rapid growth of intellectual property is accompanied – and legitimated – by the ascendancy of an ‘absolute protection’⁴³ or a ‘full-value’⁴⁴ paradigm of intellectual property in both legal scholarship and juridical discourse. On this view, intellectual property is rightly seen as a species of private property and, indeed, real property rights, which entails fortifying the exclusionary rights of owners. In economic-theoretical terms, strong intellectual property rights are said to be needed to internalise the ‘externalities’⁴⁵ associated with the uses of intellectual property and to minimise ‘free riding’⁴⁶ on the investments of owners. Allowing owners to gain the ‘full social value’⁴⁷ of their intellectual property – for instance, by charging for any use – is the best means of incentivising their production. In the context of copyright, any unauthorised copying or use of the author’s work that enriches the user would constitute free riding.⁴⁸ The lawsuit against Google could have been driven not so much by any potential loss in profits suffered by authors and publishers as by the possibility of Google free riding on their products.⁴⁹ Indeed, it has been argued that the increased visibility of the books indexed by Google would not only add to their sales, but also spare them from the more ignominious fate of cultural oblivion.⁵⁰ The authors’ persistent action against Google in spite of

acts restricted to the copyright owner has widened, the range of circumstances in which secondary liability will be found has also widened, the likelihood that courts will find partial or non-literal takings “substantial” (and so infringing) has increased, and the reach of defences and exceptions has narrowed”: Barron, 98.

⁴⁰ Netanel, ‘Why Has Copyright Expanded? Analysis and Critique’, 3–10.

⁴¹ *ibid.* 5.

⁴² Lemley, ‘Property, Intellectual Property, and Free Riding’, 1042. See Title 17 of the United States Code, section 302(a).

⁴³ Lemley, ‘Property, Intellectual Property, and Free Riding’, 1031.

⁴⁴ *ibid.*

⁴⁵ *ibid.* 1032.

⁴⁶ *ibid.*

⁴⁷ *ibid.* 1031.

⁴⁸ *ibid.* 1043.

⁴⁹ For a similar observation, see Vaidhyanathan, *The Googlization of Everything*, 59.

⁵⁰ See Cory Doctorow, ‘Why Publishing Should Send Fruit-Baskets to Google’, *Boing Boing* (blog), 14 February 2006.

their foreseeable gains, then, might well evidence the absolute protection paradigm of intellectual property noted in the literature.

By ruling in favour of Google and what was assessed to be in the public's interest, the Second Circuit Court of Appeals would seem to have rejected the emergent absolute protection perspective in intellectual property and reaffirmed the more traditional utilitarian model of copyright as about striking the right balance between two pertinent sets of considerations. In the critical literature, the traditional copyright balance has been theorised in two principal and closely related ways. The first approach is the 'clash-and-balance paradigm',⁵¹ which, as interpreted by Abraham Drassinower and Maurizio Borghi, is reflected in the case law of Canada and the United States. On this view, the two broad considerations on either end of the balance are cast as the putatively competing interests of authors and users, or, more specifically, 'the incentive to create and the imperative to disseminate the works of authorship'.⁵² On the one hand, the copyright system accords proprietary rights to authors over their creations as rewards and incentives for the production of original works. On the other hand, the law affirms the public as the ultimate beneficiaries of the system and those works, beneficiaries whose interests extend to consuming those works and, possibly, using them to generate new works. The task of the copyright system is to address the tension between both sides in particular situations and achieve the optimal production and distribution of works that serves society at large.

The other closely related approach is the 'incentives-access paradigm'⁵³ discussed by Glynn S. Lunney, Jr. and Anne Barron, which is a perspective fundamentally shaped by neoclassical economic theory and the calculus of cost-benefit analysis. On this view, copyright imposes two sorts of social costs against which the benefits of granting these rights of exclusion to authors in their creations are to be balanced.⁵⁴ First, higher prices can be charged for copyrighted works than for non-copyrighted works in the marketplace, which yields a consumer loss. Second, the creation of new works may be inhibited by the costs of licences for the use of copyrighted works on which those new works are built. These costs are, in sum, the loss of public access to works resultant of any system of copyright. However, similar to the other, this approach assumes that there would be the incentive to invest in the production of new works only if the potential to profit from those

⁵¹ Borghi, 'Copyright and Truth', 2. See also Drassinower, *What's Wrong with Copying?*, 17–53. Specifically, Drassinower's account draws on the United States Supreme Court decision of *Feist Publications Inc v Rural Telephone Service Co Inc* 499 U.S. 340 (1991) and the Canada Supreme Court decision of *CCH Canadian Ltd v Law Society of Upper Canada* 2004 SCC 13: Drassinower, 23–30.

⁵² Drassinower, *What's Wrong with Copying?*, 21.

⁵³ Lunney, 'Reexamining Copyright's Incentives-Access Paradigm'; Barron, 'Copyright Infringement: "Free-Riding" and the Lifeworld', 103.

⁵⁴ See Barron, 'Copyright Infringement: "Free-Riding" and the Lifeworld', 103–7.

works is to some extent assured by the law. The challenge for any copyright institution is to ‘[balance] the benefits of broader protection, in the form of increased incentive to produce such works, against its costs, in the form of lost access to such works’.⁵⁵ As Barron clarifies, the incentives-access paradigm is inherently resistant to the sort of maximal copyright protection advanced by absolute protectionists, for the latter is seen as having insufficiently accounted for the social costs of copyright.⁵⁶

Both the justification and outcome of *Authors Guild v Google, Inc* reflect a preference for the public interest to be served not by way of copyright maximalism, but through a calibrated balance between incentivising work production via copyright protection and enhancing public access to knowledge. The Second Circuit Court of Appeals’ discussion of the law of fair use opens by subordinating the interests of authors to those of the public whom the system ultimately serves: ‘Thus, while authors are undoubtedly important intended beneficiaries of copyright, the ultimate, primary intended beneficiary is the public, whose access to knowledge copyright seeks to advance by providing rewards for authorship’.⁵⁷ The very development of the doctrine of fair use, which afforded the unauthorised copying of copyrighted works in certain situations that advanced public knowledge, was cited as the law’s recognition that ‘giving authors *absolute* control over all copying from their works would tend in some circumstances to limit, rather than expand, public knowledge’.⁵⁸ Indeed, the four statutory factors for determining fair use reflect the judiciary’s need to strike the copyright balance, that is, ‘to define the boundary limit of the original author’s exclusive rights in order to best serve the overall objectives of the copyright law to expand public learning while protecting the incentives of authors to create for the public good’.⁵⁹ That Google Books was eventually legitimated – despite the project’s ‘commercial motivation’⁶⁰ and ‘copying of the totality of the original’⁶¹ – evidences the Second Circuit Court of Appeals’ willingness to assess the appropriate balance, and their commitment to the traditional utilitarian model of copyright.

For Lemley and other supporters of the utilitarian model of copyright, the Second Circuit Court of Appeals’ decision might instantiate a kind of triumph over the absolute protection paradigm and a counterpoint to the recent expansion of intellectual property rights. But for Drassinower, Borghi, and Barron, who reject the frame of neoclassical economics, the decision

⁵⁵ Lunney, ‘Reexamining Copyright’s Incentives-Access Paradigm’, 485.

⁵⁶ Barron, ‘Copyright Infringement: “Free-Riding” and the Lifeworld’, 12–13.

⁵⁷ *Authors Guild v Google, Inc*, 13.

⁵⁸ *ibid*.

⁵⁹ *ibid* 15. The four factors are listed in Title 17 of the United States Code, section 107, and extensively discussed in *Campbell v Acuff-Rose Music, Inc*.

⁶⁰ *Authors Guild v Google, Inc*, 26.

⁶¹ *ibid* 30. As noted in the judgement, these two facts are typically assessed as operating against the finding of fair use: see *ibid* 27–33.

could simply reflect how deeply entrenched the economic paradigm of copyright is. From the three critical standpoints, the utilitarian model of copyright does not provide any satisfactory account of the proper subject matter of copyright law. It also misconstrues the nature of authorship, the relationship between authors and users, and society at large. Drassinower problematises the utilitarian model or ‘value paradigm’⁶² of copyright by way of an extended critique of the metaphor of balance as deployed to construe the originality requirement of copyright by the Supreme Courts of the United States and Canada in two landmark cases.⁶³ One of Drassinower’s basic suggestions is that the balance model of copyright fails to account for its adoption of ‘value’⁶⁴ (specifically, ‘economic value’⁶⁵) – as the master category by which to render commensurable the pertinent interests of authors and users. His critique of ‘the poverty of value’⁶⁶ consists of a series of provocations: why should copyright law be construed merely as a ‘distributive mechanism’⁶⁷ that regulates the creation and dissemination of value in a market of authors and users? Does construing the act of authorship as the origination of value, an interest that could be offset by the ultimately weightier alternative of so distributing value as to advance public knowledge, not obscure something specific about authorship?⁶⁸ Does the judicial act of balancing the incentive to create works and the imperative to distribute them not fail to account for the originality requirement that more fundamentally determines what falls within the remit of the copyright system in the first place?⁶⁹ And does the metaphor of balance not risk mischaracterising the relationship between authors and users as essentially oppositional rather than complementary?⁷⁰ Borghi elegantly reframes Drassinower’s critique of the copyright balance as relating to the model’s failure to afford any serious investigation into the proper subject matter of copyright. In Borghi’s words, ‘the copyright debate of recent years has focused almost exclusively on the *scope* of copyright ... as if ... the question of the *subject matter* of copyright was not the preliminary and most important one in this debate’.⁷¹ For Borghi and Drassinower alike, the calculative idiom of ‘balance’, ‘value’ and ‘interest’ forecloses any meaningful discussion of what copyright is really about.

⁶² Drassinower, *What’s Wrong with Copying?*, 51.

⁶³ See footnote 51 above. Drassinower also refers to the classic United Kingdom cases of *Walter v Lane* [1900] AC 539 and *University of London Press v University Tutorial Press Ltd* [1916] 2 Ch 601, whose emphasis on labour or the ‘sweat of brow’ standard of originality forms the background against which the new standards of ‘creativity’ and ‘skills and judgement’ advanced in the North American Courts are assessed: see Drassinower, 30–41.

⁶⁴ Drassinower, 18.

⁶⁵ *ibid.*

⁶⁶ *ibid.* 17.

⁶⁷ *ibid.* 51.

⁶⁸ *ibid.* 55.

⁶⁹ *ibid.* 17.

⁷⁰ *ibid.* 55.

⁷¹ Borghi, ‘Copyright and Truth’, 2.

Similarly, Barron rejects the traditional utilitarian justification of copyright for failing to provide any adequate account of copyright and society. Barron is deeply critical of both the incentives-access and absolute protection paradigms of copyright because of their fundamental grounding in economic theory, which she denounces as a worldview of ‘incurable deficiencies’⁷² that denies the full significance of the institution in the wider social order. Specifically, she takes issue with the economic model of society as comprised of self-interested, utility-maximising individuals acting in competition with one another, and the concomitant model of copyright law as about the optimal regulation of relationships of exchange between information producers and consumers.⁷³ For Barron, neither account adequately captures the significance of law, society, and the relationship between them.⁷⁴ Animated by a shared logic of economic analysis that reductively prioritises the matrices of ‘utility’ and ‘efficiency’, both the incentives-access and absolute protection paradigms fail to provide ‘a comprehensive analysis of the social significance of copyright’.⁷⁵ Thus, the utilitarian reasoning behind the decision of *Authors Guild v Google, Inc* is unlikely to receive Barron’s unmitigated support.

Against the prevailing utilitarian model of copyright, Drassinower, Borghi and Barron advance alternative accounts that depart from the orthodox construal of copyright as a form of intellectual property. For their fundamental rethinking of copyright, these scholars draw on Kant’s 1785 essay on the book and author’s rights. As we shall see, Kant’s essay foregrounded the communicative situation between authors and readers that Updike more recently understood as assailed by the mass digitisation of books.

Literary Communication

Presently, in both common law systems of copyright and civil law regimes of *Urheberrecht* or *droit d’auteur*, the literary works in which authors hold so-called exclusive rights of copying are treated as forms of intellectual property.⁷⁶ Unless otherwise specified in the relevant statutes, the author is generally recognised as the rightful owner of the abstract work that has been fixed in some perceptible medium of expression.⁷⁷ This means that property in the literary work could be held

⁷² Barron, ‘Kant, Copyright and Communicative Freedom’, 9.

⁷³ *ibid* 7.

⁷⁴ In that article, Barron cites Jürgen Habermas’s social theory as a potential framework with which to rethink copyright law and society: see *ibid* 28–31.

⁷⁵ *ibid* 28.

⁷⁶ On the relationship between the common law and civil law models, see Lionel Bently et al., *Intellectual Property Law* (Oxford: Oxford University Press, 2018), 35–36.

⁷⁷ See, for example, Title 17 of the United States Code, section 102.

by its author even as property in the physical book is held by its lawful purchaser. The authority to grant someone permission to copy the work is but one of the distinguishing rights that extend from the author's literary proprietorship.⁷⁸ In *Authors Guild v Google, Inc* it was undisputed that the three author-plaintiffs owned copyrights in works that Google had scanned, indexed and made searchable and available for snippet view. Their works fulfilled the requirement of originality under section 102 of Title 17 of the United States Code, which, as interpreted by the courts, prescribed a standard of minimal creativity: each was 'independently created by the author (as opposed to copied from other works), and ... [possessed] at least some minimal degree of creativity'.⁷⁹ As clarified in the same statutory section, the author's proprietorship extends not to the ideas of the work per se, but to the expression of those ideas: it is the embodiment of those ideas in some 'tangible medium of expression'⁸⁰ that forms the object of literary property. This basic distinction between the non-copyrighted idea and the copyrighted expression, also known as the 'idea/expression dichotomy',⁸¹ is one of the key conceptual bases on which copyright systems at national, regional, and international levels identify the subject matter of protection.

Contrary to some suggestions in the legal literature, Kant was not a proponent of intellectual property.⁸² Kant did not regard the author as the owner of any intangible work materially expressed in the book that warranted protection under any system of property rights. Instead, Kant's case for author's rights was based on a concept of the book as a communicative medium that relayed to the public a *speech* necessarily spoken in its author's name: 'In a book, as a writing, the author *speaks* to his reader; and the one who has printed the book *speaks*, by his copy, not for himself but simply and solely in the author's name. He presents the author as speaking publicly and only mediates delivery of his speech to the public'.⁸³ The publisher, no less than the book, was the channel through which the author communicated with the reading public. Further, rather than the idiom of property, it was the language of personhood that defined Kant's account of author's rights. In Kant's view, the author had an 'inalienable right (*ius personalissimum*)'⁸⁴ for the speech

⁷⁸ For instance, under Title 17 of the United States Code, section 106, other rights include preparing derivative works based on the work, distributing copies of the work to the public by sale, and performing the work publicly.

⁷⁹ *Feist Publications Inc v Rural Telephone Service Co. Inc*, 345.

⁸⁰ Title 17 of the United States Code, section 102.

⁸¹ 'Over the next 200 years, the so-called idea/expression dichotomy became an integral part of US jurisprudence and found its way into the 1991 European software directive (91/250/EEC; Art. 1(2)), the 1994 WTO TRIPS Agreement and the 1996 WIPO Copyright Treaty': Kawohl and Kretschmer, 'Johann Gottlieb Fichte, and the Trap of *Inhalt* (Content) and *Form*: An Information Perspective on Music Copyright', 214. See also Biagioli, 'Genius against Copyright: Revisiting Fichte's Proof of the Illegality of Reprinting', 1854.

⁸² See, for instance, Merges, *Justifying Intellectual Property*; Fisher, 'Theories of Intellectual Property'. For a persuasive critique of these representations of Kant, see Pievatolo, 'Freedom, Ownership and Copyright: Why Does Kant Reject the Concept of Intellectual Property?'

⁸³ Kant, 'On the Wrongfulness of Unauthorized Publication of Books (1785)', 30.

⁸⁴ *ibid* 35.

printed in the book to be communicated in his own name. Under this ‘most personal right’,⁸⁵ it was ultimately the author who spoke through the book printed by the publisher. Pursuant to the same fundamental right, the author granted the publisher the right to publish the book by means of a contract.⁸⁶ To reprint the book without such a right was to wrong both the legitimate publisher and the author: doing so not only subtracted the profits of the former,⁸⁷ but further, in so relaying the speech without his permission, violated the latter’s ‘innate right in his own person’,⁸⁸ that is, to speak only as he willed.

Kant’s concept of the book as communication or literary speech act is adopted by Drassinower, Borghi and Barron to advance alternative accounts of authorship and copyright that, in their own ways, resist both the utilitarian model of copyright and its basic concept of intellectual property. Reviewing and comparing their respective positions would help us appreciate those productive ways in which Kant’s essay has afforded the critical rethinking of authorship and copyright. It would also prepare us for another way of approaching Kant’s text, one already pointed to by the text itself, that could further illuminate the thematic conjuncture. Drassinower’s rethinking of copyright proceeds by way of an anti-proprietary rehabilitation of basic copyright categories relating to the subject matter of protection – especially the originality requirement and the related idea/expression dichotomy – that broadly aligns with Kant’s concept of the book as communicative act. As we may recall, in the United States (and, indeed, other Western legal systems), copyright protection extends only to original expressions. ‘The idea/expression dichotomy is inseparable from the doctrine of originality. It provides that not originality per se but rather original *expression* is at stake in copyright law’.⁸⁹ This means not only that the work must not be copied, but also that the work itself refers to the very form in which ideas are expressed. As presently institutionalised, the literary work is treated as an object of property, that is, as a thing in which the owner (often the author) exercises certain proprietary rights of exclusion and control, including and especially the exclusive right of copying. Drassinower rejects the proprietary view of the literary work while retaining the threshold copyright condition that it be the original expression of its author. For Drassinower, the work is not ‘an object of ownership’⁹⁰ but rather ‘a communicative act’.⁹¹ Consistent with the requirement that the work not be copied, the ‘originality’ of this act is understood as extending from ‘its being a speaking of one’s own, a speaking in one’s

⁸⁵ *ibid.*

⁸⁶ *ibid.* 33.

⁸⁷ *ibid.* 29

⁸⁸ *ibid.* 35.

⁸⁹ Drassinower, *What’s Wrong with Copying?*, 56.

⁹⁰ *ibid.* 62.

⁹¹ *ibid.*

own words'.⁹² Under this renewed Kantian understanding of authorship, copyright infringement is understood not as 'some kind of conversion, whether of the tangible book or of the intangible work ... [but rather as] compelling another to speak'.⁹³ As Drassinower acknowledges, his proposed substitution of 'speech', 'communication', and 'action' for the reified object of literary property as the proper subject matter of copyright is substantially indebted to Kant.⁹⁴

Kant's concept of the book as speech act also facilitates Drassinower's construal of copyright as a juridical structure that affirms the equality of authors, rather than as a distributive mechanism made to achieve a balance between the competing interests of authors and users. Again, the idea/expression dichotomy is key to Drassinower's renewal of copyright from a Kantian perspective.⁹⁵ Under utilitarian copyright and the cost-benefit calculus, the idea/expression dichotomy is broadly justified on the grounds that the social costs of granting copyright protection to ideas per se are outweighed by its benefits. Protecting the original expressions of ideas reflects the optimal balance between incentivising the creation of works and disseminating them. Against such an instrumentalist mode of justification, Drassinower re-reads the dichotomy as copyright's affirmation of an egalitarian ethic of authorship: 'The free availability of ideas is but the rubric under which copyright law affirms and recognizes my equality as an author at the very moment at which it affirms and recognizes yours'.⁹⁶ Under the renewed dichotomy, the subjects of copyright law are no longer bifurcated as authors and users whose interests in producing and consuming works are opposed. Instead, both are recognised as author-users who are equally entitled to draw on the ideas embodied in one another's works for the making of their own. As sharply put in a preceding article, Drassinower recognises the communicative acts of authors to be premised on the 'intertextuality of creation'.⁹⁷ Other communicative acts provide the ideas on which the authors rely to generate their own. In so protecting original expressions while permitting the free flow of ideas, copyright law affirms the necessary mutual indebtedness of communicative acts and, by the same token, the equality of authors as users.

While Drassinower attempts to salvage parts of the copyright institution from its utilitarian and proprietary foundations, which necessarily risks the account's absorption into the paradigm it opposes,⁹⁸ Borghi and Barron take Kant's 1785 essay as the basis on which to imagine almost from

⁹² *ibid* 73.

⁹³ *ibid* 178.

⁹⁴ See *ibid* 112–13.

⁹⁵ See *ibid* 66–73.

⁹⁶ *ibid* 7.

⁹⁷ Drassinower, 'Authorship as Public Address: On the Specificity of Copyright Vis-A-Vis Patent and Trade-Mark', 211.

⁹⁸ For a similar critique of Drassinower, see Barron, 'Kant, Copyright and Communicative Freedom', 36–41.

scratch non-proprietary systems of copyright. They further turn to Kant's wider philosophical oeuvre, drawing on ethico-political ideas articulated 'outside' Kant's essay and its succinct reprisal in *Die Metaphysik der Sitten* ('The Metaphysics of Morals'),⁹⁹ and even to other thinkers' theories. Similar to Drassinower, Borghi uses Kant's concept of the book as public address to redefine the copyright subject matter as an act of speaking to the public in the author's name. Borghi accepts Kant's premise that even as the book might, in one sense, be a speech spoken by the publisher who has printed it, such speech is, in another more fundamental respect, necessarily spoken in the author's name. Because of the non-severable link between the speech and its author, a book may be lawfully printed only if the permission (or 'mandate'¹⁰⁰) to do so has been granted by the author. Under the publishing contract, what passes from the author is not any right in or extending from any object of property, but instead 'a duty (and a faculty) to retell',¹⁰¹ that is, a personal obligation to recommunicate the author's speech to the public. Conducted in the absence of any such permission, the act of reprinting books doubly wrongs the authorised publisher and the non-consenting author.¹⁰² For Borghi, then, there is no intellectual property in the work embodied by the book: nothing ideal is owned by the author. There are only actions in and by means of books, which are the true subject matter of copyright.

Revising the copyright subject matter from 'work' to 'action' is significant to Borghi because it paves the way to a new fundamental justification of copyright as a domain grounded in the same *telos* to which such action is directed, namely, the furtherance and maintenance of the pursuit of truth.¹⁰³ To be sure, in the 1785 essay, Kant did not provide any general theory of action, nor did he specify any orientation to truth in the copyright speech act. An account of the book as an action necessarily coupled to the author-actor in whose name it was enacted had been sufficient for Kant to establish a case for the unlawfulness of reprinting that extended from a personal right of publishing granted by the author, rather than one ultimately rooted in the author's ownership of any abstract thing.¹⁰⁴ But as Borghi sets out to account for the rightful *end* that the copyright

⁹⁹ See Kant's discussion, 'What is a Book?' in Kant, 'The Metaphysics of Morals (1797)', 437–38.

¹⁰⁰ As Borghi notes, the mandate (*mandatum*) is 'an institution of Roman contract law [that] regulates the relationship between individuals as far as actions to be carried out...are concerned': Borghi, 'Copyright and Truth', 5. The crucial point is that the primary subject matter is not a tangible book or nor a so-called intangible work, but rather an action.

¹⁰¹ *ibid* 7.

¹⁰² *ibid* 5.

¹⁰³ Borghi clarifies that such *telos* is 'presumptive' rather than actual: it is 'an end which can be reasonably expected in advance, prior to any contingent embodiment of the fact': *ibid* 18. This seems to be his attempt to address the foreseeable problem of differences in motivation between individual authors in particular instances.

¹⁰⁴ See Pievatolo, 'Freedom, Ownership and Copyright: Why Does Kant Reject the Concept of Intellectual Property?', 3: 'Kant, by conceiving the book as an action, adopts a strategy based on the *ius personale* only. By using such a strategy, he concludes that the unauthorized printer has to be compared to an unauthorized spokesperson rather than to a thief. Therefore, it is not necessary to go beyond the Roman law tradition, by inventing a new *ius reale* on immaterial things'.

speech act (and copyright law more generally) serves, he develops a teleological account of actions that draws on an Aristotelian idea of action proposed by Hannah Arendt: ‘actions, unlike things, cannot be divorced from the aim and purpose they are directed to and for which they have been entrusted to others. Actions have necessarily a purpose or an end [citing an excerpt from Arendt’s *The Life of the Mind* (1978)]’.¹⁰⁵ Having supposed that any action, including the copyright speech act, cannot be severed from the *telos* to which it is necessarily oriented, he proceeds to claim that the *telos* of the copyright speech act had already been suggested by Kant in the two elements that constituted the act: namely, that the act involved speaking publicly, and to do so in one’s own name. To suggest what these two elements might mean beyond what was briefly stated in the essay, Borghi turns to some of Kant’s other philosophical writings on thinking and publicity.¹⁰⁶ From this ensemble of texts bearing Kant’s name, Borghi suggests that speaking publicly is the act by which rational human beings think and ascertain the validity of their own judgements: it is ‘the way in which humans can distinguish truth from error’.¹⁰⁷ Public communication is conceived as an intersubjective and dialogical process that facilitates the interlocutors’ arrival at a commonly agreed judgement that is true insofar as it accords with the nature of the matter in question.

As regards the requirement for the copyright speech act to be spoken in the author’s own name, Borghi grounds this in Kant’s idiosyncratic perspective on the public use of reason. As Jürgen Habermas once noted: in 1784, the Prussian King Frederick II had declared that private persons were not allowed to pass judgements on the public actions of political and legal officials because the former lacked the knowledge and expertise to do so.¹⁰⁸ The prohibition reproduced the commonplace understanding of ‘private reason’ as reason exercised by persons in their personal capacity, and ‘public reason’ as that which underpinned official actions. But in the same year, through another essay published in the *Berlinische Monatschrift*, Kant subverted the sovereign prohibition by inverting its distinction between the public and private uses of reason: ‘But by the public use of one’s own reason I understand that use which someone makes of it *as a scholar* before the entire public of the *world of readers*. What I call the private use of reason is that which one may make of it in a certain *civil* post or office with which he is entrusted.’¹⁰⁹ Kant saw the public use of

¹⁰⁵ See Borghi, ‘Copyright and Truth’, 7, footnote 21.

¹⁰⁶ In their order of reference, these writings include Kant, *Was heißt, sich im Denken orientieren?* (‘What Does It Mean, to Orient One’s Self in Thinking?’) in *8 Werkausgabe Immanuel Kant* (1968); Kant, *Kritik der reinen Vernunft* (‘Critique of Pure Reason’) in *3 Werkausgabe Immanuel Kant* (1968); Kant, *Anthropologie in pragmatischer Hinsicht* (‘Anthropology from a Pragmatic Point of View’) in *12 Werkausgabe Immanuel Kant* (1968); Kant, *Beantwortung der Frage: Was ist Aufklärung?* (‘Answer to the Question: What Is Enlightenment?’) in *11 Werkausgabe Immanuel Kant* (1968). For his account of truth, Borghi also draws on Hannah Arendt, ‘Truth and Politics’ in *Between Past and Future* (London: Penguin Books, 2006): see Borghi, 14–17.

¹⁰⁷ Borghi, 11.

¹⁰⁸ Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, trans. Thomas Burger (Great Britain: Polity Press, 1962), 25.

¹⁰⁹ Kant, ‘An Answer to the Question: What Is Enlightenment? (1784)’, 18.

reason as ‘an unrestricted freedom to make use of own reason and to speak in his own person’.¹¹⁰ Previously degraded as beneath the expertise of officials, the individual’s exercise of his own reason to critique official actions became a ‘public use of reason’ that was infinitely freer and more valuable than its ‘private use’ by political and legal actors. For the purposes of the 1784 essay, Kant had seen the public use of reason as that which furthered mankind’s emergence from immaturity, which was his interpretation of enlightenment. Borghi does not call attention to the collective emancipatory function that Kant had ascribed to the public use of reason. Instead, Kant’s definition of public reason as speech spoken ‘in his own person’ serves as the basis for Borghi’s interpretation of the second requirement of the copyright speech act. To speak in the author’s own name is for the author to act in a way that is unencumbered by official obligations. This freedom to speak in one’s own person helps the author to communicate with the public and test one’s own judgements with a view to reaching the *telos* of truth together. To speak publicly and in one’s own name is for the author to think in common or ‘coalesce’¹¹¹ with the public in the service of truth. The copyright speech act is thus re-imagined by Borghi as that which allows the author and the public to come together and achieve ‘the common end of being in the truth’.¹¹²

As we have suggested, identifying truth as the *telos* of the copyright speech act allows Borghi to unify the interests of authors and the public that utilitarian copyright tends to assume as divided and in competition. Instead of regarding them as merely engaging in ‘an exchange of information values’,¹¹³ Borghi sees authors and the public as ‘*coalescing* parties to a common act of thinking’.¹¹⁴ Under this reconciliation of authors and the public under the rubric of action and truth, the copyright system itself is transfigured into a relational sphere that facilitates the thinking-in-common oriented towards truth. Copyright becomes ‘neither (just) about “the author” as such nor (just) about “the public” as such), but is primarily about the author-public coalescence’.¹¹⁵ Not so much the striking of an optimal balance between the incentive to create works and the imperative to distribute them, the dialogical endeavour of truth is that which fundamentally concerns and justifies copyright law.

The ethos of resisting utilitarian copyright and copyright expansionism demonstrated in Borghi’s and Drassinower’s transpositions of Kant to the present is similarly enacted in Barron’s scholarship. For Barron, the attraction of Kant’s philosophy extends not only from its power to

¹¹⁰ *ibid* 19.

¹¹¹ For Borghi’s discussion of the etymology of ‘coalesce’ and how it fits his account of copyright as about being in truth with others, see Borghi, ‘Copyright and Truth’, 18, footnote 49.

¹¹² *ibid* 18.

¹¹³ *ibid*.

¹¹⁴ *ibid*.

¹¹⁵ *ibid* 20.

contribute to these critical contemporary efforts, but also to do so in way that makes up for a major deficit in their thinking. Barron explicitly distinguishes her position from three clusters of critiques that, in her view, suffer from the same limitation of failing to provide any rich understanding of what is truly at stake in the growth of copyright restrictions and intellectual property rights in particular.¹¹⁶ These include not only liberal accounts that have relied on the categories of the public domain, free culture, and individual freedom of expression to oppose the privatisation of information,¹¹⁷ but also Kantian interventions such as Drassinower's.¹¹⁸ Whilst sympathetic to Drassinower's proposal of ensuring reciprocal equality amongst authors through the copyright system, Barron notes that Drassinower does not clarify why the egalitarian ethic of authorship warrants protection beyond alluding to its affirmation of the inherent dignity of authorship.¹¹⁹ This limitation, Barron suggests, extends from Drassinower's exclusive focus on Kant's 1785 essay.¹²⁰ In order to understand what is truly advanced by a dialogical sphere of authorship unfettered by proprietary rights, Barron argues that it is necessary to situate the essay within Kant's ethical, legal, and political thought.¹²¹

Specifically, Barron suggests that the regime of author's rights proposed by Kant in the 1785 essay is only intelligible within the project of collective emancipation involving the public use of reason that Kant referred to as 'enlightenment' (*Aufklärung*) in the essay published a year before. Like Borghi, Barron retrieves from the earlier essay the principle of publicity or 'open public debate'¹²² as the critical dialogical process of relying on one's own reason to contest and displace traditional forms of authority like ecclesiastical or state authorities. The latter are but secondary to reason, which alone must guide our actions. However, rather than designate 'truth' as the *telos* of publicity, Barron prioritises its character as 'an emancipatory process that ... moves humanity as a whole towards a situation in which "everything submits" to criticism'.¹²³ The freedom to speak

¹¹⁶ See, especially, Barron, 'Kant, Copyright and Communicative Freedom', 3–6.

¹¹⁷ The two main referenced works on the public domain are: Pamela Samuelson, 'Challenges in Mapping the Public Domain', in *The Future of the Public Domain: Identifying the Commons in Information Law*, ed. Lucie Guibault and P. Bernt Hugenholtz (Alphen aan den Rijn: Wolters Kluwer Law & Business, 2006), 7–25; James Boyle, 'The Second Enclosure Movement and the Construction of the Public Domain', *Law and Contemporary Problems* 66 (2003): 33–74. Those on free culture and freedom of expression are: Lawrence Lessig, *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity* (New York: The Penguin Press, 2004); Netanel, *Copyright's Paradox*.

¹¹⁸ Barron also cites Treiger-Bar-Am, 'Kant on Copyright: Rights of Transformative Authorship'.

¹¹⁹ See Barron, 'Kant, Copyright and Communicative Freedom', 8.

¹²⁰ *ibid.*

¹²¹ In their order of reference, these texts include: Kant, 'Groundwork for the Metaphysics of Morals (1785)'; Kant, 'Critique of Practical Reason (1788)'; Kant, 'The Metaphysics of Morals'; Kant, 'On the Common Saying: That May Be Correct in Theory, But It Is No Use in Practice (1793)'; Kant, 'Toward Perpetual Peace (1795)' all in Immanuel Kant, *Practical Philosophy*, ed. and trans. Mary J. Gregor, The Cambridge Edition of the Works of Immanuel Kant (Cambridge: Cambridge University Press, 1996); Kant, *Critique of Judgment (1790)* (Indianapolis: Hackett, 1997).

¹²² Barron, 'Kant, Copyright and Communicative Freedom', 18.

¹²³ *ibid.* 27.

publicly (or what Barron calls ‘communicative freedom’¹²⁴) is the key to a collective freedom that is achieved by humankind only when reason has become the definitive authority in the world at large. Communicative freedom and the practice of enlightenment on a global scale would nonetheless require certain legal arrangements as part of its empirical conditions of possibility. As a preliminary move, Barron notes that Kant’s philosophy of law or doctrine of right (the *Rechtslehre*) provides a moral justification for imposing a coercive system of laws that is based on the recognition of ‘the inevitability of conflict between beings in a context of finitude’.¹²⁵ A system of rights has to be enforced so as to secure the empirically conflictual freedoms of persons, though the contents of these rights could and must be subject to public scrutiny.¹²⁶ For Barron, the concept of author’s rights that Kant introduced in the 1785 essay to address the problem of unauthorised reprinting in eighteenth-century Germany was precisely the legal arrangement proposed to protect communicative freedom in the situation.

More so than Drassinower and Borghi, Barron demonstrates an awareness of some of the historical specificities of Kant’s 1785 proposal. As noted in greater detail by Martha Woodmansee, in eighteenth-century Germany, professional writers like Gotthold Ephraim Lessing and Friedrich Gottlob Klopstock were facing a particular problem relating to the burgeoning book trade that occurred in the absence of effective legal mechanisms to restrict the unauthorised reprinting of books.¹²⁷ Writers were reliant on publishers and the printing press to publish their books and, from Kant’s perspective, relay their speech to the public. Kant himself recognised the importance and value of the printing press and the industry of publishers to mediate the delivery of speech spoken in the author’s name: ‘Now, publication is speech to the public (through printing) in the name of the author and hence an affair carried on in another’s name’.¹²⁸ However, print technology also afforded the reprinting of already published books by unauthorised publishers and their sale for a higher profit because there was no need to pay for the author’s manuscript. The book privilege system allowed individual states to grant publishers protection against reprinting within their respective borders. But given the proximity of the three hundred or so German states and their

¹²⁴ *ibid* 39.

¹²⁵ *ibid* 13.

¹²⁶ See *ibid* 19: ‘In a nutshell, Kant’s message is this: subjects must obey the laws in force, but as citizens they should also argue publicly about their rightness’.

¹²⁷ See Woodmansee, ‘The Genius and the Copyright: Economic and Legal Conditions of the Emergence of the “Author”’, 431–48.

¹²⁸ Kant, ‘On the Wrongfulness of Unauthorized Publication of Books (1785)’, 32. See also Barron, ‘Kant, Copyright and Communicative Freedom’, 40, footnote 29: ‘the 1785 Essay on unauthorized reprinting reflects Kant’s recognition that communication between speakers in modern conditions is inevitably *channelled* – by technologies and media of communication (print and books in Kant’s day; software and networks in ours), by commercial intermediaries (Prussian publishers in Kant’s context; global information and entertainment corporations in ours), and by institutional structures (book markets then; information markets generally now) – in ways that may shape the form and content of communication and so the nature of the communication community itself’.

differential treatments of book piracy, it was not possible for publishers to obtain a privilege in every state. The profitability of book piracy limited the profits of publishers, which in turn affected the livelihood of authors and their communicative freedom. As Barron puts it strongly, ‘in the absence of a right to control unauthorized publication, no publisher would purchase a manuscript from an author in the first place’.¹²⁹ The author’s freedom to speak publicly depended on the willingness of publishers to print their books. If collective emancipation depended on the use of public reason through the medium of print, then the reluctance of publishers to print the books of authors and adequately pay them for their efforts would have affected the very practice of enlightenment that Kant advocated. In the 1785 essay, Kant pushed for a regime of author’s rights that saw unauthorised reprinting as a wrong against the publisher, who had been granted an exclusive right to speak in the author’s name via a contract with the author. The right to grant this personal right to the publisher, in turn, extended from the author’s ‘innate right in his own person, namely, to prevent another from having him speak to the public without his consent, which consent certainly cannot be presumed because he has already given it exclusively to someone else’.¹³⁰ Without extending the concept of property to any immaterial thing in the book, Kant advanced a legal arrangement that protected the practice of authorised publication and the communicative freedom of authors in eighteenth-century Germany.

For Barron, though Kant’s idea of author’s rights proposed a solution to a specific problem in eighteenth-century Germany, it nonetheless necessitates a re-evaluation of today’s utilitarian and proprietary systems of copyright. How far can utilitarian copyright protect communicative freedom and affirm the practice of enlightenment on a global scale? Does the expansion of copyright and intellectual property rights not constitute an obstacle or ‘impediment’¹³¹ to the collective emancipation of humanity at large? Rather than reproducing these dominant economic frames of copyright, Barron argues for the necessity of considering Kant’s alternative of author’s rights and the culture of public communication that it promises to secure.

Medium of Literature

We have recalled three distinctive positions on the question of authorship and copyright that adopt differing interpretations of Kant’s 1785 essay and its significance to copyright law today. These readings of Kant call attention to different junctures in the essay and, at times, seek to illuminate

¹²⁹ Barron, ‘Kant, Copyright and Communicative Freedom’, 34.

¹³⁰ Kant, ‘On the Wrongfulness of Unauthorized Publication of Books (1785)’, 35.

¹³¹ Barron, ‘Kant, Copyright and Communicative Freedom’, 45.

them by selectively referring to other parts of Kant's philosophical oeuvre. Emphasising the verbal and dialogical nature of the book as suggested in the essay, Drassinower sees authorship as an author's invitation to the public to engage in a dialogue through new communicative acts that draw on the ideas expressed in others. As rethought by Drassinower, the idea/expression dichotomy evidences the law's affirmation of an egalitarian ethic of authorship that sees authors as equally entitled to be inspired by one another's acts. For Borghi and Barron, on the other hand, the dichotomy and the concept of intellectual property it implies are fundamentally incompatible with Kant's notion of author's rights. Moving beyond Kant's essay to consider his reflections on thinking and publicity, Borghi conceives of authorship as the author-public coalescence that affords our common being in truth. The copyright speech act warrants legal protection precisely by virtue of its necessary orientation towards truth. Similarly referring to these 'external' texts but also to Kant's ethical and legal-political philosophy, Barron grounds authorship in Kant's notions of right, communicative freedom, and enlightenment. Authorship is an exercise of the freedom to participate in open public debate, which advances the global project of collective emancipation where reason alone governs human actions. For Barron, Kant's regime of author's rights was the rightful legal arrangement to protect communicative freedom in eighteenth-century Germany, and ought to be considered as a corrective to the proprietary notion of copyright that now prevails.

In so constructing their own positions on authorship and copyright through a close engagement with the philosophical meaning of Kant's essay and other writings, the three contemporary intellectual property scholars seem to demonstrate a shared acceptance of what they understand as a central premise of Kant's essay: the book is a speech spoken in the name of its author addressed to the public, who are in turn invited to reply, likewise with speech spoken in their own name. The structural coupling of the speech to the name of the author, which is non-severable by virtue of what Kant understood as the innate right of the author in one's own person, is what justifies each of the contemporary scholars' recourse to the writings bearing the author's name to illuminate the meaning of Kant's speech of 1785. Each scholar's 'speech' could also be understood as assenting to their respective – and even one another's – Kantian perspectives on authorship. From within Drassinower's position, the three scholars have drawn on the ideas in Kant's essay to articulate their own original ways of rethinking authorship and copyright. For the purposes of Borghi's truth-oriented theory, the speech acts of the scholars evidence the coming-together in truth of their authors' being, which is their necessary end. Lastly, from Barron's perspective, the affinities and differences in their positions reflect and emanate from the process of critical debate that is the motor of progress in the global project of collective emancipation in reason. All three scholars have approached Kant's essay as a speech addressed to themselves as

members of public, to which they have responded with their own speech that could, in turn, be seen as invitations to other members of the public (like ourselves) to interpret and critique their positions. Authorship as a recursive dialogue of interventions: this is one way of reading Kant's essay and the scholarship it has inspired that appears to have been authorised by Kant himself.

And yet, as Barron shows some awareness of, the 'speech' of 1785 already registers in its philosophical meaning a dimension of authorship that exceeds such emphasis on the acts of interpretation and critique surrounding it.¹³² Kant recognised that publishing in eighteenth-century Germany was an activity of relaying a speech coupled to the author that specifically relied on the medium of print. 'He presents the author as speaking publicly and only mediates delivery of his speech to the public ... He indeed provides in his own name the *mute instrument for delivering the author's speech to the public* [reference mark]; but to *bring his speech to the public* by printing it, and so to show himself as the one *through whom the author* speaks to the public, is something he can do only in the name of another'.¹³³ In the accompanying footnote, Kant explained that the printed book was 'mute' because it relayed the author's speech not by means of sound as in the instances of the 'megaphone' or 'mouth', but rather by means of the letter: 'This is what is essential here: that what is thereby delivered is not a *thing* but an *opera*, namely *speech*, and indeed by letters. By calling it a mute instrument I distinguish it from one that delivers speech by sounds, such as a megaphone or even the *mouth* of another'.¹³⁴ Kant not only understood the speech of authors in his day to be 'channelled'¹³⁵ by the technology of print, but also saw such a mode of relay as being an optical one that relied on the visual perception of the reader. Print was – and continues to be – an optical medium: it can relay the 'speech' of the author only by means of the visible letters imprinted on the page. The opticality of print is reaffirmed by Kant in the passage on the nature and legal status of the book in *The Metaphysics of Morals*: 'A book is a writing (it does not matter here, whether it is written by hand or set in type, whether it has few or many pages) which represents a discourse that someone delivers to the public by visible signs'.¹³⁶

Why might the mediality and opticality of the book matter? In line with the emphasis on the authorial speech that is shared with the public through publication, there is the possibility of understanding the medium of print as being that which simply facilitates the transmission of the

¹³² See footnote 128 above for Barron's important observation of the technological, economic, and institutional bases of modern communication that Kant had apprehended.

¹³³ Kant, 'On the Wrongfulness of Unauthorized Publication of Books (1785)'. See also Kant's ventriloquism of the publisher: "'Through me a writer will by means of his letters have informed you of this or that, instruct you, and so forth. I am not responsible for anything, not even for the freedom which the author assumes to speak publicly through me: I am only the medium by which it reaches you.'": *ibid.*

¹³⁴ *ibid.*

¹³⁵ See footnote 128 above.

¹³⁶ Immanuel Kant, 'The Metaphysics of Morals (1797)', in *Practical Philosophy*, ed. Paul Guyer and Allen W. Wood, trans. Mary J. Gregor (Cambridge: Cambridge University Press, 1996), 437.

author's discourse to the public. In the above cited passage from *The Metaphysics of Morals*, Kant did not seem to think there was any significant difference between handwritten and printed texts that might affect our understanding of authorship. A book that has been printed is no less the speech of its author than the handwritten manuscript is. The nature of a book as speech is defined not so much by print as by language. As a broadcast medium, print may help facilitate the public use of reason that is the collective emancipatory practice of enlightenment. But it is the linguistic nature of the book that first affords the communication of its speech and what the author understands about the world.¹³⁷ In so focusing on interpreting Kant's essay in the light of contemporary issues in copyright law and/or Kant's wider philosophical system, the three legal scholars, too, seem to regard as their priority the meaningful content of the speech. The fact that their interpretations of Kant rely on different versions of the text, including the printed translation in *The Cambridge Edition of the Works of Immanuel Kant* (as cited by Drassinower and Barron) and the digital translation in the archive of *Primary Sources on Copyright (1450-1900)* (as cited by Borghi), is apparently immaterial. The materiality of Kant's essay as it was originally published in the *Berlinische Monatsschrift* matters only inasmuch as it affords its translation into a form that permits scholarly interpretation and debate. The perspective here is that the medium is only secondary to the meaningful speech it conveys and incites. The medium matters only inasmuch as it is the vehicle for the message.

But if we were to turn to other traditions of scholarship that take the medium more seriously, we would find that the very technical specificity of a book as a printed text could be the key to its historical significance, which exceeds what is typically understood as its meaningful or philosophical content. Indeed, the latter could be seen as quite derivative of the former, not only in the sense that any meaningful act of interpretation is advanced only on the basis of the material letters perceived, but also in the sense that the resultant meaning often entails a forgetting of those medial conditions of possibility that supplement, or even subvert, it. Taking as their methodological starting point Marshall McLuhan's provocation that 'the medium is the message',¹³⁸ the media-historical studies of Friedrich Kittler have suggested some specific ways in which the mediality and opticality of printed books contributed to the emergence of the Romantic fiction of authorship as the creation of an original work by a sovereign author or poetic genius in

¹³⁷ On the equation of transmission channels with language by John Locke and other Enlightenment philosophers, see Bernhard Siegert, *Relays: Literature as an Epoch of the Postal System*, trans. Kevin Repp (Stanford: Stanford University Press, 1999), 1.

¹³⁸ McLuhan, *Understanding Media*, 7.

Germany circa 1800.¹³⁹ Kittler recalls that literary production in eighteenth-century-Germany was premised on techno-institutional conditions of possibility (that is, a ‘discourse network’¹⁴⁰), which included for instance the pedagogical practices of German mothers reading to their children from printed vernacular primers like Ernest Tillich’s *Erstes Lesebuch für Kinder* (‘First Reader for Children’).¹⁴¹ The elementary operation of alphabetising children and preparing them to be future German authors was administered by mothers through ABC books of the like, which attests to the subjectivating function of print media and their ancillary techniques.

Even though it was by means of print that alphabetised authors wrote and created the meaningful works in which they claimed ownership, they tended not to see those material conditions of possibility, which, in the case of the printed page, were ironically visible. Consider, for instance, the scenes involving a hallucinating young poet in E.T.A Hoffmann’s *Der goldne Topf* (‘The Golden Flower Pot’),¹⁴² which Kittler reads as emblematic of German Romanticism’s blindness to the optical medium that first afforded the construction of meaning. As the young student Anselmus sat in the azure chamber of Archivarius Lindhorst’s house copying the latter’s manuscripts, he heard whispers from Serpentina (‘I am near, near, near! I help you: be bold, be steadfast, dear Anselmus! I toil with you so that you may be mine!’¹⁴³) that facilitated his completion of the task almost without having to refer to the manuscript (‘he scarcely needed to look at the original at all’¹⁴⁴). The materiality of the letter, otherwise visible to any reader, was ceded to a speech that was of infinitely greater significance to the writer himself: ‘Whereas the caffeine-drunk bureaucrat Heerbrand beheld dancing Fraktur letters and the insane Klockenbring hallucinated the syllables and images of absent books, the Poet Anselmus hears only a single Voice whose flow makes his roman letters rounded, individualized, and – the distinguishing feature – unconscious.’¹⁴⁵ Only belatedly – that is, after the deed had been accomplished – did Anselmus see what he had written in a state of alphabetised intoxication: ‘authorship arises in rereading what had been unconsciously written in the delirium’.¹⁴⁶ From an alphabetised culture extended the work, whose ‘ownership’ was belatedly ascribed to the author. But the author did not even notice the letters he transcribed, much less see the wider technical infrastructure to which he and the work were

¹³⁹ See Friedrich Kittler, ‘Authorship and Love’, *Theory, Culture & Society* 32, no. 3 (2015): 15–47; Kittler, *Discourse Networks 1800/1900*; Kittler, *Optical Media: Berlin Lectures 1999*. See also Kittler, ‘Unpublished Preface to Discourse Networks’; Kittler, ‘The Perspective of Print’.

¹⁴⁰ See Kittler, *Discourse Networks 1800/1900*, 369.

¹⁴¹ See the section on ‘Learning to Read’: *ibid* 27–53.

¹⁴² E. T. A. Hoffmann, ‘The Golden Flower Pot’, in *The Best Tales of Hoffmann*, ed. E. F. Bleiler (New York: Dover Publications, Inc., 1967), 1–70.

¹⁴³ *ibid* 34.

¹⁴⁴ *ibid* 35.

¹⁴⁵ Kittler, *Discourse Networks 1800/1900*, 100.

¹⁴⁶ *ibid* 109.

coupled. As we have suggested, such an instance of the denial of the materiality of the letter and other nodes of the discourse network is not an exclusive privilege of the Romantic poet. In so centring their reading of Kant's text on its philosophical content (that is, Kant's 'speech'), so too have the contemporary legal scholars slipped into the position of Anselmus. The medial-materialities of Kant's 1785 essay as a printed text that forms part of the German periodical have ceded visibility to its ideal propositions.

The printed book of eighteenth-century Germany responded to the public's desire for images at a time before images could be physically stored and transmitted by means of photography.¹⁴⁷ In technical and scientific volumes we find realistic illustrations and pictures that claim to represent the world as it is, which further the Enlightenment's search for objective knowledge. In Romantic novels, on the other, we see phantasmal scenes like those of Anselmus' hallucinations, which are not unlike the projections of the *lanterna magica*. Be they the images of 'fiction' or 'non-fiction', of 'real' or 'imagined' perception, of the *camera obscura* or its ghostly successor, the book's imagery relies on the printed page with its arrangement of graphic marks that affords reading. 'since everything depended on putting individual letters in their place, Gutenberg's print technology required a spatial geometry. Each lead letter was located in relation to its neighbour to the right, left, top and bottom; in other words, each letter filled an empty space that was already waiting for it'.¹⁴⁸ The printed page is that visible layer of the book that enables the book to perform its imaginary and meaningful functions.

Other than in media theory, the printed page has been studied in the overlapping fields of bibliography, book history, print culture, literary studies, typography and graphic design for its interplay with the sphere of meaning to which legal scholarship has largely restricted itself when approaching a text like Kant's 1785 essay.¹⁴⁹ To cite a recent example: in *How the Page Matters* (2011), Bonnie Mak traced the evolution of the page as a material interface between the designer and the reader across the communicative-medial epochs of scribal, print and digital culture by comparing three corresponding versions of a fifteenth-century treatise, Buonaccorso da

¹⁴⁷ See Kittler, *Optical Media: Berlin Lectures 1999*, 89–117.

¹⁴⁸ Kittler, 'The Perspective of Print', 38.

¹⁴⁹ See, for instance, Genette, *Paratexts*; Jerome J. McGann, *The Textual Condition* (Princeton: Princeton University Press, 1991); George Bornstein, *Material Modernism: The Politics of the Page* (Cambridge: Cambridge University Press, 2001); Alberto Manguel, 'A Brief History of the Page', in *A Reader on Reading* (Yale University Press, 2010), 120–27; Peter Stoicheff and Andrew Taylor, eds., *The Future of the Page* (Toronto, Buffalo and London: University of Toronto Press, 2004); John Trimbur, 'Delivering the Message: Typography and the Materiality of Writing', in *Rhetoric and Composition as Intellectual Work*, ed. Gary A. Olson (Carbondale and Edwardsville: Southern Illinois University Press, 2002), 188–202. See also Daniel Berkeley Updike, *Printing Types: Their History, Forms, and Use; A Study in Survivals* (Harvard University Press, 1922); Lucien Febvre and Henri-Jean Martin, *The Coming of the Book: The Impact of Printing 1450-1800*, ed. Geoffrey Nowell-Smith and David Wootton, trans. David Gerard (London: NLB, 1976); Eisenstein, *The Printing Press as an Agent of Change: Communications and Cultural Transformations in Early-Modern Europe Volumes I and II*; Eisenstein, *The Printing Revolution in Early Modern Europe*.

Montemagno's *Controversia de nobilitat* (1428). In so juxtaposing the manuscript, print and digital copies of the text, she showed how different editorial decisions relating to textual presentation (or what she called the 'architectures of the page'¹⁵⁰), ranging from the materials out of which the pages were made to their layout of distributed letters, blank spaces and images, affected the message it transmitted. The choice of typeface at a particular moment in history that afforded different options, for instance, could evidence some relations between the text and various traditions that were then operative – consolidating, inflecting, or perhaps diverging from them. Our interpretations of textual meaning could be determined by the media-materialities of the page that communicates it. Indeed, we may suggest that the optical page could be read as an index of its historical significance – or what Walter Benjamin called the 'aura'¹⁵¹ of the work of art – which necessarily exceeds its interpretive content. To ask not so much what the printed page 'means' (a hermeneutic question) as what it 'evidences' (a techno-historical question) could be the starting point in an attempt to correct the bias against the materiality of the text in question. But, of course, as we may already have seen in our review of the contemporary takes on Kant's essay, the two questions relating to the two slopes of the printed book are necessarily intertwined: as we try to grasp the 'meaning' of the text, we already find ourselves operating within a field circumscribed by the material text. And an inquiry into the media-historical specificities of Kant's original text could well affect what is understood as its proper 'message'.

How might we re-read Kant's 1785 essay such that due regard is given to the printed text as an optical medium and to the material page as a spatio-temporal index? In Brad Pasanek and Chad Wellmon's 'Enlightenment, Some Assembly Required' (2016), we find an exemplary reading of Kant's *Beantwortung der Frage. Was ist Aufklärung?* ('An Answer to the Question: What Is Enlightenment?') (1784) essay that may serve as our model for an alternative way of looking at a printed book. Let us consider their treatment of the title of Kant's earlier essay. As it had originally appeared in the lead essay of the December 1784 issue of the German periodical, the essay title did not only consist of the words that we now use to refer to it, but also included a date and a page number enclosed in parenthesis:

Beantwortung der Frage:

Was ist Aufklärung?

(S. Decemb. 1783. S. 516)

¹⁵⁰ See Bonnie Mak, *How the Page Matters* (Toronto, Buffalo and London: University of Toronto Press, 2011), 9–21.

¹⁵¹ Walter Benjamin, 'The Work of Art in the Age of Mechanical Reproduction', in *Illuminations*, ed. Hannah Arendt, trans. Harry Zohn (London: Fontana Press, 1992). For this interpretation of Benjamin's aura as relating to the presence of a work in time and space as evidenced by the material features of the text, see Bornstein, *Material Modernism*, 30–31.

According to the bibliographic norm that was operative at the time of Kant's writing, the parenthesis was a citation that directed readers to a page of an essay in the December 1783 issue of the same periodical, namely, Johann Friedrich Zöllner's *Ist es rathsam, das Ehebündniß nicht ferner durch die Religion zu sancieren?* ('Is it wise to no longer sanction marriage through religion?'). If we were to turn to page 516, we would find the question *Was ist Aufklärung?* in the footnote, accompanied by Zöllner's complaint about the absence of any satisfactory answer to the question despite its importance.¹⁵² By thus citing Zöllner's own essay in his essay title promising 'an answer to the question', Kant directs the readers to a network of references – in which his essay is located – as the reply. The public use of reason that Kant had suggested in his 'speech' as essential to the practice of enlightenment was, thus, fundamentally dependent on the system of print (or 'bibliographic system'¹⁵³) that the title foregrounded. The 'entire public of the *world of readers*'¹⁵⁴ before whom one's own reason was to be exercised did not precede the printed books with which one was engaging. There was no 'public sphere' of rational subjects before the subjectivating practices of reading and writing that extended from the infrastructure of print. Rather, books, authors and readers had co-evolved as a culture mediated by the technology of print and the techniques surrounding it.

In the title of Kant's original essay of 1784, we find a visible trace of the bibliographic system in eighteenth-century Germany that conditioned its articulation. But in its subsequent reprints, the parenthetical cross-reference was excised, which contributed to the de-historicisation and de-mediatiation of Kant's reflections on the practice of enlightenment. The English translation in *The Cambridge Edition of the Works of Immanuel Kant* is only one recent participant in this continual erasure of Kant's own awareness of some of the technical a priori on which his articulation of authorship as speech act depended. The editorial and/or translational decision is symptomatic of a wider tendency to neglect the medial-materialities of the text in contemporary interpretations of Kant. 'Despite this linking of essay to essay, scholars have long read Kant's essay in isolation, as *Kant's* essay, an autonomous piece of thinking [citing James Schmidt, 'Misunderstanding the Question: What Is Enlightenment' (2011)]. Dislocated from its position in the Enlightenment network of citation, it has been reduced to its ostensible *philosophical* content and arguments'.¹⁵⁵ Though referring to posterior treatments of Kant's 1784 essay, this critique by Pasanek and Wellmon could just as well apply to those of Kant's later essay.

¹⁵² See 'J. F. W. Zöllner: Ist es rathsam, das Ehebündniß nicht ferner durch die Religion zu sancieren? (1783)', Universität Bielefeld: Universitätsbibliothek, accessed 30 April 2022, http://ds.ub.uni-bielefeld.de/viewer/image/2239816_002/535/LOG_0076/.

¹⁵³ Pasanek and Wellmon, 'Enlightenment, Some Assembly Required'.

¹⁵⁴ Kant, 'An Answer to the Question: What Is Enlightenment? (1784)', 18.

¹⁵⁵ Pasanek and Wellmon, 'Enlightenment, Some Assembly Required'.

Conclusion

To be sure, none of the three Kantian scholars has been oblivious to the medial-materialities of the cultural works whose production, distribution and use copyright law purports to regulate. For instance, reflecting on the decision of *Authors Guild v Google, Inc*, Drassinower has suggested that Google's mass digitisation project involves a 'merely technical, noncommunicative reproduction incidental to the operations of digital technology'¹⁵⁶ rather than any act of recommunicating authorial speech to the public. On Drassinower's view, rather than instantiating any fair use of copyrighted works, the scanning and indexing of these works to be made searchable on Google's website could be more adequately understood and legitimated as a 'nonuse'¹⁵⁷ of works, which does not involve compelling authors to speak. As noted from the outset, Borghi and his co-author Karapapa have assessed the phenomenon of mass digitisation as involving a three-fold paradigmatic shift relating to the transformation of works to data, the inversion of copyright into an opt-out system, and the recentralisation of informational power in digital intermediaries such as Google. This latest phase in the digital revolution is thus seen as radically disruptive to our received notions of authorship and copyright. Other than literature, Barron has studied other cultural works of music, film, the visual arts, and the distinctive places they occupy within copyright law and other disciplinary discourses, recognising their generic differences.¹⁵⁸ In their own ways, these moments in their scholarship evidence some attentiveness to the technological (re)mediation of cultural works.

And yet, in interpreting Kant's 1785 essay for the purposes of rethinking copyright and authorship, these scholars have largely prioritised its 'message' over the 'medium'. In so doing, they have obscured the dependence of the meaningful work on its material body, and the possible transactions between them. This tendency to underestimate what Hans Ulrich Gumbrecht and Karl Ludwig Pfeiffer have called the 'materialities of communication'¹⁵⁹ is not at all distinctive to the legal academy. Shortly before his death, Kittler suggested that until recently Western philosophy had devoted itself to preserving Aristotle's distinction between form (*eidos*) and matter (*hylé*).¹⁶⁰ Whereas the ideal aspects of beings were regarded as their essence, their material or

¹⁵⁶ Drassinower, *What's Wrong with Copying?*, 225.

¹⁵⁷ *ibid.*

¹⁵⁸ See, for instance, Anne Barron, 'Copyright Law and the Claims of Art', *Intellectual Property Quarterly* 4 (2002): 368–401; Anne Barron, 'The Legal Properties of Film', *Modern Law Review* 67, no. 2 (2004): 177–208; Anne Barron, 'Copyright Law's Musical Work', *Social & Legal Studies* 15, no. 1 (2006): 101–27.

¹⁵⁹ Hans Ulrich Gumbrecht and Karl Ludwig Pfeiffer, eds., *Materialities of Communication* (Stanford: Stanford University Press, 1994).

¹⁶⁰ Friedrich Kittler, 'Towards an Ontology of Media', *Theory, Culture & Society* 26, no. 2–3 (2009): 23–31.

corporeal bases were deemed inconsequential and irrelevant to ontological inquiry. To undo the characteristically philosophical violence of privileging form over matter, it is arguably necessary for copyright scholars to attend closely to the medial-materialities of literature and other cultural works. Doing so could help clarify our understanding of the present digital transformation of authorship and copyright. With respect to Kant's 1785 essay, what remains to be done is to revisit it in the light of media theory and restore to sight its printed pages.

3. From Paratexts to Print Machinery

Introduction

Where books and other textual forms are concerned, the terms ‘work’ and ‘literary work’ in particular are often used to designate the main subject matter of copyright protection both nationally and internationally.¹ The Berne Convention of 1886 not only foregrounds in the title its overarching interest in the ‘protection of literary and artistic works’,² but further identifies ‘books, pamphlets, and other writings’³ as some of the tangible forms that literary works may take. In copyright scholarship, it has been suggested that the Berne Convention’s adoption of ‘literary work’ as its final term of reference was substantially owed to the German delegation’s objection to the French delegation’s proposed use of ‘literary property’, which the former regarded as being at odds with the concept of *Urheberrecht* in German law.⁴ The absence of reference to ‘property’ or ‘property right’ in the Convention might seem to support the suggestion that the treaty evinced, and continues to do so in its latest revision, a non-proprietary understanding of author’s rights.⁵ Nonetheless, it is also apparent from the more recent copyright directives issued by the European Union that literary works are now understood as objects of ‘intellectual property’⁶ in European and international copyright law. In the United Kingdom, the Copyright, Designs and Patents Act of 1988 expressly conceives of copyright as ‘a property right which subsists...in...original literary, dramatic, musical or artistic works’⁷, likewise reflecting the synonymy between ‘literary work’ and ‘literary property’ in contemporary copyright systems. Under the present legal orthodoxy, when books are nominated as literary works, they are at once understood to be objects of intellectual

¹ The next chapter, ‘Materiality of Type’, addresses copyright in the typographical arrangement of published editions, which is a more recent doctrine that presents a more nuanced, though still limited, perspective on the literary artefact.

² Berne Convention for the Protection of Literary and Artistic Works.

³ *ibid* article 2.

⁴ See Sam Ricketson, *The Berne Convention for the Protection of Literary and Artistic Works: 1886-1986* (London: Centre for Commercial Law Studies, Queen Mary College and Kluwer, 1987), 154–55.

⁵ For this suggestion in the literature, see Sam Ricketson and Jane Ginsburg, ‘The Berne Convention: Historical and Institutional Aspects’, in *International Intellectual Property: A Handbook of Contemporary Research*, ed. Daniel J. Gervais (Cheltenham, UK: Edward Elgar Publishing Limited, 2015), 13.

⁶ See, especially, the Information Society Directive of 2001 (‘Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society’). The latest directive similarly affirming copyright as a species of intellectual property rights is the Directive on Copyright in the Digital Single Market of 2019 (‘Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on Copyright and Related Rights in the Digital Single Market and Amending Directives 96/9/EC and 2001/29/EC’).

⁷ Copyright, Designs and Patents Act 1988, section 1(a).

property, that is, so-called intangible objects created and owned by persons, referred to as ‘authors’.⁸

The intangible nature of the literary work tends to be simply assumed in contemporary copyright law and scholarship.⁹ The very differentiation between the fields of property law and intellectual property law is premised on a categorical distinction between ‘physical’ and ‘non-physical’ forms susceptible to ownership. Where an asset is non-physical as in the instance of the literary work, the law provides that it has first to be embodied in some perceptible form so as to be disposed to regulation. For instance, under section 102 of Title 17 of the United States Code, copyright protection ‘subsists...in works of original authorship fixed in any tangible form of medium of expression...from which they can be perceived, reproduced or otherwise communicated’.¹⁰ Though distinguished from tangible forms, the copyright work nonetheless requires a material form to be protected as such. The printed book comprised of inked paper bound between covers is but one of the substantial forms in which the work appears. Effectively situated at the threshold of the physical and the non-physical, the concept of ‘work’ affords the law’s movement between the domains of the perceptible and the imperceptible so as to enforce a system of rights and obligations in which the ‘author’ stands as a key beneficiary.¹¹

The significance of authorship in copyright law has been much discussed in copyright scholarship, initially often in critical projects aimed at disclosing its contingency and limits, but more recently also as part of proposed correctives to the utilitarian-proprietary paradigm of copyright.¹² To be sure, it is possible to identify modulations in the understanding of authorship adopted in different copyright regimes. A brief comparison between what are often accepted as the prevailing standards of originality in the United States and the United Kingdom, for instance, would suggest that there are multiple ways of conceiving the contribution to the literary work a person must make to be recognised as its author in copyright law. Simply put, whereas the US Supreme Court has clarified that authorship presupposes originality in the sense of ‘independent

⁸ See, for instance, *ibid* section 9, which defines the author of the literary work as ‘the person who creates it’.

⁹ Exceptionally, see Brad Sherman and Lionel Bentley’s history of the ‘mentality of intangible property’ in Britain, which we consider towards the end of this chapter: Brad Sherman and Lionel Bentley, *The Making of Modern Intellectual Property Law* (Cambridge: Cambridge University Press, 2003), 9–59.

¹⁰ Title 17 of the United States Code, section 102.

¹¹ Brad Sherman has sharply suggested that ‘the copyright work is better seen as a quasi-object or hybrid that is both tangible and intangible at the same time’: see Brad Sherman, ‘What Is a Copyright Work?’, *Theoretical Inquiries in Law* 12, no. 1 (2011): 120.

¹² The former set of scholarship includes: Woodmansee, ‘The Genius and the Copyright: Economic and Legal Conditions of the Emergence of the “Author”’; Jaszi, ‘Toward a Theory of Copyright: Metamorphoses of “Authorship”’; Woodmansee and Jaszi, *The Construction of Authorship*; Rose, *Authors and Owners*. The latter set of studies includes: Drassinower, *What’s Wrong with Copying?*; Borghi, ‘Copyright and Truth’; Barron, ‘Kant, Copyright and Communicative Freedom’. See chapter 1, ‘Introduction: A Medial Perspective on Copyright’; chapter 2, ‘Two Ways of Looking at a Printed Book’.

creation plus a modicum of creativity’,¹³ the British courts still largely affirm the traditional view that origination simply entails some requisite amount of ‘skill, labour, and expense’.¹⁴ In *Feist Publications, Inc. v Rural Telephone Service Company, Inc.*, the US Supreme Court held that mere labour sans creativity expended in the making of a work did not grant any copyright protection. Specifically, the selection and arrangement of facts relating to the names, towns, and telephone numbers of subscribers to a telephone service provider for publication in a telephone directory failed to meet the minimum standard of creativity for copyright protection. In other words, whilst demanding some industry and labour, compiling the white pages of the telephone directory did not make the public utility an author of original work. More so than in the United Kingdom, authorship in the United States is construed with reference to the idiom of creativity rather than that of labour and investment.¹⁵

And yet, as Jane Ginsburg has noted in a comparative study of seven contemporary copyright regimes,¹⁶ the varying notions of authorship across jurisdictions do coincide in a shared understanding of the author as the personal creator of the work. ‘Despite these variations [in originality standards], I nonetheless conclude that in copyright law, an author is (or should be) a human creator who, notwithstanding the constraints of her task, succeeds in exercising minimal personal autonomy in her fashioning of the work’.¹⁷ For Ginsburg, a proper understanding of copyright law necessitates our recognition of authors as the central subjects whose creative endeavours copyright law seeks to stimulate so as to advance public knowledge.¹⁸ Such a claim about the centrality of authors to copyright law is backed by the Constitution of the United States, which recognises ‘securing for limited Times to Authors...the exclusive Right to their...Writings’¹⁹ to be a means of promoting scientific progress. Though lacking equivalent constitutional support, the United Kingdom expressly defines in its copyright statute the author of the work as ‘the person who creates it’,²⁰ similarly stressing the notion of personal intellectual creation as the touchstone of authorship.

¹³ *Feist Publications Inc. v Rural Telephone Service Co. Inc.* 111 S.Ct. 1282 (1991), 1288. 499 U.S. 340 (1991), 1288.

¹⁴ *Walter v Lane* [1900] AC 539, at 552. See also *University of London Press v University Tutorial Press* [1916] 2 Ch 601; *Ladbroke (Football) v William Hill (Football)* [1964] 1 WLR 273.

¹⁵ For a more detailed analysis of the originality requirement in the United Kingdom and its comparison with those of the United States, civil law, and European copyright systems, see Andreas Rahmatian, ‘Originality in UK Copyright Law: The Old “Skill and Labour” Doctrine Under Pressure’ 44, no. 4 (2013): 4–34.

¹⁶ These include both common law jurisdictions (the United States, Canada, the United Kingdom and Australia) and civil law systems (France, Belgium and the Netherlands): Jane Ginsburg, ‘The Concept of Authorship in Comparative Copyright Law’, *DePaul Law Review* 52 (2003): 1063–92.

¹⁷ *ibid* 1064.

¹⁸ *ibid* 1063.

¹⁹ Constitution of the United States, article 1, section 8, clause 8.

²⁰ Copyright, Designs and Patents Act 1988, section 9.

In European copyright law, particularly the European Court of Justice decision of *Infopaq International v Danske Dagblades Forening*,²¹ we find a particular manifestation of the causal relationship between the literary work and its author posited in the originality requirement. Reviewing the decision shall sharpen our understanding of ‘work’, ‘author’ and ‘originality’ as the central categories via which copyright law apprehends the subject matter of books, and further prepare the way for this chapter’s contribution. The *Infopaq* case concerned eleven-word extracts from Danish newspapers that had been subjected to the digitally mediated practices of scanning, processing and reprinting by a media monitoring and analysis company, Infopaq, for commercial purposes without the permission of their copyright holders.²² Pursuant to a referral by the Højesteret (the Danish Supreme Court), the European Court of Justice was asked to interpret article 2(a) of the Information Society Directive of 2001.²³ The article directed Member States to ‘provide for the exclusive right to authorise or prohibit...reproduction...in whole or in part...for authors, of their works’.²⁴ The question was whether the expression ‘reproduction...in part’ in the article encompassed the storage and printing of the eleven-word newspaper extracts. To address this, the ECJ had to clarify what the term ‘works’ in the article meant and, in so doing, ascertain the proper subject matter of copyright protection.

Advancing an interpretation of the article grounded in a ‘harmonized legal framework for copyright’,²⁵ the ECJ held that copyright protection obtained solely in respect of an original work understood as such not only within the Information Society Directive, but also in other pertinent authorities of the European copyright regime. These would include the Berne Convention relating to literary and artistic works, and other Directives of the European Union concerning the originality of computer programs, databases, and photographs.²⁶ As interpreted by the ECJ, the term ‘works’ in article 2(a) of the Information Society Directive adopts the same standard of originality as that in other sources of European copyright law: the copyright work is ‘a subject-matter which is original in the sense that it is its author’s own intellectual creation’.²⁷ Notice that the originality of the work is determined with reference to the external figure of the author: the work is original and potentially protected under copyright law only if it has been created by the author. A causal relationship between author and work is assumed in the originality requirement.

²¹ [2009] ECR I-06569 (Case C-5/08).

²² The five phases of the ‘data capture process’ are discussed in paragraphs 16–21 of the *Infopaq* decision.

²³ The European Court of Justice was also asked to clarify the conditions for exemption of temporary acts of reproduction stated in article 5 of the Information Society Directive, the findings of which do not concern us here.

²⁴ *ibid.*

²⁵ *Infopaq International A/S v Danske Dagblades Forening*, paragraph 36.

²⁶ The key referenced sources are articles 2(5) and (8) of the Berne Convention; article 1(3) of the Computer Programs Directive; article 3(1) of the Database Directive; article 6 of the Copyright Term Directive. See *Infopaq International A/S v Danske Dagblades Forening*, paragraph 34–35.

²⁷ *Infopaq International A/S v Danske Dagblades Forening*, paragraph 37.

The ECJ further held that the various parts of any work, such as those sequences of eleven words from the Danish newspapers that Infopaq had extracted, could enjoy copyright protection ‘provided that they contain elements which are the expression of the intellectual creation of the author of the work’.²⁸ In line with the treatment of the genre in the Berne Convention, the ECJ recognised the Danish newspapers to be ‘literary works covered by Directive 2001/29’.²⁹ Whilst words *per se* are not regarded as the intellectual creation of authors, ‘the choice, sequence and combination of those words’³⁰ is seen as the means by which ‘the author may express his creativity in an original manner and achieve a result which is an intellectual creation’.³¹ In other words, the particular selection and arrangement of words within a larger literary work may fall under copyright protection only if it is an expression of the author-creator that contributed to the intellectual creation at large. By the same logic, the entire work is understood to be as an expression, or a set of expressions, originating in the author. With respect to the eleven-word extracts from the Danish newspapers, then, the ECJ held that it was up to the national court to decide whether or not the sequences were the expressions of authors-creators, such that reproducing them potentially amounted to copyright infringement.³²

Though decided within the European copyright system, the *Infopaq* case and its treatment of the originality requirement reflects and contributes to a wider cultural-legal subscription to the myth of the proprietary author. The European perspective on the work as its author’s own intellectual creation has long been suggested in copyright scholarship to be akin to the French system of *droit d’auteur* that protects works bearing *l’empreinte du talent créateur personnel* (‘the imprint of personal creative talent’ or ‘the stamp of its author’s personality’).³³ The ECJ’s characterisation of the copyright work as being expressive of the author’s ‘creativity’, while vague, coheres with the French understanding of the work as an extension of the author’s personality. Their reliance on the idiom of creativity further resonates with the post-*Feist* position in US copyright law, which, as discussed, similarly emphasises some minimum exercise of creative choice.³⁴ Though the ‘skill and labour’ standard of originality continues to hold sway in UK copyright law, the phrase ‘author’s own intellectual creation’ is presently used to define the originality of databases as literary works

²⁸ *ibid* paragraph 39.

²⁹ *ibid* paragraph 44.

³⁰ *ibid* paragraph 45.

³¹ *ibid*.

³² After the preliminary ruling by the ECJ, the Højesteret ruled that those extracts were, indeed, works covered by copyright, and Infopaq was obligated to seek the prior consent of the copyright holders before subjecting those newspapers articles to the data capture process: *Infopaq International A/S v Danske Dagblades Forening* Case 97/2007, 15 March 2013.

³³ Cour de Cassation, Chambre civile 1, du 13 novembre 1973. See Eleonora Rosati, ‘Originality in a Work, or a Work of Originality: The Effects of the *Infopaq* Decision’, *Journal of the Copyright Society of the USA* 58, no. 4 (2010): 797.

³⁴ See Ginsburg, ‘The Concept of Authorship in Comparative Copyright Law’, 1081.

in the CDPA 1988. Pursuant to an amendment effected by the UK Databases Regulations 1997, section 3A(2) of the CDPA 1988 now states that ‘a literary work consisting of a database is original if, and only if, by reason of the selection or arrangement of the contents of the database the database constitutes the author’s own intellectual creation’.³⁵ The wording coheres with that of section 9 of the CDPA 1988, which enshrines the author of the work as the ‘person who creates it’.³⁶ These continuities between common law and civil law systems, across national and international copyright regimes, suggest a commonly ingrained approach to the work as an intellectual creation of its personal author. On this view, the book is regarded as embodying an intangible object created by an author, whose proprietary rights are granted and protected under the prevailing copyright system. The threshold requirement of ‘originality’ collaborates with the operative terms ‘work’ and ‘author’ to re-entrench the modern myth of the author as personal creator and owner of literature (and other cultural forms).

This chapter seeks to destabilise the central position of the proprietary author in copyright law. Following on from our call in the previous chapter to study the peripheral matters of Kant’s ‘On the Wrongfulness of Reprinting’ (1785),³⁷ this chapter turns to a series of paratexts within and surrounding those printed pages as indices of the medial-material conditions and historical processes that produced them. In particular, we consider not only the epitextual background of the German Enlightenment in which the *Berlinische Monatsschrift* was produced, but also the peritextual specimens of catchwords, signature marks, and various front matter of Kant’s periodical essay. Our study of these paratexts alongside the so-called authorial speech of Kant’s essay suggests the periodical to be deeply involved in the operations of a print machinery that preceded the authorial figure. The existence of this medial-material network, whose operations are obscured by the triadic terms ‘originality’, ‘author’ and ‘work’, suggests copyright law and the myth of proprietary authorship to be suppressive of the deep historicity of literary reproduction.

In what follows, we first review Gérard Genette’s concept of paratext, particularly his discussion of five key paratextual characteristics that illuminate the significance of the paratext and its relationship to the text.³⁸ Then, we consider how the concept of paratext interacts with Kant’s concept of the book in the 1785 essay, attending to the distinction between *opus* and *opera* on which Kant’s proposed solution to the problem of reprinting turns. Thereafter, we consider in turn the epitextual setting of the German Enlightenment and the genre of the periodical, including some

³⁵ Copyright, Designs and Patents Act 1988, section 3A(2).

³⁶ *ibid* section 9.

³⁷ Immanuel Kant, *Von der Unrechtmäßigkeit des Büchernachdrucks* in L. Bently and M. Kretschmer (eds), *Primary Sources on Copyright (1450-1900)* at http://www.copyrighthistory.org/record/d_1785 (accessed 30 April 2022); Kant, ‘On the Wrongfulness of Unauthorized Publication of Books (1785)’.

³⁸ Gérard Genette, *Seuils*, Collection Poétique (Paris: Éditions du Seuil, 1987); Genette, *Paratexts*.

of the salient political, economic, and medial-infrastructure conditions that affected the phenomenon of print proliferation, and selected peritexts of Kant's essay that point to the socio-technological assemblage that generated it.

Literary Object and Action

On the front cover of the 2002 paperback edition of Genette's work published by Éditions du Seuil, we find the off-centre back-view image of a young girl standing on tiptoe in the vestibule of a house, looking past a wooden door left ajar, the daylight streaming in from the doorway suggesting it to be an unblocked view of the outside.³⁹ Towards the bottom left corner of the cover, a dog stands on receding black and white square tiles, as if closer to the viewer, looking in the opposite direction, apparently towards the interior of the house. This divided image of an animal bound in captivity, and a girl standing on transitional grounds in anticipation of some freer future, beautifully illustrates the book title, *Seuils* (meaning 'thresholds'), printed above and across the girl's image, beneath and alongside the author's name, 'Gérard Genette'. As the text notes, 'a threshold...[is] 'a "vestibule" that offers the world at large the possibility of either stepping inside or turning back',⁴⁰ that is, a liminal space between the inside and the outside that defines the situation at hand. Though largely focused on that of the doorway and the girl's perceptual exposure to the outside, the front cover broaches multiple thresholds. Besides the boundary line between the vestibule and the house's interior marked by the switch from horizontally placed tiles to diagonally placed ones, the aforementioned letters printed above the picture, too, prescribe our perceptual movement between the spaces of the text and the image. On one reading, if we follow the gaze of the dog towards the 'inside' of the book and along its surface, we would be led from the sturdy spine of the book to the back cover identifying the front cover image as a partial photographic reproduction of a seventeenth-century Dutch painting,⁴¹ the printed pages of Genette's 'main' text, various front matter, and, finally, back to the front cover. Alternatively, following the outward gaze of the girl, our attention shifts from the so-called 'internal' space of the book-object to the 'external' social space in which it is held and viewed, thereby undoing the textual loop. Of course, the two itineraries could be readily reversed: both interpretive possibilities are embedded in the indeterminate gaze of each figure. Our perceptual oscillations between letters

³⁹ Gérard Genette, *Seuils*, Points Essais (Paris: Éditions du Seuil, 2002). The first edition published in 1987 has a simpler front cover: a white page identifying the author and publisher in red, and the book title and series title in black: Genette, *Seuils*, 1987.

⁴⁰ Genette, *Paratexts*, 2. Genette notes that the term 'vestibule' arose in Jorge Luis Borges' reflections on the preface.

⁴¹ Pieter de Hooch, *La Mère*, 1660.

and image, the front cover and other parts of the book, and the book and its place in a wider social reality instantiate some of the possibilities of migrating between spaces, which presuppose the borderlands between them.

‘Thresholds’ is deployed in Genette’s work to describe a category of liminal spaces conjoining the interior world of the text and the exterior world of the public; a category of which the front cover, its constitutive elements, and other parts of the book are but some examples. Whilst we might be accustomed to focusing our interpretive efforts on the ‘internal’ sequence of statements forming the signifying contents of the book (which, in copyright law, is understood to be the material embodiment of the abstract ‘literary work’), Genette reminds us that the so-called main text of any book is rarely, if ever, unaccompanied by marginal matters that present the book as a unit of interpretable meaning. These auxiliary features are what Genette calls the work’s ‘paratext’. The paratext is ‘what enables a text to become a book and to be offered as such to its readers, and, more generally, to the public’.⁴² In other words, it is the set of conditions on the basis of which any particular text is presented as a book to be read. To become the book *Senils*, Genette’s text had, first, to acquire the foregoing material features, including the printed title and author’s name that have afforded our identification and interpretation of it. The text’s dependence on the paratext for its reading is reflected in the prefix ‘para’, which doubly signifies a relationship of equivalence and subordination that suits the latter’s ambivalent status.⁴³

Paratext is a heuristic figure that calls attention to the peripheral matters of the book that tend to escape the conscious reflection of the reader despite their role in facilitating and shaping its reception. It contributes to a wider poetics of ‘transtextuality’, a practice of attending to the processual relations between texts, that Genette has theorised elsewhere.⁴⁴ The fact that this dimension of the book conditions and affects its historical significance is suggested by Genette’s description of it as a relational ‘zone...of *transaction*’,⁴⁵ that is, ‘a privileged place of a pragmatics and a strategy, of an influence on the public, an influence that – whether well or poorly understood and achieved – is at the service of a better reception for the text and a more pertinent reading of it (more pertinent, of course, in the eyes of the author and his allies)’.⁴⁶ Notice that the exchanges between literary actors (the author and his allies on the one hand, and the readers and the wider

⁴² Genette, *Paratexts*, 3.

⁴³ Genette cites Joseph Hillis Miller’s comments on ‘para’ as ‘a double antithetical prefix signifying at once proximity and distance, similarity and difference, interiority and exteriority, ... something simultaneously this side of a boundary line, threshold, or margin, and also beyond it, equivalent in status and also secondary or subsidiary, as of guest to host, slave to master’, that is, as a prefix alluding to the liminal operations of the paratext: see *ibid* 1, footnote 2.

⁴⁴ For Genette’s five-element typology of transtextuality in which paratextuality participates, see Gérard Genette, *Palimpsests: Literature in the Second Degree*, trans. Channa Newman and Claude Doubinsky (Lincoln and Lincoln: University of Nebraska Press, 1997), 1–10.

⁴⁵ Genette, *Paratexts*, 2.

⁴⁶ *ibid*.

public on the other) are observed as dependent on their interactions with these material paratexts, the reliance on which attests to a deep sociality between humans and non-humans that exceeds the more conventional liberal-humanist understanding. Those whom Genette calls the author's 'allies' are the publisher and the printing house, whose involvement in the production of the text and many of its surrounding paratexts, such as *Seuils* and its striking front cover, enables its dissemination and readership. We may want to question the nature and strength of this alliance, for Genette himself recognises that the author's wishes might not always be respected.⁴⁷ But what matters for now is that this allusion to some literary association indexed by the book hints at the insufficiency of the copyright perspective on the literary work as the author's own creation.

Genette outlines five key characteristics of the paratext that illuminate its significance to the text in question.⁴⁸ A working reprisal of these would aid both our consideration of its relationship with Kant's account of the book, and our subsequent attendance to some of the essay's paratexts. The first two paratextual features are defined with reference to their spatial and temporal dimensions. Where a paratext is found 'within' or as being physically appended to the book, it is called a 'peritext'.⁴⁹ Besides the front cover,⁵⁰ examples of the peritext include other front matter such as the title page and various prefaces,⁵¹ the material form of the book such as its typesetting and paper,⁵² and other sectional or marginal elements such as intertitles and notes.⁵³ Conversely, if the paratext appears 'outside' the book, it is referred to as the 'epitext'.⁵⁴ In this subcategory of more remote elements, Genette locates 'public epitexts'⁵⁵ – that is, epitexts that are addressed by the author and/or his associates to the public or a segment of it, such as interviews with the author, or book advertisements and other promotional activities undertaken by the publisher – and 'private epitexts'⁵⁶ – namely, those with more specific, individual addressees, such as the personal letters, even diary entries, of the author. The paratext could, further, be identified with reference to the date of appearance of the first published edition of the book. In short, it could be a 'prior paratext'⁵⁷ (which appears *before* the original text, such as a prospectus), an 'original paratext'⁵⁸ (appearing at the same time as the text), a 'later paratext'⁵⁹ or 'delayed paratext' (appearing shortly thereafter, for

⁴⁷ *ibid* 23.

⁴⁸ *ibid* 4–15.

⁴⁹ *ibid* 5.

⁵⁰ *ibid* 23–32.

⁵¹ *ibid* 32–33, 161–236.

⁵² *ibid* 33–36.

⁵³ *ibid* 294–343.

⁵⁴ *ibid* 5.

⁵⁵ *ibid* 9.

⁵⁶ *ibid*.

⁵⁷ *ibid* 5.

⁵⁸ *ibid*

⁵⁹ *ibid*

instance, in a second edition, or only much later, perhaps long after the author's death). The paratext could also be studied for its disappearance and/or reappearance, which, as we shall see, is valuable to our paratextual reading of Kant's essay.⁶⁰ The fact that the paratext has a lifespan, subsisting for a duration that may be long, short, or intermittent, attests to the third and what Genette regards as the most important paratextual characteristic: its functional aspect.

As theorised by Genette, the functionality of the paratext consists in its auxiliary support of the text, the specificities of which could be identified only with reference to the particular object in question. Despite calling attention to its ambiguous status and, at times, suggesting its equivalence, if not precedence, to the text, Genette stresses that 'the paratext element is always subordinate to "its" text, and this functionality determines the essence of its appeal and its existence'.⁶¹ In so doing, Genette reasserts the priority of authors and publishers in his account of the literary artefact even as it makes visible those peripheral matters often overlooked in commentaries focusing on the main text. Returning to the front cover of the 2002 edition of *Seuils* (which we may now regard as a 'later peritext' broadly falling within the publisher's remit), we may note that printed on its top right and bottom right corners are a pair of black and green strips with the words 'POINTS' and 'ESSAIS' respectively. Together, these comprise the series emblem, which executes the function of 'indicating to the potential reader the type of work, if not the genre, he is dealing with: French or a foreign literature, avant-garde or tradition, fiction or essay, history or philosophy, and so forth'.⁶² Before purchasing or reading the book, the reader is informed by means of the series emblem that it is a collection of essays forming part of a series published by the Parisian publishing house Éditions du Seuil. In the *Points* series, the colour green is reserved for 'essays', purple for 'history', blue for 'sciences', and so forth. The genre of *Seuils* is designated by its colour-coded series emblem, the publishing decision of which coheres with the author's self-understanding as essayist.⁶³ This alignment supports Genette's observation about the general alliance between authors and publishers, though he is also careful to note that there could well be conflicting intentions in particular instances.⁶⁴

The execution of any paratextual function depends on the pragmatic status of the paratext, which is the fourth characteristic Genette notes. 'Pragmatic' is a shorthand for the communicative situation of the paratext, which concerns some message passed from a sender to a receiver.⁶⁵ As already suggested, the sender or addressor is typically the author or publisher (or both), to whom

⁶⁰ *ibid* 6-7.

⁶¹ *ibid* 12.

⁶² *ibid* 22.

⁶³ Genette alludes to this self-understanding: see *ibid* 23.

⁶⁴ *ibid*.

⁶⁵ *ibid* 8.

responsibility for the paratext is often attributed, and who tends to be regarded as having accepted such responsibility. Where a third party is involved in its sending, as in the instance of a third party writing the preface, Genette suggests that it entails a delegation of responsibility by the author and/or publisher, which does not necessarily—if at all—amount to an absolute release from it.⁶⁶ Responsibility for the paratext, he stresses, could well be shared. The receiver or addressee, on the other hand, is usually the public, though it might be a group of persons, or even a particular individual. The terminological distinction between ‘public’ and ‘private’ epitexts reviewed in the above is based on this difference between types of addressees. The message could simply be the information communicated by the paratext, though it often carries an ‘illocutionary force’,⁶⁷ that is, it amounts to some intended action. The series emblem of *Seuils* does not simply relay the word ‘essays’, but more significantly advises, even instructs, that the book to be treated as belonging to that literary genre. Booksellers are asked to shelve it with other essay collections, and buyers and readers are, similarly, expected to find a text that matches the conventions of the genre, the failure of which could be unsettling. Prescribed actions of the sort attest to the paratext’s functionality.

The last aspect of the paratext in Genette’s theory concerns its substantiality or ‘mode of existence’,⁶⁸ the discussion of which, arguably, most undermines the priority granted to authors and publishers in those of the paratext’s functional and pragmatic statuses. Already in our review of the front cover of *Seuils* we have seen at least three forms in which the paratext could take: an image (the partial photographic reproduction of Pieter de Hooch’s *La Mère*), a text (the author’s name, book title, and series), and, relatedly, a material appearance (the typographic arrangement of those elements).⁶⁹ Each of these substantial forms are typically understood as falling within the purview of the author and/or publisher, the supposed controlling minds that made the decisions to configure and present the book as such. And yet, within the rubric of substantial paratexts, Genette also locates what he calls ‘purely factual’⁷⁰ phenomena that, in some way, shape the meaning and reception of the text. ‘By *factual* I mean the paratext that consists not of an explicit message (verbal or other) but of a fact whose existence alone, if known to the public, provides some commentary on the text and influences how the text is received’.⁷¹ Genette gives the example of Marcel Proust’s commonly known half-Jewish and homosexual identities, the biographical facts of which necessarily inform our reading of the relevant passages in *A la recherche du Temps perdu*.⁷²

⁶⁶ *ibid* 9.

⁶⁷ *ibid* 10.

⁶⁸ *ibid* 4.

⁶⁹ *ibid* 7.

⁷⁰ *ibid* 7.

⁷¹ *ibid*.

⁷² *ibid* 8.

Though these facts concern the author, they are not communicated by him nor his publishers, but instead form part of the larger historical background or context in which the book is (re)produced and disseminated. They belong to the ‘implicit contexts that surround a work and, to a greater or lesser degree, clarify or modify its significance’.⁷³ In so suspending the subject-focused requirement of ‘communication’ and some intended ‘message’, Genette seems to render inapplicable to factual paratexts his other observations about their functional and pragmatic aspects, or at least invites our rethinking of their posited boundaries. As helpful as a recognition of the communicative situation could be, our study of paratexts need not be limited to the identities of senders and receivers, their intentions and responses, the contents of messages and their illocutionary force. Known facts about authorial life and generic conventions alter the way books are read. The historical background, ‘the context formed, for the [example of Honoré de Balzac’s *Le Père Goriot* (1835)], by the period known as “the nineteenth century”’,⁷⁴ is no less involved in the question of the text’s significance. It might well be that any posited communicative situation pertaining to the text and its constitutive paratexts only owes its significance to the historical period and context in which they participate.

Accordingly, our paratextual reading of Kant’s 1785 essay shall cover not only a selection of peritexts in the essay and other issues of the *Berlinische Monatschrift*, but also some factual epitexts surrounding the period of late-eighteenth-century Germany and the genre of the periodical. Considered collectively, these paratexts shall help us grasp some of the conditions and processes of literary production and assess the extent to which these are accounted for by the terms and doctrines of copyright law.

Before doing so, let us compare Genette’s concept of paratext with Kant’s account of the book, which could help illuminate both their points of mutual convergence and distance from copyright law’s treatment of literature. Genette understands that it is only by virtue of an indeterminate set of paratextual conditions and practices, ranging from the peritextual parts of the book to the epitextual background of authorial, generic and historical facts, that any book may be presented as an interpretable unit to the public. He also foregrounds the communicative situation of the text and its paratexts, privileging the authors and publishers on the one hand, and the public in part or as a whole on the other, as their typical senders and receivers respectively. Both the making of the book and its operation as a communicative medium that puts into relation the author, publisher, and public are highlighted as key determinants of its significance. In Kant’s non-proprietary solution to the problem of reprinting in eighteenth-century Germany, which our

⁷³ *ibid* 7.

⁷⁴ *ibid*.

previous chapter introduced, we find an account of the book that, to some degree, similarly recognises its historical production and emergence before the public. Though it is in the service of authors that Kant's notion of author's rights as inalienable personal rights in the book is advanced, the essay is no less interested in the publishing process, the role that the publisher plays in it, and the rights of the legitimate publisher. Indeed, Kant's case for the wrongfulness of unauthorised publication is built on two syllogisms that, first, justify the legitimate publisher's right to publish the book as a contractual right granted by the author pursuant to the latter's personhood;⁷⁵ and, second, refutes any claim by the unauthorised publisher that owning a printed copy alone confers any positive right of republication.⁷⁶ Kant's proposed regime of author's rights is, at once, a system of publisher's rights. The publisher's activity of publishing the book is rethought of as the fulfilment of a contractual obligation to carry on the author's affair of speaking to the public, rather than as the exercise of any property right in a manuscript or an already printed copy.⁷⁷ In so taking an interest in the activity of publishing, Kant stands with Genette in recognising that the author depends on other participants in the assembly line that produced the printed book.

Likewise, Kant stresses the communicative function of the book, that is, its role in relaying a speech, divided between the publisher as its sender and the author in whose name it is sent, to the public. 'In a book, as a writing, the author *speaks* to the reader; and the one who has printed the book *speaks*, by his copy, not for himself but simply and solely in the author's name. He presents the author as speaking publicly and only mediates delivery of his speech to the public'.⁷⁸ As discussed in the previous chapter, it is this notion of literary communication that some Kantian copyright scholars have relied upon to rethink the copyright work along non-proprietary lines. Construed not as an object of literary property but rather as an authorial speech act, the book has become the crucial means and method by which the enterprises of dignity, truth and freedom are advanced. Whilst the role of the publisher is less prominent in Kantian revisions of copyright law, it is affirmed to be crucial to the printed book in Kant's and Genette's perspectives, which register their awareness of the collaborative character of literary production that extends beyond the influence of personal authors.

Despite challenging copyright law's entronement of the author as creator of the intangible literary work, Kant's recognition of the dual character of the book as manufactured object (*opus*) and communicative act (*opera*) evidences a similar tension to that present in Genette's theorisation

⁷⁵ Kant, 'On the Wrongfulness of Unauthorized Publication of Books (1785)', 29–31.

⁷⁶ *ibid* 31–33.

⁷⁷ The essay opens with a scathing dismissal of the proprietary perspective: *ibid* 29.

⁷⁸ *ibid* 30.

about the substantial and pragmatic characteristics of the paratext. As we have suggested, though the epitextual background is perceived to be integral to the book's presentation before the public, Genette nonetheless tends to construe the paratext in terms of the communicative situation to which it supposedly belongs. Specifically, Genette privileges authors and publishers as the typical senders of the paratextual message, thereby limiting its interpretation to the will of these literary subjects. This is consistent with his recognition of the author and publisher as 'the two people responsible for the text and the paratext'⁷⁹ while accepting the occasional delegation of 'a portion of their responsibility to a third party'.⁸⁰ In the instance of the partially reproduced artwork on the front cover of *Seuils*, for instance, the back cover tells us that it is contributed by the photographer Jörg P. Anders and the German federal government agency *Bildarchiv Preussischer Kulturbesitz*, in whom copyright in the cover image is vested. This legal attribution of ownership of a part of what Genette calls the 'publisher's peritext'⁸¹ to someone other than the publisher is suggestive of a similar sort of third-party assignment of responsibility, which complicates the otherwise binomial characterisation of the book as joint product of author and publisher. Genette's further admission of the thick history of literary production into the substantial paratext accentuates the insufficiency of such a dualist paradigm.

Kant oscillates between two senses of the book as *opera* and *opus*, the shift between which poses a similar challenge to his designation of authors and publishers as the pertinent subjects in the communicative situation of the printed book. As foregrounded at the start of Kant's essay, his argument for the wrongfulness of reprinting pivots on whether the book is understood as an alienable 'commodity'⁸² [*Waare*], that is, a manufactured work [*opus*] that could be traded freely without any reference to a personal author, or, instead, as pertaining to the author's 'use of his powers [*opera*]⁸³ that are not, in themselves, susceptible to alienation, which makes publishing an activity of 'carrying on an affair in the name of another, namely the author'⁸⁴. For the most part, Kant adopts the latter understanding of the book as action—a speech act that remains necessarily attached to the author as the person in whose name it is performed. As Kant clarifies in the concluding 'General remark',⁸⁵ the inseverable bond between the book and its author is peculiar to the nature of the book as its author's speech, which differs from the work of art inasmuch as the latter entails the manipulation of materials without any requisite attribution to an originating

⁷⁹ Genette, *Paratexts*, 9.

⁸⁰ *ibid.*

⁸¹ *ibid.* 16–36.

⁸² *ibid.* 29.

⁸³ *ibid.* 30.

⁸⁴ *ibid.* 29. On the importance of Kant's distinction between *opus* and *opera*, see also Pottage, 'Literary Materiality', 417–20.

⁸⁵ *ibid.* 33–35.

author. A collection of plaster casts of gems such as Philipp Daniel Lippert's *Daktyliothek* (1755-1756)⁸⁶ could, in Kant's view, be freely reproduced without the original maker's consent. 'For it is a work (*opus*, not *opera alterius*) which anyone who possesses it can alienate without even having to mention the name of the originator; hence he can copy it and make use of the copies for public trade in his own name, as what is his. But another's writing is the *speech* of a person (*opera*), and one who publishes it can speak to the public only in the name of this other and can say no more of himself than that the author through him (*Impensis Bibliopolae*) delivers the following speech to the public'.⁸⁷ Because the activity of the book extends from the author's personhood, particularly the author's personal right to speak to the public freely and 'to prevent another from having him speak to the public without his consent',⁸⁸ publishing and reprinting the book are always acts of relaying the author's speech and must be authorised by the author.

Yet, for the book to perform the activity of transmitting the author's speech, it has, first, to become the material object of printed letters on papers bound between covers available for the reader's viewing. Kant exhibits this awareness of the material condition of the book as a tangible artefact, one not unlike the artwork from which he distinguishes it, in his discussion of its features as an optical medium. As noted in our previous chapter, Kant apprehends the book as a 'mute instrument',⁸⁹ that is, a technology that delivers the speech of its author not by means of sound as in the instances of the 'megaphone'⁹⁰ or 'mouth'⁹¹ but rather 'by letters'.⁹² In the eighteenth century, books could relay any speech only by means of the visible letters imprinted on the page. Kant's sensitivity to the book's operation as an optical rather than acoustic medium would be reprised in both *Die Metaphysik der Sitten* ('The Metaphysics of Morals') (1797) and the *Der Streit der Fakultäten* ('The Conflict of the Faculties') (1798).⁹³ In these instances where Kant evidences a sharp awareness of the visuality of the book, the book re-materialises as a manufactured object that is produced only pursuant to other industrial and historical processes. Literature slides back along the slope of its materiality, on which the very distinction between *opus* and *opera* depends. In the book's 'regression' to objecthood, the so-called speech acts of authors, and the publishing activity of relaying these speech, regain their medial-material conditions of possibility, which otherwise risk being overlooked in accounts centred on the teleological ends of authorship. The return to

⁸⁶ See Immanuel Kant, *Practical Philosophy*, ed. and trans. Mary J. Gregor, The Cambridge Edition of the Works of Immanuel Kant (Cambridge: Cambridge University Press, 1996), 628, note 3.

⁸⁷ Kant, 'On the Wrongfulness of Unauthorized Publication of Books (1785)', 34.

⁸⁸ *ibid.* 35.

⁸⁹ *ibid.* 30.

⁹⁰ *ibid.*

⁹¹ *ibid.*

⁹² *ibid.*

⁹³ See chapter 4, 'Materiality of Type'.

the history of bookmaking indexed in paratexts such as those of Kant's essay in the *Berlinische Monatsschrift*, further suspends the priority that tends to be granted to authors and publishers as the presumed controllers of literary production, leaving open the possibility for a rethinking of what books 'are'.

Place and Genre of the *Berlinische Monatsschrift*

In studies of the historical event and period that we now call the German Enlightenment, it is not unusual to note the suggestion that one of its defining practices was, precisely, that of defining what the practices of enlightenment were. As discussed in our previous chapter, the *Berlinische Monatsschrift* had published Kant's perspective on the matter less than a year before his essay on author's rights. In *Beantwortung der Frage: Was Ist Aufklärung?* ('An Answer to the Question: What is Enlightenment?') (1784), Kant conceived of enlightenment as the use of 'one's own understanding',⁹⁴ which released oneself from an immature state of dependence on another. Though it might appear to bear the philosophical form of a universal proposition, Kant's account of enlightenment was deeply political.⁹⁵ To valorise the use of one's own reason as an emancipatory practice was to oppose the Prussian King Frederick II's contemporaneous declaration, which forbade laypersons from passing judgements on the actions of public officials because the former purportedly lacked the requisite expertise.⁹⁶ The declaration had reproduced the commonplace understanding of 'private reason' as that which was exercised by persons in their personal capacity, and 'public reason' as that which extended to official actions. Kant inverted that basic distinction. Formerly debased as beneath the expertise of officials, the individual's critique of official actions was transfigured into a 'public use of one's reason'⁹⁷ that was infinitely freer and more valuable than the execution of bureaucratic and institutional duties. The latter became merely the 'private use of reason'.⁹⁸ For Kant, it was the public use of reason, 'an unrestricted freedom to make use of his own reason and to speak in his own person',⁹⁹ that facilitated the human being's emergence from immaturity.

Further, Kant clarified that it was principally in the media of writing and print that the public use of reason occurred. The 'public' element of enlightenment related not simply to the critique

⁹⁴ Kant, 'An Answer to the Question: What Is Enlightenment? (1784)', 17.

⁹⁵ For two competing 'philosophical' and 'political' interpretations of Kant's essay, see Franco Venturi, *Utopia and Reform in the Enlightenment* (Cambridge University Press, 1971), 1–17; James Schmidt, 'Misunderstanding the Question: "What Is Enlightenment?": Venturi, Habermas, and Foucault', *History of European Ideas* 37 (2011): 43–52.

⁹⁶ See Habermas, *The Structural Transformation of the Public Sphere*, 25.

⁹⁷ Kant, 'An Answer to the Question: What Is Enlightenment? (1784)', 18.

⁹⁸ *ibid.*

⁹⁹ *ibid.* 19.

of state and institutional actions, but also to the broadcasting of such critique to the masses through textual publications: ‘But by the public use of one’s own reason I understand that use which someone makes of it *as a scholar* before the entire public of the *world of readers*.’¹⁰⁰ For Kant, the public use of reason involved the production, circulation, and reading of printed matter. Enlightenment, it would seem, was a thoroughly literate enterprise that surrounded the focal object of the eighteenth-century book.

This is also where a continuity between Kant’s essays on enlightenment and author’s rights becomes apparent. Published in less than a year apart from each other, the essays commonly apprehended the book as the communicative interface between the scholar-author and the reading public. The book afforded the practice of enlightenment, that is, the use of one’s own reason, because it relayed its author’s speech to the reader. Kant’s later account of the book as the optical medium that conveyed a speech necessarily spoken in the author’s name was consistent with his prior understanding of the use of public reason as a freedom to speak in one’s own person. As Anne Barron has also suggested, the regime of author’s right was proposed by Kant as the legal arrangement to protect the freedom to speak publicly through print in eighteenth-century Germany, which he had situated at the heart of enlightenment practice.¹⁰¹

The medium of the book was understood by Kant to be fundamental to the emancipatory practice of enlightenment. And yet, in the 1784 essay, the book was first figured as a threat to individual autonomy and the project of enlightenment that sought to secure it: ‘If I have a book that understands for me, a spiritual advisor who has a conscience for, a spiritual advisor who has a conscience for me, a doctor who decides upon a regimen for me, and so forth, I need not trouble myself at all.’¹⁰² Grouped together with the commanding figures of theology and medicine, the epistemic object was recognised as one of the main adversaries of enlightenment: it inhibited the use of one’s own understanding. Appearing to be an authoritative record of knowledge, a book threatened to divest its reader of the will to participate in the production of other books that mediated the use of public reason. Thus, for Kant, the societal function of the book in eighteenth-century Germany was markedly ambivalent: it was, at once, the friend and enemy of enlightenment culture.

Kant’s suspicion of the book arose alongside the booming print trade of late-eighteenth-century Germany. Like many other parts of eighteenth-century Europe, Germany saw the rapid proliferation of printed books and other literary forms such as pamphlets, newspapers, periodical

¹⁰⁰ *ibid* 18.

¹⁰¹ Barron, ‘Kant, Copyright and Communicative Freedom’, 22.

¹⁰² Kant, ‘An Answer to the Question: What Is Enlightenment? (1784)’, 17. See also Pasanek and Wellmon, ‘Enlightenment, Some Assembly Required’.

journals, encyclopaedias, lexica and bibliographies.¹⁰³ Especially in the latter half of the century, the German literary market was evidently flourishing. Let us consider some indicative statistics in the literature. As estimated by Eltjo Buringh and Jan Luiten van Zanden, the total number of printed books in Germany rose from 98 million in the seventeenth century to 195 million in the eighteenth century.¹⁰⁴ Relying on another dataset, Eckhart Hellmuth and Wolfgang Piereth suggest that more than two-thirds of the total production of German language books in that century were likely to have been published after 1760.¹⁰⁵ Similarly, as Helga Brandes notes, the rapid market expansion was reflected in the catalogues of the Leipzig and Frankfurt book fairs: ‘In 1763, the number of new titles listed in these catalogues had risen since 1721 by 265; during the next forty years from 1763 to 1805 the rate of new titles grew tenfold (2,821 more books appeared in 1805 than in 1763). Around 1740 about 750 new titles entered the market annually; during the 1780s and 1790s there were about 5,000 each year.’¹⁰⁶ Periodical publishing, too, expanded rapidly: as Thomas Broman reminds us, more than 2,000 periodicals were launched between 1765 and 1800.¹⁰⁷ In the 1770s alone, Jeremy D. Popkin notes that there were 718 new periodicals.¹⁰⁸ These statistics on print proliferation reflect the rapidly growing demand for information, which correlated with the rising literacy rates of the German inhabitants and the expansion of the reading public.¹⁰⁹

From the distance of the twenty-first century, the phenomenon of print proliferation in eighteenth-century Germany and its associated increases in readership and literacy might seem to be of transparent advantage to individual growth and societal development. In its time, however, print proliferation was accompanied by much epistemological, cultural and ethical anxiety amongst scholars and writers.¹¹⁰ Disease-related metaphors were used to describe, denounce and caution

¹⁰³ On the proliferation of printed matter in eighteenth-century Europe, see ‘Proliferation’, in *Interacting with Print: Elements of Reading in the Era of Print Saturation*, by The Multigraph Collective (Chicago and London: The University of Chicago Press, 2018), 243–59.

¹⁰⁴ Eltjo Buringh and Jan Luiten van Zanden, ‘Charting the “Rise of the West”: Manuscripts and Printed Books in Europe, a Long-Term Perspective from the Sixth through the Eighteenth Centuries’, *Journal of Economic History* 69 (2009): 417; cited in ‘Proliferation’, 243.

¹⁰⁵ Eckhart Hellmuth and Wolfgang Piereth, ‘Germany, 1760-1815’, in *Press, Politics and the Public Sphere in Europe and North America, 1760-1820*, ed. Hannah Barker and Simon Burrows, trans. Angela Davies (Cambridge: Cambridge University Press, 2002), 71.

¹⁰⁶ Helga Brandes, ‘The Literary Marketplace and the Journal, Medium of the Enlightenment’, in *German Literature of the Eighteenth Century: The Enlightenment and Sensibility*, ed. Barbara Becker-Cantarino (United States of America: Camden House, 2005), 79.

¹⁰⁷ Thomas Broman, ‘Periodical Literature’, in *Books and the Sciences in History*, ed. Marina Frasca-Spada and Nick Jardine (Cambridge: Cambridge University Press, 2000), 225.

¹⁰⁸ Jeremy D. Popkin, ‘Periodical Publication and the Nature of Knowledge in Eighteenth-Century Europe’, in *The Shapes of Knowledge from the Renaissance to the Enlightenment*, ed. Donald R. Kelly and Richard H. Popkin (Springer Science & Business Media, 1991), 207.

¹⁰⁹ See Hellmuth and Piereth, ‘Germany, 1760-1815’, 71: ‘In the last third of the eighteenth century, a maximum of 15 percent of the 25 million inhabitants of the German Reich could read; by the end of the century this figure had risen to about 25 per cent’.

¹¹⁰ See Wellmon, *Organizing Enlightenment*, 4.

against print saturation and the excesses of reading. In 1794, the German historian Johann Gottfried Hoche compared the ‘reading addiction’¹¹¹ in Germany to the ‘infectious...yellow fever in Philadelphia’¹¹² of 1793, condemning it as ‘the source of moral degeneracy in children’¹¹³ and of intellectual decline. ‘The mind is savaged instead of being ennobled. One reads without purpose, enjoys nothing and devours everything’.¹¹⁴ It was suggested that the indiscriminate, excessive reading habits of the German literate public achieved nothing other than self-abasement and civilisational decline. Similarly, in 1795, the German scholar and publisher Johann George Heinzmann condemned the rampant circulation of printed matter (and the incessant chatter about them) as ‘the plague of German Literature’.¹¹⁵ Print proliferation was adversely assessed as involving the virulent fetishisation of books as commodities serving no desirable end.

In so distrusting the book for having displaced its reader as the agent and subject of knowledge, Kant contributed to the growing suspicion amongst his contemporaries that knowledge had been reduced to fungible commodities. His more critical intervention, however, was to call for the re-appropriation of print as an enlightenment technology. Rather than continuing to fetishise books and other textual forms as commodities whose indiscriminate consumption merely concealed one’s concomitant objectification, Kant argued that persons should reclaim their autonomy over and through the medial object. Apprehended as an optical medium that relayed a speech necessarily spoken in the author’s name, the book materially afforded the public use of reason that served the proper *telos* of human emergence from immaturity. Print publishing was the mediated process by which one used one’s own reason, spoke in one’s own name, and released oneself from a captive state of reliance on another. The apparent surfeit of books and texts was to be addressed not by condemning nor by abandoning print technology, but by purposefully redirecting it to these human-centred ends.

We have suggested that Kant’s 1784 essay on enlightenment responded not only to the political affairs of eighteenth-century Germany, but also to the rapidly evolving medial situation. Recent and contemporary enlightenment scholars such as Franco Venturi have read Kant’s essay as advancing a ‘philosophical interpretation of the German *Aufklärung*’¹¹⁶ that proceeded by tracing

¹¹¹ Johann Gottfried Hoche, *Vertraute Briefe über die jetzige Lesesucht und über den Einfluß der-selben auf die Verminderung des häuslichen und öffentlichen Glücks*. (‘Intimate Letters: The Current Reading Addiction and Its Influence on the Reduction of Domestic and Public Happiness’) (Hanover: Ritscher, 1794); translation from ‘Proliferation’, in *Interacting with Print: Elements of Reading in the Era of Print Saturation*, by The Multigraph Collective (Chicago and London: The University of Chicago Press, 2018), 252.

¹¹² ‘Proliferation’, 252.

¹¹³ *ibid.*

¹¹⁴ *ibid.*

¹¹⁵ Johann Georg Heinzmann, *Appel an Meine Nation: Über die Pest der deutschen Literatur* (‘A Plea from My Nation: On the Plague of German Literature’) (Bern, 1795).

¹¹⁶ Venturi, *Utopia and Reform in the Enlightenment*, 1.

the idea of enlightenment to its origins in Roman antiquity. As the argument goes, it was from Horace's Epistle II, Book I, *Ad Lollium*, that Kant retrieved the phrase *sapere aude* and transposed it to eighteenth-century Germany as the motto of enlightenment. According to Venturi, Kant's bias towards the history of ideas led to the philosopher's neglect of the political realities in which enlightenment was practised. However, as James Schmidt has rightly pointed out, such a treatment of Kant's essay ironically suppressed those passages and dimensions of Kant's essay that suggest it to be profoundly involved in the politics of its time.¹¹⁷ For Kant's concept of the public use of reason effectively conveyed the necessity for persons, civil servants included, to make use of their own reason—in their capacity as scholar-authors—to critically assess their socio-political situation. As we have further noted, Kant's concept was premised on an inversion of the commonplace distinction between private and public reason that King Frederick II had used to justify limiting the freedom of laypersons to critique the actions of public figures. In so opposing the censorious sovereign edict, Kant's essay critically engaged with late-eighteenth-century German politics.

Nonetheless, as we have noted, Kant's essay also responded to the troubling phenomenon of print proliferation in Germany and Europe at large. To address the glut of printed books and other textual forms, Kant proposed a rehabilitated understanding of the book as the medium of enlightenment. Not so much a fungible commodity, the book was a crucial technology that afforded the public use of reason and the human being's emergence from immaturity. Similarly attentive to the rapidly evolving medial conditions of the European Enlightenment, contemporary media and literary scholars such as Clifford Siskin and William Warner have sought to rethink the Enlightenment as 'an event in the history of mediation'.¹¹⁸ The singularity of the Enlightenment was to be found in the communicative media, practices and institutions in which it occurred. 'By apprehending Enlightenment as an event in the history of mediation, we are arguing that one cannot disentangle the phenomenon called Enlightenment from the particular forms and genres, the associational practices, and the protocols first developed in the long eighteenth century.'¹¹⁹ As the scholars further noted, the booming book trade had been widely discussed in eighteenth-century Europe. For Kant, print proliferation was to be critically appropriated and understood as part of the mediated process of 'enlightenment', whose meaning Johann Friedrich Zöllner had—in a footnote—invited other readers of the *Berlinische Monatschrift* to clarify.¹²⁰

¹¹⁷ Schmidt, 'Misunderstanding the Question: "What Is Enlightenment?": Venturi, Habermas, and Foucault', 43–44.

¹¹⁸ Clifford Siskin and William Warner, 'This Is Enlightenment: An Invitation in the Form of an Argument', in *This Is Enlightenment*, ed. Clifford Siskin and William Warner (Chicago and London: The University of Chicago Press, 2010), 1.

¹¹⁹ *ibid.* 22.

¹²⁰ 'J. F. W. Zöllner: Ist es rathsam, das Ehebündniß nicht ferner durch die Religion zu sancieren? (1783)'. See chapter 2, 'Two Ways of Looking at a Printed Book'.

Unlike his more monumental works, Kant's successive interventions in the discourse surrounding print proliferation did not bear the form of a philosophical treatise. Rather, it was in the genre of the periodical essay—particularly essays published in the *Berlinische Monatsschrift*—that Kant advanced his concept of the public use of reason and the legal regime to protect it. For a long time, the fields of book history and print culture had largely focused on the medium of the book and its surrounding practices. But perhaps attesting to the recent emergence of 'periodical studies',¹²¹ there are now multiple histories of the periodical that address the specificities of the genre. Often taken as a starting point in these accounts is a set of analytical differences between the two textual forms, one of which concerns their respective temporal structures. Whereas the modern book is broadly understood as a relatively self-contained publication that is more or less complete by the time of its appearance before the reader (subject, of course, to qualifications or complications, such as the possibility of new editions), the periodical is known to be published in 'continuing serial form'.¹²² Our contemporary understanding of the academic journal as consisting of regularly published issues of articles and other texts, such as letters and book reviews, substantially coheres with the German historian Joachim Kirchner's definition of the modern periodical:

Seventeenth- and eighteenth-century periodicals were founded as publications, intended to continue for an unlimited period, to be published with more or less regular frequency, each publication meant for a generally limited group of readers, multiplied mechanically and in such a manner that the single issues are recognizable as (periodically) appearing parts of a uniformly edited entity, and striving after varied contents within their own specialized professional or scientific field.¹²³

These expectations and features -- continuity and regularity in publication, the use of print technology for its mass reproduction and relay to subscribed readers, and the editing of issues that include a variety of contents even as they participate in some whole -- typically define the periodical genre. In more recent scholarship, further distinctions have been made between the periodical and other textual forms in terms of authorship and topicality. Thomas Broman notes that while the authored monograph is often presented as dominated by 'a single authorial voice',¹²⁴ each periodical issue 'contains a multiplicity of voices that sometimes speak to each other, sometimes

¹²¹ Sean Latham and Robert Scholes, 'The Rise of Periodical Studies', *The Modern Language Association of America* 121, no. 2 (2006): 517–31.

¹²² Popkin, 'Periodical Publication and the Nature of Knowledge in Eighteenth-Century Europe', 203.

¹²³ Joachim Kirchner, *Das deutsche Zeitschriftenwesen: seine Geschichte und seine Probleme*, vol. 1 (Wiesbaden: Harrassowitz Verlag, 1958), 32–33; translation from Wilmont Haacke, 'German Periodicals--Their Historiography and Sociography', *International Communication Gazette* 13, no. 3 (1967): 243.

¹²⁴ Broman, 'Periodical Literature', 226.

to other writings, and sometimes to no one in particular'.¹²⁵ And while newspapers are seen as 'wholly topical and transfer their attention to the next matter of interest with every issue',¹²⁶ periodicals tend to evidence greater commitment to their selected topics, using each as 'the occasion for more sustained discussion and reflection'.¹²⁷

Notwithstanding these apparent generic differences between books, newspapers and periodicals, a closer look at some critical studies would suggest the historical evolution of these textual forms to be deeply intertwined. Kirchner's history of German periodicals from the late seventeenth century to the turn of the twentieth century privileged as its starting point the 1665 launch of the French *Journal des Sçavans*, which continues to be seen as the first learned journal in Europe.¹²⁸ But it is now also acknowledged that the periodical was anticipated by other handwritten and printed texts that similarly embodied its defining characteristics of seriality and periodicity. In pre-histories of the periodical, it is not the codex—and its gradual succession of the two-handed scroll from around the second century AD¹²⁹—that claims priority. Rather, Jeremy Popkin notes that, as early as 1540, a rudimentary form of the periodical—a regularly printed list of commodities traded in the Antwerp market—had been in circulation.¹³⁰ Unlike the eighteenth-century periodical, that early price list was not fully printed: the current prices of the printed index of commodities were handwritten.¹³¹ Nonetheless, it bore the salient features of periodicity and publicness in its dissemination of useful knowledge. These features would be re-embodied by the first political newspapers to appear in early-seventeenth-century Europe—at least two of them appeared in Germany by 1609.¹³² Those fully printed texts organised contemporary events in chronological sequences and were sold to the reading public. More so than the early price lists, the newspapers 'systematized the collection and organization of data about the political world,'¹³³ turning apparently random flows of information into more coherent, more intelligible forms of knowledge about the world in which their readers inhabited. Their regular appearance probably helped foster a greater sense of order in seventeenth-century Europe than did the sixteenth-century news sheets or broadsides, which appeared far more sporadically.¹³⁴ The sense-making enterprise would later be joined by learned journals, such as the *Journal des Sçavans*, the English *Philosophical Transactions* (also from 1666), the Italian *Giornale de' letterati* (from 1668), the Latin *Acta*

¹²⁵ *ibid.*

¹²⁶ *ibid.*

¹²⁷ *ibid.*

¹²⁸ See Haacke, 'German Periodicals--Their Historiography and Sociography', 237.

¹²⁹ See Vismann, *Files*, 40–43.

¹³⁰ Popkin, 'Periodical Publication and the Nature of Knowledge in Eighteenth-Century Europe', 204–5.

¹³¹ *ibid.* 212.

¹³² *ibid.* 205.

¹³³ *ibid.*

¹³⁴ Broman, 'Periodical Literature', 227.

Eruditorum (from 1682) and the German *Monats-Gespräche* (from 1688), along with entertainment magazines, such as the French *Mercure galant* (from 1672). The periodical genre would continue to diversify in topics of interest and multiply, both in titles and individual output, across the eighteenth century and beyond. Some major categories of eighteenth-century journals include moral weeklies, women's journals, and review journals.¹³⁵ There were not only general magazines that dealt with a wide range of subjects, but also specialist journals that focused on some, including 'theology, philosophy, law, medicine, education, natural sciences, economics, music, architecture and military science'.¹³⁶ As Hellmuth and Piereth have noted, the *Berlinische Monatschrift* was one of the late eighteenth-century 'historico-political journals'¹³⁷ that, notwithstanding its varied contents, engaged closely with political topics such as the question of enlightenment.

Like the glut of books in the eighteenth-century, the contemporaneous growth in periodicals evidenced a heightening demand for reading materials. Such an expansion of the literary market has been attributed to a coalescing nexus of historical changes. As we have previously noted, there was a clear rise in the literacy rates of eighteenth-century Germany and other parts of Europe, which translated into a widening of the reading public. 'Around 1700 only 5 percent of the German population or approximately 80,000 to 85,000 people are estimated to have been literate, but by 1800 we count between 350,000 and 550,000 potential readers (or an increase of about 25 percent.'¹³⁸ Further, Germany might have experienced a sort of 'reading revolution'¹³⁹ or fundamental alteration in reading habits that intensified the demand for a wider variety and larger quantity of materials. As Rolf Engelsing's hypothesis went, the literate public shifted from an intensive reading of a relatively limited selection of texts to an extensive reading of a greater number of varied texts. Engelsing's study has been criticised for exaggerating the extent of the shift.¹⁴⁰ But if such an alteration in reading habits did happen, it would probably have facilitated the popularisation and diversification of the periodical genre.

Though similarly riding on the rising demand for reading materials, the periodical genre has flourished under certain economic conditions that rendered periodical publishing more successful than book publishing in some ways. As commonly noted by Popkin, Broman and Adrian Johns, the successive launches of eighteenth-century journals, however short-lived, were perhaps partly owed to the market assessment that periodical publishing tended to be less risky an enterprise than

¹³⁵ For a study of these periodical genres, see Brandes, 'The Literary Marketplace and the Journal, Medium of the Enlightenment'.

¹³⁶ Hellmuth and Piereth, 'Germany, 1760-1815', 72.

¹³⁷ *ibid.*

¹³⁸ Brandes, 'The Literary Marketplace and the Journal, Medium of the Enlightenment', 80.

¹³⁹ Rolf Engelsing, *Der Bürger als Leser: Lesergeschichte in Deutschland 1500-1800* (Stuttgart: J. B. Metzler, 1974); translation from Popkin, 'Periodical Publication and the Nature of Knowledge in Eighteenth-Century Europe', 208.

¹⁴⁰ *ibid.*

book publishing. In contrast to the uncertainties surrounding the profitability of publishing a novel or monograph, the qualities of standardisation and repetition in content and format of consecutive issues in any periodical, and the promise of a steady flow of income from subscribers, provided greater assurance of its commercial viability.¹⁴¹ For printing houses, subscription arrangements ensured a consistent stream of work and payment: unlike in the case of books, master-printers did not have to wait for payments from authors only at the end of long projects, but could rely on more frequent payments based on the periodicity of journal issues to keep the printing houses running.¹⁴² Further, as Johns has suggested, periodicity could have helped mitigate some consequences of unauthorised reprinting: for instance, the losses suffered by the reprinting of any particular issue could be recouped in later issues.¹⁴³ The temporal structure of the periodical genre suited the economic demands of eighteenth-century publishing and printing, making it a promising venture for the participants in the book trade. It might even have inspired the printing and selling of certain books in instalments or by subscription, such as multi-volume encyclopaedias.¹⁴⁴

In the light of Broman's recent study of the financial records of the Thurn und Taxis Post, which was one of the main postal systems that distributed and sold periodicals to subscribers in eighteenth-century Germany, we can suggest that the expansion of the periodical trade was materially supported by the postal infrastructure that relayed communications across the Holy Roman Empire.¹⁴⁵ The very emergence of newspapers and periodicals depended on the prior establishment of postal routes in Europe during the early sixteenth century. The postal network not only allowed the exchange of personal, commercial, and political correspondences, but also the production and distribution of handwritten newsletters such as the Fugger newsletters (1568-1604) that anticipated the first fully printed political newspapers of the seventeenth century.¹⁴⁶ Following their invention, printed newspapers and periodicals could not only reach their reader-subscribers by post, but also be sold and distributed at local post offices. By the late-eighteenth-century, German postmasters, such as those of the Thurn und Taxis Post, participated in the lucrative periodical business by contracting with publishers to distribute and sell them at local offices.¹⁴⁷ For example, with respect to the 1783 launch of a new periodical, *Wöchentliche Nachrichten*

¹⁴¹ Popkin, 209; Broman, 'Periodical Literature', 234.

¹⁴² Adrian Johns, 'Miscellaneous Methods: Authors, Societies and Journals in Early Modern England', *The British Journal for the History of Science* 33, no. 2 (2000): 162.

¹⁴³ *ibid* 164.

¹⁴⁴ Popkin, 'Periodical Publication and the Nature of Knowledge in Eighteenth-Century Europe', 209.

¹⁴⁵ Broman, 'The Profits and Perils of Publicity: Allgemeine Literatur-Zeitung, the Thurn Und Taxis Post, and the Periodical Trade at the End of the Eighteenth Century'.

¹⁴⁶ Broman, 'Periodical Literature', 227.

¹⁴⁷ Broman, 'The Profits and Perils of Publicity: Allgemeine Literatur-Zeitung, the Thurn Und Taxis Post, and the Periodical Trade at the End of the Eighteenth Century', 266–67.

vom Handel ('Weekly Trade News'), the post office in Gotha received about a quarter of the revenues for contributing towards the periodical's subscription and distribution.¹⁴⁸ Hence, the expansion of the periodical trade could be traced to the postal systems that operated as the intermediaries and channels between publishers and readers.

Whereas eighteenth-century books substantially relied on the less mobile spaces of bookshops and book fairs for their trade, the *Berlinische Monatsschrift* and other periodicals could be more readily circulated through the same postal infrastructure that afforded the emergence of the preceding lightweight forms—the handwritten newsletters and printed newspapers. In so identifying this closer proximity of the periodical to the newspaper than the book, we move closer to seeing the periodical's distinctive place in the German Enlightenment. Recall that, for Kant, it was on the basis of printed matter that the public use of reason proceeded. Based on the prominence of the book in Kant's writings on enlightenment and author's rights, we suggested that he might have considered the book to be the privileged medium of enlightenment. And yet, it was in the form of the periodical essay—an essay in the *Berlinische Monatsschrift*—that Kant advanced his perspective on enlightenment. Given its continuous, regular appearance before the public—a periodic rhythm prescribed by its temporal structure, and materially enabled by the postal infrastructure of postal routes, local post offices, and postmen—could the periodical not, in fact, be the 'medium of the Enlightenment *par excellence*'?¹⁴⁹

There is much in the literature suggesting the critical contributions of periodicals, especially the *Berlinische Monatsschrift*, to Kant's understanding of enlightenment. As Popkin has suggested, in its tendency to reach out to the broader reading public and beyond a narrow circle of intellectuals, the periodical genre suited the enlightenment ethos of subjecting knowledge to public scrutiny espoused by Kant (and, later, by Habermas): 'Even more than the book, which might languish unread, the journal was the chosen vehicle for this public debate.'¹⁵⁰ The avoidance of philosophical jargon in Kant's essay contributions to the *Berlinische Monatsschrift*, as prescribed by its format as a popular journal, would have facilitated its reading by scholars and non-scholars alike. From its inception, the *Berlinische Monatsschrift* was envisioned by its editors, Friedrich Gedike and Johann Erich Biester, as an enlightenment medium – that is, as the means by which 'to spread useful enlightenment and to banish pernicious errors and enterprises of unmeritorious conviction'.¹⁵¹ As observed by John Christian Laursen, Biester frequently reiterated the journal's

¹⁴⁸ *ibid* 266–67.

¹⁴⁹ Hellmuth and Piereth, 'Germany, 1760-1815', 72.

¹⁵⁰ Popkin, 'Periodical Publication and the Nature of Knowledge in Eighteenth-Century Europe', 211.

¹⁵¹ See Friedrich Gedike and Johann Erich Biester, 'Vorrede', Münchener Digitalisierungszentrum Digitale Bibliothek, 1783, accessed 30 April 2022, <https://www.digitale->

role in critical publicity: “Candidness was ever its character; the spread of freedom of thought...was its goal; the undoing of the chains of untruth, the recovery of the right to one’s own investigations and one’s own thinking were often in different disguises, its object.”¹⁵² Further, as James Schmidt and others have demonstrated, the journal was closely affiliated with the *Berliner Mittwochsgesellschaft* (‘Berlin Wednesday Society’), a secret society committed to enlightening the public, in which the editors participated as members.¹⁵³ Though strategically concealing their weekly meetings from the public, the Society relied on the journal to broadcast their findings.¹⁵⁴ As noted by Brad Pasanek and Chad Wellmon, many of the lectures that opened those meetings were later published in the *Berlinische Monatsschrift*.¹⁵⁵ One of these reworked pieces was Moses Mendelssohn’s response to the question of enlightenment in the September 1785 issue, which was based on the lecture delivered at a meeting in May earlier that year.¹⁵⁶ Relayed to the subscribers across late-eighteenth-century Germany, the monthly periodical based in Berlin, worked to inform and structure ‘the entire public of the *world of readers*’,¹⁵⁷ directing them towards a print-based culture of public debate.

The postal infrastructure materially enabled periodicals to operationalise the principle of publicity, that is, the public use of reason that Kant theorised as the practice of enlightenment. Through the December 1784 issue of the *Berlinische Monatsschrift*, Kant could address the phenomenon of print proliferation—which arose amidst convergent historical changes such as the increase in literacy rates and shift in reading habits. The glut of books and other printed matter, which threatened to dispossess readers of their agency, was to be managed through the exercise of public use. The periodical essay, and the *Berlinische Monatsschrift* at large, were a technology by which to regulate what Chad Wellmon has called the ‘information overload’¹⁵⁸ of late eighteenth-century Germany. Enlightenment periodicals of the sort served to critique and control the

sammlungen.de/de/view/bsb10926840?q=%28Berlinische+Monatsschrift.+1.+1781%29&page=8,9; my translation.

¹⁵² Norbert Hinske and Michael Albrecht, *Was ist Aufklärung? Beiträge aus der Berlinischen Monatsschrift* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1977), 318; translated and cited in John Christian Laursen, ‘The Subversive Kant: The Vocabulary of “Public” and “Publicity”’, in *What Is Enlightenment? Eighteenth-Century Answers and Twentieth-Century Questions*, ed. James Schmidt (Berkeley and Los Angeles, California: University of California Press, 1996), 263.

¹⁵³ James Schmidt, ‘Introduction: What Is Enlightenment? A Question, Its Context, and Some Consequences’, in *What Is Enlightenment? Eighteenth-Century Answers and Twentieth-Century Questions*, ed. James Schmidt (Berkeley and Los Angeles, California: University of California Press, 1996), 3; Pasanek and Wellmon, ‘Enlightenment, Some Assembly Required’.

¹⁵⁴ See James Schmidt, ‘The Question of Enlightenment: Kant, Mendelssohn, and the *Mittwochsgesellschaft*’, *Journal of the History of Ideas* 50, no. 2 (1989): 272.

¹⁵⁵ Pasanek and Wellmon, ‘Enlightenment, Some Assembly Required’.

¹⁵⁶ Moses Mendelssohn, ‘On the Question: What Is Enlightenment? (1784)’, in *What Is Enlightenment? Eighteenth-Century Answers and Twentieth-Century Questions*, ed. and trans. James Schmidt (Berkeley and Los Angeles, California: University of California Press, 1996), 53–57; see Schmidt, ‘Introduction: What Is Enlightenment? A Question, Its Context, and Some Consequences’, 3.

¹⁵⁷ Kant, ‘An Answer to the Question: What Is Enlightenment? (1784)’, 18.

¹⁵⁸ Wellmon, *Organizing Enlightenment*, 4.

saturation of books. Other types of periodicals, such as review journals, too, acted as critical tools for readers to differentiate between books of varying qualities.¹⁵⁹ Yet, these periodicals could have performed their regulatory functions only by adding to the vast quantity of printed matter and exacerbating the phenomenon of print proliferation. A version of this paradox was noted in the editors' preface to the first issue of the *Berlinische Monatsschrift*: 'Among the excellent, good, mediocre, and bad periodicals with which our fatherland is enriched, endowed, flooded, and afflicted, our *Berlinische Monatsschrift* now also appears.'¹⁶⁰ Nonetheless, as the editors recognised, the paradox did not necessarily announce the failure of their enlightenment goal. Rather, it pointed to the preceding historical conditions—political, economic, and medial-material conditions—in which the periodical arose, and which the periodical sought to reconfigure.

How the Periodical Turned into Books

If we juxtapose the 'first' page of Kant's 'original' 1785 essay with that of the translation in *The Cambridge Edition of the Works of Immanuel Kant*, we shall see some of the past paratextual features that were not carried over into the contemporary English text.¹⁶¹ For Anglophone readers, one of the most jarring differences might concern their typefaces, the significance of which would be explored in our following chapter.¹⁶² For now, let us attend to two other sets of paratexts that are no less instructive. In the German essay, between the main textual body and the footnote, we can identify a couple of apparently displaced markings along an invisible line that bibliographers call the 'direction line'.¹⁶³ At the far-right of the direction line, we find the last word of the page's main text, *wie* ('how'), which has been dropped to that corner from the line above it. If we turn to the next page, we shall find a repetition of the word *wie*, from which the main text continues. The pattern continues across all fifteen pages of Kant's essay, with the solitary last word of each page in the direction line mirroring the first word of the subsequent page, as if anticipating the latter's arrival. Indeed, Kant's essay was, in this sense, foreseen in and by the periodical contribution before it: *1. An einen jungen Dichte* ('To a Young Poet') by Justus Möser. In the May 1785 issue of

¹⁵⁹ See Broman, 'Periodical Literature', 230–36.

¹⁶⁰ See Gedike and Biester, 'Vorrede'.

¹⁶¹ See Immanuel Kant, 'Von der Unrechtmäßigkeit des Büchernachdrucks', Münchener DigitalisierungsZentrum Digitale Bibliothek, 1785, accessed 30 April 2022, <https://www.digitale-sammlungen.de/de/view/bsb10926844?page=433>; Kant, 'On the Wrongfulness of Unauthorized Publication of Books (1785)', 29.

¹⁶² Whereas the Cambridge edition was printed in the familiar Times New Roman font, the essay in the *Berlinische Monatsschrift* had been set in the Breitkopf Fraktur type that Kant would later endorse in *Der Streit der Fakultäten* ('The Conflict of the Faculties').

¹⁶³ Philip Gaskell, 'The Hand-Printed Book' in *A New Introduction to Bibliography* (New Castle, Delaware: Oak Knoll Press, 2000), 7.

the *Berlinische Monatsschrift*, Kant's essay bore not only its German title, but also its assigned number within the ten publications in the issue: 2. *Von der Unrechtmäßigkeit des Büchernachdrucks*. On the last page of Möser's letter, which is the verso of the leaf before the first of Kant's, we find the marking 2. *Von*. In the same way, the last page of Kant's essay is marked 3. *Der*, which is the first word and serial number of the following contribution: a poem entitled 3. *Der Gefange* ('The Prisoner'). This series of paratexts, which point to and beyond Kant's essay, are called 'catchwords'.¹⁶⁴

As noted by a scholar of medieval literature, Daniel Sawyer, 'page-by-page catchwords'¹⁶⁵ of the sort used in the *Berlinische Monatsschrift* were one of the systems that had emerged in Western Europe during the early days of print for book producers to prescribe and track the physical structures of the books into which manuscripts were made. Books as codices, that is, 'pairs of leaves folded into gatherings or quires',¹⁶⁶ were produced pursuant to these types of functional systems. Even before Johann Gutenberg's mid-fifteenth-century invention of the printing press, earlier practices of writing in the direction line of the verso of the final leaf of a gathering the first word of the recto of the first leaf of the subsequent gathering had been adopted in early medieval Latin books circa 1000.¹⁶⁷ Those early 'gathering catchwords'¹⁶⁸ mostly worked to ensure the gatherings were bound in order. By the time that page-by-page catchwords became more or less standardised as a printing convention around the mid-sixteenth century, the system served at least two functions in addition to its contribution to bookbinding. Before book production arrived at the binding phase, the pages of the text had first to be arranged for printing in a particular sequence on large sheets of paper, after which the printed sheets could be cut and folded into gatherings. This activity of 'imposition'¹⁶⁹ was undertaken by a workman in the printing house, the 'compositor',¹⁷⁰ whose responsibilities also included assembling the requisite printing types. Imposing catchwords helped the compositor ensure the pages were in order. During bookbinding, the catchwords, too, assisted the binder by ensuring the pages were correctly arranged. Further, as Sawyer has suggested, during the reading of the book, these catchwords, by virtue of their repetitive and anticipatory character, would have eased the reader's transition from page to page, especially if the book was read aloud.¹⁷¹

¹⁶⁴ Daniel Sawyer, 'Page Numbers, Signatures, and Catchwords', in *Book Parts*, ed. Dennis Duncan and Adam Smyth (Oxford: Oxford University Press, 2019), 142.

¹⁶⁵ *ibid* 143.

¹⁶⁶ *ibid* 139.

¹⁶⁷ *ibid* 142.

¹⁶⁸ *ibid*

¹⁶⁹ Gaskell, 'The Hand-Printed Book', 5.

¹⁷⁰ *ibid*.

¹⁷¹ Sawyer, 'Page Numbers, Signatures, and Catchwords', 143.

The catchword *wie* is hardly the only paratext that indexed the making of the *Berlinische Monatsschrift*, registering ‘how’ the manuscripts submitted by Kant and other authors to the editors became the printed pages enclosed between covers. To its left, centred within the same direction line, is another marking that reads ‘Cc4’. Unlike the catchword, this paratextual feature does not appear on every page of Kant’s essay, but only on the first two rectos and last three rectos of the leaves that comprise it. The recto of the leaf that comes after that of the first page is marked ‘Cc5’. In the following three leaves, each direction line simply contains a catchword. Only on the rectos of the sixth, seventh and eighth leaves do we find ‘Dd’, ‘Dd2’, and ‘Dd3’ respectively. But like catchwords, this series of markings both precede and succeed Kant’s essay. ‘Cc’, ‘Cc2’, and ‘Cc3’ appear in the opening and closing leaves of Möser’s letter, while ‘Dd4’ and ‘Dd5’ would appear in the third poem and the fourth essay. In the May 1785 periodical issue, catchwords begin from its first contributions, and end with its last. There is no 1. An anticipating Möser’s letter, nor does final page of the issue include any catchword that heralds the June 1785 issue. Catchwords appear within individual issues of the *Berlinische Monatsschrift*, grouping them as relatively self-contained wholes. This second set of serial markings, however, cuts across the six issues that form the first volume of the *Berlinische Monatsschrift* in 1785. For instance, ‘Bb5’ is found in the last contribution to the April issue, and the June issue begins with ‘Ii’, continuing from the last markings of May’s. The volume begins with ‘A’–‘A5’ in the first pieces in the January issue, and ends with ‘Oo’–‘Oo5’ from the last few in the June issue. In bibliography, these markings are called ‘signatures’ or ‘signature marks’.¹⁷²

These signature marks in the German periodical were a hybrid system in which two older modes of sorting the leaves and gatherings of texts met. As Sawyer reminds us, the antecedents date back to well before print culture, the earliest evidence of which arose in late antiquity.¹⁷³ ‘Leaf signatures’,¹⁷⁴ usually comprised of numbers (e.g., 1–5), were used to mark every leaf of the first half of each gathering. On the other hand, ‘gathering signatures’¹⁷⁵ often appeared as a letter (e.g., A–O) or number marked on the recto of the first leaf of each gathering, or on the verso of the last leaf of the gathering. It was in late medieval times that leaf and gathering signatures became combined, marking not just the first and last leaves of a gathering, but also the gathering as part of a codex. The combined form in the *Berlinische Monatsschrift*—identifying gatherings by serial letters from A to O, and from Aa to Oo, and marking leaves from 1–5—dates back to others that were rapidly adopted by print producers during the incunable period. Like the system of

¹⁷² *ibid* 140.

¹⁷³ *ibid*

¹⁷⁴ *ibid*.

¹⁷⁵ *ibid*.

catchwords, the signature series guided the work of binders by prescribing the text's intended binding order. These systems were all the more significant at a time when texts, be they eighteenth-century novels or periodicals, were usually sent for binding only sometime after they had purchased.¹⁷⁶ Eighteenth-century publishers, readers and binders could rely on these systems to have gatherings of leaves assembled into bound codices.

Like other periodicals, the *Berlinische Monatsschrift*, did not reach its subscribers as bound volumes comprised of multiple issues. As its name indicates, the *Berlinische Monatsschrift* was published only once a month, each issue of which would usually have been delivered through the post as stitched gatherings of leaves. Though not yet enclosed in front and back paper boards, these issues would have, to some extent, resembled books in their printed matter. For instance, the May 1785 issue contained not just Kant's essay and nine other contributions, but also the front matter of a title page—including, in chronological sequence, the names of the periodical and editors, its month of issue, an imprint identifying the place of publication and the printing house, and a table of contents—followed by an advertising page. These opening paratexts, along with the internal serial markings of catchwords, signature marks, and page numbers, would have lent some sense of unity to the periodical issue. Indeed, to collate these printed matter as a unit for sale already constitutes an act of binding, inasmuch as doing so defines the issue's boundaries and ascribes value to it.¹⁷⁷ To assemble this issue and the other five from the first half of 1785 into a bound volume, then, is to engage in an act of rebinding: to unravel the 'whole' that it was and form another.

But if we flip to the front matter of the volume comprised of the January-June 1785 issues of the periodical, it would seem that the subscribers needed more than the usual contents represented in the May issue to build the book as a whole. After the flyleaf separating the front paper board from the printed pages, we find on the verso of the first leaf of the text block a portrait-style frontispiece of an eighteenth-century Prussian jurist, Johann Heinrich Casimir von Carmer. The copper-plate engraving consists of a circular frame affixed to a wall, in which depicts a side profile of the head and upper torso of the jurist, as if looking to the reader's left and outside the book. Below the circular frame, engraved in Roman type, are his name and title as King Frederick II's Grand Chancellor. Facing us, on the recto of the next leaf, we find the volume's title page, again specifying the names of the periodical and its editors, the publishing house and place of publishing, and further identifying it as the fifth volume consisting of the sixth issues from January to June 1785. Thereafter, we find a consolidated table of contents, entitled *Inhalt des fünften Bandes*

¹⁷⁶ See 'Binding', in *Interacting with Print: Elements of Reading in the Era of Print Saturation*, by The Multigraph Collective (Chicago: The University of Chicago Press, 2018), 49–65.

¹⁷⁷ *ibid* 51.

(‘Contents of the Fifth Volume’), listing the full contributions of the six issues and their page numbers. Then, instead of the title page, table of contents, and advertising page of the January issue, we see the first contribution to the month’s issue (another piece by Möser), followed by the others. To form the fifth volume, then, the subscriber-reader must have received the book’s own frontispiece, title page, and table of contents.

If we turn to the preface of the very first volume of the *Berlinische Monatsschrift*, we shall learn that these book-making materials had been purposefully given at selected times by Gedike and Biester:

Each month, an issue of six to seven sheets stitched together is published. Six issues make up one volume. With the sixth issue, the main title is given. Our idea as publishers is to occasionally (at least before the first issue of each volume) provide, at no additional price, a clean and faithful copper engraving of a special, deserving man whose image is not yet well known, which would delight us as much as the public.¹⁷⁸

Based on this key editors’ peritext, the frontispiece of Carmer would probably have been received by the January 1785 issue, while the main title and consolidated table of contents should have arrived with the June 1785 issue. From the very beginning of the *Berlinische Monatsschrift*, then, the editors had devised and carried out the plan of encouraging their readers to turn the individual issues into a bound volume by supplying them with these book-making materials every half year. The readers were, thereby, mobilised as participants in the making of each lasting volume of the *Berlinische Monatsschrift*. As well put by Pasanek and Wellmon: ‘The readers then participate in the Enlightenment not least by converting their periodicals into bound books; the serialised *Monatsschrift* providing a kind of kit that a reader could use (in cooperation with a book binder) to collect the individual pieces of the journal into a volume (*ein Band*) that would lend the journal the printed book’s greater sense of stability and heft.’¹⁷⁹

In so enlisting its reader-subscribers as bookmakers through these material means, the *Berlinische Monatsschrift* joined other eighteenth-century periodicals in promoting their own survival and longevity during the age of print proliferation. Rather than being a unique stratagem of Gedike and Biester, the distribution of those sorts of front matter was quite a common practice in periodical publishing. As Popkin has noted: ‘throughout the eighteenth century, journal publishers assumed that readers would bind and preserve the index numbers of their journals: subscribers regularly received title pages, indexes, and sometimes engraved illustrations that had not been included with the number of the journal when it was first sent out but which were intended to be

¹⁷⁸ See Gedike and Biester, ‘Vorrede’; my translation.

¹⁷⁹ Pasanek and Wellmon, ‘Enlightenment, Some Assembly Required’.

bound with it in its definitive form.¹⁸⁰ Becoming a book was one of the material methods by which the periodical sought to overcome its own ephemerality: an obsolescent condition where the value of its printed matter was ceded to, or equated with, that of the innumerable others constituting the ‘plague of German literature’.¹⁸¹ To rebind every six issues of the *Berlinische Monatschrift* into a hard-backed volume that could stand on the shelf for a long time and pulled out for re-reading at any future point was to value it as worthy of storage and retrieval. Gedike and Biester provided the instructions and materials for the individual reader’s revaluation of the received issues, and, in so doing, improved its odds against the very phenomenon of print proliferation that the editors and Kant had identified as the medial-material conditions for their respective interventions.

Catchwords, signature marks, page numbers, title pages, imprints, tables of contents, advertising pages, frontispiece—none of these paratexts were inherited by the English translation of Kant’s essay in *The Cambridge Edition of the Works of Immanuel Kant*. Their excision reflects not so much editorial neglect as the loss of their historical functions. As Genette has noted, paratexts are developed to fulfil particular functions that allow them to present the text as a book. Thus, their lifespans are intimately related to how far they are needed to fulfil these functions: ‘a paratextual element may...disappear, definitively or not, by authorial decision or outside intervention or by virtue of the eroding effect of time.’¹⁸² As books were increasingly sold in bound copies by publishers, and the processes of book production became more standardised and reliable (especially in the age of electronic publishing), catchwords and signature marks were no longer seen as necessary to guide the assembly of books. ‘Their disappearance is a marker of increasing predictability in the book and of the shift of the responsibility for binding from owners to producers.’¹⁸³ Having been transposed from the *Berlinische Monatschrift* to an Anglophone edition comprising ‘all of Kant’s writings on moral and political philosophy’,¹⁸⁴ Kant’s essay now bears its own page numbers, title and intertitle pages, imprints, and table of contents. Instead of the frontispiece of an unfamiliar but important jurist that the editors sought to introduce to the public, we now find another portrait on the book cover—the illuminated head of Kant the author, peering at the dark grounds on which he stood. Following the nineteenth- and twentieth-century development of other mass media such as radio, television, and the Internet, print has long ceased to be the preferred medium for advertising. Many of the ‘prior’¹⁸⁵ and ‘original paratexts’¹⁸⁶—those

¹⁸⁰ Popkin, ‘Periodical Publication and the Nature of Knowledge in Eighteenth-Century Europe’, 206.

¹⁸¹ Heinzmann, *Appel an Meine Nation: Über die Pest der deutschen Literatur*.

¹⁸² Genette, *Paratexts*, 1.

¹⁸³ Sawyer, ‘Page Numbers, Signatures, and Catchwords’, 142.

¹⁸⁴ This is stated in the preface to Kant, *Practical Philosophy* (unpaginated).

¹⁸⁵ The terminology is Genette’s: see *Paratexts*, 5.

¹⁸⁶ Genette, 5.

which had appeared before, within, and/or alongside Kant's essay at the time of its publication—were probably excluded from the contemporary edition because of their perceived obsolescence.

And yet, as we have suggested, these discarded paratexts are valuable in their continuing indexical functions: they point to the print machinery of the German Enlightenment that produced the *Berlinische Monatsschrift*, and which the enlightenment periodical sought to steer. As long recognised in the fields of book history and print culture, books are not the exclusive creations of their authors, but the effects of larger assemblages of technologies, techniques, objects, institutions, and other persons. In Robert Darnton's 'What is the History of Books' (1982), for instance, we find the diagram of a 'communications circuit'¹⁸⁷ through which printed books had tended to pass. In that circuit, authors were located within a series of other industry actors, including publishers, printers, shippers, booksellers, readers, and binders. The actions of those involved persons were, in turn, defined and delimited by particular historical conditions variously called 'intellectual', 'economic', 'social', 'political', and 'legal'. Our study of Kant's essay in the fifth volume of the *Berlinische Monatsschrift* has similarly suggested a decentring of the figure of the author: instead of being simply the material embodiment of an author's 'own intellectual creation', Kant's essay was deeply involved in the historical processes that produced it and other printed matter in eighteenth-century Germany. Its material paratexts evidence the technologically mediated labour of compositors, printers, binders, advertisers, editors, readers, authors, etc. Together with the postal system, these text- and book-making processes participated in the gargantuan print apparatus that mediated the German Enlightenment. It was through the very medium of print that Kant, Gedike, Biester and others sought to clarify and advance public enlightenment, and to strategically intervene in the phenomenon of print proliferation. Authorship in the German Enlightenment was intimately bound up with a broader medial-material assemblage, without which essays, periodicals, and books would not have been possible.

Conclusion

In their history of modern intellectual property law, Brad Sherman and Lionel Bentley suggested that the now-trite treatment of literary works as forms of intangible property (in short, the 'mentality of intangible property'¹⁸⁸) arose during the pre-modern debate over literary property leading up to the decision of *Donaldson v Becket* (1774).¹⁸⁹ Faced with the pressing issue of whether

¹⁸⁷ Robert Darnton, 'What Is the History of Books?', *Daedalus* 111, no. 3 (1982): 68.

¹⁸⁸ Sherman and Bentley, *The Making of Modern Intellectual Property Law*, 10.

¹⁸⁹ 4 Burr. 2408, 98 ER 257; 2 Bro PC 129, 1 ER 837. To be clear, for Sherman and Bentley, the distinction between 'modern' and 'pre-modern' intellectual property law concerned not so much the socio-historical period in which the

authors retained a perpetual property right in their labours at common law that surpassed the fourteen-year term of copyright protection conferred by the Statute of Anne 1710,¹⁹⁰ participants in the debate took opposing positions on the threshold question of the ontological status of literary property. For some who were against the very recognition of literary property, the supposedly incorporeal or intangible nature of authorial labour was cited as preventing any requisite occupancy or possession of the object amounting to the acquisition of title.¹⁹¹ By contrast, those in favour of perpetual literary property claimed that the mental labour invested in authorial creation was, à la Locke's notion of possessive individualism, sufficient to found the author's property right.¹⁹² Occupancy was but an alternative to, if not a subsidiary of, labour as a category that justified the recognition of proprietary rights.¹⁹³ This question regarding the basis on which literary property could or could not be acquired, along with others pertaining to its identification and relation to the public,¹⁹⁴ dealt with the nature of the subject matter of literature and the (im)possibility of literary ownership. Despite their differing takes on whether and how far property may subsist in literature, both positions assume the distinction between mental and manual labour, between the exertions of the mind and body, which similarly defines their understanding of the pertinent subject matter.¹⁹⁵ In the pre-modern and modern phases of intellectual property law alike, literature tends to be understood as consisting in the intellectual efforts of the originating author, which are protected as forms of intangible property.

Our study of Kant's 1785 essay and some of its constitutive paratexts has suggested that literature need not be viewed in intangible nor in proprietary terms. Despite the prevailing emphasis placed on the notion of the authorial speech act in Kantian copyright scholarship, the essay also understood the book to be a printed artefact whose visible marks facilitated its reception by readers. Instead of viewing the book as a material embodiment of an intangible literary work created and owned by its author, Kant perceived it to be an optical medium that operated within a communicative situation, one that recognised authors as persons who relied on the technology to communicate with the public and perform the emancipatory practice of enlightenment. In line

law developed as the doctrinal shift from a 'subject-specific and reactive' mode of treating and regulating the subject matter of protection to one that was more 'abstract and forward-looking': see, especially, Sherman and Bently, *The Making of Modern Intellectual Property Law*, 3–5. For a critique of this periodisation, see Kathy Bowrey, 'Law, Aesthetics and Copyright Historiography: A Critical Reading of the Genealogies of Martha Woodmansee and Mark Rose', in *Research Handbook on the History of Copyright Law*, ed. Isabella Alexander and H. Tomás Gómez-Arostegui (Cheltenham, UK: Edward Elgar Publishing, 2016), 43–44.

¹⁹⁰ The full title: 'An Act for the Encouragement of Learning, by Vesting the Copies of Printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned'.

¹⁹¹ See Sherman and Bently, *The Making of Modern Intellectual Property Law*, 21–24.

¹⁹² *ibid.*

¹⁹³ *ibid.*

¹⁹⁴ *ibid.* 24–25.

¹⁹⁵ *ibid.* 15–18.

with his personal understanding of the author and medial account of the book, Kant's proposed regulatory regime for book publishing eschewed the idiom of property rights and, instead, recognised legitimate publishers as agents contractually empowered by personal authors. Kant's prioritisation of authors and publishers as the main actors and controllers of book production is both deepened and problematised by our study of the essay's paratexts. Both the epitextual background of the German Enlightenment and peritextual features of the periodical essay have directed us to the print machinery of eighteenth-century Germany. The indexed assemblage of print technologies, practices, infrastructures, and actors was the medial-material a priori that afforded the very production and circulation of Kant's essay. Connecting but also preceding authors, publishers and books, this print machinery suggests the terms and doctrines of copyright law to be insufficient to deal with the complexities of the book's emergence. As the myth of the proprietary author is reproduced through the triadic terms of 'work, 'author' and 'originality', copyright law continues to suppress the deep historicity of literary production. To counteract this, we shall attend further to the medial-materialities of the print artefact.

4. Materiality of Type

Introduction

In the previous chapter introduction, we stressed the centrality of authorship to copyright law, taking as our example the originality requirement of the European system as reflected in *Infopaq International A/S v Danske Dagblades Forening*.¹ Literary authors are legally understood as the personal subject whose ‘own creation’ of a literary work acts as the basis for granting the authorial subject an exclusive right of reproduction of the work. However, as suggested in our review of the catchwords, signature marks, front matter and other paratexts of Kant’s essay in the *Berlinische Monatschrift*, the tangible object of the printed book is only produced pursuant to a print machinery – that is, a complex assemblage of actors involved in the coalescing processes of literary production – whose operations are obscured by the author-centric requirement of originality. The legal-proprietary understanding of authorship as original creation suppresses the deep historicity of literary production.

Notwithstanding the importance of authors to copyright law, they are not the only proprietary beneficiaries. Publishers, too, are recognised as holding ownership rights in books. In the United Kingdom, section 1(1) of the Copyright, Designs and Patents Act 1988 (‘CDPA 1988’) defines copyright as a ‘property right’² that subsists not only in ‘original literary, dramatic, musical or artistic works’,³ but also in ‘the typographical arrangement of published editions’.⁴ Under section 8(1) of the same Act, a ‘published edition’ means that of ‘the whole or any part of one or more literary, dramatic, or musical works’, though the House of Lords more recently clarified that the published edition of a newspaper referred to the publication as whole rather than to any of its constitutive articles.⁵ This category of copyright is primarily intended to protect the publisher’s interests rather than the contributing authors’. But curiously, the Act defines the publisher as the ‘author’ of the typographical arrangement of any published edition, ‘the person who creates it’,⁶ as if copyright in published editions were grounded in authorship as the fundamental basis on which the law proceeds.

¹ [2009] ECR I-06569 (Case C-5/08).

² Copyright, Designs and Patents Act 1988, section 1(1).

³ *ibid* section 1(1)(a).

⁴ *ibid* section 1(1)(c).

⁵ See *Newspaper Licensing Agency Ltd v Marks & Spencer Plc* [2001] UKHL 38 (discussed below).

⁶ Copyright, Designs and Patents Act 1988, sections 9(1) and 9(2)(d).

Compared with copyright in the literary work, copyright in typographical arrangement is of more recent origin, first recognised only in the Copyright Act 1956.⁷ As noted in some legal authorities, typographical copyright arose partly in response to contemporaneous technological developments, particularly improvements in optical lithography that eased the reproduction of printed editions.⁸ In the 1952 Report of the Copyright Committee chaired by Sir Henry Gregory, it is recorded that the Publishers Association had proposed the inclusion of copyright in typographical arrangement in the Copyright Act 1956 so as to prevent any ‘unscrupulous competitor’⁹ from reproducing the printed edition of any literary or musical work ‘by photolithography or similar means’.¹⁰ Photographic technology made the production of reprints faster and cheaper than traditional typesetting, and was exploited to reap the benefits of the publisher’s investments in the original edition. Photolithography was referenced in section 15(3) of the Copyright Act 1956, which defined the infringing act of the publisher’s copyright as ‘the making, by any photographic or similar process, of a reproduction of the typographical arrangement of the edition’.¹¹ Though the Publishers Association had pushed for a fifty-year term of protection, the Copyright Committee decided that a twenty-five-year term, which corresponded to that of copyright in gramophone records, films and photographs, would be sufficient.¹² And though persuaded that typographical protection should be granted under the new Act, the Committee did not adopt the exact wording of the Association’s proposed section to be included in the Act, which stated that ‘the first publisher of such first publication [of the typography] shall be deemed the author of the work’.¹³ The perspective on publishers as authors of typographical work nonetheless anticipated the present approach adopted in the CDPA 1988. Under the English copyright system of today, the publisher is an author in the sense that it is to this individual that the creation of the typography is attributed. This existence of such a causal relationship between author and work is the factual basis on which a property right in the typographical arrangement is granted to the publisher.

The co-subsistence of literary and typographical copyright in any printed publication under this expanded rubric of authorship was discussed in *Newspaper Licensing Agency Ltd v Marks &*

⁷ See Copyright Act 1956, section 15.

⁸ See, for example, *Newspaper Licensing Agency Ltd v Marks & Spencer Plc* [2001] UKHL 38, paragraph 5.

⁹ The Copyright Committee of Great Britain, *Report of the Copyright Committee* (Her Majesty’s Stationery Office, 1952), 110, paragraph 306.

¹⁰ *ibid.*

¹¹ Copyright Act 1956, section 15(3). In section 17(5) of the CDPA 1988, a more general definition of ‘making a facsimile copy of the arrangement’ is adopted, suggesting the updated Act’s recognition of more recent technologies such as digital scanning that now facilitate typographical reproduction.

¹² See *Report of the Copyright Committee*, 111, paragraph 309. This accords with the present term of protection: see Copyright, Designs and Patents Act 1988, section 15.

¹³ The proposed section was cited in the *Report* at 111, paragraph 307.

*Spencer Plc.*¹⁴ Tasked to clarify the boundaries of typographical copyright, the House of Lords addressed two main issues, the first being whether a ‘published edition’ referred to the individual articles of a newspaper or to the newspaper as whole; and the second, whether there was any substantial reproduction of the pertinent typographical arrangement that amounted to copyright infringement. A close review of Lord Hoffmann’s leading opinion,¹⁵ particularly the ways in which he addressed both questions, shall give us a working sense in which copyright law approaches the literary artefact and its material form. It would further pave the way for this chapter’s intervention, which is to consider how the materiality of the printed work, particularly that of the typeface in which it was set, invites us to reassess the sufficiency of the law’s treatment of literature as objects of intellectual property.

In *Newspaper Licensing Agency Ltd v Marks & Spencer Plc*, the relevant genre of publication was that of newspapers, particularly national and regional newspapers.¹⁶ As Lord Hoffman noted, each newspaper was understood as comprised of multiple objects in which different categories of copyright could subsist at the same time.¹⁷ The individual articles were ‘literary works’ that, if ‘original’, were protected under section 1(1)(a) of the CDPA 1988. The same section provides for the protection of original ‘artistic works’, which would have covered any original drawings and photographs in the newspaper. With respect to the dispute at hand, however, the pertinent aspect of the newspaper was its typographical layout, the protection of which was prescribed under section 1(1)(c) of the same Act. Typographical copyright in newspapers had been assigned by their publishers to the plaintiff-appellant, a company that dealt with copyright licensing on their behalf. The plaintiff-appellant had issued a licence to a press cutting agency for the copying of portions of those newspapers, the latter service of which had been contractually obtained by defendant-respondent. However, the defendant-respondent had made further copies of those cuttings and distributed them to its employees without any license to do so. The plaintiff-appellants claimed that copyright in the typographical arrangement of the newspapers, specifically, the typographical arrangement of individual articles in them, had been infringed. The first issue was whether the notion of ‘published edition’ whose typographical arrangement was protected under the CDPA 1988 referred to the newspaper as a whole or to the individual articles. Did the publisher hold copyright in the typographical arrangement of each article of the newspaper, or only in the layout of the entire publication? If the former was true, any photocopy of a press cutting would likely

¹⁴ [2001] UKHL 38.

¹⁵ The other four Lords agreed with Lord Hoffmann’s reasoning and ruled with it.

¹⁶ The High Court judgement provides more details about the newspapers: see *Newspaper Licensing Agency Ltd v Marks & Spencer Plc* [1999] R.P.C 536, 539, paragraph 5.

¹⁷ See *Newspaper Licensing Agency Ltd v Marks & Spencer Plc* [2001], paragraph 4.

mean a ‘facsimile copy’ of the typographical arrangement of the article that constitutes copyright infringement under section 17(5) of the CDPA 1988, subject to the possibility of changes made to its layout to fit the A4 dimensions of the printing paper; if the latter, there would arise the further question of whether the replicated typography was a ‘substantial part’ of the layout of the entire newspaper, the substantiality requirement for infringement being referenced in section 16(3)(a).¹⁸

For both the High Court judge, Lightman J, and the dissenting judge in the Court of Appeal decision, Chadwick LJ, copyright in typographical arrangement materially aligned with copyright in literary work in the sense that it was in the layout of each literary work that the publisher’s copyright subsisted.¹⁹ Insofar as each article of the newspaper constituted a ‘literary work’, it also constituted a distinct ‘published edition’ whose typographical arrangement was protected under the CDPA 1988. In support of this position, Lightman J cited Walton J’s decision in *Machinery Market Ltd v Sheen Publishing Ltd*²⁰ as an agreeing precedent. The earlier case concerned advertisements in a trade magazine published by the plaintiff that had been photographically reproduced without permission in another rival magazine published by the defendant. In addressing the question of whether the defendant had infringed any typographical copyright provided under section 15 of the Copyright Act 1956, Walton J held that each advertisement was a ‘literary work’ whose printing in the magazine constituted a ‘published edition’ within the meaning of that section. Since only the head and foot of the original advertisements had been altered in their reproduced forms, there was a substantial copying of the typographical arrangement of each advertisement that amounted to copyright infringement. Affirming the precedent, Lightman J held in the present case that copyright subsisted in the typographical arrangement of each newspaper article, and the typographical arrangements were substantially reproduced by the defendant in the photocopies distributed to its employees.

When the case reached the Court of Appeal, Chadwick LJ diverged from the majority reversal of Lightman J’s decision, agreeing instead with the latter’s construction of typographical copyright as attached to the individual literary work within the newspaper. Nonetheless, less reliance was placed on *Machinery Market Ltd v Sheen Publishing Ltd*, which Chadwick LJ found to lack evidence of the Court’s substantial engagement with the possibility that the pertinent layout might be that of the entire publication rather than that of the individual contribution.²¹ According to the majority opinions by Gibson LJ and Mance LJ, the intended legislative meaning of ‘published edition’ was

¹⁸ See *ibid* paragraph 8.

¹⁹ *Newspaper Licensing Agency Ltd v Marks & Spencer Plc* [1999] R.P.C 536, 539–40, paragraph 6; *Newspaper Licensing Agency Ltd v Marks & Spencer Plc* [2001] Ch 257, 273–78, paragraphs 50–68.

²⁰ [1983] F.S.R. 431. See *Newspaper Licensing Agency Ltd v Marks & Spencer Plc* [1999] R.P.C 536, 542, paragraph 13.

²¹ *Newspaper Licensing Agency Ltd v Marks & Spencer Plc* [2001] Ch 257, 277, paragraph 64.

that of its ‘natural’²² and ‘commercial’²³ meaning, which they understood as the entire product made and sold by the publishers. As the latter put it, ‘What is on this basis protected corresponds with the commercial product which the publisher creates, publishes and sells, that is the whole edition’.²⁴ Opposing their interpretation, Chadwick LJ based his interpretation of section 8(1) of the CDPA 1988 on a definition of ‘edition’ in the *Oxford English Dictionary*: just as ‘edition’ was defined as ‘[one] of the differing forms in which a literary work...was published’,²⁵ so too did ‘published edition’, in its reference to ‘one or more literary...works’, extend to the entire publication *and* to each of the constituent works. For Chadwick LJ, it would be ‘artificial’²⁶ to hold that each of the literary works of a newspaper did not, in itself and collectively, constitute a ‘published edition’. For instance, where a musical score and lyrics were published as a single choral work, there would be three published editions with their respective typographical arrangements: the published edition of the score as a musical work, that of the lyrics as a literary work, and that of the combined work.²⁷ By analogy, the multiple literary and artistic works published as part of any newspaper would imply multiple typographical copyrights, with those of the individual articles subsisting alongside that of the newspaper as a whole.

Overruling the positions adopted by the two judges of the lower courts, Lord Hoffmann delinked the concept of published edition from that of the literary work, arguing that the statutory definition evidenced the lack of any ‘necessary congruence’²⁸ (nor any ‘necessary correlation’²⁹) between the two concepts. Unlike Chadwick LJ, Lord Hoffmann did not think that the phrase ‘one or more literary...works’ in the definition of published edition implied any legislative recognition of the constituent work as an object in which typographic copyright subsisted. Rather, the same phrase was read as affirming that the published edition could well comprise multiple works, which meant it exceeded the proportions of the individual work and referred to the published product as a whole. Echoing the majority judges of the Court of Appeal, Lord Hoffmann adopted what he understood to be the meaning of term as used in the publishing industry: ‘The edition is the product, generally between covers, which the publisher offers to the public’.³⁰ Parliament intended for the term ‘published edition’ to mean ‘what a publisher would understand by an edition’,³¹ which was not that of a literary work within a larger publication. With

²² *ibid* paragraph 19.

²³ *ibid* paragraph 85.

²⁴ *ibid*.

²⁵ *ibid* paragraph 50.

²⁶ *ibid* paragraph 62.

²⁷ *ibid* paragraph 61.

²⁸ *Newspaper Licensing Agency Ltd v Marks & Spencer Plc* [2001] UKHL 38, paragraph 11.

²⁹ *ibid* paragraph 14.

³⁰ *ibid*.

³¹ *ibid* paragraph 16.

respect to each newspaper whose parts had been photocopied by the defendant-respondent, then, only one typographical copyright (namely, typographical arrangement of the publication in its entirety) had been vested in the publisher and later assigned to the plaintiff-appellant.

In so arriving at this interpretation of ‘published edition’, Lord Hoffmann followed Wilcox J’s decision in *Nationwide News Pty Ltd v Copyright Agency Ltd* (1995) 128 ALR 285, a case before the Federal Court of Australia that had adopted the same ‘holistic’ interpretation of newspapers as ‘published editions’.³² In that case, educational institutions had photocopied items in newspapers, magazines and other periodicals, raising a series of questions concerning typographical copyright (or, in the Court’s preferred term of reference, ‘published edition copyright’) provided under a similar set of sections under the Australian Copyright Act 1968 that were based on section 15 of the UK Copyright Act 1956.³³ Citing the 1952 Report of the Copyright Committee and other related Australian legislative papers in support of the view that the Bill was intended to capture the mischief of the copying and piracy of *entire* products through photographic means that publishers have ‘gone through great trouble and expense to produce’,³⁴ Wilcox J reached the conclusion that a published edition referred to the publication as a whole rather than any particular item within it. It further meant that the reproduction of any item would not infringe published edition copyright unless the item constituted a substantial part of the typographical work. As Lord Hoffmann would likewise do, Wilcox J disagreed with Walton J’s view in the preceding case of *Machinery Market Ltd v Sheen Publishing Ltd*, noting that the latter was ‘expressed in an urgent *ex tempore* judgement without reference to the genesis of s.15 of the United Kingdom Act.’³⁵

Before reflecting on what Lord Hoffmann’s reply to the first definitional issue reveals about the way copyright law treats the literary artefact and its material form, let us consider his response to the second issue concerning the substantiality requirement of typographical copyright infringement, which is no less illuminating. Having decided that the pertinent typographical arrangement was that of each newspaper in its entirety, Lord Hoffmann then considered whether the partial photocopies made by the defendant-respondent amounted to substantial parts of each arrangement. The starting point was that the substantiality requirement for copyright infringement involved a qualitative rather than quantitative assessment of that which had been copied.³⁶ This

³² Wilcox J’s decision was subsequently affirmed on appeal: see *Nationwide News Pty Ltd v Copyright Agency Ltd* [1996] FCA 257.

³³ See Copyright Act 1968, sections 88, 92, and 100.

³⁴ *Nationwide News Pty Ltd v Copyright Agency Ltd* (1995) 128 ALR 285. Wilcox J was citing from the Australian Second Reading Speech for the Copyright Bill introduced in 1967, which contained the same provisions that would subsequently be enacted in those sections of the Copyright Act providing for published edition copyright.

³⁵ *ibid.*

³⁶ See *Ladbroke (Football) Ltd v William Hill (Football) Ltd* [1964] 1 WLR 273, which was the *locus classicus* of the qualitative approach that Lord Hoffmann cited.

meant that it was not a question of how much had been reproduced, but whether the reproduced matter sufficiently reflected the sort of underlying ‘interest’³⁷ that was protected by the particular category of copyright. In the instance of a literary or artistic work, the protected interest was reflected in the standard of originality on the basis of which copyright protection was granted, namely, in the ‘skill and labour’³⁸ that the author had invested in the creation of the work. Similarly, in regard to typographical copyright, it was with reference to the pertinent skill and labour involved in the production of the typographical arrangement of the published edition that its substantial copying was to be determined. As Lord Hoffmann put it, ‘one must ask whether there has been copying of sufficient of the relevant skill and labour to constitute a substantial part of the edition’s typographical arrangement’.³⁹

In Lord Hoffmann’s brief articulation of his view on ‘the nature of the skill and labour involved in a typographical arrangement’, particularly that of ‘a modern newspaper’, we find an instance of copyright law’s attempt to find a vocabulary with which to describe the visual materiality of the printed text and the processes that produced it. Spanning but a paragraph, the account may be cited here in full:

In the case of a modern newspaper, I think that the skill and labour devoted to typographical arrangement is principally expressed in the overall design. It is not the choice of a particular typeface, the precise number or width of the columns, the breadth of margins and the relationship of headlines and strap lines to the other text, the number of articles on a page and the distribution of photographs and advertisements but the combination of all of these into pages which give the newspaper as a whole its distinctive appearance. In some cases that appearance will depend upon the relationship between the pages; for example, having headlines rather than small advertisements on the front page. Usually, however, it will depend upon the appearance of any given page. But I find it difficult to think of the skill and labour which has gone into the typographical arrangement of a newspaper being expressed in anything less than a full page. The particular fonts,

³⁷ *Newspaper Licensing Agency Ltd v Marks & Spencer Plc* [2001] UKHL 38, paragraph 24. Lord Hoffmann was citing from Sackville J’s appellate opinion affirming Wilcox J’s decision, which deployed the language of interest to elucidate the substantiality requirement of published edition copyright. Lord Hoffmann’s reasoning very much resembles Sackville J’s, suggesting that his decision on the second issue substantially relied on the appellate decision, no less than his reply to the first issue depended on Wilcox J’s: compare *Nationwide News Pty Ltd v Copyright Agency Ltd* [1996] FCA 257 and *Newspaper Licensing Agency Ltd v Marks & Spencer Plc* [2001] UKHL, paragraphs 19–24.

³⁸ *Newspaper Licensing Agency Ltd v Marks & Spencer Plc* [2001] UKHL 38, paragraph 19. Here, Lord Hoffmann cited the case of *Designers Guild Ltd v Russell Williams (Textiles) Ltd (trading as Washington DC)* [2000] 1 WLR 2416, which dealt with artistic copyright in fabric designs.

³⁹ *Newspaper Licensing Agency Ltd v Marks & Spencer Plc* [2001] UKHL 38, paragraph 20.

columns, margins and so forth are only, so to speak, the typographical vocabulary in which the arrangement is expressed.⁴⁰

We may note that the visible form or ‘appearance’ of the newspaper as a whole is analytically divided into different types of content, ranging from its ‘typeface’, ‘fonts’, ‘columns’, and ‘margins’ to various examples of its textual (‘headlines’, ‘strap lines’ and ‘articles’) and visual images (‘photographs’ and ‘advertisements’). Further, these typographic components are recognised to be spatially interrelated, their ‘arrangement’ evidenced in the relationship between different types of pages (e.g., the ‘front page’ of headlines and other pages with advertisements) and in the combination of elements that constitute a single page.⁴¹ For Lord Hoffmann, it is the making of these various aspects of the newspaper’s presentation, described in terms of a ‘typographical vocabulary’, that instantiates the ‘skill and labour’ protected by typographical copyright. Since copyright law recognises the publisher as the proprietary author of the published edition under copyright law, the publisher is the very subject to whom the law attributes the exercise of such protected ‘skill and labour’.

Taking the newspaper page as the basic evidential unit by which the publisher’s typographical labour was expressed, Lord Hoffmann agreed with the Court of Appeal decision that none of the photocopied press cuttings sufficiently replicated a substantial part of the presentation of each newspaper. Because many of these photocopies entailed items that were refitted to appear on A4-sized sheets, they did not even reproduce the full article itself. Accordingly, the House of Lords unanimously held that there was no typographical copyright infringement.

What, then, do Lord Hoffmann’s replies to these two issues in typographical copyright suggest about the law’s treatment of literature, particularly the literary artefact and its material form? To begin with, the very recognition of a property right in the *typographical arrangement* of a newspaper, as opposed to only those in the *literary and artistic* works comprising it, evidences the copyright system’s understanding that the book consists of more than what are typically regarded as its interpretable or semantic ‘contents’. Rather, the very optical conditions that make these contents legible to the reader, variously called the newspaper ‘design’, ‘layout’ and ‘presentation’, are registered in copyright law as useful products of skill and labour deserving of protection. In this sense, copyright law is no stranger to the visual materiality of the text that makes its reading possible. Already in the High Court decision, there was a dual recognition of the pertinent subject-matter of protection as ‘the image on the page’⁴² and of its basic significance to the reading

⁴⁰ *ibid* paragraph 23.

⁴¹ See, too, *ibid* paragraph 26: ‘The presence of other material on the page and the spatial relationship of the articles to each other are important parts of its typographical arrangement’.

⁴² *Newspaper Licensing Agency Ltd v Marks & Spencer Plc* [1999] R.P.C 536, 541, paragraph 9.

experience: ‘The typographical arrangement of a newspaper is of importance to the general reader, for it affects how reader friendly are the newspapers and the articles in it and the impact of the contents on the reader’.⁴³ Those instances of the ‘typographical vocabulary’ cited by Lord Hoffmann, whilst used to identify some particular forms in which the entire typographical arrangement of the newspaper manifests, would also suggest the law’s recognition of some of those tangible means by which its contents are relayed to the readers.

And yet, we may also note that this remains a quite specific, and also limited, understanding of the visual materiality of the printed text. By virtue of its operation as a problem-solving institution with its own substantive doctrines and interpretive practices, copyright law is willing to apprehend the visible surface of the publication only in a way that accords with the norms and rationality of the system. For instance, as we have suggested, Lord Hoffmann only enumerated the typographical components of ‘typeface’, ‘columns’, ‘margins’, and so forth because these were understood as comprising the product of the publisher’s ‘skill and labour’. It is by reference to the perceived interest underlying typographical copyright, particularly the interest in protecting the publisher’s investments, that the typography of the newspaper is defined. Further, the significance of typographical arrangement is limited to its role in presenting a ‘reader friendly’ product, the making of which the utilitarian copyright system regulates and promotes through the granting of intellectual-proprietary rights to publishers and authors. Viewed alongside the system’s broad objective of encouraging the production of new works, the typography of texts matter only in terms of its communicative-commercial functions.

Notwithstanding its awareness of the importance of the publication’s typography to the reading and communication of its contents, copyright law insists on a strict bifurcation of the literary artefact into its constitutive ‘literary and artistic works’ on the one hand, and its overall ‘typographical arrangement’ on the other. This is apparent not only in the statutory ascription of a distinct category of proprietary right with its own mode of infringement to each subject matter, but also in Lord Hoffmann’s delinking of the concept of published edition from that of the underlying works. Pursuant to his judgement, the pertinent ‘typographical arrangement’ under section 1(1)(c) of the CDPA 1988 is doubly removed from the literary work: one, consistent with the Act’s categorisation of objects and rights, copyright in the ‘literary work’ is affirmed as distinct from that in the typography of its published form. Whereas the latter can be infringed only with a ‘facsimile copy’,⁴⁴ that is, with an exact reproduction of the visible surface of the work, the former may be infringed with the reproduction of the work ‘in any material form’, that is, with an inexact

⁴³ *ibid* 541, paragraph 10.

⁴⁴ Copyright, Designs and Patents Act 1988, section 17(5).

copying of its expression that, nonetheless, reproduces something essential to the work. Recognising this difference between the two types of copyrights, Lord Hoffmann cited the case of *Designers Guild Ltd v Russell Williams (Textiles) Ltd (trading as Washington DC)*,⁴⁵ which had found there to be substantial reproduction of a fabric design amounting to copyright infringement even though the reproduced fabric lacked any ‘photographic fidelity’⁴⁶ to the original. Though the case pertained to artistic copyright specifically, it attested to copyright law’s protection of something beyond the material surface of the work, which Lord Hoffmann recognised as no less applicable to literary, dramatic and musical works.⁴⁷ Second, in so affirming a ‘holistic’ understanding of ‘published edition’, Lord Hoffmann distinguished the typography of the publication as a whole from that of each of the contributing works, thus further separating the spheres of literary works and typographical arrangements.

Copyright law’s bifurcation of the literary artefact into its two aspects of authorial expression and the edition’s typography works to generate and sustain the order of proprietary rights ascribed to the subjects of authors and publishers. On the one hand, the object of the original ‘literary work’ is recognised to be the creation of its author or authors, whose investment of skill and labour into the work’s production is protected through the law’s granting of a property right in the work, including the exclusive right of reproduction. On the other, the conceptually distinct object of the entire typographical arrangement of the work’s published edition is conceived of as the output of the publisher or publishers, which similarly warrants copyright protection. Both instances converge in their (re)production of an aesthetics of the literary artefact as divided between the labours of authors and publishers, both of whom are perceived as the creators of those intangible objects that have been fixed in the medium of the particular text. As publishers, too, are seen as author-creators, reproduced across the rift between the rightful domains of each of the two subjects is a common myth of authorship: the idea that embodied in literary artefacts are distinct ideal objects with their respective subjects standing over and against them as their rightful owner-creators.

Resuming from our preceding efforts, this chapter seeks to problematise the myth of authorship ratified and entrenched by the doctrines of typographical and literary copyright. It asks about the limits of the legal account of literature by attending to the materiality of the printed book, particularly, the materiality of its typeface. Our analysis begins by juxtaposing Fichte’s and Kant’s essays published in the *Berlinische Monatsschrift* during the late eighteenth century, which present two accounts of the book that, in their own ways, anticipate and undermine the

⁴⁵ [2000] 1 WLR 2416.

⁴⁶ *Newspaper Licensing Agency Ltd v Marks & Spencer Plc* [2001] UKHL 38, paragraph 19.

⁴⁷ *ibid* paragraph 20.

contemporary copyright perspective.⁴⁸ After having worked out a sense of the visual-corporeal materiality of literature, we turn to some aspects of the production and perception of the Breitkopf Fraktur typeface in which the essays were set, attending to their implications on the question of authorship. In this historical itinerary of the typeface, we shall find that the materiality of type directs us once more to those deep interactions between human actors and print technologies that constitute the printed book, whose complexity far exceeds the copyright perspective.

Eyes and Bodies of Literature

More than a century and a half before typographical copyright was first legislated in the United Kingdom, questions of the relationship between the ideal and material dimensions of literature, between the intangible and tangible properties in books, had already surfaced in Germany, with positions being taken by the so-called ‘German Idealist’ philosophers Fichte and Kant. The typographical materiality of the printed book was explicitly broached in Kant’s account, though it also fundamentally informed Fichte’s. Comparing these positions would not only sharpen our understanding of the aesthetics of literary property today and its continuities with older modes of thinking dating back to the German Enlightenment, but also facilitate our reckoning with its limits by suggesting another productive way of approaching the literary artefact.

Fichte’s and Kant’s pieces contributed to a long historical debate concerning the wrongfulness of the reprinting of books and other publications, which occurred within the broader context of print proliferation, unauthorised reprinting, and the weakly regulated book trade of the Holy Roman Empire during the late eighteenth century. As mentioned in the last two chapters, during the late eighteenth century, German authors and publishers were confronting the unauthorised reprinting of their texts. Though dating back to at least the late fifteenth century, the problem of unauthorised reprinting only reached ‘epidemic proportions’⁴⁹ during the eighteenth century with the heightening profitability of books corresponding to their rising demand amidst higher literacy rates, a shift in reading habits, and other contributing historical changes.⁵⁰ In the literature on this

⁴⁸ ‘Fichte: Proof of the Unlawfulness of Reprinting, Berlin (1793)’, Primary Sources on Copyright (1450-1900), eds L. Bently & M. Kretschmer, accessed 30 April 2022, http://www.copyrighthistory.org/cam/tools/request/showRecord.php?id=record_d_1793; ‘Immanuel Kant: Von der Unrechtmäßigkeit des Büchernachdrucks (1785)’, Universität Bielefeld: Universitätsbibliothek, accessed 30 April 2022, http://ds.lib.uni-bielefeld.de/viewer/image/2239816_005/430/LOG_0055/; Immanuel Kant, ‘On the Wrongfulness of Unauthorized Publication of Books (1785)’, in *Practical Philosophy*, ed. Paul Guyer and Allen W. Wood, trans. Mary J. Gregor, The Cambridge Edition of the Works of Immanuel Kant (Cambridge: Cambridge University Press, 1996), 27–35.

⁴⁹ Woodmansee, ‘The Genius and the Copyright: Economic and Legal Conditions of the Emergence of the “Author”’, 437.

⁵⁰ See chapter 3, ‘From Paratexts to Print Machinery’.

topic, we often find mention of the lack of effective legal mechanisms to regulate the unauthorised copying and sale of publications within the markedly fragmentary political context of the Holy Roman Empire, which was comprised of more than three hundred states unbound by any common government nor uniform legal code.⁵¹ Prior to its first copyright laws,⁵² it was principally a system of privilege (*privilegium impressorium*) that regulated the book trade.⁵³ Upon application to the individual German state authorities, privileges could be issued to authors, publishers and printers to prohibit the reprinting and sale of particular books in the territory within a specific period of time without the privilege holder's consent.⁵⁴ The fragmentary political context, however, frustrated the efforts of privilege holders to take action against pirate publishers and printers. Privilege protection was geographically limited in the sense that it applied only within the borders of the state that had granted it.⁵⁵ To seek full protection, then, the author, publisher or printer had to apply for a privilege in every state, which was impractical. Further, the states held divided positions on book piracy, which effectively meant that book pirates could continue with their otherwise prohibited activities in those that endorsed them. Whereas the Prussian government was willing to negotiate with other states to vindicate the interests of Prussian publishers whose books had been pirated, it also silently endorsed the pirating activities of its own publishers.⁵⁶ Piracy was even actively promoted in Austria and other southern German states, producing the infamously prolific Viennese pirate publisher and bookseller, Johann Thomas von Trattner.⁵⁷ Pursuant to the activities of reprinting and sale, legitimate publishers and authors suffered losses that affected their trade and livelihood.⁵⁸ The circumstances led to a long debate over the wrongfulness of reprinting, which Woodmansee dated as having happened between 1773 and 1794.⁵⁹ Participants in the debate

⁵¹ Geographically, the Holy Roman Empire cut across today's territories of Austria, Germany, Hungary and Switzerland: see Woodmansee, 'The Genius and the Copyright: Economic and Legal Conditions of the Emergence of the "Author"', 182.

⁵² See, for instance, the Prussian Copyright Act of 1837.

⁵³ The other main pillar of book regulation was that of censorship: see Pamela E. Selwyn, *Everyday Life in the German Book Trade: Friedrich Nicolai as Bookseller and Publisher in the Age of Enlightenment, 1750-1810* (University Park, Pennsylvania: The Pennsylvania State University Press, 2000), 183.

⁵⁴ According to an eighteenth-century German jurist J. J. Moser, the privilege system forbade 'certain books from being reprinted within a certain period of time against the will and the detriment of the privilege holder, or copies reprinted elsewhere from being sold within the German empire': see Selwyn, 182.

⁵⁵ Woodmansee, 'The Genius and the Copyright: Economic and Legal Conditions of the Emergence of the "Author"', 438.

⁵⁶ Selwyn, *Everyday Life in the German Book Trade*, 185.

⁵⁷ See Martha Woodmansee, 'Publishers, Privateers, Pirates: Eighteenth-Century German Book Piracy Revisited', in *Making and Unmaking Intellectual Property: Creative Production in Legal and Cultural Perspective*, ed. Mario Biagioli, Peter Jaszi, and Martha Woodmansee (Chicago and London: The University of Chicago Press, 2011), 183.

⁵⁸ Woodmansee has commented extensively on the difficulties faced by serious German writers such as Christian Fürchtegott Gellert (1715-69) and Gotthold Ephraim Lessing (1729-81) to receive adequate compensation for their work: see Woodmansee, 'The Genius and the Copyright: Economic and Legal Conditions of the Emergence of the "Author"', 431-40.

⁵⁹ Woodmansee, 440.

ranged from publishers and jurists to poets and philosophers, amongst whom were Fichte and Kant.⁶⁰

As its title foregrounds, Fichte's essay offers a *Beweis der Unrechtmäßigkeit des Büchernachdrucks* ('proof of the wrongfulness of reprinting'), the focus of which coheres with the author's prioritisation of the moral and legal question raised by the practice over that of its utility. Contrary to preceding voices in the debate that had argued for the permissibility of reprinting based on its public benefits, Fichte thought that no utility could justify a wrongful practice.⁶¹ To prove the wrongfulness of reprinting was to overrule all arguments for the practice grounded in its usefulness.

There are two parts to Fichte's case that, at first look, may seem to cohere with certain aspects of modern copyright and intellectual property law. One, it was from a *proprietary* perspective that Fichte evaluated the practice of unauthorised reprinting, arguing that the author held 'ownership'⁶² (*Eigentum*) of something in the book implying the wrongfulness of the practice. Contrary to the limited terms for copyright protection in today's legal systems, however, Fichte understood literary property as being 'perpetual'⁶³ or 'enduring'⁶⁴ (*fortdaurend*). Two, Fichte advanced a concept of the book premised on a two-fold distinction that some copyright scholars have suggested as having anticipated the idea/expression dichotomy of modern copyright law.⁶⁵ To begin with, Fichte distinguished the 'physical aspect'⁶⁶ [*das körperliche*] of the book, particularly the 'printed page'⁶⁷ [*das bedruckte Papier*], from its 'ideal aspect'⁶⁸ [*sein Geistiges*], the division of which resembles our present legal categorisation of literary objects into personal property on the one hand, and intellectual property on the other. As Fichte noted, whereas the lawful purchase of a physical book would

⁶⁰ See *ibid* 440, footnote 32: 'Among the publishers and legal experts who contributed were Phillip Erasmus Reich, Joachim Heinrich Campe, Johann Stephan Pütter and Johann Jakob Cella; the contributing poets and philosophers included Zacharias Becker, Gottfried August Bürger, Kant, Feder, Ehlers, and Fichte'.

⁶¹ 'Fichte: Proof of the Unlawfulness of Reprinting, Berlin (1793)', 445. See, for instance, Reimarus, 'Publishing from the Perspective of the Writer, the Publisher, and the Public, Reconsidered'; cited at the start of Fichte's piece (443–45) and satirised in a concluding parable that culminated in the hanging of 'useful' thief (474–83).

⁶² 'Fichte: Proof of the Unlawfulness of Reprinting, Berlin (1793)', 458.

⁶³ *ibid*.

⁶⁴ The word 'enduring' is Borghi's translation, which seems to be closer to the literal sense of the German: see Maurizio Borghi, 'Owning Form, Sharing Content: Natural-Right Copyright and Digital Environment', in *New Directions in Copyright Law*, ed. Fiona MacMillan, vol. 5 (Edward Elgar Publishing, 2007).

⁶⁵ See, for example, Kawohl and Kretschmer, 'Johann Gottlieb Fichte, and the Trap of *Inhalt* (Content) and *Form*. An Information Perspective on Music Copyright', 214; Biagioli, 'Genius against Copyright: Revisiting Fichte's Proof of the Illegality of Reprinting', 1854. It should be noted that these scholars were, ultimately, interested in pointing to important differences between Fichte's content/form distinction and the idea/expression dichotomy of copyright systems.

⁶⁶ 'Fichte: Proof of the Unlawfulness of Reprinting, Berlin (1793)', 447.

⁶⁷ *ibid*.

⁶⁸ *ibid*.

have granted its buyer absolute ownership of it (including the right of its destruction), the transaction would not have necessarily granted the buyer any property right in its ideal aspect.⁶⁹

Yet, Fichte also observed that a book was typically bought to be read, that is, not for its paper *per se* but for its ‘content’ [*Inhalt*], suggesting then that a right in something relating to its ideal aspect had passed to the purchaser.⁷⁰ This was where Fichte drew a second distinction between two parts to the ideal aspect of the book that served as the conceptual basis on which to prove the wrongfulness of reprinting:

This ideal aspect is in turn divisible into a material aspect [*das Materielle*], the content [*Inhalt*] of the book, the ideas [*Gedanken*] it presents; and the form [*Form*] of these ideas, the way in which, the combination in which, the phrasing and wording in which they are presented.⁷¹

Having thus differentiated between the ‘content’ and ‘form’ of the ideal aspect of the book, Fichte argued that it was a right to appropriate the former through the investment of one’s mental labour, for instance, through an ‘assiduous and rational study’⁷² of Kant’s *Kritik der reinen Vernunft* (‘Critique of Pure Reason’), that the buyer of the book acquired along with its printed paper. The book’s content was potentially ‘the common property of many’⁷³ in the sense that it could at once be held by multiple readers by virtue of its ideal or intangible nature. As regards the ‘form’ of the ideas in the book, Fichte claimed that it remained ‘forever [the author’s] exclusive property’.⁷⁴ It was on the basis of this perpetual and exclusive property of the author that Fichte both justified the practice of authorised publication and condemned the practice of unauthorised reprinting. Through a publishing contract, the publisher acquired from the author a particular property right or ‘usufruct’⁷⁵, which permitted the publisher to ‘sell’⁷⁶ the right to appropriate the ideas of the book by printing and marketing it to the public. Reprinting without the author’s permission was wrongful because it effectively ‘usurped’⁷⁷ the usufruct that only the author, as the rightful owner of the ‘form’ in the book, could have granted.

In Fichte’s distinction between form and content, one might find certain echoes of the modern idea/expression dichotomy. Specifically, Fichte’s recognition of the ideas presented in the book as potentially exceeding any individual’s exclusive right of possession or control could be compared to the ‘idea’ limb of the modern dichotomy, which affirms ideas as being unencumbered

⁶⁹ *ibid.*

⁷⁰ *ibid.* 448.

⁷¹ *ibid.* 447.

⁷² *ibid.* 448. The example of Kant’s book was given by Fichte on the same page.

⁷³ *ibid.* 450.

⁷⁴ *ibid.* 451.

⁷⁵ *ibid.* 457

⁷⁶ *ibid.*

⁷⁷ *ibid.*

by intellectual property rights and belonging to the public domain.⁷⁸ In *Hollinrake v Truswell*,⁷⁹ the English Court of Appeal offered one of the earliest formulations of the dichotomy: ‘Copyright...does not extend to ideas, or schemes, or systems, or methods; it is confined to their expression; and if their expression is not copied the copyright is not infringed’.⁸⁰ Lindley LJ held that the copied method of measuring parts of the arm and elbow for the cutting of a sleeve, which had been printed on a piece of cardboard, was not the subject matter of copyright protection within the meaning of section 2 of the Copyright Act 1842. The dichotomy is often justified on the grounds that ideas should not be monopolised by any private individual, but instead remain freely available for public use.⁸¹ For instance, in *Baker v Seldon*,⁸² which was the precedent cited by the English Court of Appeal in support of the dichotomy, the United States Supreme Court held that an author’s copyright in a book describing a system of book-keeping did not extend to the system itself, the latter of which was the ‘common property of the whole world’⁸³ that could be used and explained by any author in his or her own way. As Justice Bradley put it, the object of publishing a book on science or the arts, which was ‘to communicate to the world the useful knowledge which it contains’,⁸⁴ would be ‘frustrated if the knowledge could not be used without incurring the guilt of piracy of the book’.⁸⁵ The judicial recognition of ideas presented in the book as ‘common property’ belonging to no single author would seem to resonate with Fichte’s concept of content, the latter of which was understood as bearing the potential to be appropriated by those who have laboured to read it. Similarly, Fichte’s ascription of property rights in the ‘form’ of the book, described as the ‘phrasing and wording’ in which ideas are presented, might seem to anticipate copyright law’s understanding of original ‘expression’ in modern copyright law, or the ‘way in which ideas are expressed’, as the proper subject matter of protection. Copyright scholars such as Friedemann Kawohl and Martin Kretschmer have, accordingly, stressed the ‘huge influence’⁸⁶ of Fichte’s distinction between form and content on the development of national, regional, and international copyright law, which have codified the idea/expression dichotomy.

Nonetheless, Fichte’s concept of form was based on a theory of the mind as the giver of literary form; a theory that copyright doctrine could, at most, be said to tacitly reflect in its

⁷⁸ One of the classic formulations of the idea/expression dichotomy arose in Justice Bradley’s opinion in the US Supreme Court case of *Baker v Selden*, 101 U.S. 99 (1879).

⁷⁹ [1894] 3 Ch. 420.

⁸⁰ *Hollinrake v Truswell* [1894] 3 Ch. 420.

⁸¹ See Brad Sherman, ‘Appropriating the Postmodern: Copyright and the Challenge of the New’, *Social and Legal Studies* 4 (1995): 37.

⁸² 101 U.S. 99 (1879).

⁸³ *ibid* paragraph 3.

⁸⁴ *ibid* paragraph 9.

⁸⁵ *ibid*.

⁸⁶ Kawohl and Kretschmer, ‘Johann Gottlieb Fichte, and the Trap of *Inhalt* (Content) and *Form*: An Information Perspective on Music Copyright’, 214.

recognition of the author as the originating source of literary expression. The central importance of the mind to Fichte's proof was flagged up early in the piece when he noted that the proof was grounded in the 'immediately self-evident'⁸⁷ presupposition that 'we are the rightful owners of a thing the appropriation of which by another is physically impossible'.⁸⁸ This inalienable 'thing', as Fichte would clarify, was the 'mind'⁸⁹ or 'spirit' [*Geist*] of the person. For Fichte, it was the mind that gave ideas their perceptible form, without which ideas would be incapable of being thought, much less of being presented to another. The perceptibility of form was stressed in Fichte's recognition that there were no 'pure ideas without sensible images'⁹⁰ [*reine Ideen ohne sinnliche Bilder*], the latter of which had to be supplied by the individual mind. In the case of books, it was the mind of the writer that gave the ideas presented in the books their perceptible form. It was impossible for this form to be appropriated, not by the reader, publisher nor reprinter. To read the book was to 'assimilate'⁹¹ [*aufnehmen*] its ideas to the reader's own 'system of thought'⁹² [*Gedankensystem*], which meant the giving of a new form to those ideas that necessarily diverged from the preceding form given by the author. To publish the book with permission was to exercise the usufruct that the author had granted to the publisher, which involved the passing of a property right but not the property itself. To reprint the book without permission was to appropriate not the form of its ideas but only the usufruct that the author alone was capable of granting. In all three instances, the literary form remained the inalienable property of the author by virtue of its origination in the latter's mind. Insofar as copyright expression, too, is understood as causally deriving from its author-creator, the doctrine could be said to grant a similar sort of priority to the author's mental labour. However, copyright law does not go so far as to articulate any equivalent concept of inalienable property in the book that is generated by mental processes of formation and assimilation unique to the minds of authors and readers.

The theory of mind that defines Fichte's concept of form leads us closer to the place of materiality in Fichte's essay. Notions of materiality have already surfaced in our reprisal of Fichte's two-fold distinction between the physical and the ideal, and between content and form, structuring it from within. In the initial fold, the matter of the book was valuable to Fichte as that which served to be negated in order to identify the ideal object in which authors and readers were truly interested. It was against the 'printed paper' of the book that its ideal dimension was defined, the latter of which was prioritised as the ultimate object of the book transaction. Nonetheless, as if

⁸⁷ 'Fichte: Proof of the Unlawfulness of Reprinting, Berlin (1793)', 446.

⁸⁸ *ibid.*

⁸⁹ *ibid.* 450.

⁹⁰ *ibid.* 451.

⁹¹ *ibid.*

⁹² *ibid.*

defying conceptual repression, the negated term would return in the second fold, this time informing both sides of the binary forming the book's ideal aspect. The content and ideas presented in the book were understood as its 'material aspect' [*das Materielle*], suggesting that those ideas shared a material basis with the printed paper. The materiality of ideas would be reaffirmed in Fichte's recognition of the impossibility of 'pure ideas without sensible images' and of the concomitant necessity of ideas to bear perceptible form. Thus, despite being the prioritised term in the second fold, the form of ideas, too, was understood in terms of the visible letters appearing on the page: 'the phrasing and wording in which [ideas] are presented'. Literary property was, at once, material property. Rather than being external to the proof advanced by the philosopher of German Idealism, materiality was integral to it as the structural motif that defined its basic distinction.

And yet, as Fichte's underlying theory of mind would suggest, the literary form in which the author held perpetual property bore an ultimately subjective aspect that exceeded its ostensibly objective presentation in the material book. This meant that Fichte's understanding of literary form was not reducible to the combination of letters printed in the book. Rather, it continually extended from the mind that had produced it, enduring as something beyond the book's surface. A clue to the subjectivity of form was given in Fichte's recognition of form as being no less inalienable, no less 'physically impossible' to appropriate, than the mind that had generated it. Form could not be the object of theft because, against the appearance of the book, it remained bound to its originating mind. Kretschmer-Kawohl and Mario Biagioli have, in their own ways, similarly observed the non-exhaustion of literary form by the arrangement of letters in the book. Kretschmer-Kawohl have twice noted a 'tension'⁹³ and 'contradiction'⁹⁴ in Fichte's concept of form, which at once referred to 'the process of formation'⁹⁵ of the literary work and its 'result'.⁹⁶ The former sense was dependent on the individual who had given the form, be it the author who articulated the book's ideas or the reader who had appropriated them, whereas the latter seemed to pertain to the book in itself or at least an aspect of it.⁹⁷ Biagioli has emphasised that, unlike intellectual property law, Fichte did not reify or 'fetishize'⁹⁸ the book as that in which the author held property, but instead simply suggested that it bore 'material traces'⁹⁹ of something else he called 'form'. What has been

⁹³ Martin Kretschmer and Friedemann Kawohl, 'The History and Philosophy of Copyright', in *Music and Copyright*, ed. Simon Frith and Lee Marshall (Routledge, 2004), 21–52.

⁹⁴ Kawohl and Kretschmer, 'Johann Gottlieb Fichte, and the Trap of *Inhalt* (Content) and *Form*: An Information Perspective on Music Copyright', 213.

⁹⁵ Kretschmer and Kawohl, 'The History and Philosophy of Copyright'.

⁹⁶ *ibid.*

⁹⁷ Kawohl and Kretschmer, 'Johann Gottlieb Fichte, and the Trap of *Inhalt* (Content) and *Form*: An Information Perspective on Music Copyright', 213.

⁹⁸ Biagioli, 'Genius against Copyright: Revisiting Fichte's Proof of the Illegality of Reprinting', 1867.

⁹⁹ *ibid.* 1865.

commonly noted is that Fichte understood form as something necessarily exceeding the material combination of letters in the book precisely because it remained attached to the mind in which it originated. Hence, the apparent reassertion of materiality in Fichte's concept of form is complicated by its underpinning theory of mind, whose relationship with the material remains ambiguous. It is unclear if Fichte understood the mind itself as bearing any particular material basis, notwithstanding its predominant association with the ideal. What we can say, though, is that Fichte conceived of literary form as extending beyond the printed words of the book. Further, this object of literary property is recognised as being created by the author alone and, by virtue of the singularity of its creation, immune to appropriation.

Unlike Fichte's account, Kant's proposed solution to the problem of reprinting in late-eighteenth-century Germany did not rely on any concept of intellectual property. As we have previously discussed, Kant advanced a non-proprietary perspective on author's rights that was grounded in a concept of the book as communicative medium and visual object in particular.¹⁰⁰ For Kant, the book served to relay to the public a speech necessarily spoken in its author's name. 'In a book, as a writing, the author *speaks* to his reader; and the one who has printed the book *speaks*, by his copy, not for himself but simply and solely in the author's name. He presents the author as speaking publicly and only mediates delivery of his speech to the public'.¹⁰¹ The right that the author held in relation to the book was conceived not as any proprietary right, but instead as a personal right of self-expression that extended from the author's personhood. In Kant's view, the author had an 'inalienable right (*ius personalissimum*) for the speech to be communicated in his own name. Under this 'most personal right',¹⁰² it was ultimately the author who spoke through the book printed by the publisher. Pursuant to the same fundamental right, the author granted the publisher the right to publish the book by means of a contract.¹⁰³ To reprint the book without such a right was to wrong both the legitimate publisher and the author: doing so not only subtracted the profits of the former,¹⁰⁴ but further, in so relaying the speech without his permission, violated the latter's 'innate right in his own person',¹⁰⁵ that is, to speak only as he willed.

Notice that, even as Kant prioritised the author as the ultimate subject in whose name the book's speech was necessarily communicated, he credited the publisher's involvement in the production of the book. More so than in Fichte's essay, the publisher arose as a key figure without

¹⁰⁰ See chapter 2, 'Two Ways of Looking at a Printed Book'; chapter 3, 'From Paratexts to Print Machinery'.

¹⁰¹ Kant, 'On the Wrongfulness of Unauthorized Publication of Books (1785)', 30.

¹⁰² *ibid.*

¹⁰³ *ibid.* 33.

¹⁰⁴ *ibid.* 29–30.

¹⁰⁵ *ibid.* 35.

whom the book would not be presented to the reading public. Whereas Fichte had focused on the author's act of giving form to ideas as the central act that created literary property, it was the process of 'publishing' [*Verlag*] and its significance to the problematic that Kant sought to clarify from the outset:

Some regard the publishing of a book [*den Verlag eines Buchs*] as a use of property in a copy (whether the copy has come to the possessor as a manuscript from the author or as a print of the manuscript from an already existing publisher) and then want, nevertheless, to restrict the use of this right by the reservation of certain rights, either of the author or of the publisher appointed by him, so that unauthorized publication of it would not be permitted; they can never succeed in this. For the author's property in his thought (even if one grants that there is such a thing in terms of external rights) is left to him regardless of the unauthorized publication; and, since there cannot reasonably be an express consent of one who buys a book to such a restriction of his property [footnote inserted], how much less will a merely presumed consent suffice for his obligation?¹⁰⁶

For Kant, it was simply misleading to see publishing as the exercise of a proprietary right in the written manuscript or printed book because the author's right in his thoughts was essentially inalienable and, thus, not of a proprietary nature. As the right was 'left to [the author] regardless of the unauthorized publication', it should be understood as a personal right instead. As we have recalled, Kant's subsequent re-construal of publishing as a process of relaying the author's speech was based on such a personal understanding of the author's communicative right, that is, a right to have the speech communicated in his (or her) own name that existed by virtue of his (or her) personhood. In so conceiving of the book as communicative medium, Kant did not lose sight of the publisher's role in literary production.

Further, as we have stressed in the earlier chapters, Kant saw the very visibility of the printed book as that which afforded its relay of the author's speech to the public.¹⁰⁷ Whereas copyright scholars have tended to interpret Kant's essay as prescribing a speech act theory of the literary work,¹⁰⁸ the essay also sharply registered the medial-material conditions of possibility of literary communication. The optical medium of print, Kant observed, was the material basis on which eighteenth-century book publishing occurred. '[The publisher] indeed provides in his own name *the mute instrument for delivering the author's speech to the public*; [footnote inserted] but to *bring his speech to the public* by printing it, and so to show himself as the one through whom the author speaks to

¹⁰⁶ *ibid* 29.

¹⁰⁷ See chapter 2, 'Two Ways of Looking at a Printed Book'; chapter 3, 'From Paratexts to Print Machinery'.

¹⁰⁸ See Drassinower, *What's Wrong with Copying?*; Borghi, 'Copyright and Truth'; Barron, 'Kant, Copyright and Communicative Freedom'.

the public, is something he can do only in the name of another'.¹⁰⁹ In the accompanying footnote, Kant explained that the printed book was 'mute' because it relayed the author's speech not by means of sound as in the instances of the 'megaphone' or 'mouth', but rather by means of the letter: 'This is what is essential here: that what is thereby delivered is not a *thing* but an *opera*, namely *speech*, and indeed by letters. By calling it a mute instrument I distinguish it from one that delivers speech by sounds, such as a megaphone or even the *mouth* of another'.¹¹⁰ In this contrast between acoustic and optical media, the materiality of the letter, specifically the visibility of the printed letter, rears to prominence. Prior to the evolution of audiobooks, books could relay the speech of the author only by means of the visible letters printed on the page. The opticality of print would be re-emphasised by Kant in a passage on the nature and legal status of the book in *Die Metaphysik der Sitten* ['The Metaphysics of Morals'] (1797): 'A book is a writing (it does not matter here, whether it is written by hand or set in type, whether it has few or many pages) which represents a discourse that someone delivers to the public by visible signs'.¹¹¹ Though eventually elided in favour of their continuity as visual methods of communication, the taxonomic difference between handwriting and typesetting evidently surfaced in Kant's reflections on the book.

These interests in the publisher and publishing, and in the opticality of the book and its typesetting, would resurface in Kant's brief reflection on eighteenth-century German typefaces in *Der Streit der Fakultäten* ('The Conflict of the Faculties') (1798).¹¹² There, we find an acuter recognition of the perceptual materiality of type than in the earlier text, which accentuates the distance between Fichte's and Kant's perspectives on the medium of literature. Whilst the *Berlinische Monatsschrift* had silently served as the enlightenment periodical that conveyed Kant's proposed regime of author's rights in 1785, its typeface and typesetting would become the very subject matter of discussion in the later text. Specifically, Kant announced his support for the periodical's use of the Breiskopf Fraktur typeface because its letters were, in his view, less straining on the reader's eyes than roman types were.¹¹³ This position was advanced against the then-prevailing '*fashion* in printing'¹¹⁴ to set letters in the supposedly more attractive roman types. Dismissing the preference for roman types as one of several 'wretched affectations'¹¹⁵ of book printers in his day,¹¹⁶ Kant asserted instead that letters 'have no intrinsic beauty at all'.¹¹⁷ Consistent

¹⁰⁹ Kant, 'On the Wrongfulness of Unauthorized Publication of Books (1785)', 30.

¹¹⁰ *ibid.*

¹¹¹ Kant, 'The Metaphysics of Morals (1797)', 437.

¹¹² Immanuel Kant, *The Conflict of the Faculties*, trans. Mary J. Gregor (New York: Abaris Books, Inc., 1979), 209–13.

¹¹³ *ibid.* 211.

¹¹⁴ *ibid.*

¹¹⁵ *ibid.*

¹¹⁶ *ibid.* 209.

¹¹⁷ *ibid.* 211.

with his concept of the book as communicative medium and visual object, Kant prioritised instead the functionality of type, particularly the ease with which it permitted one's reading of the text. Johann Gottlob Immanuel Breitkopf, the Leipzig typefounder and publisher who had designed the fraktur typeface deployed in the German periodical, was cited as an authority for the position that roman type 'tires the eyes more quickly than does Gothic type'.¹¹⁸ Kant would conclude by directing printers to the printed pages of the *Berlinische Monatsschrift* as the exemplary publication: 'for no matter what page one opens it to, the sight of it will strengthen the eyes perceptibly when they have been strained by reading the kind of print described above [footnote inserted]'.¹¹⁹ As suggested by the accompanying footnote, Kant's acute sensitivity to the opticality of the printed page was owed to his own perceptual experiences as a reader. Not only had he already gone blind in the left eye some years before writing the passage, he continued to suffer from a recurrent, intermittent condition of being temporarily overcome by 'a certain brightness [that] suddenly spreads over the page',¹²⁰ which stressed the importance of visual perception to the activity of reading.

More so than Fichte, then, Kant understood the reading of print to be a corporeal experience, that is, an interactive activity between the bodies of type and readers. Recall that, for Fichte, it was the mind that gave form to ideas, the giving of which establishes the author's perpetual ownership of literary form. Though literary form was affirmed to bear a material basis, such materiality was seen as consisting only in an imaginable combination of words that, ultimately, transcended the visible letters printed in the book. The printed book only mattered as the medium of exchange between the minds of authors and readers. For the author, the book bore partial record of the literary form s/he had created and forever owned. For the reader, the book was simply a repository of ideas to be appropriated through the no less writerly act of giving original form to those ideas. From within each of the perspectives, the book ceded visibility and priority to the pertinent form and its generative mind. Kant, on the contrary, kept in sight the book as an optical medium composed of letters printed on paper. Instead of proposing any concept of intellectual property that exceeded the material dimensions of the book, Kant saw the book as a material artefact to be interacted with first and foremost through the organ of the eyes. Before the book could be read for its interpretable meaning or 'speech', it had first to be seen as a material composition of type set on paper. Reading, or what Fichte's understood as the application of one's mind, could not take place without the sensory perception of printed matter, that is, the phenomenal encounter

¹¹⁸ *ibid.*

¹¹⁹ *ibid.*

¹²⁰ *ibid.*

between eye and page. It is this corporeal dimension of reading, relatively muted in Fichte's account, that distinguishes Kant's.

In Kant's recognition of the visual materiality of the printed book, particularly that of its typeface and typesetting, we find both an anticipation of the doctrine of typographical copyright and a key to its problematisation. On the one hand, Kant's acknowledgement of the publisher's contribution to the production of the printed text coheres with typographical copyright's recognition of the skill and labour invested in the publication of the book and its typographical arrangement in particular. This continuity insists notwithstanding the obvious difference that copyright law sees the publisher's contribution as sufficient to grant the publisher a property right in the edition's typography, whereas Kant declined to see the publisher as an intellectual proprietor. On the other hand, in so identifying the opticality of print and the corporeal experience of reading, Kant provides an arguably richer perspective on the materiality of book than that of copyright law. For whilst the typographical arrangement of the book only matters to the copyright system as evidence of the publisher's skill and labour that warrants protection, the visual materiality of the book in Kant's account implies a dimension of historical interactions between bodies that far exceed the copyright perspective. For Kant, *Breitkopf Fraktur* was the exemplary typeface that best relayed the speech made in the name of the author in each of the essays published in the *Berlinische Monatsschrift*. But would the materiality of the periodical's typeface and typesetting necessarily operate in the interest of communication?

Making *Breitkopf Fraktur*

Typographical copyright takes the publisher's contribution to literary production as the decisive event that grants the publisher ownership of the typographical arrangement of the published edition. If an equivalent law were to have operated during the time of the publication of Kant's and Fichte's essays in the *Berlinische Monatsschrift*, the periodical editor-publishers, Friedrich Gedike and Johann Erich Biester, would have had a property right in the typography of the issues in which the essays appeared. Any reprinting of those issues in their entirety without permission would have infringed the copyright held by Gedike and Biester, the latter whom would have been recognised as 'authors' of each typographical arrangement, 'the person[s] who create[d] it'. Their typographical authorship would have co-subsisted with the literary authorship of Kant, Fichte, and other writers who wrote their respective textual contributions to each issue.

And yet, the historical processes of literary production would complicate such a neat bifurcation of the literary artefact into intellectual works created by publishers and authors. As

discussed in the last chapter, the signature marks, catchwords, front matter, and other material paratexts of Kant's essay evidence the technologically mediated labour of not only the named publishers and authors, but also that of others working within and outside the printing house, including compositors, printers, binders, advertisers, readers, and so forth.¹²¹ Together with the postal system, text- and book-making processes participated in the gargantuan print apparatus that mediated the German Enlightenment. It was through the very medium of print that Kant, Gedike, Biester and others sought to clarify and advance public enlightenment, and to strategically intervene in the phenomenon of print proliferation. Authorship in the German Enlightenment was intimately bound up with a broader medial-material assemblage, without which essays, periodicals, and books would not have been possible. Any claim to sole proprietorship in some aspect of literary production, be it the typographical layout or literary work, would have to deny that the other surrounding processes made a pertinent contribution to its emergence.

For Lord Hoffmann, the typeface of a publication only mattered as a part of the 'typographical vocabulary' in which the publisher's labour of creating the overall design is expressed. Nonetheless, we may note that before any ascription of the utilised typeface to the publisher's mental labour, the typeface has first to be made available as a technical possibility in which the contents are to be set. The historicity of typefaces is, to an extent, recognised in modern copyright law's willingness to grant copyright in typefaces to their designers in certain jurisdictions.¹²² For instance, sections 55(1)–(3) of the CDPA 1988 acknowledge the possibility of there being 'copyright in an artistic work consisting of the design of a typeface'¹²³ for a term of twenty-five years from its first appearance in the market. Apprehended as an 'artistic work'¹²⁴ in which copyright could subsist, the typeface and its protection are similarly brought under the rubric of authorship, in which a particular human designer is perceived to be its creator.¹²⁵ Even where the typeface as artistic work is generated by a computer, the law ascribes its authorship to some underlying creative personality: 'the person by whom the arrangements necessary for the creation of the work are undertaken'.¹²⁶ Despite collaborating to reproduce the myth of authorship, the doctrines of typographical copyright and copyright in typeface design bring to light some of the technical preconditions for

¹²¹ See chapter 3, 'From Paratexts to Print Machinery'.

¹²² The United States is one of the few jurisdictions that do not recognise copyright in typefaces: see Gloria C. Phares, 'An Approach to Why Typography Should Be Copyrightable', *The Columbia Journal of Law & the Arts* 39, no. 3 (2016): 417–20.

¹²³ Copyright, Designs and Patents Act 1988, section 55(1).

¹²⁴ *ibid* section 4(1).

¹²⁵ *ibid* sections 9(1) and 9(3).

¹²⁶ *ibid* section 9(3). On artificial intelligence and copyright, see chapter 6, 'Conclusion: Authorial Responsibility without Ownership?'

the production of books that may, upon closer study, perturb the legal insistence on authorial creation.

Kant's endorsement of the 'Breitkopf characters'¹²⁷ printed in the *Berlinische Monatschrift* offers us an inroad into the history of the typeface. When citing that periodical as the model for print in 1798, Kant emphasised the readability of its typeface and typesetting, which aligned with the communicative aim of publication. The modern conception of the 'aesthetics' of type, construed as pertaining to questions of 'beauty'¹²⁸ and 'taste',¹²⁹ was de-prioritised in favour of its ancient sense of relating to 'sense perception',¹³⁰ particularly the sense of sight: 'for no matter what page one opens [the *Berlinische Monatschrift*] to, the sight of it will strengthen the eyes perceptibly when they have been strained by reading the kind of print described above'.¹³¹ In so doing, notwithstanding Kant's 1785 comments on literary materiality, he enacted an 'ethic of typographical invisibility'¹³² or transparency that would continue to predominate in modern Western publishing and bookmaking. Under this paradigm, the best typeface and typesetting effaced themselves to reveal the printed contents. In 1951, a similarly practical and communicative account of typography was articulated by Stanley Morison:

Typography may be defined as the art of rightly disposing printing material in accordance with specific purpose; of so arranging the letters, distributing the space and controlling the type as to aid to the maximum the reader's comprehension of the text. Typography is the efficient means to an essentially utilitarian and only accidentally aesthetic end, for enjoyment of patterns is rarely the reader's chief aim.¹³³

Echoing Kant's disapproval of the use of grey rather than black ink for its 'softer and more agreeable'¹³⁴ contrast on white paper, Morison argued that 'there [was] little room for "bright" typography'.¹³⁵ All decisions in typography, whether they relate to composition, imposition, impression, or paper, were to be made in the service of readability and communication within societal traditions and publishing contexts. Though recognising its historical decline in use, Morison noted some merits of black letter, affirming that it was 'in design more homogenous,

¹²⁷ Kant, *The Conflict of the Faculties*, 211.

¹²⁸ *Oxford English Dictionary*, 2nd ed. (Oxford: Oxford University Press, 2004), s.v. 'Aesthetics', definitions 4 and 5.

¹²⁹ *ibid.*

¹³⁰ As recorded in the *Oxford English Dictionary* entry, 'aesthetics' derives from the ancient Greek *αἰσθητικός*, meaning 'of or relating to sense perception, sensitive, perceptive'.

¹³¹ Kant, *The Conflict of the Faculties*, 211.

¹³² Paul C. Gutzjahr and Megan L. Benton, 'Introduction: Reading the Invisible', in *Illuminating Letters: Typography and Literary Interpretation*, ed. Paul C. Gutzjahr and Megan L. Benton (Amherst and Boston: University of Massachusetts Press, 2001), 4.

¹³³ Stanley Morison, *First Principles of Typography* (Cambridge: Cambridge University Press, 1951), 5.

¹³⁴ Kant, *The Conflict of the Faculties*, 211.

¹³⁵ Morison, *First Principles of Typography*, 5.

more lively and more economic a type than the grey round roman we use'.¹³⁶ Kant's defence of the Breitkopf Fraktur typeface based on its perceptual advantage over roman types was, thus, not peculiar to the philosopher, but instead reflected the predominant modern understanding of type as a practical means of literary dissemination.

Though named in support of Kant's case for the superior readability of German scripts,¹³⁷ the Leipzig typefounder Breitkopf did not share the philosopher's contempt for roman types, nor did he necessarily privilege the functionality of type over its aesthetic beauty. The beauty of roman types arose as a topic for reflection in a 1777 essay where Breitkopf praised the letters cut by the Parisian typefounder Pierre Simon Fournier le jeune. In *Nachricht von der Stempelschneiderey und Schriftgießerey. Zur Erläuterung der Enschedischen Schriftprobe* ('Breitkopf on Punchcutting and Typefounding'¹³⁸), Breitkopf criticised a claim made by a Dutch typefounder, Joh. Enschedé, that the latter's typefoundry in Holland was 'the best and most beautiful'¹³⁹ in all of Europe.¹⁴⁰ The typefoundry's most recent typefaces were partially cut by the German punchcutter, Joan Michaël Fleischmann, whom Enschedé recognised as 'the greatest or the most accomplished type-cutter since the invention of printing'.¹⁴¹ Against these superlatives used to describe Enschedé's own typefoundry and punchcutter, Breitkopf sought to show that Fournier's typefoundry in Paris was in fact the more superior, a key reason being that the latter's types were cut by the artist Fournier himself. In Breitkopf's view, 'the best and most beautiful'¹⁴² typefaces were those whose full range of sizes exhibited the greatest regularity, consistency, and harmony in appearance. He compares the pleasure of viewing these typefaces to that of seeing a beautiful work of art: 'it is a pleasant, appealing sight, where the eye is just as much delighted when types of different sizes appear on a page as by a beautiful painting'.¹⁴³ Because of this demand for consistency, Breitkopf stressed that the types had to be 'cut from one and the same hand by a single artist'.¹⁴⁴ The advantage of Fournier's foundry over Enschedé's consisted precisely in the fact that Fournier had personally cut all of the typefaces according to a common design, whereas Enschedé had employed multiple

¹³⁶ *ibid* 7.

¹³⁷ Kant did not cite the specific reference in which Breitkopf purportedly noted that Roman letters were more straining on the eyes than German ones were.

¹³⁸ See the English translation by Dan Reynolds: J. G. I. Breitkopf, *Breitkopf on Punchcutting and Typefounding: A Critique of Enschedé's 1768 Type Specimen*, trans. Dan Reynolds (Berlin-Neukölln, 2019).

¹³⁹ *ibid* 1.

¹⁴⁰ Enschedé's claim was made in his preliminary note to the 1768 type specimen catalogue published by his printing house in Haarlem, whose review by Christoph Gottlieb von Murr in the *Journal für Kunstgeschichte und zur allegemine Litteratur* (Journal of Art History and Literature) in 1776 served as the occasion for Breitkopf's criticism of Enschedé in the 1777 essay: see the translator Dan Reynold's introduction, especially pages ii and v.

¹⁴¹ Breitkopf, *Breitkopf on Punchcutting and Typefounding: A Critique of Enschedé's 1768 Type Specimen*, 3.

¹⁴² *ibid* 1.

¹⁴³ *ibid*.

¹⁴⁴ *ibid*.

typesetters. Juxtaposing Enschedé type specimens against Fournier's, Breitkopf observed that the former not only omitted certain type sizes, but also were only partly cut by Fleischmann, such that the type specimens lacked the uniform beauty of the Fournier's. 'How pleasantly one is moved by the consistency of [Fournier's] round *Romain* or roman types, cut according to a common design, which one reads with pleasure; none of the type specimen from the other, previously-distinguished Parisian typefoundries come close; not the typefaces of the Sanlecques or those of Granjon'.¹⁴⁵ In Breitkopf's praise of Fournier's letters, we see the Leipzig typefounder's clear admiration for the beauty of roman types. In the course of elaborating on the aesthetic principles of typefaces, Breitkopf went further to suggest that 'a full round letter [was] always more pleasant to the eye than a long and condensed one',¹⁴⁶ which lends itself to be read as an implicit comparison between roman and black letter types. The rest of the essay was punctuated with exclamations about the beauty of the former. Considerations of the readability of letters arose only in occasional discussions of letters that were so tiny as to be nothing but 'pure torture'¹⁴⁷ for type-cutters, printers and readers, or whose strokes and lines were 'too fine'¹⁴⁸ to be read and 'burdensome to the reader's eyes'.¹⁴⁹ German types and typefoundries were mentioned only in the concluding two paragraphs, when Breitkopf reflected on the limits of typefounding in German as compared to that in France, Holland and the Netherlands. Christian Zinck, a punchcutter and typefounder in Wittenberg, was cited as possibly matching Fournier in vocational excellence 'if only he had possessed a good eye for beauty and correctness, in addition to his industriousness'.¹⁵⁰ Further, Breitkopf recognised that the existence of two German types, namely, schwabacher and fraktur, alongside that of roman and italic styles, made it difficult for German typefoundries to produce artists like Fournier capable of cutting every type.¹⁵¹ Much had to be done for leading German typefoundries, including Breitkopf's in Leipzig, to produce type specimens as beautiful and as complete as the roman letters of Fournier's.¹⁵²

Our reprisal of Breitkopf's essay suggests that the visual materiality of type is by no means definitively nor exhaustively explained by the communicative and functionalist account provided by Kant. Unlike Fichte's movement beyond the surface of the text to the so-called ideal form belonging to the author, Kant's account retained its focus on the visible letters of the publication as the material means that relayed a speech necessarily spoken in the author's name. However, the

¹⁴⁵ *ibid* 6.

¹⁴⁶ *ibid* 3.

¹⁴⁷ *ibid* 7.

¹⁴⁸ *ibid* 9.

¹⁴⁹ *ibid*.

¹⁵⁰ *ibid* 11.

¹⁵¹ *ibid*.

¹⁵² *ibid*.

optical medium need not be subordinated to the prescribed role of delivering any message defined with reference to the authorial figure. Rather, as suggested by Breitkopf, both the printed letters and the printing types that were cut for their production could be regarded as works of art that were, in themselves, pleasing to the eyes. Whilst the philosopher thought that the ‘letters, considered as pictures, have no intrinsic beauty at all’,¹⁵³ the Leipzig typefounder instead recognised their potential for ‘beautiful regularity’¹⁵⁴ and the aesthetic pleasure that ‘geometrically-correct’¹⁵⁵ typefaces gave. ‘The beauty of every typeface consists in the correct relation of the strokes with the space between the lines, which cannot be neglected even in the intervals between one letter and the next; in the correct height and depth of the ascender’d and descender’d letters; and in the proper length of the lines’.¹⁵⁶ The proportions of type could be determined with precision, not unlike those of sculptures. Roman types were not to be categorically dismissed for allegedly interfering with the reading of books, but instead admired as crafted objects whose aesthetic appeal was not necessarily in tension with their functionality.

Other than exhibiting an emphasis of the aesthetic beauty of type, Breitkopf’s text also affords our questioning of his putative creation of the typeface that now bears his last name. Recall that, when the Wittenberg typefounder Zinck was mentioned, it was to call attention to the gap between Zinck’s craftsmanship and Fournier’s. Breitkopf had not only been familiar with Zinck’s work, but in fact enlisted his help for the very making of the Breitkopf Fraktur typeface more than two decades ago. As recorded in Christina Killius’s account of the ‘origins’ of the typeface, the letters of Breitkopf Fraktur were first cut by Zinck and two other punchcutters, Johann Michael Schmidt and Johann Peter Artopacus in the Leipzig typefoundry around 1750.¹⁵⁷ Not unlike Enschedé, Breitkopf had relied on the labour of others to produce the typeface that would bear his sole name. The ‘authorship’ of the typeface was, thus, divided from its very originary moment. Indeed, the visible irregularities of the script evidenced this co-production, and could well have informed Breitkopf’s later comments about the aesthetic requirement for typefaces to be cut by the same hand.¹⁵⁸ As Killius put it, ‘Breitkopf Fraktur appeared somewhat inconsistent [*uneinheitlich*] because of the multiple typecutters. That is why the publisher advocated as early as 1776 that a good type

¹⁵³ Kant, *The Conflict of the Faculties*, 209–11.

¹⁵⁴ Breitkopf, *Breitkopf on Punchcutting and Typefounding: A Critique of Enschedé’s 1768 Type Specimen*, 3.

¹⁵⁵ *ibid.* 2.

¹⁵⁶ *ibid.*

¹⁵⁷ Christina Killius, *Die Antiqua-Fraktur Debatte um 1800 und ihre historische Herleitung* (Wiesbaden: Harrassowitz Verlag, 1999), 327.

¹⁵⁸ For an image of the Breitkopf Fraktur script taken from Albert Kapr, *Fraktur: Form und Geschichte der gebrochenen Schriften* (H. Schmidt, 1993), see Killius, 328.

foundry should have all its typefaces designed by an artist in order to achieve the greatest possible consummation and harmony'.¹⁵⁹

Such a record of collaboration in the initial cutting of Breiskopf Fraktur is broadly consistent with the history of the manufacture of types offered by Harry Carter.¹⁶⁰ Before the appearance of two-dimensional ink marks of letters on paper, the three-dimensional metal types had first to be made. 'Type is something that you can pick up and hold in your hand'.¹⁶¹ Though printers financed the operations by purchasing the types at book fairs and foundries, their making was undertaken by other skilled artists, namely, punchcutters, matrix and mould makers, and casters.¹⁶² The technical skills required for the completion of these tasks derived from trades that historically predated letterpress printing, including coin and seal engraving (for punchcutting), goldsmithery (for matrix- and mould-making) and pewtery (for typecasting).¹⁶³ Punchcutters worked to cut by hand relief patterns of the letters on the end of long pieces of steel.¹⁶⁴ These completed 'punches' were then struck into blocks of copper, creating impressions of each letter and thereby forming 'matrices'.¹⁶⁵ After each matrix had been carefully trimmed or 'justified' to give the preferred alignment, it was fixed in a two-part contraption called a 'mould' so that molten metal (typically an alloy of lead, tin, antimony and copper¹⁶⁶) could be poured into the matrix while the matrix was held in place. Printing types were thus cast, the requisite number of which in a particular size constituted a 'fount'.¹⁶⁷ Printers could contract with specialist casters for the making of types using the matrices and moulds that they had purchased, though by the early seventeenth century most were already purchasing ready-made founts.¹⁶⁸ The co-cutting of those punches for the 'first' casting of Breiskopf Fraktur was but one moment in the longer production lines that manufactured the types utilised in printing houses of the period.

As suggested by the technical derivation of typefounding from older trades, the history of typefounding predates the founding of any particular type. From Killius's account of the 'origins' of Breiskopf Fraktur, we can further identify at least two sets of techno-cultural inheritances on which the design of Breiskopf Fraktur had probably drawn. First, Albrecht Dürer's writings on applied geometry, including his discussion on the production of roman types, had been closely

¹⁵⁹ Killius, *Die Antiqua-Fraktur Debatte um 1800 und ihre historische Herleitung*, 327; my translation.

¹⁶⁰ Harry Carter, *A View of Early Typography: Up to About 1600* (London: Hyphen Press, 2002).

¹⁶¹ *ibid* 5.

¹⁶² *ibid* 10.

¹⁶³ *ibid* 13.

¹⁶⁴ *ibid* 6. For a schematic representation of a punch, a matrix, and a type, see Philip Gaskell, *A New Introduction to Bibliography* (New Castle, Delaware: Oak Knoll Press, 1995), 11.

¹⁶⁵ Carter, *A View of Early Typography: Up to About 1600*, 6.

¹⁶⁶ *ibid* 21.

¹⁶⁷ *ibid* 7.

¹⁶⁸ Gaskell, *A New Introduction to Bibliography*, 12.

studied by Breitkopf and shaped his own perspective on typefounding, particularly his demand for geometrical correctness.¹⁶⁹ Other than Dürer's texts, Breitkopf owned an extensive collection of books on the art of printing that contributed to his understanding of it.¹⁷⁰ Second, the design of Breitkopf Fraktur was based on a classical model of fraktur, the Neudörffer-Andreä Fraktur, which dates back to the early sixteenth century.¹⁷¹ Printing types are, thus, iterations of prior historical forms. In the 1777 essay, Breitkopf suggested that even the letters cut by the 'peerless' Fournier had identifiable precedents: 'Fournier is not entirely the inventor of these cursive types; P. Moreau, a Parisian writing master who was granted a privilege to build a foundry and printing establishment in 1640, had the idea first'.¹⁷² Indeed, he noted that the technology of printing types historically derived from handwritten scripts: 'It is the imitation of handwriting that led to the invention of printing. The first examples of the art were nothing else than copies of the common handwriting then used in Germany, just as the Manutius italic was a copy of the roman chancellory hand. Subsequent type-cutters only improved these features, and have endeavoured to give them a definite and steady form, and this is the reason why they have actually been confirmed as types for use in printing'.¹⁷³ The history of Breitkopf Fraktur incessantly points backwards to an earlier point in time, moving from an apparently self-contained form invented in Leipzig around 1750 to its precursors in the sixteenth century and, even further, to the material form of writing that it supposedly superseded.

Hence, the 'invention' of Breitkopf Fraktur was not only owed to the multiple hands that cut it, but also deeply indebted to prior knowledges and practices that animated its production. Theories and practices of punchcutting and typefounding, only crudely indexed in the proper names of Breitkopf, Zinck, Schmidt, Artopacus, Dürer, Neudörffer and Andreä, were part of the historical processes that produced it. Emergent from a dense history of collaboration, influence, imitation, adaptation and renewal, the material typeface undercuts the idea of sole proprietorship attached to its name and enshrined in the doctrines of copyright law.

(Not) Seeing Breitkopf Fraktur

Between the manufacture of printing types and the reader's perception of their inked impressions on paper, there would have occurred a series of processes in literary production that evidence the

¹⁶⁹ Killius, *Die Antiqua-Fraktur Debatte um 1800 und ihre historische Herleitung*, 327.

¹⁷⁰ *ibid.*

¹⁷¹ *ibid.*

¹⁷² Breitkopf, *Breitkopf on Punchcutting and Typefounding: A Critique of Enschedé's 1768 Type Specimen*, 9.

¹⁷³ *ibid.* 10.

socio-technological origins of the printed book. In respect of Kant's and Fichte's essays in the *Berlinische Monatsschrift*, a condensed sketch of some of the likely intermediate stages may be generated from bibliographical studies of the hand-press period of print, 1500-1800, in which the German periodical was made.¹⁷⁴ After having procured the Breitkopf Fraktur types, the Berlin publishing house Haude and Spener, with whom Gedike and Biester had contracted to print the periodical issues, would assign to its workers various tasks involving certain modes of interaction with those printing types and their impressions. The metal types would have been stored in 'cases', namely, large wooden trays split into compartments assigned to each of the different symbols (and blanks) that made up the fount of type.¹⁷⁵ From these cases, the compositor retrieved particular types that would be assembled into words, lines and pages, the arrangement of which be based on the handwritten manuscripts supplied by Gedike and Biester.¹⁷⁶ Specifically, each line of type was gathered on a hand-held tray called a 'composing stick', before being tied with a string and transferred to trays large enough hold an entire page of type called 'galleys'.¹⁷⁷ Pages of type set on a whole sheet of paper were locked into position by a pair of iron frames called 'chases', thereby becoming 'formes' prepared for printing.¹⁷⁸ This process of setting pages into formes was called 'imposition', and was in part shaped by the spatial dimensions of the paper on which the text was to be printed.¹⁷⁹

The presswork of this time typically involved a wooden hand-press operated by two pressmen.¹⁸⁰ After placing a forme on a small table mounted behind one of the side-frames of the hand-press ('ink block'), the first pressman would use a pair of stuffed leather pads ('ink balls') to rub black ink (a mix of varnish and lampblack) onto the surface of the type.¹⁸¹ After the forme was transferred onto a block of marble or limestone called the 'press stone', the other pressman would work to lower paper (probably wetted the night before so as to aid its absorption of the ink) onto it.¹⁸² Once each forme had been printed off, it was usually passed back to the compositor for the stripping and cleaning of its type (by scrubbing it with an alkaline solution and rinsing it with water)¹⁸³ and the return of the type to the cases.¹⁸⁴ After both sides of the sheets of paper had been

¹⁷⁴ See Gaskell, *A New Introduction to Bibliography*, 5–159.

¹⁷⁵ For an image of what an arrangement of compartments for a case of German types might look like, see Gaskell, 35.

¹⁷⁶ *ibid* 40.

¹⁷⁷ *ibid* 43.

¹⁷⁸ *ibid* 42.

¹⁷⁹ *ibid* 56.

¹⁸⁰ For an image of a modern replica of a late-eighteenth-century English common press, see Gaskell, *A New Introduction to Bibliography*, 119.

¹⁸¹ *ibid* 125

¹⁸² *ibid* 129.

¹⁸³ *ibid* 109.

¹⁸⁴ *ibid* 53.

printed, the warehouse-keeper would hang them up on racks to dry.¹⁸⁵ Once that was done, the sheets would be sorted and folded into the gatherings that formed each copy of the periodical issue.¹⁸⁶ Once stitched, each issue would be ready for sale and delivery at various sites and in various modes, whether sold at retail bookshops, book fairs, or sent via the postal system to the regular subscribers of the periodical.¹⁸⁷ As the publishers of the *Berlinische Monatsschrift*, Gedike and Biester would have financed and asserted some degree of control over each of these processes of print production, including their selection of the printing house.¹⁸⁸ Nonetheless, it was still only by virtue of this assemblage of industry actors interacting with the technologies available to them that the printed publication finally appeared before the reader.

What might it have been like to see Breitkopf Fraktur as the typeface of the *Berlinische Monatsschrift* in the late eighteenth century? Our comparison of the accounts by Fichte, Kant and Breitkopf points to the bodies of literature as the key site on which the typeface interacts with readers and bears on the concepts of book and authorship. For Fichte, the combination of letters and words in the printed book only acted as a material index of the inalienable proprietary ‘form’ generated by the author’s mind. Notwithstanding Fichte’s intimations about the materiality of ideas and the ideal aspects of the book, the particular typeface in which the book was set was invisible to the philosopher, who had prioritised instead the minds of authors and readers. Kant, on the other hand, kept in view the surface of the printed book, noting its operation as an optical medium that relied on the encounter between eyes and the printed letters of the book for the relay of a speech necessarily spoken in the author’s name. Differences in the readability of typefaces, particularly the contrast between the ‘Breitkopf characters and the ‘Didot characters’¹⁸⁹ (an Antiqua or roman variant), were directly remarked upon, with Kant preferring the former for being less tiring to read. Still, Kant’s functionalist account of the book, in so prescribing to the typeface the definitive function of communicating a speech bound to the personhood of the author, disclosed a hidden allegiance to the modern ethics of typographical transparency. The visual and corporeal materiality of type, which Kant’s account already suggests, is brought into sharper focus in Breitkopf’s account of the aesthetic beauty of types. Rather than as being optical instruments that simply facilitate the expression of the author’s personhood, types and their impressions on paper could also be seen as artistic objects capable of generating pleasure in readers by virtue of their geometrical proportions and consistency in appearance. Whereas the minds of authors and readers

¹⁸⁵ *ibid* 143

¹⁸⁶ *ibid* 144.

¹⁸⁷ On the postal system, see chapter 3, ‘From Paratexts to Print Machinery’.

¹⁸⁸ See Gaskell, *A New Introduction to Bibliography*, 179.

¹⁸⁹ Kant, *The Conflict of the Faculties*, 211.

were prioritised in Fichte’s account, the eyes and bodies of the persons interacting with print in historical time rose to prominence in Kant’s and Breitkopf’s accounts. From the latter two perspectives, to consider how Breitkopf Fraktur might have been seen by late-eighteenth-century German readers would be to reckon with their perceptual effects on those corporeal subjects.

As a blackletter script, Breitkopf Fraktur would have evoked both the visceral and cultural associations of the script. In the preface to his re-design and republication of the Breitkopf Fraktur typeface in 1793, Breitkopf observed that German typefaces tended to be reproached for looking ‘gothic’,¹⁹⁰ that is, for their association with datedness, ugliness, and barbarism.¹⁹¹ This ‘negative image’¹⁹² of blackletter was offered by Killius as an explanation for the general reluctance of typographers to reform fraktur until well into the eighteenth century. Breitkopf’s work with fraktur resisted contemporary efforts to abolish blackletter typefaces and pressures to make them closer in appearance to roman typefaces. Despite admiring the rounded characters of roman typefaces, Breitkopf sought to preserve the defining characteristics of fraktur, namely, its ‘long, narrow and broken’¹⁹³ letters, while demanding for ‘geometrical correctness’¹⁹⁴ in its redesign.

Perceptions of the comparative beauty of types are entwined with those of the cultures that produced them. In some twentieth-century Anglophone accounts of blackletter types, we can find reiterations of the earlier aesthetic dismissal of fraktur with added tinges of xenophobia and a certain disdain for Germanic culture.¹⁹⁵ Consider, for instance, Daniel Berkeley Updike’s history of German types, 1500-1800.¹⁹⁶ While accounting for the historical differentiation between two categories of blackletter types, fraktur and schwabacher, Updike utilised a slew of derogatory adjectives and phrases to describe examples of each in selected publications. The early fraktur in which Hans Schönsperger’s *Diurnale* (1514) was set was said to consist of descenders that were ‘all too restless’¹⁹⁷ and of capital letters with ‘eccentric curves’¹⁹⁸ that were ‘particularly disagreeable and vulgar’.¹⁹⁹ Similarly, the cursive schwabacher type deployed in Chrystoph Froschauer’s *Kunstrich Buch* (1567) was described as having ‘imitated the German handwriting of that period—a

¹⁹⁰ See Killius, *Die Antiqua-Fraktur Debatte um 1800 und ihre historische Herleitung*, 329.

¹⁹¹ See also Gerald Newton, ‘Deutsche Schrift: The Demise and Rise of German Black Letter’, *German Life and Letters* 56, no. 2 (2003): 185; *Oxford English Dictionary*, 2nd ed. (Oxford: Oxford University Press, 2004), s.v. ‘Gothic’.

¹⁹² Killius, *Die Antiqua-Fraktur Debatte um 1800 und ihre historische Herleitung*, 326; my translation.

¹⁹³ *ibid* 329.

¹⁹⁴ *ibid* 327.

¹⁹⁵ Other than Updike’s account (discussed below), see S. H. Steinberg, *Five Hundred Years of Printing* (Mineola, New York: Dover Publications, Inc., 1955). See also Peter Bain and Paul Shaw, ‘Introduction: Blackletter vs Roman: Type as Ideological Surrogate’, in *Blackletter: Type and National Identity*, ed. Peter Bain and Paul Shaw (Princeton Architectural Press, 1998), 13: ‘Steinberg called blackletter the “main obstacle to Germany’s full share in the life of the civilized world”’.

¹⁹⁶ Updike, *Printing Types*, 139–58.

¹⁹⁷ *ibid* 140.

¹⁹⁸ *ibid*.

¹⁹⁹ *ibid*.

fussy, restless kind of character, which is distracting to the eye and has somewhat the appearance of ravelled carpet-threads'.²⁰⁰ Compare these denunciations of blackletter types with Updike's approval of the sixteenth-century roman types used in *Canones Apostolorum* (1525): the latter edition was noted to be set in a 'larger and better roman character, accompanied by a charming type',²⁰¹ and overall 'an elegant piece of work'.²⁰² The occasional applaudable use of roman types was said to have declined across the sixteenth and seventeenth century and, finally, 'succumbed'²⁰³ to the popular taste for *fraktur* in the eighteenth century.²⁰⁴ Other instances of the simultaneous criticism of blackletter typefaces and the people who produced them would recur across Updike's account. 'These types are characteristically German—which is, artistically, seldom a compliment!'²⁰⁵ Perhaps the clearest sign of contempt for German culture would appear in his description of the printed editions of *Historia von D. Johann Fausten*, printed in Frankfurt in 1586, as 'very ugly and very obviously Teutonic'.²⁰⁶ Updike's extreme account suggests that, against any pretensions to universality and objectivity, questions of beauty were bound up with those of cultural differences, with aesthetic judgements being shaped by the wider socio-political context in which they were made.

The cultural-political significance of *Breitkopf Fraktur* in late-eighteenth-century Germany, would further perturb any functionalist account of type that narrowly centres on its communicative function. Being an 'improved' *fraktur* typeface that nonetheless stayed to the broken character of the script, *Breitkopf Fraktur* would have metonymically invoked the symbolic associations of *fraktur* and blackletter types more generally. As historical studies of blackletter have suggested, *fraktur* was not simply a 'neutral' medium assessed based on its aesthetic or communicative merits, but instead bore the face of German national identity.²⁰⁷ As we have previously noted, the Holy Roman Empire of the late eighteenth century was a highly fragmented political entity composed of more than three hundred states with separate governments and laws. Nonetheless, the German language was understood to be the cultural glue that held together the disparate states. In Johann Gottfried Herder's definition of nation, for instance, a common language used by the constitutive members of a group was identified to be the most important medium that held them together as a community. For Herder, a nation was 'a community that was made of kinship and history and

²⁰⁰ *ibid* 142.

²⁰¹ *ibid*.

²⁰² *ibid*.

²⁰³ *ibid* 145.

²⁰⁴ *ibid*.

²⁰⁵ *ibid* 140.

²⁰⁶ *ibid* 146.

²⁰⁷ See Peter Bain and Paul Shaw, eds., *Blackletter: Type and National Identity* (New York: Princeton Architectural Press, 1998); Newton, 'Deutsche Schrift: The Demise and Rise of German Black Letter'.

social solidarity and cultural affinity and was shaped over time by climate and geography, by education, by relations with its neighbours and by other factors, and was held together most of all by language, which expressed the collective experience of the group'.²⁰⁸ As one of the four blackletter types that emerged in German-speaking localities during the Middle Ages and retained its popularity well beyond the late eighteenth century,²⁰⁹ Fraktur came to be perceived as the visual-material form of the language that united the Germanic peoples. Despite their formal differences, *textura*, *rotunda*, *schwabacher* and *fraktur* were grouped as scripts of the Middle Ages whose 'darkness of the characters overpowers the whiteness of the page',²¹⁰ hence the name 'blackletter'. The emergence of the rounder, more broadly spaced roman types in the late fifteenth century, and its competition with blackletter types since then, further enforced the division between German national identity and that of the wider European community.²¹¹ As Peter Bain and Paul Shaw put it, *fraktur* and other blackletter types had been 'the visual embodiment of German national identity since the days of Luther'.²¹² Martin Luther's 1522 German translation of the New Testament had been fully set in blackletter, the body text taking the form of *schwabacher*, and the title text, *fraktur*.²¹³ The historical emancipation of the German peoples from the Roman Catholic Church was thus associated with these blackletter types.²¹⁴ The subsequent re-design, reproduction, and reuse of *fraktur* by *Breitkopf* and others would carry forward the cultural-political history of the German type and its symbolic resonances.

Still, Fichte insisted on looking beyond the typography of the book to the mind that supposedly produced and owned the form evidenced in it, thereby eliding the broader cultural-political significance of blackletter type. The philosopher's prioritisation of the authorial mind underlying the book was not missed by Friedrich Kittler in the latter's discussion of the techno-institutional conditions or *Aufschreibesystem* ('discourse network') that generated the myth of authorship circa 1800.²¹⁵ Though Fichte's 1793 essay was only mentioned in passing as 'one of the

²⁰⁸ Johann Gottfried Herder, *Ideen zur Philosophie der Geschichte der Menschheit* ['Outlines of a Philosophy of the History of Man'] (1800), translated and cited in Bain and Shaw, 'Introduction: Blackletter vs Roman: Type as Ideological Surrogate', 13.

²⁰⁹ The other three categories of blackletter type are *textura*, *rotunda* and *schwabacher*: see Bain and Shaw, 10. For a timeline of milestone events in the development of blackletter type between 1455 and 1995, see Paul Shaw, 'Timeline of Typography and Events 812-1995', in *Blackletter: Type and National Identity* (Princeton Architectural Press, 1998), 22–66.

²¹⁰ Bain and Shaw, 'Introduction: Blackletter vs Roman: Type as Ideological Surrogate', 10.

²¹¹ Phillipp Th. Bertheau, 'The German Language and the Two Faces of Its Script: A Genuine Expression of European Culture?', in *Blackletter: Type and National Identity* (New York: Princeton Architectural Press, 1998), 22.

²¹² Bain and Shaw, 'Introduction: Blackletter vs Roman: Type as Ideological Surrogate', 14.

²¹³ Bertheau, 'The German Language and the Two Faces of Its Script: A Genuine Expression of European Culture?', 26.

²¹⁴ Yvonne Schwemer-Scheddin, 'Broken Images: Blackletter between Faith and Mysticism', in *Blackletter: Type and National Identity* (New York: Princeton Architectural Press, 1998), 52.

²¹⁵ Kittler, *Discourse Networks 1800/1900*.

essays that led to the codification of authors' copyrights',²¹⁶ Kittler commented extensively on Fichte's reflections on reading and his pedagogical method as a university lecturer at Jena, suggesting the latter to be one of the exemplary representatives of the traditions of German Idealism and Romanticism that similarly prioritised the imagination (synonymous with 'mind' or 'spirit') over the letter. These passages provide some clues to Fichte's perspective on the relationship between mind and materiality and how might it obscure the implications of the Breitkopf Fraktur typeface on authorship.

In Fichte's guidance to the reader on how his treatise *Grundlage der gesamten Wissenschaftslehre* ('Foundations of the Science of Knowledge') (1794) should be read, he wrote that it 'cannot be communicated in any way by the mere letter, but must be imparted by the spirit',²¹⁷ thereby reasserting the priority of the latter. 'It could not be otherwise in a science that returns to the very foundations of human knowledge, in that the very enterprise of the human spirit proceeds from the imagination, and in that the imagination cannot be grasped except through the imagination'.²¹⁸ Notice that the imagination was set up as the transcendental ground for the very production of knowledge, including that of itself, relegating the letter to a secondary and derivative status. Whilst the book consisted of letters, it was dependent on the reader's use of his or her own imagination to generate knowledge of the imagination itself. In other words, in order to 'understand' the subject matter of the book, the reader had to become an author like himself, that is, not just a body that writes, but more fundamentally a mind that 'imagines' or gives form to ideas.

A similar call to authorship was sounded earlier in Fichte's *Plan anzustellender Rede-Übungen* ('Plan for Speech Exercises') (1787), which advocated for the subordination, even disappearance, of the letter by prescribing authorship as a remedy for the reader's spiritual 'stagnation'.²¹⁹ Two modes of reading were juxtaposed against each other: whilst 'to follow another's train of thought',²²⁰ that is, to trace the letters printed in the book, 'slackens the soul' and lulls it with a certain indolence',²²¹ to instead 'develop one's own thoughts'²²² and 'put oneself confidently and subtly in the spirit of the author'²²³ would help 'interrupt the stagnation thus induced in the human spirit'.²²⁴ Fichte further claimed that it was by becoming an author that the fullest understanding of the author could be gained by the reader: 'Certainly no one can completely understand a writer

²¹⁶ *ibid* 160.

²¹⁷ Johann Gottlieb Fichte, *Grundlage der gesamten Wissenschaftslehre* (1794), cited in Kittler, *Discourse Networks 1800/1900*, 154.

²¹⁸ *ibid*.

²¹⁹ Johann Gottlieb Fichte, *Plan anzustellender Rede-Übungen* (1787), cited in Kittler, *Discourse Networks 1800/1900*, 155.

²²⁰ *ibid*.

²²¹ *ibid*.

²²² *ibid*.

²²³ *ibid*.

²²⁴ *ibid*.

and feel himself his equal who is not already in some sense a writer himself.²²⁵ We may note that, in Fichte's emphasis on understanding the author by becoming an author, the book all but recedes from view. The materiality of the book gives way to authorial formation. Lost in the reverie of authorship, Fichte went so far as to suggest that authorship could take place in the absence of prior books: "There is certainly no greater spiritual pleasure for those capable of it than that which one experiences through, or during, writing itself, and which...would remain so even in a world where no one read or heard of anything read".²²⁶ The practice of writing itself was imagined as an immensely pleasurable activity that could take place without the practice of reading. Fichte's valorisation of the imagination extended to the extinction of letters. As Kittler put it, "The clear implication is that, in the writing of the *Science of Knowledge* as well the imagination had surpassed all letters".²²⁷

Fichte's fantasy of the disappearance of books was re-staged in the first university lectures that he gave in Jena. Departing from the practice of assigning and paraphrasing textbooks of older thinkers, which Kittler observed to be a convention extending from the earlier discourse network of *res publica litteraria* (the 'Republic of Scholars'), Fichte read aloud from his own newly written work, that is, instalments of what would later be published as *Grundlage der gesamten Wissenschaftslehre*.²²⁸ In so doing, Fichte not only performed his pedagogical duties as an author who exerted his imagination as if in the absence of prior books, but also urged his students to enact authorship by giving form to the ideas that arose in the lectures. It was as if eighteenth-century authors were independent of books, publishers and the wider print machinery. "Where previously the printing press and professors simply republished the whole world of books, the author-ego (to use his favorite term) Fichte published himself."²²⁹ Instead of books, authors themselves were reproduced. For Kittler, Fichte was enacting precisely what the discourse network of 1800 demanded: the identification of the imaginative author-poet as the foundation of the European system of knowledge.

As a philosophical proponent of German Idealism, Fichte cooperated with the poets of German Romanticism to imagine the transcendence of the spirit and imagination over the material letter. An emblematic scene in Romantic literature that depicted the tradition's 'invisibilisation' of the letter arose in E. T. A Hoffmann's *Der goldne Topf* ('The Golden Flower Pot'), which we have discussed in an earlier chapter.²³⁰ As the young student Anselmus sat in the azure chamber of

²²⁵ *ibid.*

²²⁶ *ibid.*

²²⁷ *ibid.*

²²⁸ *ibid.* 156. See also Kittler, 'Towards an Ontology of Media', 28.

²²⁹ Kittler, *Discourse Networks 1800/1900*, 156.

²³⁰ Hoffmann, 'The Golden Flower Pot', 1. See chapter 2, 'Two Ways of Looking at a Printed Book'.

Archivarius Lindhorst's house copying the latter's manuscripts, he heard whispers from Serpentina ('I am near, near, near! I help you: be bold, be steadfast, dear Anselmus! I toil with you so that you may be mine!²³¹) that facilitated his completion of the task almost without having to refer to the manuscript ('he scarcely needed to look at the original at all'²³²). The materiality of the letter, otherwise visible to any reader, was ceded to a speech that was of infinitely greater significance to the writer himself:

Whereas the caffeine-drunk bureaucrat Heerbrand beheld dancing Fraktur letters and the insane Klockenbring hallucinated the syllables and images of absent books, the Poet Anselmus hears only a single Voice whose flow makes his roman letters rounded, individualized, and—the distinguishing feature—unconscious.²³³

Only belatedly—that is, after the deed had been accomplished—did Anselmus see what he had written in a state of alphabetised intoxication: 'authorship arises in rereading what had been unconsciously written in the delirium'.²³⁴ From an alphabetised culture extended the work, whose 'ownership' was belatedly ascribed to the author. But the author did not even notice the letters he was transcribing, much less see the wider techno-institutional network to which he and the work were coupled. Fichte was but one of the late-eighteenth-century authors who assumed the position of Anselmus: he did not attend to the fraktur letters in which his 1793 periodical essay was set, nor those of his other publications. The typeface and what it might index about the historical context in which it was produced and used remained invisible to the philosopher.

If Fichte had attended to the materiality of the fraktur letters in which his texts were set, he could have realised that the so-called 'transcendental' and 'transcendent' mind of the author might well have been the effect of broader subjectivating processes that relied on the optical medium. For instance, as Kittler has noted, the discourse network of 1800 was characterised by the mass printing, distribution and use of state-sanctioned ABC books or primers that enlisted mothers as the primary instructors in their children's education. 'The list of such books is long: Friedrich Wilhelm Wedag, *Handbook of Early Moral Education, Intended Primarily for Use by Mothers, in Epistolary Form* (1795); Samuel Hahnemann, *Handbook for Mothers, or Rules for the Early Education of Children (after the Principles of J. J. Rousseau)* (1796); Christoph Wilhelm Hufeland, *Good Advice for Mothers on the Most Important Points of Physical Education in the First Years* (1799); Johann Heinrich Pestalozzi, *How Gertrude Teaches Her Children, an Attempt to Provide Guidance for Mothers in the Self-Instruction of Their Children* (1801); *The Mother's Book, or Guidelines for Mothers in Teaching Children*

²³¹ Hoffmann, 'The Golden Flower Pot', 34.

²³² *ibid* 35.

²³³ Kittler, *Discourse Networks 1800/1900*, 100.

²³⁴ *ibid* 109.

to *Observe and Speak* (1803); Christian Friedrich Wolke, *Instructions for Mothers and Child Instructors on the Teaching of the Rudiments of Language and Knowledge from Birth to the Age of Learning to Read* (1805); Heinrich Stephani, *Primer for Children of Noble Education, Including a Description of My Method for Mothers Who Wish to Grant Themselves the Pleasure of Speedily Teaching Their Children to Read* (1807).²³⁵ Though set in fraktur, these primers were created to be read not by children, but rather by mothers who thereby learnt how to use their own mouths to teach their children to vocalise the sounds of the alphabet. ‘Did you know, ladies, that you can close the oral cavity without any help from the lips, simply by firmly pressing the forward part of the tongue tightly against the gums and thereby forcing the same original voice sound to travel also through the nasal passage? If you try this, you will find that you have made a voice sound different from the previous ones, which is designated *n* in our speech notation’.²³⁶ Instead of fraktur letters, then, the mother’s mouth and the sounds it produced were the chief sensory phenomena that first made the child a literate subject. Psychically, this meant that the child’s future acts of reading the book would entail the unseeing of the letters and the hallucination of a voice that recalled the mother’s. ‘And when later in life children picked up a book, they would not see letters but hear, with irrepressible longing, a voice between the lines’.²³⁷ In so prescribing the maternal instruction that substituted the voice for the letter, the ABC books of 1800 inaugurated the birth of poet-authors such as Anselmus, Fichte, and the German Romantics. Despite contributing to the alphabetisation of the author, the ‘original’ fraktur letters effaced themselves, enduring only as traces in Breitkopf’s updated script. By virtue of their Breitkopf Fraktur letters, Fichte’s and Kant’s essays subsist as palimpsests of the historico-material means by which authorial subjects were produced in their time.

Conclusion

In as early as 1982, Walter Ong had suggested the figure of the proprietary author to be a perceptual effect of the print medium and its typography.²³⁸ The image of an authorial mind that stood over and against an object it had created, versions of which were theorised in Fichte’s essay and redoubled in the various author-centric doctrines of copyright, was traced to the visual space of the printed page and its ostensible promise of intellectual proprietorship:

²³⁵ *ibid* 27–28.

²³⁶ Heinrich Stephani, *Fibel für Kinder von edler Erziehung, nebst einer genauen Beschreibung meiner Methode für Mütter, welche sich die Freude verschaffen wollen, ihre Kinder selbst in kurzer Zeit lesen zu lehren* [‘Primer for Children of Noble Education, Including a Description of My Method for Mothers Who Wish to Grant Themselves the Pleasure of Speedily Teaching Their Children to Read’] (1807), cited in Kittler, *Discourse Networks 1800/1900*, 34.

²³⁷ *ibid*.

²³⁸ Walter J. Ong, *Orality and Literacy: The Technologizing of the Word*, 30th Anniversary Edition (London and New York: Routledge, 2012), 128–9.

Print created a new sense of the ownership of words...Typography had made the word into a commodity...By removing words from the world of sound where they had first had their origin in active human interchange and relegating them definitively to visual surface, and by otherwise exploiting visual space for the management of knowledge, print encouraged human beings to think of their own interior conscious and unconscious resources as more and more thing-like, impersonal and religiously neutral. Print encouraged the mind to sense that its possessions were held in some sort of inert mental space'.²³⁹

As a visible embodiment of the abstract literary work, the printed page seemed to reflect a mind of no-less objectively ascertainable dimensions. Ong pointed us to what resembled a modern iteration of Jacques Lacan's mirror stage.²⁴⁰ Just as the function of the 'I' had formed pursuant to the infant's *méconnaissance* ['misrecognition'] of its ideal specular image as its present and future self, so too did the proprietary author emerge from a misidentification of the ostensibly self-contained printed page as external analogue of the author's inner mind. In both instances, the complex historical processes that produced the image of the author-ego were submerged beneath it.

Our review of the above aspects of the production and perception of the Breitkopf Fraktur typeface has disclosed a similar elision of the literary artefact in the myth of authorship variously reproduced in contemporary law and the two German philosophers' accounts of the book. Whereas the law acts as if the literary artefact could be bifurcated into its constitutive literary (and other cultural) works and its overall typographical arrangement, the historical itinerary of the typeface disavows such a simple division, illustrating instead an array of criss-crossing interactions between human bodies and print technologies. Though intimated in Kant's concept of the book as communicative medium, this corporeal dimension of literature ultimately exceeds it by bringing to light those aesthetic and cultural-political dimensions of type that defy any prevailing emphasis on communication and authorship. The materiality of type suggests the printed book itself to be deeply involved in the production of the myth of proprietary authorship, the understanding of which necessitates further work.

²³⁹ *ibid.*

²⁴⁰ Jacques Lacan, 'The Mirror Stage as Formative of the I Function: As Revealed in Psychoanalytic Experience', in *Écrits: The First Complete Edition in English* (New York and London: W. W. Norton & Company, 2006), 75–81.

5. (After)lives of I. Kant

Introduction

Perhaps attesting to the global dominance of the myth of proprietary authorship, it is rare to find recent print publications that do not bear the name of their authors. The authorial name affixed to the text, often foregrounded in the front cover and title page of the book, is of evidential significance to contemporary copyright systems, whose assignment of economic and moral rights is in some ways tied to the identities of authors.¹ Not only may the authorial name be relied upon as probative proof of literary ownership, it further places the burden of proof on any party seeking to dispute ownership in jurisdictions such as the United Kingdom, Australia, and many civil law and European nations.² For instance, section 104(2)(a) of the Copyright, Designs and Patents Act 1988 ('CDPA 1988') provides that the person whose name appears on the publication 'shall be presumed, until the contrary is proved—to be the author of the work'.³ Similarly, article 15(1) of the Berne Convention for the Protection of Literary and Artistic Works 1886 states that the appearance of the author's name on the literary work 'in the usual manner' is sufficient, 'in the absence of proof to the contrary', for the author to enforce the protected rights.⁴ Though no equivalent presumption of authorship operates in the United States nor in Canada, the authorial name printed in the certificate of registration of copyright issued by their respective copyright and intellectual property offices is similarly presumed to be a valid index of authorship.⁵

Having one's name affixed to the text as its author may be of ostensible advantage when enforcing the property right subsisting in the literary work. But other copyright doctrines could be invoked to contest a claim to exclusive authorship, one of which is that of 'joint authorship'.⁶ In the United Kingdom, for instance, an unnamed participant in the creation of the literary work may argue that the work is a product of 'collaboration'⁷ with the named author, in which the former's contribution 'is not distinct from that of the other author'⁸ so as to qualify for joint authorship

¹ For an overview of the norms organised around the author in UK copyright law, see Lionel Bently et al., *Intellectual Property Law* (Oxford: Oxford University Press, 2018), 125–40.

² For a list of some pertinent statutory provisions, see Jane Ginsburg, 'The Concept of Authorship in Comparative Copyright Law', *DePaul Law Review* 52 (2003): 1069, footnote 18.

³ Copyright, Designs and Patents Act 1988, section 104(2)(a). The presumption is inapplicable in certain exceptional instances such as works produced in the course of employment: see section 104(2)(b) of the same Act.

⁴ Berne Convention for the Protection of Literary and Artistic Works (1886), article 15(1).

⁵ See Title 17 of the United States Code, section 410(c); Copyright Act (R.S.C., 1985, c. C-42), section 53(2).

⁶ For a recent account of the doctrine of joint authorship in UK copyright law, see Daniela Simone, 'Kogan v Martin: A New Framework for Joint Authorship in Copyright Law', *Modern Law Review* 83, no. 4 (2020): 877–92.

⁷ Copyright, Designs and Patents Act 1988, section 10(1).

⁸ *ibid.*

under section 10(1) of the CDPA 1988. A recent case before the Court of Appeal that addressed the question of joint authorship in a screenplay, a text that straddled the literary and dramatic categories of the copyright work, is that of *Kogan v Martin*.⁹ The claimant, whose name alone had appeared as the screenwriter in all typed versions of the screenplay, the certificates of the first three drafts registered with the Writers Guild of America, the emails sent to various finance companies, and eventually in the film's credits, had sought a declaration that he was, indeed, the sole author of the work.¹⁰ Conversely, the defendant, who had been romantically involved with the claimant during the writing of the first three drafts and allegedly made pertinent contributions to their writing that accrued to the final version, made a counterclaim for copyright infringement on the basis of her alleged ownership of a share of the copyright in the screenplay as its joint author. Though the first instance Court ruled in favour of the claimant, the Court of Appeal ordered a retrial of the case on several grounds of error, including the trial judge's failure to see that the dramatic genre of the work called for a recognition of the defendant's 'non-textual input',¹¹ ranging from the inclusion of a song performance to ideas relating to character and plot development, as possibly yielding joint authorship. Subsequently, in the second trial, the Intellectual Property Enterprise Court held that the defendant's devising of those musical, character and plot elements of the screenplay, indeed, entailed the 'creation, selection, and gathering together of concepts and emotions which the words have fixed in writing'¹² so as to constitute original authorial contributions amounting to one fifth of the screenplay's creation.

In copyright scholarship, *Kogan v Martin* has been affirmed as paying heed to 'the reality of collaborative creativity',¹³ both in the Court of Appeal's positing of a four-part test for joint authorship that is attentive to the context of the creative process and the nature of the subject matter, and in its own demonstration of a 'more comprehensive and nuanced approach'¹⁴ to the evidence that far exceeds the narrow vision of the first instance Court. For our present purposes, what matters beyond the case's doctrinal significance is its reflection of the law's treatment of the authorial name. Notwithstanding the appearance of the claimant's name in every version of the screenplay and in its various institutional and public forms, both the Intellectual Property Enterprise Court and the Court of Appeal were willing to recognise the possibility of there being

⁹ [2019] EWCA Civ 1645; [2020] E.C.D.R. 3.

¹⁰ On the appearance of the claimant's name in these various 'private' and 'public' forms, see *Martin v Kogan* [2018] F.S.R. 9 (2017), paragraphs 56, 81, 97; *Kogan v Martin* [2020] E.C.D.R. 3 (2019) paragraphs 71, 99; *Martin v Kogan* [2021] E.C.D.R. 26 (2021), paragraphs 40, 186, 193, 204, 205, 260, 291, 377.

¹¹ On these non-textual contributions, see *Kogan v Martin* [2020] E.C.D.R. 3 (2019), paragraphs 121-138.

¹² *Martin v Kogan* [2021] E.C.D.R. 26 (2021), paragraph 319, citing *Kogan v Martin* [2020] E.C.D.R. 3 (2019), paragraph 41.

¹³ Simone, 'Kogan v Martin: A New Framework for Joint Authorship in Copyright Law', 892.

¹⁴ *ibid* 881.

an uncredited joint author to whom the work was originally indebted. Perfunctorily cited by the lower Court as not altering the civil standard of proof, the statutory presumption of authorship provided under section 104(2) of the CDPA 1988 was not even mentioned by the Court of Appeal, as if it were immaterial to the question of joint authorship. The task of copyright law, it seemed, was not to trust the claim to sole intellectual proprietorship performed by the authorial name affixed to the text, but instead to look past the façade at the actual authorial contributions to the creative process. The authorial name was but one testament to authorship, and could well be of limited evidential value, for it might screen the truth of the work's creation.

Further, the absence of specification of the authorial name on the embodied work does not in itself preclude the subsistence of copyright in the work. Under the doctrine of 'unknown authorship',¹⁵ which applies where the authorial identity is not known, the duration of copyright in a literary work takes as its reference point not the year in which the author dies, but that in which the work was made or first made available to the public.¹⁶ As presently provided, the copyright term ends seventy years thereafter.¹⁷ Where only the publisher's name appears on the work when it was first published somewhere that qualifies it for copyright protection, the law presumes the publisher to be the copyright owner.¹⁸ Despite the importance of authors to copyright law as one of the pillars on which its doctrinal edifice stands, the law does provide for situations of authorial anonymity. First an index, then a screen, the authorial name now appears to be entirely dispensable.

English legal history suggests that the present optionality of declaring the author's name on the text is largely continuous with the past, save for certain short-lived decrees and laws mandating otherwise that were in force between the mid-sixteenth to mid-seventeenth centuries.¹⁹ Instead of the author's name, it is the printer's name that more consistently has had to be printed in the publication since the late eighteenth century, the requirement of which dates back even further to around the mid-sixteenth century. Pursuant to the Proclamation of 1546, printers were first required to specify on each print publication their own names, the authors' names, and the date of printing. Similar requirements were put in place by other Proclamations and the Star Chamber Decree of 1586 during the reign of Queen Elizabeth I (1558-1603), the latter of which remained

¹⁵ For the definition of 'unknown authorship', see Copyright, Designs and Patents Act 1988, section 9(4).

¹⁶ *ibid* sections 12(2) and 12(3).

¹⁷ *ibid*.

¹⁸ *ibid* section 104.

¹⁹ The following two paragraphs are largely based on Eric Barendt, *Anonymous Speech: Literature, Law and Politics* (Oxford and Portland, Oregon: Bloomsbury Publishing, 2016), 82–93. Other than the primary sources cited below, see Fredrick Seaton Siebert, *Freedom of the Press in England 1476-1776: The Rise and Decline of Government Controls* (Urbana: University of Urbana Press, 1952); Colin Manchester, 'The Newspapers, Printers and Reading Rooms Repeal Act 1869: A Case for Repeal?', *Legal Studies* 2, no. 2 (1982): 180–88; Robert J. Griffin, 'Anonymity and Authorship', *New Literary History* 30, no. 4 (1999): 877–95.

in force until 1637. Superseding the earlier Decree, the Star Chamber Decree of 11 July 1637 criminalised the printing of ‘any Books, Ballads, Charts, Protraictures, and other thing or things whatsoever’²⁰ without setting ‘the Name or Names of the Author or Authors, Makers or Makers of the same’.²¹ Following the abolition of the Star Chamber by the Long Parliament in 1641, the House of Commons issued the Order of 29 January 1641 for both the author’s name to be printed and the author’s consent to be sought in any (re)printing.²² Though the Ordinance for the Regulating of Printing of June 1643 only required the printer’s name to be printed in the book,²³ subsequent renewals of the Ordinance between 1647 and 1653 further mandated the printing of the author’s name in the title page.²⁴ Enacted on 20 September 1649, the ‘Act against Unlicensed and Scandalous Books and Pamphlets, and for better regulating of Printing’ only identified the title printing of the author’s name and place of residence as a disjunctive requirement to that of including the licenser’s name, either of which was to be fulfilled *on top of* the more basic requirement of indicating the printer’s name.²⁵ The Licensing Act of 1662²⁶ made it necessary for every printer to print and set his own name and that of the authors only if the licenser so required (‘...if he be thereunto required by the licenser under whole approbation the licensing of the said book’²⁷). Despite remaining in force over the next thirty years, the Act was not renewed in 1695. Subsequent legislative attempts to compel the disclosure of authors’ names, such as a Bill read before the House of Commons on 3 June 1712 mandating that ‘to every Book, Pamphlet, and Paper, which shall be printed, there be set the Name and the Place of Abode of the Author, Printer, and Publisher thereof’,²⁸ did not enter into force.

By the end of the eighteenth century, a strict requirement for print publications to bear the names and addresses of their printers and publishers has set in. The Newspaper Publication Act

²⁰ See the Star Chamber Decree of 11 July 1637, ‘VIII. Item’: <https://www.british-history.ac.uk/rushworth-papers/vol3/pp306-316> (accessed 30 April 2022).

²¹ *ibid.*

²² See the Order of 29 January 1641, ‘Printing’: <https://www.british-history.ac.uk/commons-jrnl/vol2/pp402-404> (accessed 30 April 2022).

²³ See the Ordinance for the Regulating of Printing of 16 June 1643: <https://www.british-history.ac.uk/no-series/acts-ordinances-interregnum/pp184-186> (accessed 30 April 2022).

²⁴ See Griffin, ‘Anonymity and Authorship’, 894, footnote 28.

²⁵ See September 1649: An Act against Unlicensed and Scandalous Books and Pamphlets, and for better regulating of Printing, ‘Printers to enter Bond of 300 L; Authors or Licensers name to be prefixed’: <https://www.british-history.ac.uk/no-series/acts-ordinances-interregnum/pp245-254> (accessed 30 April 2022).

²⁶ The full title is ‘An Act for preventing the frequent Abuses in printing seditious, treasonable, and unlicensed Books and Pamphlet, and for regulating of Printing and Printing Presses’.

²⁷ See the Licensing Act of 1662, clause VII: https://www.copyrighthistory.org/cam/tools/request/showRecord.php?id=record_uk_1662 (accessed 30 April 2022).

²⁸ *The Political State of Great Britain*, vol. 3 (London: J. Baker, 1712), 425.

of 1798²⁹ not only required that the names and places of abode addresses of newspaper printers and publishers be disclosed to the relevant Commissioners, but also that these details be printed ‘in some Part of every Newspaper’.³⁰ Whereas the 1798 Act only pertained to newspapers and similar publications of news or intelligence, the Unlawful Societies Act of 1799³¹ necessitated the printing of the names and addresses of printers and publishers in every type of printed publication, including books and pamphlets.³² The same requirement was provided under the Printers and Publishers Act of 1839.³³ Presently, pursuant to the Second Schedule of the Newspapers, Printers, and Reading Rooms Repeal Act of 1869 and the amending Printer’s Imprint Act of 1961, each printer is required to print ‘his or her name and usual place of abode or business’³⁴ and the same details of the publisher ‘upon the first or last leaf of every paper or book’³⁵ that falls under these Acts.

The persistence of anonymity as a legal possibility, even as a norm,³⁶ at least in England across the latter half of the seventeenth century and the eighteenth and nineteenth centuries, has led some literary scholars to question the apparent priority that Foucault granted to the authorial name in ‘What Is an Author’ (1969).³⁷ Foucault’s theorisation of the ‘author-function’, that is, the role of the authorial figure in discourse, opens by differentiating the author’s name from the proper name, the distinction of which invites a close association of the *figure* of the author with the author’s *name*. Whereas the proper name ‘Pierre Dupont’ more simply designates and describes a particular person, the author’s last name ‘Shakespeare’ further classifies a number of texts as being written by that author and him alone, establishing between these texts relationships of ‘homogeneity,

²⁹ The full title: ‘An Act for preventing the Mischiefs arising from the printing and publishing Newspapers and Papers of a like Nature, by Persons not known; and for regulating the Printing and Publication of such Papers in other Respects’.

³⁰ Newspaper Publication Act of 1798, section 8.

³¹ The full title: ‘An Act for the more effectual Suppression of Societies established for Seditious and Treasonable Purposes; and for better preventing Treasonable and Seditious Practices’).

³² Unlawful Societies Act of 1799; see also Barendt, *Anonymous Speech*, 88.

³³ Printers and Publishers Act of 1839; see also Barendt, *Anonymous Speech*, 88.

³⁴ Newspapers, Printers, and Reading Rooms Repeal Act of 1869, Second Schedule, section 2.

³⁵ *ibid.*

³⁶ For a statistical survey of anonymous English novels first published in Britain and Ireland between 1770 and 1830, see James Raven, ‘The Anonymous Novel in Britain and Ireland, 1750-1830’, in *The Faces of Anonymity: Anonymous and Pseudonymous Publications from the Sixteenth to the Twentieth Century*, ed. Robert J. Griffin (New York: Palgrave Macmillan, 2003), 141–66.

³⁷ Michel Foucault, ‘What Is an Author?’, in *Language, Counter-Memory, Practice: Selected Essays and Interviews: Selected Essays and Interviews by Michel Foucault*, ed. Donald F. Bouchard (Ithaca, New York: Cornell University Press, 1977). Other than Griffin’s work discussed below, see Mark Vareschi, *Everywhere and Nowhere: Anonymity and Mediation in Eighteenth-Century Britain* (Minneapolis: University of Minnesota Press, 2018); Robert J. Griffin, ed., *The Faces of Anonymity: Anonymous and Pseudonymous Publication, 1600-2000* (New York: Palgrave Macmillan, 2003). Mark Vareschi; Starner (eds), *Anonymity in Early Modern England*; the essays in Griffin (ed), *The Faces of Anonymity*. To be clear, many of these studies are not dismissive of Foucault, but rather keen on extending his insights into the historicity of the author-function to contexts where the authorial name is in some way absent.

filiation, reciprocal explanation, authentication, or of common utilization'.³⁸ Whilst it might be tempting to equate the authorial name with the authorial figure, Robert Griffin argues that the author-function could just as well operate in anonymous and pseudonymous texts, that is, where the legal name of the author is not printed in the title page.³⁹ For instance, by the mid-eighteenth century it had become commonplace to use the phrase 'by the author of' in publications following earlier unattributed works, which just as effectively grouped those texts as a set to be read as written by the same author.⁴⁰ Relatedly, the phrase 'by a lady', which was mostly used in the publication of Jane Austen's novels in the early nineteenth century, brought the pertinent texts under the authorship of a particular gender and class, regardless of the actual identities of the authors.⁴¹

De-linking the author's name and the author-function allows Griffin to make certain observations and suggestions about the history of anonymous publishing that might otherwise be missed when focusing on the author's name. To begin with, anonymous publishing thrived during the eighteenth and nineteenth centuries, insisting 'at least as much a norm as signed authorship',⁴² notwithstanding the commodification of the author's name. For instance, according to one account of novel publishing in England and Ireland between 1750 and 1830, more than 80 percent of new novels published between 1750 and 1790 were published anonymously.⁴³ Despite falling to under half in the first decade of the nineteenth century, the fraction of anonymous novels regained its height by the end of the 1820s.⁴⁴ Whereas copyright history has noted the operation of the author's name as a sort of 'brand name'⁴⁵ that assured the quality of the literary product during the period, Griffin highlighted that practices of anonymity and pseudonymity granted authors certain advantages, including those of social and political protection.⁴⁶ Indeed, except during the limited period demanding for the full disclosure of the identities of authors, authorial anonymity was understood to be 'an officially tolerated form of sanctuary'.⁴⁷ Though Percy Shelley's servant was imprisoned for distributing seditious tracts that had been published

³⁸ Foucault, 'What Is an Author?', 1977, 123.

³⁹ Griffin's broad definition of anonymity includes pseudonymity, the practice of using a name other than the author's legal name: see Griffin, 'Anonymity and Authorship', 882.

⁴⁰ *ibid* 880.

⁴¹ *ibid*.

⁴² *ibid* 882.

⁴³ Raven, 'The Anonymous Novel in Britain and Ireland, 1750-1830', 143.

⁴⁴ *ibid*.

⁴⁵ Mark Rose, *Authors and Owners: The Invention of Copyright* (Cambridge, Massachusetts: Harvard University Press, 1993), 1.

⁴⁶ On some of the more specific motivations for publishing anonymously and their supporting historical examples, see Griffin, 'Anonymity and Authorship', 885–86.

⁴⁷ *ibid* 888.

anonymously and without the necessary printer's imprint, the author himself evaded punishment.⁴⁸ In the light of the co-existence of anonymous publishing, copyright regulation, and the writing profession, Griffin further suggests that the rise of the professional author in modernity was not necessarily owed to the presence nor absence of their names in title pages. 'The history of publication shows unequivocally that there is no cause-and-effect relation between the ownership of literary property, or the lack of it, and the presence or absence of the name of the author'.⁴⁹ In line with our earlier review of the place of the authorial name in copyright law, Griffin notes that copyright could subsist in both onymous and anonymous literary publications, which might or might not be held by the authors.⁵⁰ 'Even when the name is marked as a commodity, the copyright is not always retained by the writer; even when copyright is retained, the writer can remain unknown'.⁵¹ Austen, for example, often retained copyright in her anonymously published novels, the cost of printing being borne by her and their distribution being achieved by way of booksellers who partook of the profits.⁵²

Griffin's commentary on the history of anonymous publishing in England reflects a perspective on the printed authorial name that eventually coincides with that of copyright law. 'The conclusion is inescapable. Naming and copyright protection operate on separate levels of discourse and involve separate decisions on the part of the writer (if indeed the writer is consulted). When copyright historians discuss the author as owner, the author is an abstract legal identity which does not need to have a specific name for it to function in legal discourse'.⁵³ Whilst at times helpfully indicating the identities of authors as potential first owners of copyright, the printed authorial name is an expendable product of commercial publishing that might distract us from the deeper questions of authorship that warrant attention. For the Court of Appeal in *Kogan v Martin*, it is the potential reality of a second feminine author suppressed beneath the established screenwriter's name that the copyright doctrine of joint authorship must evolve to uncover. As for Griffin, it is the existence of publishing practices conducted in the absence of the author's name, or, better yet, in the play of 'masks'⁵⁴ or 'faces of anonymity'⁵⁵, phenomena no less concrete than those surrounding the author's name, that must now be accounted for in histories of professional

⁴⁸ See Richard Holmes, *Shelley: The Pursuit* (New York: New York Review of Books, 2003).

⁴⁹ Griffin, 'Anonymity and Authorship', 889.

⁵⁰ 'Onymous' publications are publications whose authors are named. The terminology is Genette's: see Gérard Genette, *Paratexts: Thresholds of Interpretation*, trans. Jane E. Lewin (Cambridge: Cambridge University Press, 1997), 39.

⁵¹ Griffin, 'Anonymity and Authorship', 889.

⁵² See Jan Fergus and J. Luke Wood, *Jane Austen: A Literary Life* (New York: Palgrave Macmillan, 1991).

⁵³ Griffin, 'Anonymity and Authorship', 889–90.

⁵⁴ See Griffin, *Faces of Anonymity*, 10.

⁵⁵ *ibid.*

authorship.⁵⁶ The author-function may operate without the authorial name, the fact of which complicates studies that assume synonymy between them.

There is no denying the importance of these questions about joint authorship and anonymous authorship that copyright law and literary studies have helped de-peripheralise. However, as suggested in the above, these questions have tended to be posed by way of a diminution of the authorial name as a material practice and its ambiguous role in the historical (de)constitution of the proprietary author. The authorial name affixed to the title page might well suppress the conditions of the book's emergence. But is there nothing more to be said about the distinct contributions (and resistance) of the authorial name to the making of literature and its status as literary property? Similarly, eighteenth- and nineteenth-century authors might at times have declined to disclose their identities to the reading public while nonetheless been able to professionalise and assert ownership of their works. But might the authorial name not have been part of the material practices through which the socio-technological machinery of print relations sustained itself? As 'abstract' as the legal identity of the proprietary author might seem, might it not in fact be emergent from, and embedded in, concrete practices surrounding literary production, including that of printing names? The existence of anonymous publications notwithstanding, would authors have been understood as authors without the historical practices of naming?

This fourth and last substantive chapter of the thesis approaches the materiality of the author's name and its relation to authorship and copyright by expanding on these counter-suggestions. Extending from our previous efforts, we take Kant's 1785 essay in the *Berlinische Monatschrift* as our focal site of analysis. We begin anew by returning to Foucault's essay on the author-function and comparing it with Roger Chartier's excursions into book history to respond to both the limits and potentialities of Foucault's concept. This gives us a theoretico-methodological starting point from which to revisit Kant's essay for what it might indicate about the author-function in late-eighteenth-century Germany. After considering how the name of the author is deployed on the rhetorical level of the text, we turn to some of the textual and typographical placements of Kant's name, both within and without the May 1785 issue of the periodical, and during and beyond the author's lifetime. In so following the anthumous and posthumous (dis)placements of I. Kant, we learn of the authorial name's role in implementing a social and ethical author-function (other than that of proprietary authorship) that Kant understood to be responsive to the demands of enlightenment practice.

⁵⁶ See also Robert J. Griffin, 'The Profession of Authorship', in *A Companion to the History of the Book*, ed. Simon Eliot and Jonathan Rose, 2nd Edition (United Kingdom: John Wiley & Sons, 2020).

Materialities of the Author-Function

To begin with, let us recognise some textual ambiguities surrounding Foucault's 'What Is an Author?' (1969).⁵⁷ Despite the apparent ease with which we cite the title and its accompanying date, it is as yet unclear to which text we are—and should be—referring. As Gérard Genette has noted alongside the titologists, one of the basic and most important functions of the title is to identify a text.⁵⁸ By naming the text, the title works to 'designate it as precisely as possible and without too much risk of confusion'.⁵⁹ In print publishing, the title usually appears at the time of the publication of the first edition of the text.⁶⁰ With respect to Foucault's text, it was in 1969 when the original French essay entitled *Qu'est-ce qu'un auteur* was published in the year's third issue of the *Bulletin de la Société française de Philosophie*.⁶¹ Earlier, on 22 February 1969, Foucault had delivered a version of the text as a lecture before the French Society of Philosophy. The original published essay was later edited, translated into English under the title 'What Is an Author?', and published in a collection of Foucault's essays, *Language, Counter-Memory, Practice: Selected Essays and Interviews* (1977).⁶² By citing the English title and the year of appearance of the original French essay, we are purporting to refer to the translated text while recognising the original date of its appearance and reserving room for our return to the original text, lecture, and their constitutive paratexts as might be necessary.⁶³

The situation becomes more complicated when we consider the presence—and, indeed, absence—of other texts against which the identity of our chosen text is defined. Another version of 'What Is an Author?', or another translated text that bears the same title, authorial name, and

⁵⁷ See Stuart Elden, 'The Textual Issues around Foucault's "What Is an Author?"', *Progressive Geographies* (blog), 11 April 2017, <https://progressivegeographies.com/2017/04/11/the-textual-issues-around-foucalt-what-is-an-author/> (accessed 30 April 2022); Stuart Elden, 'What Is Author? From Paris to Buffalo', *Progressive Geographies* (blog), November 2021, <https://progressivegeographies.com/resources/foucault-resources/foucault-minor-resources/what-is-an-author-from-paris-to-buffalo/> (accessed 30 April 2022).

⁵⁸ For Genette's account of the title as paratext, see Genette, *Paratexts*, 55–103. For a helpful overview of modern titology, see Victoria Louise Gibbons, 'Toward a Poetics of Titles: The Prehistory', PhD thesis (Cardiff, Cardiff University, 2010), 23–53.

⁵⁹ Genette, *Paratexts*, 79.

⁶⁰ *ibid.* 66. See also Colin Manchester, 'The Newspapers, Printers and Reading Rooms Repeal Act 1869: A Case for Repeal?', *Legal Studies* 2, no. 2 (1982): 180–8.

⁶¹ Michel Foucault, 'Qu'est-ce qu'un auteur', *Bulletin de la Société française de Philosophie* 63, no. 3 (1969): 73–104. The following publication history is partially recorded in the introductory editorial comments of Michel Foucault, *Dits et écrits: 1954-1988*, ed. Daniel Defert, François Ewald, and Jacques Lagrange, vol. 1 (Gallimard, 1994), #69. See also the opening editorial footnote of Foucault, 'What Is an Author?', 1977, 113.

⁶² Foucault, 'What Is an Author?', 1977.

⁶³ For Foucault's contemporaneous discussions of the author-function, see Michel Foucault, 'The Enunciative Function', in *The Archaeology of Knowledge and the Discourse on Language*, trans. A. M. Sheridan Smith (New York: Pantheon Books, 1972), 88–105; Michel Foucault, 'The Discourse on Language', in *The Archaeology of Knowledge and the Discourse on Language*, trans. A. M. Sheridan Smith (New York: Pantheon Books, 1972), 215–37.

many close resemblances to the first, has been published and reprinted in other anthologies. The first known printed collection in which the other text appeared was *Textual Strategies: Perspectives in Post-Structuralist Criticism* (1979).⁶⁴ Some key differences between the two texts include the omission of the contextual introduction of the first text in the second,⁶⁵ and the inclusion of a new part towards the end of the second that specified the author's ideological operation as a 'principle of thrift in the proliferation of meaning'.⁶⁶ One of the explanations given for the appearance of the second text builds on the fact that Foucault had given another talk on the author-function at SUNY Buffalo in March 1970. According to the editor's preface to *Textual Strategies*, the second text was his own translation of the second talk, the latter of which was identified as a 'version'⁶⁷ of the first given at the French Society of Philosophy and later published in its bulletin. The translation was not only published with the 'permission'⁶⁸ of both the author Foucault and the French Society of Philosophy, but also edited with an 'American readership in mind';⁶⁹ the author having given the editor a 'free hand'⁷⁰ to do so. That the second version of Foucault's text ends on an apparently more 'political note'⁷¹ than the first version is understood by the editor-translator to be indicative of a broader shift in Foucault's research interests from questions of language to those of history and politics.

Whereas the existence of two published texts does not necessarily impede analysis and could, on the contrary, enable it, the discovery that there is a third unpublished text still in manuscript form, one that might unsettle prior assumptions and findings, would complicate the matter further. The front matter of *Textual Strategies* presents the second Foucault text as an edited and translated version of the second talk. This textual identity is co-legitimated by *Dits et écrits*, probably the leading edition of Foucault's *oeuvre*, whose copy of Foucault's *Qu'est-ce qu'un auteur* gives an editorial introductory nod to the translated version of 'What Is an Author?' in *Textual Strategies* and its reprint in *The Foucault Reader*.⁷² Specifically, it is claimed that Foucault 'equally authorises' (*autorisa indifféremment*)⁷³ the first French text and the English translation of what purports to be the Buffalo

⁶⁴ Michel Foucault, 'What Is an Author?', in *Textual Strategies: Perspectives in Post-Structuralist Criticism*, ed. and trans. Josué V. Harari (Ithaca, New York: Cornell University Press, 1979), 141–60.

⁶⁵ See Foucault, 'What Is an Author?', 1977, 113–5.

⁶⁶ Foucault, 'What Is an Author?', 1979, 159. On other terminological and editorial changes, see Stuart Elden, 'The Textual Issues around Foucault's "What Is an Author?"'; Stuart Elden, 'What Is Author? From Paris to Buffalo'.

⁶⁷ Josué V. Harari, ed., *Textual Strategies: Perspectives in Post-Structuralist Criticism* (Ithaca, New York: Cornell University Press, 1979), 13.

⁶⁸ *ibid.*

⁶⁹ *ibid.*

⁷⁰ *ibid.*

⁷¹ *ibid.* 43. This claim is, of course, contestable. Questions of language may be thoroughly historical and political.

⁷² Michel Foucault, 'What Is an Author?', in *The Foucault Reader*, ed. Paul Rabinow (New York: Pantheon Books, 1984). See Foucault, *Dits et écrits*, #69.

⁷³ Foucault, *Dits et écrits*, #69.

lecture. What appears as #69 in *Dits et écrits*, as Stuart Elden similarly notes, is a composite edition of Foucault's essay, one consisting of the first French text and, enclosed in parenthesis and clarified in a few notes, some passages purportedly from the original Buffalo lecture.⁷⁴ However, Elden suggests that the second Foucault text in *Textual Strategies* might in fact be based on the first published text in , at least more so than on any text written for, or delivered at, SUNY Buffalo.⁷⁵ In Elden's words, 'what claims to be the Buffalo text was actually something else – essentially a version of the Paris lecture, in a different translation, with some edits and a little of the actual Buffalo lecture appended'.⁷⁶ The insertions in #69 of *Dits et écrits* are, rather, French translations of the English translated text in *Textual Strategies*. The 'actual Buffalo lecture' or 'full Buffalo lecture', as Elden has more recently brought to our attention in November 2021, 'exists in the archive, and has not been published'.⁷⁷ At least until the original Buffalo lecture has been made publicly available, it would remain unclear whether, and if so how far, the first and second texts depart from the Buffalo manuscript, and what could be made of these differences.

Our present interests are not so much in identifying the 'true' nor 'definitive' textual expression of Foucault's ideas on authorship as in commenting on the pertinence of these textual issues surrounding the essay to the thematic. Despite the prevailing juridical emphasis on the author as creator and owner of the original literary work, the literary artefact arises only pursuant to the interactions between multiple actors, including editors, translators, publishers and scholars. Previously, with respect to Kant's 1785 essay in the *Berlinische Monatsschrift*, we referred to the assemblage of print actors, technologies, and practices that produced the periodical as the print machinery of the German Enlightenment.⁷⁸ Kant's authorial 'speech', which presented the printed text as a speech articulated in the author's name, depended on this very machinery for its presentation before the public. In the instance of Foucault's 1969 essay, we have seen in operation a similar literary apparatus on which the making, distribution, and reading of the text is materially dependent. The two published versions of 'What Is an Author?', not to mention the third unpublished manuscript in the archive and the other 'original' French texts, all depend on a plurality of actors, objects, and practices for their public appearance. This non-exhaustive series of (con)textual elements, which Genette federated under the abyssal category of the paratext, directs us to the limits of the myth of proprietary authorship.

⁷⁴ Elden, 'The Textual Issues around Foucault's "What Is an Author?"'

⁷⁵ Elden, 'What Is Author? From Paris to Buffalo'.

⁷⁶ *ibid.*

⁷⁷ *ibid.*; see the opening parenthesis, 'Update November 2021'.

⁷⁸ See chapter 3, 'From Paratexts to Print Machinery'.

And yet, the discourse involving ‘What Is an Author?’—including our contribution in the above—has incessantly sought recourse to the author Foucault as the figure authorising each text that bears the original or translated title, in each instance authenticating the text as written by, or in some other way associated with, the author. Our citation of each version of the text doubly depends on its title and the name of the author affixed to it. The relevant editors and translators of Foucault’s essay, particularly those of *Textual Strategies* and *Dits et écrits*, cite Foucault as the personal authorial figure who consented to the making of the text at hand, legitimating it as reflecting, or at least originating from, the lectures he had given in Paris and New York. Elden’s careful mapping of the different versions of the text, the appended editorial comments, and the inconsistencies between them has proceeded on the basis that there could be (and indeed is) an original manuscript, the ‘full Buffalo lecture’⁷⁹ in the Foucault archive, against which any claim to textual veracity and accuracy is to be measured. Both the authorial name and the individual person it purportedly designates are summoned, expressly or implicitly, to identify, describe, classify, and evaluate the text in each instance.

At play in this discourse is the basic classificatory operation of the authorial figure that Foucault has conceptualised as the author-function. As we have recalled, Foucault’s initial discussion of the author-function proceeded by distinguishing the modern understanding of the authorial name from the proper name. Whereas the proper name conventionally serves to identify and describe some individual, the author’s name goes further to ‘group together a number of texts and thus differentiate them from others’.⁸⁰ This classification also entails the establishing of various relationships between the included texts: in the instance of those different versions of Foucault’s ‘What Is an Author?’, the author is deployed as a figure of ‘authentication’,⁸¹ inviting them to be accepted as legitimate specimens of the author’s oeuvre, and to be read alongside one another as kindred texts affording ‘reciprocal explanation’.⁸² The third and perhaps most crucial point is that the recognition of there being a particular author to a text, most obviously through the authorial name affixed to it, defines the being (or ‘manner of existence’⁸³) of the text and the discourse in which it participates. An essay bearing an author’s name, and Foucault’s canonised name in particular, tends to spare it the fate of cultural oblivion. ‘Discourse that possesses an author’s name is not to be immediately consumed and forgotten; neither is it accorded the momentary attention given to ordinary, fleeting words. Rather, its status and its manner of reception are regulated by

⁷⁹ Elden, ‘What Is Author? From Paris to Buffalo’.

⁸⁰ Foucault, ‘What Is an Author?’, 1977, 123.

⁸¹ *ibid.*

⁸² *ibid.*

⁸³ *ibid.*

the culture in which it circulates'.⁸⁴ Elden's careful reading of those works bearing Foucault's name attests to the present endurance of the author-function in the given sense.

Whilst recognising there could be multiple author-functions, or differences in the author-function as it operates in various discourses at any given time, Foucault outlines what he considers to be four of 'the most obvious and important'⁸⁵ features of the author-function in 'books or texts with authors'.⁸⁶ A review of Foucault's suggestions alongside Roger Chartier's critical engagement with them, especially with the second and third suggestions, would give us a working understanding of the author-function and its relationship with the author's name. It would also illuminate some differences between historical and legal perspectives on the author's name, and guide our subsequent reading of Kant's name in the various editions of his essay on author's rights.

Foucault starts by relating the author-function in modern discourse to the legal-institutional order of Western civilisation, suggesting that the law both reflects and entrenches our modern understanding of authors as owners of property in books. Alluding to the first copyright laws of the eighteenth and early nineteenth centuries, Foucault notes that the present status of books as objects of property owned by authors is a result of 'legal codification...accomplished some years ago'.⁸⁷ Prior to ratifying the myth of the proprietary author, Foucault adds, the law had first inducted the author as a penal subject—one who was 'subject to punishment...to the extent that his discourse was considered transgressive'.⁸⁸ Though Foucault does not specify a date for this initial penal subjectivation of the author, our earlier review of the English laws surrounding the (non-)printing of authorial names suggests that it dates back to at least the mid-sixteenth century.⁸⁹ It is also significant that Foucault here identifies what appear to be two historically successive senses of the author, which evidences an acute recognition of the historicity of the author-function and its co-evolution with law. In copyright history, there have been a number of incisive responses to Foucault's call to study the juridical correlate of the author, including key classics of the early

⁸⁴ *ibid.*

⁸⁵ *ibid.* 130.

⁸⁶ *ibid.* 124.

⁸⁷ *ibid.* Foucault also notes that the proprietary function of the author in modern discourse was preceded by the author becoming 'subject to punishment', which coheres with our earlier review of anti-sedition laws demanding for the disclosure of authorial identities in title pages in early modern England.

⁸⁸ *ibid.*

⁸⁹ See also Roger Chartier's discussion of a 1544 catalogue, the Sorbonne's Index, that used the category of the author as its principle for designating books censored by the Faculty of Theology of Paris, which supports Foucault's proposed connection between judicial responsibility and the author-function: Roger Chartier, 'Figures of the Author', in *The Order of Books: Readers, Authors, and Libraries in Europe between the Fourteenth and Eighteenth Centuries*, trans. Lydia G. Cochrane (Stanford, California: Stanford University Press, 1994), 49.

1990s focusing on localities in eighteenth-century Europe, which have in turn attracted their share of critical engagement.⁹⁰

The second aspect of the author-function concerns its discursive and historical specificity: ‘it does not operate in a uniform manner in all discourses, at all times, and in any given culture’.⁹¹ As we have seen, this proposition is to some extent continuous with Foucault’s opening suggestion about the historical transformation of the author from a penal subject into an owner of literary property. Whereas the emphasis in the first was on coincidences between the cultural and juridical expressions of authorship, that in the second is on potential divergences in the significance of authors in specific discourses. By way of illustration, Foucault posits a reversal or chiasmus concerning the organisation of so-called scientific texts (‘dealing with cosmology and the heavens, medicine or illness, the natural sciences or geography’⁹²) and literary texts (‘stories, folk tales, epics and tragedies’⁹³) around the practice of (not) naming the author, which supposedly occurred during the early modern period (‘the seventeenth and eighteenth centuries’⁹⁴). According to Foucault, in the Middle Ages, literary texts were disseminated without interest in their authors’ identities, whilst scientific texts required the validation of their authors, whose names had to be therein indicated. However, by early modernity, the two positions had reversed: scientific texts relied instead on impersonal conceptual systems for the validation of their truth-claims, whilst the demand for disclosing the identities of literary authors arose, with each anonymous literary publication becoming ‘a puzzle to be solved’.⁹⁵

Chartier casts doubt on Foucault’s chiasmus of literary and scientific authorship by citing examples from book history that contradict it. Contrary to Foucault’s claim of medieval indifference to authorial identities in literary texts, Chartier noted particular strategies adopted by the Parisian *rhétoriciens* (including Jean Molinet, André La Vigne and Pierre Gringore) between

⁹⁰ See chapter 1, ‘Introduction: A Medial Perspective on Authorship and Copyright’. Three of the early landmark monographs focusing on Germany, Britain, and France respectively are Martha Woodmansee, *The Author, Art, and the Market: Rereading the History of Aesthetics* (New York: Columbia University Press, 1994); Rose, *Authors and Owners*; Carla Alison Hesse, *Publishing and Cultural Politics in Revolutionary Paris, 1789-1810* (Berkeley, Los Angeles, Oxford: University of California Press, 1991). For two helpful reviews of Woodmansee’s and Rose’s works, see Rosemary J. Coombe, ‘Challenging Paternity: Histories of Copyright’, *Yale Journal of Law & the Humanities* 6, no. 2 (1994): 397–422; Kathy Bowrey, ‘Law, Aesthetics and Copyright Historiography: A Critical Reading of the Genealogies of Martha Woodmansee and Mark Rose’, in *Research Handbook on the History of Copyright Law*, ed. Isabella Alexander and H. Tomás Gómez-Arostegui (Cheltenham, UK: Edward Elgar Publishing, 2016), 27–52. See also Roger Chartier’s book-historical studies of the author-function, which have implicitly critiqued genealogies of authorship that narrowly focused on statutory articulations: Chartier, ‘Figures of the Author’; Roger Chartier, ‘Foucault’s Chiasmus: Authorship between Science and Literature in the Seventeenth and Eighteenth Centuries’, in *Scientific Authorship: Credit and Intellectual Property in Science*, ed. Mario Biagioli and Peter Galison (London and New York: Routledge, 2003), 13–31; Roger Chartier, *The Author’s Hand and the Printer’s Mind*, trans. Lydia G. Cochrane (Cambridge: Polity Press, 2014).

⁹¹ Foucault, ‘What Is an Author?’, 1977, 130.130.

⁹² *ibid.* 125.

⁹³ *ibid.*

⁹⁴ *ibid.*

⁹⁵ *ibid.* 126.

1450 and 1530 to establish their presence as individual owners and controllers of their literary texts.⁹⁶ On top of relying on the limited system of privileges to control the publication and distribution of their books, the Parisian authors had their identities indicated in title pages, colophons and frontispieces, including in the form of a portrait of the author writing the work.⁹⁷ These material methods of authorial self-promotion evidence the operation of the author-function well before early modernity. Foucault's claim about the impersonality of early modern scientific texts is similarly undermined in Chartier's reference to the widespread textual practice of dedications to patrons whose superior socio-economic status to some extent assured the credibility of scientific truth-claims.⁹⁸ Consider, for instance, Galileo Galilei's *Sidereus nuncius*, whose account of astronomical discoveries, including the Medicean Stars, was dedicated to the Grand Duke of Tuscany, Cosimo II de' Medici, celebrating the latter as 'the primordial inspiration and the first author of the work presented to him'.⁹⁹ Rather than indicating any absence or diminution of the author-function, the dedication reflected its enduring operation by way of transfer to the sovereign as 'the discoverer and owner of the natural reality'.¹⁰⁰ The insistence of the author-function across the medieval and early modern periods, with respect to both literary and scientific texts, and as mediated and evidenced by their material forms, would seem to refute Foucault's historical claim, or at least necessitate further qualification.¹⁰¹

Chartier's attention to the material form of the book and its deep involvement in the author-function attests to both an acceptance and sharpening of Foucault's third observation about the author-function's reliance on particular methods and procedures. Foucault understood that the attribution of books to authors did not happen 'spontaneously'¹⁰² (that is, without identifiable cause) but instead depended on 'a series of precise and complex procedures'.¹⁰³ Specifically, Foucault noted that the modern recognition of authors as individuals whose "'profundity' and 'creative' power"¹⁰⁴ gave rise to the literary work is, in fact, an aspect or extension of a contingent

⁹⁶ Chartier, 'Foucault's Chiasmus: Authorship between Science and Literature in the Seventeenth and Eighteenth Centuries', 24. Chartier cited the work of Cynthia J. Brown in support: see Cynthia J. Brown, *Poets, Patrons, and Printers: Crisis of Authority in Late Medieval France* (Ithaca and London: Cornell University Press, 1995), 7.

⁹⁷ Chartier, 'Foucault's Chiasmus: Authorship between Science and Literature in the Seventeenth and Eighteenth Centuries', 24.

⁹⁸ *ibid.* 22.

⁹⁹ *ibid.* Chartier cited the work of Mario Biagioli in support: see Mario Biagioli, 'Galileo the Emblem Maker', *Isis* 81, no. 2 (1990): 230–58; Mario Biagioli, *Galileo, Courtier: The Practice of Science in the Culture of Absolutism* (United States of America: The University of Chicago Press, 1993).

¹⁰⁰ Chartier, 'Foucault's Chiasmus: Authorship between Science and Literature in the Seventeenth and Eighteenth Centuries', 22.

¹⁰¹ See Mario Biagioli and Peter Galison's edited collection of studies on scientific authorship: Mario Biagioli and Peter Galison, eds., *Scientific Authorship: Credit and Intellectual Property in Science* (London and New York: Routledge, 2003).

¹⁰² Foucault, 'What Is an Author?', 1977, 127.

¹⁰³ *ibid.* 130.

¹⁰⁴ *ibid.* 127.

textual practice. This individualisation of the author is but one of the ‘projections, in terms always more or less psychological, of our way of handling texts...[which] vary according to the period and the form of discourse concerned’.¹⁰⁵ In so connecting our understanding of authorship with our textual dealings, Foucault already recognised the essential involvement of books in the author-function. Through his book-historical contributions to the discourse on authorship, Chartier goes further to foreground the material form of the book as an index of those textual practices and understandings of authorship. In other words, the author-function is evidenced in the materiality of books—title pages, colophons, front pages, dedications, and so forth—by which it operates. Whereas copyright historians tend to focus on the juridical conditions for authorship, Chartier calls attention to the evolving material conditions on which our correlative understandings of the author have been, and continue to be, based.

Despite the historical importance of title pages and other preliminary materials in defining the reception of texts and their connection with authors, these original paratextual matter tend not to be reproduced in contemporary translations and editions of texts. In our previous two chapters, we commented on the exclusion of catchwords, signature marks, and the various front matter of Kant’s 1785 essay in the *Berlinische Monatschrift* from the *Cambridge Edition*, and on its typographical shift from the Breiskopf Fraktur typeface to the Times New Roman font. Chartier has observed a similar publishing practice in respect of medieval and early modern texts, including the two parts of Cervantes’ *Don Quixote*, originally entitled *El Ingenioso Hidalgo Don Quixote de La Mancha*.¹⁰⁶ Contemporary French translations of these texts have tended not to reprint their original title pages and other preliminary materials (first published in 1605 and 1615), as if these front matter were inconsequential to our understanding of the work.¹⁰⁷ Consequent to such exclusions, contemporary readers are separated from some of the key paratextual indices of the author-function as it had operated in the early seventeenth century, including the typographical placement of the authorial name in the original title pages, thereby contributing to the work’s de-historicisation and our limited engagement with the history of authorship.

Consider the original title page of Part I of Cervantes’ work: a site where the authorial name has implemented the author-function.¹⁰⁸ Instead of assuming a simple causal relationship between the juridical concept of literary property and the author-function, Chartier cites the original 1605 title page as an illustration of the attribution of texts to authors as their creators well before the

¹⁰⁵ *ibid.*

¹⁰⁶ Other than Chartier’s analysis of the title page of Part I of *Don Quixote* (which we review below), see also his account of the preliminary materials of Part II and their comparison with those of an earlier apocryphal version: see Chartier, *The Author’s Hand and the Printer’s Mind*, 140–9.

¹⁰⁷ Chartier, 139.

¹⁰⁸ For a copy of the title page, see Chartier, ‘Figures of the Author’, 52, plate.

first copyright laws of Europe. At the top of the title page, printed below the work's title, 'EL INGENIOSO / HIDALGO DON QUI- / XOTE DE LA MANCHA,' is the opening line declaring the work's origination in the author, 'Compuesto por Miguel de Cervantes / Saavedra'.¹⁰⁹ Notwithstanding this statement of literary paternity, printed in the same title are three proper names of individuals involved in the production, sale, and receipt of the text. Beneath the author's name is a statement dedicating the work to its patron: 'DIRIGIDO AL DUQUE DE BÉJAR, / Marques de Gibrleon, Conde de Benalcaçar, y Baña-/res, Vizconde de la Puebla de Alcozer, Señor de / las villas de Capilla, Curiel, y / Burguillos'.¹¹⁰ As Chartier notes, patronage was 'the fundamental relationship that dominated literary activity until the mid-eighteenth century'.¹¹¹ The co-appearance of the author's and dedicatee's names suggests the coexistence of the author function and the author's reliance on patrons for support and protection. Towards the bottom of the page, we find mention of two other nodes in the print machinery, 'Juan de la Cuesta', the printer-publisher to whom privilege was assigned for the printing of the work in Madrid, and 'Francisco de Robles', the bookseller who sold the book. Organised around these four proper names, the visual space of the title page attests to a multiplicity of actors involved in literary reproduction even as it prioritises and identifies the author as the work's creator.

The fourth and last feature of the author-function noted by Foucault entails a methodological differentiation of the actual person of the author from the author as a product of discourse. On the one side, there is the writer-in-the-flesh whose actions at a particular place and time contributed to the production of the text. But on the other, there is the discursive author, the meaningful figure of discourse whose conditions of possibility Foucault calls attention to with the term 'author-function'. Maintaining this distinction allows us to see a 'variety of egos',¹¹² or plurality of authors, that may arise in a single text. Foucault offers the example of a generic mathematical treatise, where it is possible to find at least three authorial egos attached to its different parts. In the preface, there is the 'I' who factually outlines 'the circumstances of composition';¹¹³ in the body, we find an 'I' performing the pertinent 'demonstration';¹¹⁴ and, thirdly, perhaps towards the end of the book, there might be a reflective self looking back on 'the goals of his investigation, the obstacles encountered, its results, and the problems yet to be solved'.¹¹⁵ Similarly, Chartier cites the literary example of *Don Quixote*, in which a reader may find at least four authors. 'The 'authors' of the

¹⁰⁹ *ibid.*

¹¹⁰ *ibid.*

¹¹¹ *ibid.* 44.

¹¹² Foucault, 'What Is an Author?', 1977, 131.

¹¹³ *ibid.* 130.

¹¹⁴ *ibid.*

¹¹⁵ *ibid.*

novel multiply: there is the 'I' of the prologue who announces that the work is his; then there is the author of the first eight chapters who upsets the 'I-reader' inscribed in the text when he suddenly interrupts his narration ('This caused me great annoyance'); there is also the author of the Arabic manuscript; finally, there is the Morisco author of the translation that is the text read by the 'I-reader' and by the reader of this novel.¹¹⁶ In each of these instances, the 'author' is cited as a unifying figure that ensures the integrity of the discourse, even though the dispersion of authors points to the instability of the authorial identity named on the title page; the person of whom copyright law now recognises as the owner and creator of the literary work .

As we have been suggesting, Chartier's key contribution to the history of authorship is to demonstrate its co-evolution with the history of the book. 'Such a perspective allows us to understand that the author-function is not only a discursive function, but also a function of the materiality of the text'.¹¹⁷ The materialities of the book, including that of the placement of the authorial name in the title page and its other parts, are shown to be some of the key conditions through which the author-function operates. As the original 1605 title page of Part I of *Don Quixote* suggests, the printed authorial name may anticipate the juridical recognition of the author as proprietary creator of the literary work under copyright law. But it may also subvert the myth by directing us to the adjoining historical conditions that are processually constitutive of the book, including the contributions of other print actors and practices relating to the book's financial support, publication and dissemination. The book itself, and the visual space it presents, is shown to be involved in the configuration and transmission of authorship, mediating its ascription to the author as creator. What the book affords, too, as a material index of the historical conditions and processes of literary production, is a de-constitution of the myth of proprietary authorship. In so recording some potential tensions between the juridical and historical accounts of literary production, the authorial name and its analysis paves the way to a futural mode of dealing with texts that de-prioritises authors, which is a possibility that Foucault suggests to have long been posed in literary modernism and intimated in Beckett's question, 'What matter who's speaking?'¹¹⁸

Before revisiting Kant's 1785 essay, let us note that Foucault's separation of the authorial person and the discursive author, whilst useful in pointing to the latter's discursive and historical contingency, could disguise the transactions between them. Might the person of the author, that is, the writer who wrote the manuscript to be fed into the print machinery, not be part of the

¹¹⁶ Chartier, 'Figures of the Author', 46.

¹¹⁷ Chartier, 'Foucault's Chiasmus: Authorship between Science and Literature in the Seventeenth and Eighteenth Centuries', 28.

¹¹⁸ Samuel Beckett, *Texts for Nothing* (London: Calder & Boyars, 1974), 16; cited in Foucault, 'What Is an Author?', 1977, 115.

process that shaped the book and its articulation of authorship? In reverse, might the discursively and materially constituted sense of authorship not be involved in the formation of the author's self-understanding? Does the book not depend on the person of the author, and other agents of literary production, for its emergence, and is this relationship not relevant to our understandings of authorship, including the still-dominant myth of proprietary authorship? As a book historian well aware of the sociality of texts, Chartier does not categorically exclude the person of the author, nor other pertinent human bodies, from his analysis of the materialities of the author-function. For instance, in the chapter after Chartier's analysis of the prefatory materials of *Don Quixote*, Cervantes returns as a body engaged in a series of interactions with and within the print machinery of the Spanish Golden Age, including his writing of the autograph manuscript for the printing of the first part of *Don Quixote* in the print shop of Jean de la Cuesta in 1604, his probable revisions of the fair copy, and his introduction of certain modifications into the subsequent textual editions of 1605 and 1608.¹¹⁹ Chartier's point is that early-seventeenth-century books such as *Don Quixote* were not identical to the so-called original autograph manuscripts but instead products of a complex publishing apparatus, hence the title 'Publishing Cervantes'. Not always respected, the writer's wishes were constantly threatened by the fragility and complexity of the publishing process, including but not limited to editorial interventions. Consistent with Kittler's observation about the alphabetisation of eighteenth-century German and European authors,¹²⁰ we may add that Cervantes probably had to be trained to act as he did as an author of seventeenth-century Spain. That should have included not only his own alphabetisation, but also his induction into the socio-technological systems of print and patronage. It might be that any adequate analysis of the materialities of the author-function would have to take account of the interaction between textual and human bodies. The person of the author is far from irrelevant to the author-function.¹²¹

Kant qua Media Theorist

At the rhetorical level of Kant's 1785 essay, the author's name and the idiom of acting in another's or one's own name are integral to the text's argument against the unauthorised reprinting of books. These nominal figures are the basis on which Kant defines and advances a non-proprietary understanding of publishing and books. As discussed in our previous chapter, Kant's essay opens

¹¹⁹ Roger Chartier, 'Publishing Cervantes', in *The Author's Hand and the Printer's Mind*, trans. Lydia G. Cochrane (Cambridge: Polity Press, 2014), 150–7.

¹²⁰ See chapter 2, 'Two Ways of Looking at Printed Book'; chapter 4, 'Materiality of Type'.

¹²¹ On a similar observation about the difficulty in separating the personal author from the discursive author in literary analysis, see Adrian Wilson, 'Foucault on the "Question of the Author": A Critical Exegesis', *The Modern Language Review* 99, no. 2 (2004): 339–63; which draws on Seán Burke, *The Death and Return of the Author: Criticism and Subjectivity in Barthes, Foucault and Derrida* (Edinburgh: Edinburgh University Press, 1992).

with a scathing dismissal of the perspective on publishing as involving the exercise of some property right in a text, be it a handwritten manuscript or a print copy.¹²² Not unlike Fichte, Kant did not consider it to be possible for the author to so alienate his thoughts as to give rise to any owned commodity.¹²³ Whereas Fichte still deployed the language of property and ownership (in the sense of literary property forever owned by the author whose mind had given form to it) to justify the wrongfulness of reprinting, Kant eschewed it entirely in his argument, relying instead on a communicative account of publishing that utilised the rhetoric of names. ‘But I believe there are grounds for regarding publication not as dealing with a commodity *in one’s own name* [in seinem eigenen Namen], but as *carrying on an affair in the name of another* [die Führung eines Geschäftes im Namen eines andern], namely the author, and that in this way I can easily and clearly show the wrongfulness of unauthorized publication’.¹²⁴ Kant’s construal of the book as a visual record of speech necessarily spoken in the author’s name is the basis on which the rights of the legitimate publisher against unauthorised reprinting are vindicated.¹²⁵

The phrases ‘in one’s own name’ and ‘in the name of another’ lend support to Kant’s case for author’s and publisher’s rights through their semantic associations with theological and secular law. As recorded in the *Oxford English Dictionary*, the expression ‘in — ‘s name (in the name of —)’ has been a means of ‘invoking or expressing reliance on or devotion to a divine being’¹²⁶ since at least the early medieval period. The earliest quotation consists of the Trinitarian formula of baptism from the Lindisfarne Gospels, which dates back to the early seventh century: ‘*Baptizantes eos in nomine patris et filii et spiritus sancti: fulwande hia in noma fadores & sunu & halges gastes*’.¹²⁷ Relatedly, the phrase has been used as part of ‘solemn adjurations’,¹²⁸ where Christian figures (‘God, Christ, the saints, the Devil or hell’¹²⁹), or else personifications of more secular phenomena (‘mercy’,¹³⁰ ‘goodness’,¹³¹ ‘Wisdom’¹³²) have been called to witness the situation at hand, attesting to its seriousness and importance. Whereas these definitions have relied on divine or abstract

¹²² Immanuel Kant, ‘On the Wrongfulness of Unauthorized Publication of Books (1785)’, in *Practical Philosophy*, ed. Paul Guyer and Allen W. Wood, trans. Mary J. Gregor, The Cambridge Edition of the Works of Immanuel Kant (Cambridge: Cambridge University Press, 1996), 29. See chapter 4, ‘Materiality of Type’.

¹²³ ‘Fichte: Proof of the Unlawfulness of Reprinting, Berlin (1793)’, Primary Sources on Copyright (1450-1900), eds L. Bently & M. Kretschmer, accessed 30 April 2022, http://www.copyrighthistory.org/cam/tools/request/showRecord.php?id=record_d_1793. See chapter 4, ‘Materiality of Type’.

¹²⁴ Kant, ‘On the Wrongfulness of Unauthorized Publication of Books (1785)’, 29.

¹²⁵ See chapter 2, ‘Two Ways of Looking at Printed Book’; chapter 3, ‘From Paratexts to Print Machinery’; chapter 4, ‘Materiality of Type’.

¹²⁶ *Oxford English Dictionary*, 2nd ed. (Oxford: Oxford University Press, 2004), s.v. ‘Name’, P2a.

¹²⁷ *ibid.*

¹²⁸ *ibid* P2b.

¹²⁹ *ibid.*

¹³⁰ *ibid.*

¹³¹ *ibid.*

¹³² *ibid.*

figures to authorise the pertinent context or action, the third sense of the phrase that most closely resembles its use in Kant's essay invokes the authority of human individuals, whether that for whom one is 'acting as deputy'¹³³ or oneself. To act 'in one's own name' is to act 'on one's own behalf, independently, without the authority of another'.¹³⁴ Previously dependent on theological figures of authority, the individual is now capable of authorising himself or herself to act in some manner, and of authorising another to act on his or her behalf. Notwithstanding such a definitional claim to self-sufficiency and independence, the textual examples given have tended to suppose the existence of some underpinning socio-juridical order that legitimates the said individuals as proper name bearers: 'To sue an Action of dette in his own name' (1444)¹³⁵; 'You who in the name of the rest were Solliciters in this business' (1631).¹³⁶ Similarly, Kant grounds his agential account of the publisher in what Kant considers to be the properly juridical understanding of the author as a rights-bearing individual 'with an innate right in his own person'.¹³⁷ From the personhood of the author extends the author's 'inalienable right...always *himself* to speak through anyone else, the right, that is, that no one may deliver the same speech to the public other than in his (the author's) name.'¹³⁸ Kant notes that with the author's right in relation to the book comes at least three obligations: the author 'is bound as if he were doing it [i.e., publishing the book] himself';¹³⁹ the publisher who has been contractually empowered to relay this speech to the public must fulfil this obligation, even after the author's death; and the unauthorised printer is barred from reprinting the book, the doing of which wrongs both the publisher and author. Thus, a system of rights and obligations surrounding the person of the author purportedly underpins, structures and ratifies Kant's definition of publishing. By the essay's conclusion, Kant would align his case against wrongful reprinting with the Roman legal tradition, suggesting that it extends from the latter: 'If the idea of publication of a book as such, on which this is based, were firmly grasped and (as I flatter myself it could be) elaborated with the requisite eloquence of Roman legal scholarship, complaints against unauthorised publishers could indeed be taken to court without it being necessary first to wait for a new law.'¹⁴⁰ First semantically authorising Kant's account, the

¹³³ *ibid* P2d.

¹³⁴ *ibid*.

¹³⁵ *ibid*. The quotation is from *Rolls of Parliament (Rotuli parliamentorum)*, 1278-1503 (1761-77).

¹³⁶ *ibid*. The quotation is from William Gouge, *Gods Three Arrows: Plague, Famine, Sword, in Three Treatises* (London: George Miller, 1631).

¹³⁷ Kant, 'On the Wrongfulness of Unauthorized Publication of Books (1785)', 35.

¹³⁸ *ibid*.

¹³⁹ *ibid* 32.

¹⁴⁰ *ibid*. For an account of Kant's discussion of the mandate and how far it could be said to derive from Roman law, see Alain Pottage, 'Literary Materiality', in *Routledge Handbook of Law and Theory*, ed. Andreas Philippopoulos-Mihalopoulos (London and New York: Routledge, 2019), 409–29.

theological inheritance of naming soon ushers in and subsists alongside the latter's secular perspective on print publishing and the persons it involved.

Kant's proposed system of rights and obligations with respect to publishing, which on one view centres upon the personhood and authority of the author, would seem to cohere with his preceding account of enlightenment as involving the public use of reason, that is, the exercise of 'an unrestricted freedom to make use of his own reason and to speak in his own person'¹⁴¹ before 'the entire public of the *world of readers*'.¹⁴² As noted in our earlier review of Kantian copyright scholarship, it is possible to see Kant's account of author's and publisher's rights as the legal arrangement to protect the 'communicative freedom'¹⁴³ of persons (in late eighteenth-century Germany, perhaps even in the present), which includes both the right to speak publicly and to do so in one's capacity as a rational being unencumbered by civil or religious duties. The two main examples Kant gives of speakers divided in their capacities as (passive) institutional subjects and (active) rational discussants are those of the clergyman and the citizen.¹⁴⁴ As employee of the church, the clergyman is bound to instruct his congregation according to the church's teachings. Similarly, as legal (and, in eighteenth-century Germany, monarchical) subject, the citizen is obligated to obey the prevailing laws. But neither position should prevent the individual from critiquing the doctrines and practices in his or her capacity as scholar addressing the public by one's writings. Against the Prussian King Frederick II's prohibition of private persons to pass judgements on the public actions of institutional officials in 1784, Kant asked that persons be allowed to evaluate all societal phenomena as rational addressors to the public. The authority to reason publicly, Kant clarifies by the last line of the enlightenment essay, derives from no higher source than the very dignity of the person: the '*government... finds it profitable to itself to treat the human being, who is now more than a machine, in keeping with his dignity*'.¹⁴⁵ Personal dignity, which in Kant's moral philosophy is inseparable from the rationality of persons,¹⁴⁶ acts as the common basis that founds both enlightenment practice and the legal arrangement that purportedly secures it. As Barron suggests, Kant's proposed regime of rights for publishers and authors promotes the public use of reason by ensuring the continuing willingness of publishers to purchase authorial

¹⁴¹ Immanuel Kant, 'An Answer to the Question: What Is Enlightenment? (1784)', in *Practical Philosophy*, ed. Paul Guyer and Allen W. Wood, trans. Mary J. Gregor (Cambridge: Cambridge University Press, 1996), 19. See chapter 3, 'From Paratexts to Print Machinery'.

¹⁴² *ibid* 18.

¹⁴³ Anne Barron, 'Kant, Copyright and Communicative Freedom', *Law and Philosophy* 31, no. 1 (2012): 39. See also Maurizio Borghi, 'Copyright and Truth', *Theoretical Inquiries in Law* 12, no. 1 (2011): 1–27. See chapter 2, 'Two Ways of Looking at a Printed Book'.

¹⁴⁴ Kant, 'An Answer to the Question: What Is Enlightenment? (1784)', 18–22.

¹⁴⁵ *ibid* 22.

¹⁴⁶ See Immanuel Kant, 'Groundwork for the Metaphysics of Morals (1785)', in *Practical Philosophy*, ed. Paul Guyer and Allen W. Wood, trans. Mary J. Gregor (Cambridge: Cambridge University Press, 1996), 73.

manuscripts for profitable printing.¹⁴⁷ Identifying the author as an authoritative figure capable of authorising the public communication of the author's speech, that is, the printing of a book by which a speech to the public is made 'simply and solely in the author's name',¹⁴⁸ could be thus situated within and alongside Kant's critical humanist philosophy, supporting and deriving support from it.

Despite the rhetorical significance of the nominal idiom, there are reasons to consider its literal and material importance, that is, how it stresses and urges for the actual affixing of the authorial name to the text. Following the guide of the author-function, we may note that Kant himself would, in a letter to Friedrich Schiller written around a decade after the 1785 essay, advise the latter to disclose the names of the authors who contributed to *Die Horen*, a newly launched monthly literary magazine edited by Schiller.¹⁴⁹ In an earlier letter dated 1 March 1795 and enclosed with two issues of the periodical, Schiller had asked Kant to contribute to it.¹⁵⁰ Instead of printing the authorial name on each piece constitutive of each issue of *Die Horen*, Schiller released a name list of authorial participants in the periodical in his opening editorial foreword. Included in this name list is that of Fichte, who had not only contributed a piece to the first issue of *Die Horen*, but also written to Kant supporting Schiller's request.¹⁵¹ Such a decision to publish individually authored writings as the undifferentiated output of a 'society' [*Gesellschaft*] involved in the making of the periodical would seem to cohere with, and perhaps be justified by, Schiller's announced accomplishment of 'combining several of the most deserving writers in Germany into one continuous work'.¹⁵² While politely declining to contribute to the periodical (purportedly because of the prevailing juridico-political restrictions on freedom of speech), Kant suggested that the periodical was better off disclosing the authorial identity of each piece on the grounds of promoting individual accountability and meeting the demands of the reading public: 'I feel that it may harm your magazine not to have the authors sign their names, to make themselves thus responsible for their considered opinions; the reading public is very eager to know who they are'.¹⁵³

¹⁴⁷ Barron, 'Kant, Copyright and Communicative Freedom', 34.

¹⁴⁸ Kant, 'On the Wrongfulness of Unauthorized Publication of Books (1785)', 30.

¹⁴⁹ Immanuel Kant, 'To Friedrich Schiller, March 30, 1795', in *Correspondence*, trans. Arnulf Zweig (United States of America: Cambridge University Press, 1999), 497–98. The first issue of the periodical was published on 10 December 1794: see 'Die Horen', Friedrich Schiller Archiv, accessed 30 April 2022, <https://www.friedrich-schiller-archiv.de/schriften/horen/>.

¹⁵⁰ See Kant, 'To Friedrich Schiller, March 30, 1795', 498, editorial endnote 1.

¹⁵¹ See Johann Gottlieb Fichte, 'Über Belebung und Erhöhung des reinen Interesse für Wahrheit.', Friedrich Schiller Archiv, 17 September 2013, <https://www.friedrich-schiller-archiv.de/die-horen/die-horen-1795-stueck-1/iv-ueber-belebung-und-erhoehung-reinen-interesse-fuer-wahrheit/> (accessed 30 April 2022). On Fichte's letter to Kant, see Kant, 'To Friedrich Schiller, March 30, 1795', 498, editorial endnote 1.

¹⁵² Friedrich Schiller, 'Vorwort', Friedrich Schiller Archiv, 17 September 2013, <https://www.friedrich-schiller-archiv.de/die-horen/die-horen-1795-stueck-1/vorwort/> (accessed 30 April 2022); my translation.

¹⁵³ Kant, 'To Friedrich Schiller, March 30, 1795', 498.

In Kant's 1785 description of the publishing apparatus, the author was identified as the speaker who, though dependent on the publisher and the print machinery, was ultimately responsible for the speech relayed in and by the book. Authorised to relay the speech in the author's name, the publisher was not responsible for the speech's content: 'if he can do something only in another's name, he carries on this affair in such a way that by it the other is bound as if he were doing it himself'.¹⁵⁴ Notice that in Kant's later advice to Schiller, the author was similarly seen as the personal speaker accountable for the opinions expressed in the periodical. Crucially, Kant identified the practice of having authors affix their names to their respective textual contributions, 'to have the authors sign their names',¹⁵⁵ as the means by which authors were held responsible for their texts. Indicating the authorial name within the individual text was seen and recommended as the technique by which accountability for the text was ensured. By the same token, the practice was accepted by Kant to be one of the ways to enforce the borders of each text and individualise each contribution as a distinct 'speech' traceable to some authorising person. Well before Foucault and Chartier, Kant understood the authorial name to be one of the material means by which the author-function was implemented.

In addition to suggesting the author's awareness of the materiality of the author-function, Kant's letter to Schiller records an instance of the autographic signing of the authorial name. To be sure, Foucault did not consider private letters to be material forms organised around the figure of the author: unlike an essay or a book, 'a private letter may have a signatory, but it does not have an author'.¹⁵⁶ Yet, it has been a practice for the private correspondence of writers and other intellectuals to be eventually made public in the form of the printed book, which attests to the fluidity of texts as they migrate between genres, media, and forms across time, potentially attracting and executing the author-function. In the case of Kant, it was after the author's death that his epistolary communications with other participants in the German print machinery and book trade came to be compiled and published as printed books.¹⁵⁷ The presentation of Kant's private letters to the public, quite unlike one of the hypotheticals in Kant's 1785 essay (where a publisher was obligated to publish a manuscript given by the author despite the author's death), had not been authorised by Kant.¹⁵⁸ A print translation of Kant's letter to Schiller may be found in *Immanuel Kant: Correspondence* (1999), a selection of letters pertinent to philosophy, similarly published in *The*

¹⁵⁴ Kant, 'On the Wrongfulness of Unauthorized Publication of Books (1785)', 32.

¹⁵⁵ Kant, 'To Friedrich Schiller, March 30, 1795', 498.

¹⁵⁶ Foucault, 'What Is an Author?', 1977, 124.

¹⁵⁷ On the posthumous publication of Kant's letters, see the editor's introduction of Immanuel Kant, *Correspondence*, ed. and trans. Arnulf Zweig (United States of America: Cambridge University Press, 1999), 2–3.

¹⁵⁸ *ibid.*

Cambridge Edition of The Works of Immanuel Kant.¹⁵⁹ At the bottom of the letter, typographically centred and split into two lines, is the author's sign-off: 'Your most devoted, loyal servant / I. Kant'.¹⁶⁰ In the original letter, Kant's signature served to identify the letter's sender through the abbreviated proper name and its handwritten form, whilst also forming part of the sender's best wishes to the recipient and affirming their friendship.¹⁶¹ But, to anticipate our subsequent analysis, Kant's name would also act as one of the mechanically—and, later, digitally—reproducible forms by which particular texts are included in the author's oeuvre.

If we return to Kant's essay as it was originally published in the May 1785 issue of the *Berlinische Monatsschrift* (and subsequently bound in the fifth volume of the periodical), we shall find that the text concludes with a similar imprint of the author's name. At the last line of the essay, near the bottom-right of the leaf bearing the page number '417', we find 'I. Kant' printed in the same Breiskopf Fraktur typeface in which the essay was set.¹⁶² Notice that both the alphabetical form of the author's name and its placement at the end of the text are all but identical to those of the letter. Despite the printed format, it is as if Kant had signed the essay. In both instances the author's name acts to identify the body of text that came before as a distinct record of a speech for which the named author is held accountable. Having received and read the letter signed by Kant, Schiller could write back to Kant and resume the 'literary discussions'¹⁶³ with which Kant had purportedly been 'delighted'¹⁶⁴ to engage. Readers of Kant's essay in the *Berlinische Monatsschrift* could comment on the argument in some format, whether in a private letter or some publication such as the same periodical. For instance, Fichte could claim in a footnote to his own essay to have written it before reading Kant's; and, having read it, to find it 'very encouraging to find [himself] on the same road as [Kant]'¹⁶⁵ (even though their arguments substantially differed¹⁶⁶). Set in Breiskopf Fraktur, Kant's signature in the essay underwent 'depersonalisation' in that it was no longer handwritten by the signatory but rather a product of the printing press operated by other workmen. Nonetheless, its newly acquired mechanical reproducibility within and alongside the essay facilitated the essay's dissemination to the public as a text with a known author.

Might the authorial name 'I. Kant' have been involved in the constitution or spread of the proprietary understanding of authorship, whether in Kant's time or beyond? It is true that the

¹⁵⁹ Kant, 'To Friedrich Schiller, March 30, 1795'.

¹⁶⁰ *ibid* 498.

¹⁶¹ *ibid*. The preceding part of the paragraph reads: 'And so, dearest sir, I wish your talents and your worthy objectives the strength, health, and long life they deserve, and also the friendship, with which you wish to honor one who is ever—'.

¹⁶² See <https://www.digitale-sammlungen.de/de/view/bsb10926844?page=447> (accessed 30 April 2022).

¹⁶³ Kant, 'To Friedrich Schiller, March 30, 1795', 497.

¹⁶⁴ *ibid*.

¹⁶⁵ 'Fichte: Proof of the Unlawfulness of Reprinting, Berlin (1793)', 472.

¹⁶⁶ See chapter 4, 'Materiality of Type'.

absence of copyright legislation in Germany until 1837 did not preclude the existence of the perspective on authors as owners and creators of their works before then.¹⁶⁷ Though it was in eighteenth-century Britain where the earliest copyright statute arose and the ensuing literary property debate involving London and Scottish booksellers took place,¹⁶⁸ the circulation in Germany of certain cultural texts that legitimated and rhetorically echoed the British literary property debate would suggest that there probably was a ‘transnational flow of ideas in this period’.¹⁶⁹ A key example is Edward Young’s *Conjectures on Original Composition in a Letter to the Author of Sir Charles Grandison* (1759), whose account of the author as genius and sole owner of property in the original work he has composed has been observed in law and literature scholarship to reflect an emergent perspective on the author as owner-creator that now prevails in copyright regimes.¹⁷⁰ For Young, authorship was indissociable from genius and ownership: the original work ‘rises spontaneously from the vital root of Genius’,¹⁷¹ organically extending from the writer himself; against the backdrop of merely imitative writings, the writer’s original works ‘will stand distinguished; his the sole Property of them; which Property alone can confer the noble title of an *Author*’.¹⁷² Apparently, Young’s work did not receive much attention in England when it was first published in 1759, and so probably was of little direct influence on the contemporaneous literary property debate.¹⁷³ Nonetheless, Mark Rose has suggested that Young’s ‘mystification of the author...served the purposes of the ultimate proprietors of copyrights, the booksellers’.¹⁷⁴ Recognising the nobility of authors as owners of literary property legitimated transfers of title to the booksellers for exploitation in the book trade. Other than supporting the debate’s commodification of literature, Young’s work acceded to the terms of the debate by deploying the property idiom relied upon by both the proponents and opponents of perpetual copyright at

¹⁶⁷ See ‘Prussian Copyright Act of 1837’, Primary Sources on Copyright (1450-1900), eds L. Bently & M. Kretschmer, accessed 30 April 2022, http://www.copyrighthistory.org/cam/tools/request/showRepresentation?id=representation_d_1837a.

¹⁶⁸ ‘Statute of Anne’ (‘An Act for the Encouragement of Learning, by Vesting the Copies of Printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned’), Primary Sources on Copyright (1450-1900), eds L. Bently & M. Kretschmer, accessed 30 April 2022, https://www.copyrighthistory.org/cam/tools/request/showRecord.php?id=record_uk_1710. See also Rose, *Authors and Owners*. Chartier has suggested that the proprietary understanding of authorship preceded the Statute of Anne, appearing in Ben Johnson’s and John Milton’s contracts: see Chartier, ‘Foucault’s Chiasmus: Authorship between Science and Literature in the Seventeenth and Eighteenth Centuries’, 18–20.

¹⁶⁹ Coombe, ‘Challenging Paternity: Histories of Copyright’, 421.

¹⁷⁰ Edward Young, *Conjectures on Original Composition: In a Letter to the Author of Sir Charles Grandison* (London: A. Millar and R. and J. Dodsley, 1759). See Martha Woodmansee, ‘The Genius and the Copyright: Economic and Legal Conditions of the Emergence of the “Author”’, *Eighteenth-Century Studies* 17, no. 4 (1984): 430–31; Rose, *Authors and Owners*, 117–22.

¹⁷¹ Young, *Conjectures on Original Composition*, 12.

¹⁷² *ibid* 54.

¹⁷³ See Woodmansee, ‘The Genius and the Copyright: Economic and Legal Conditions of the Emergence of the “Author”’, 430.

¹⁷⁴ Rose, *Authors and Owners*, 120.

common law in the British debate.¹⁷⁵ As Woodmansee has noted, in contrast to its mild English reception, two translations of Young's book appeared in Germany within two years of its original publication, which had a 'profound impact'¹⁷⁶ on the German debate on the book between 1773 and 1794.¹⁷⁷ Young's theory of the author as original genius perhaps shaped Fichte's view on the author's mind as that which grants singular form to ideas in the book, such form being inalienable property forever owned by the author.¹⁷⁸ The criterion of inalienability, or the impossibility of appropriation, distinguishes Fichte's account of literary property from English accounts that draw on Locke's possessive individualism. Thus, the understanding of books as original creations of proprietary authors was likely to have been present in some form in late-eighteenth-century Germany. The practice of affixing an authorial name to a text, which perceptually groups the text with the named author, may well have played some role in the rise of the myth of proprietary authorship.

Notwithstanding its ambiguous relationship with the property idiom, the material form and placement of 'I. Kant' in the *Berlinische Monatsschrift* also afforded, and to an extent supported, Kant's theorisation of the book in non-proprietary terms. Let us revisit some of the periodical's front matter: in both the title page of the May 1785 issue and that of the fifth volume as a whole, we find printed the names of the editor-publishers, 'F. Gedike und J. E. Biester'.¹⁷⁹ Their roles in editing and publishing the periodical is posited and foregrounded in both the title wording, 'Berlinische / Monatsschrift / herausgegeben / von / F. Gedike und J. E. Biester', and the preface to each issue. For instance, in the preface to the first issue, Gedike and Biester present not only their 'plan'¹⁸⁰ for the periodical, including the types of contributions pertinent to 'pleasant instruction and useful enlightenment'¹⁸¹ they would 'gratefully accept',¹⁸² but also their projected publishing of six to seven pieces in each monthly issue. Not unlike Kant's, their names are printed at the end of the text as its speaker, though the line further specifies their roles as editor-publishers,

¹⁷⁵ For a review of the arguments in the literary property debate other than Rose's, see Brad Sherman and Lionel Bently, *The Making of Modern Intellectual Property Law* (Cambridge: Cambridge University Press, 2003), 9–42.

¹⁷⁶ Woodmansee, 'The Genius and the Copyright: Economic and Legal Conditions of the Emergence of the "Author"', 430.

¹⁷⁷ For Woodmansee's overview of the debate, see *ibid.* 440–48.

¹⁷⁸ On the influence of Young on Fichte, see *ibid.* 444–46. See also our earlier discussion of Fichte in chapter 4, 'Materiality of Type'. As we have discussed, Fichte's account of literary property departs from the Anglo-American account in regarding it to be inalienable.

¹⁷⁹ For the title page of the May 1785 issue, see <https://www.digitale-sammlungen.de/de/view/bsb10926844?q=von+der+unrecht&page=422,423> (accessed 30 April 2022). For the title of the fifth volume, see <https://www.digitale-sammlungen.de/de/view/bsb10926844?q=von+der+unrecht&page=6,7> (accessed 30 April 2022).

¹⁸⁰ For the preface of the first issue, see <https://www.digitale-sammlungen.de/de/view/bsb10926840?q=%28Berlinische+Monatsschrift.+1.+1783%29&page=8,9> (accessed 30 April 2022); my translation. See chapter 3, 'From Paratexts to Print Machinery'.

¹⁸¹ *ibid.*

¹⁸² *ibid.*

‘Die Herausgeber. G. u. B’.¹⁸³ Read alongside these other nominal peritexts that assert and disclose the publishers’ identities, ‘I. Kant’ affirms Kant’s characterisation of the printed book as a speech to the public made by the publisher ‘in the author’s name’.¹⁸⁴ In other words, the printed authorial name forms part of the material basis for Kant’s communicative account of the book. The book may be imagined as consisting in a reflexive ventriloquy where the puppet-publisher disavows his responsibility for the authorial speech he transmits precisely because the book bears the names of the two pertinent actors: ‘Through me a writer will by means of letters have you informed of this or that, instruct you, and so forth. I am not responsible for anything, not even for the freedom which the author assumes to speak publicly through me: I am only the medium by which it reaches you’.¹⁸⁵ With respect to Kant’s 1785 essay, it is by means of the authorial name ‘I. Kant’ printed in the last line of the essay that responsibility for the essay qua speech is attributed to Kant, and to Kant alone.

Kant simultaneously understood the medial-materiality of the printed book and insistently anchored it to the two involved persons of publisher and author. For Kant, the book was a visual-corporeal medium that depended on the manifold bodies of texts and humans for its making, distribution, and use. Kant’s description of the book as a ‘mute instrument’¹⁸⁶ composed of ‘letters’,¹⁸⁷ along with his comments in *Der Streit der Fakultäten* (‘The Conflict of Faculties’) on typefaces such as Breiskopf Fraktur,¹⁸⁸ reflected his acute recognition of the book’s opticality and artifice. At the same time, he declined to see it as some autonomous thing whose physical independence marked a space devoid of responsibility. Rather, aided by the convention of printing the names of the publisher and author on the book, Kant identified the publisher as a human ‘medium’ whose control of the publishing apparatus enabled the transmission of another’s speech to the public, and the author as that human speaker accountable for the speech appearing in print. The objecthood of the book was, as it were, accompanied and ultimately circumscribed by the personal figures of the publisher and author and their perceived roles in producing it. Kant was a media theorist who recognised the dependence of authors on the print machinery, but also a humanist who affirmed human freedom and responsibility in his deployment of the authorial name.

¹⁸³ *ibid.*

¹⁸⁴ Kant, ‘On the Wrongfulness of Unauthorized Publication of Books (1785)’, 30.

¹⁸⁵ *ibid.*

¹⁸⁶ *ibid.*

¹⁸⁷ *ibid.*

¹⁸⁸ Immanuel Kant, *The Conflict of the Faculties*, trans. Mary J. Gregor (New York: Abaris Books, Inc., 1979), 209–13. See chapter 4, ‘Materiality of Type’.

Setting aside for now any personal or reputational reasons that might have led Kant to prefer onymous publishing,¹⁸⁹ we should note that Kant’s attribution of responsibility for books (as printed matter and as speech) to publishers and authors in 1785 coheres with his epitextual observations about the burgeoning book trade and the ethics of authorship and publishing in the German Enlightenment. As we have previously explored, the phenomenon of print proliferation in eighteenth-century Germany, indexed in the catalogues of the Leipzig and Frankfurt book fairs and other quantitative records, gave rise to considerable anxiety amongst scholars and writers.¹⁹⁰ In 1794 and 1795, the practices of indiscriminate reading and trifling chatter about books were condemned by critics as facets of a ‘reading addiction’¹⁹¹ and ‘the plague of German literature’.¹⁹² In the transcripts of Kant’s *Vorlesungen über Philosophische Enzyklopädie* (‘Lectures on the Philosophical Encyclopaedia’) given sometime between 1767 and 1782,¹⁹³ Kant himself had described the reading public’s excessive reading habits as a pathology, *Belesenheit*, a condition of overexposure to print without the requisite ability to separate the wheat from the chaff.¹⁹⁴ Accordingly, as Chad Wellmon has similarly noted more than once, the book was first characterised as a threat to individual autonomy and the emancipatory practice of enlightenment in Kant’s 1784 essay: ‘If I have a book that understands for me, a spiritual advisor who has a conscience for, a spiritual advisor who has a conscience for me, a doctor who decides upon a regimen for me, and so forth, I need not trouble myself at all.’¹⁹⁵ For Kant, the surfeit of books in the eighteenth century, ceaselessly produced by the print machinery, was overwhelming the human being and preventing the use of one’s own understanding to emerge from immaturity.

No less than authors who uncritically contributed to the clutter, publishers who financed and directed the assembly of books more for reasons of profit than for public enlightenment were

¹⁸⁹ We may consider, for instance, his corroding relationship with Fichte indexed in his personal letters: see Kant, *Correspondence*. Kant only rarely published anonymously: see Steve Naragon, ‘Chronology of Kant’s Life’, in *The Palgrave Kant Handbook*, ed. Matthew C. Altman (London: Palgrave Macmillan, 2017), xxxi–xliv.

¹⁹⁰ See chapter 3, ‘From Paratexts to Print Machinery’.

¹⁹¹ Johann Gottfried Hoche, *Vertraute Briefe über die jetzige Lesesucht und über den Einfluß der-selben auf die Verminderung des häuslichen und öffentlichen Glücks* (‘Intimate Letters: The Current Reading Addiction and Its Influence on the Reduction of Domestic and Public Happiness’) (Hanover: Ritscher, 1794); translation from ‘Proliferation’, in *Interacting with Print: Elements of Reading in the Era of Print Saturation*, by The Multigraph Collective (Chicago and London: The University of Chicago Press, 2018), 252.

¹⁹² Johann Georg Heinzmann, *Appel an Meine Nation: Über Die Pest Der Deutschen Literatur* (‘A Plea to My Nation: On the Plague of German Literature’) (Bern, 1795).

¹⁹³ On some uncertainties surrounding when the lectures were delivered, see Manfred Kuehn, ‘Dating Kant’s “Vorlesungen über Philosophische Enzyklopädie”’, *Kant-Studien* 74, no. 3 (1983): 302–13.

¹⁹⁴ Immanuel Kant, ‘Vorlesungen über Philosophische Enzyklopädie’, in *Gesammelte Schriften*, ed. Königlich Preussischen Akademie der Wissenschaften (Berlin: Walter de Gruyter, 1902), 29:30. See Chad Wellmon, ‘Kant’s Critical Technology’, in *Organizing Enlightenment: Information Overload and the Invention of the Modern Research University* (United States of America: John Hopkins University Press, 2015), 123–4.

¹⁹⁵ Kant, ‘An Answer to the Question: What Is Enlightenment? (1784)’, 17. See Wellmon, ‘Kant’s Critical Technology’, 124; Brad Pasanek and Chad Wellmon, ‘Enlightenment, Some Assembly Required’, in *The Eighteenth Centuries: Global Networks of Enlightenment*, ed. David T. Gies and Cynthia Wall (University of Virginia Press, 2018).

censured by Kant. Unlike Kant's correspondence with Schiller, Kant's two letters addressed to Friedrich Nicolai entitled *Über die Buchmacherei* ('On Turning Out Books') (1798) were open letters made for the public's reading, first published as a pamphlet in Königsberg and then as part of a collection of Kant's shorter works in Leipzig and Jena in the same year.¹⁹⁶ As specified in the opening line identifying the addressee, each letter targeted one of two roles Nicolai played in the print machinery: the first reads, 'To Mr. Friedrich Nicolai, the author'; the second, 'To Mr. Friedrich Nicolai, the publisher'. With respect to the first, the very nomination of Nicolai as author might well have been derisive, for it was instead a text bearing Justus Möser's authorial name that occasioned Kant's reply. Möser, as we may recall, was a German jurist and writer who contributed the letter to a young poet that immediately preceded Kant's 1785 essay in the same periodical issue.¹⁹⁷ In 1796, two years after Möser's death, the fragment *Über Theorie und Praxis* ('On Theory and Praxis') appeared in a posthumous collection of Möser's writings published by Nicolai.¹⁹⁸ Alluding in its title to another of Kant's essays first published in the *Berlinische Monatschrift*, *Über den Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht für die Praxis* ('On the Common Saying: That May Be True in Theory, but It Is of No Use in Practice') (1793),¹⁹⁹ Möser's fragment opposed Kant's trenchant critique of hereditary nobility. Whereas Kant had argued in the essay that no people would freely agree to be ruled by higher fellow subjects with inherited prerogatives ('the hereditary privilege of ruling rank'²⁰⁰), Möser wrote a fictional counter-narrative where persons consented to serfdom to meet their practical needs.²⁰¹ In the letter, Kant reasserted the primacy of reason as the faculty and principle that governed the question of which political arrangement people ought to agree to over and above any pragmatic or other empirical consideration. 'For this whole problem is to be judged (in the *Metaphysical First Principles of the Doctrine of Right*, p. 192), as a question belonging to the *doctrine of right*: whether the sovereign is *entitled* to found a middle estate between itself and the remaining citizens of the state; and hence the verdict is then that the people will not and cannot rationally resolve on such a subordinate authority, because otherwise it would be

¹⁹⁶ Immanuel Kant, 'On Turning out Books: Two Letters to Mr. Friedrich Nicolai from Immanuel Kant', in *Practical Philosophy* (United States of America: Cambridge University Press, 1996), 617–27. For an account of the context surrounding these letters, see the editor's introduction: *ibid* 619–20. For a more extensive treatment of Nicolai's involvement in the eighteenth-century book trade, see Pamela E. Selwyn, *Everyday Life in the German Book Trade: Friedrich Nicolai as Bookseller and Publisher in the Age of Enlightenment, 1750-1810* (University Park, Pennsylvania: The Pennsylvania State University Press, 2000).

¹⁹⁷ See chapter 3, 'From Paratexts to Print Machinery'.

¹⁹⁸ Justus Möser, *Vermischten Schriften*, ed. Friedrich Nicolai (Friedrich Nicolai, 1796). See the editor's introduction, Kant, 'On Turning out Books: Two Letters to Mr. Friedrich Nicolai from Immanuel Kant', 619.

¹⁹⁹ See Immanuel Kant, 'On the Common Saying: That May Be Correct in Theory, But It Is No Use in Practice (1793)', in *Practical Philosophy*, ed. Paul Guyer and Allen W. Wood, trans. Mary J. Gregor (Cambridge: Cambridge University Press, 1996), 279–309.

²⁰⁰ *ibid* 297.

²⁰¹ For an account of the differences between Kant's and Möser's positions, see Jonathan B. Knudsen, *Justus Möser and the German Enlightenment* (Cambridge: Cambridge University Press, 1986), 176–86.

subject to the whims and crotchets of a subject that itself needs to be governed, which contradicts itself.²⁰² After having ‘*parodied* into ridicule’²⁰³ Möser’s counter-narrative, Kant concluded by returning to Nicolai as the individual most implicated by his critique. ‘Mr Friedrich Nicolai, therefore, has come to misfortune with his interpretation and defense in the alleged concern of another (namely, Möser)’.²⁰⁴ By using the adjective ‘alleged’ to describe Möser’s fragment, Kant casted doubt on the authenticity of its authorship, suggesting that Nicolai himself might have written or substantially rewritten it while misattributing it to his late friend. Kant noted in the beginning of the letter the ambiguous origins of the fragment, it having been ‘communicated to the latter [Mr. Nicolai] in manuscript, and as Mr. Nicolai assumed that Möser himself would have communicated it if he had brought it entirely to an end’.²⁰⁵

Read alongside these comments implicating Nicolai despite the letter’s focus on the fragment bearing Möser’s name, Kant’s identification of Nicolai as author in the addressee line could be the former’s way of making the latter accountable for a speech purportedly made in another’s name, but in fact was his own. The printed authorial name had been misused by Nicolai, perhaps to disavow himself of responsibility for the text, and was now redeployed by Kant to hold Nicolai to account before the reading public. Alternatively or additionally, the nomination may be understood to be Kant’s negative appraisal of Nicolai’s authorship as merely derivative or imitative. Not only was Nicolai’s ‘completion’ of Möser’s work poor in the weakness of its argument, but Nicolai also proved incapable or afraid of exercising his own reason to produce any scholarly contribution to public enlightenment. His ‘interpretation and defense’²⁰⁶ of Möser was more a cowardly act of mimicry than a scholar’s use of reason. In the terms of Kant’s enlightenment essay, Nicolai remained mired in a ‘*self-incurred*’²⁰⁷ state of immaturity, defined by a ‘lack in resolution and courage to use [his own understanding] without direction from another’.²⁰⁸ Under this latter reading, ‘author’ was deployed ironically to disclose and deride the insufficiency of Nicolai’s contribution. In both instances, regardless of any personal feud Kant might have had with Nicolai,²⁰⁹ the printed authorial name was understood by the former to be materially connected to the assumption and attribution of scholarly responsibility in the practice of enlightenment.

²⁰² Kant, ‘On Turning out Books: Two Letters to Mr. Friedrich Nicolai from Immanuel Kant’, 623–24.

²⁰³ *ibid.* 625.

²⁰⁴ *ibid.*

²⁰⁵ *ibid.* 623.

²⁰⁶ *ibid.* 624.

²⁰⁷ Kant, ‘An Answer to the Question: What Is Enlightenment? (1784)’, 17.

²⁰⁸ *ibid.*

²⁰⁹ On Kant’s displeasure with Nicolai’s assessment of Kant’s work, see the translator’s introduction of Kant, ‘On Turning out Books: Two Letters to Mr. Friedrich Nicolai from Immanuel Kant’, 619–20. See also Selwyn, *Everyday Life in the German Book Trade*, 21–22.

Whereas the first letter dealt with the poverty of Nicolai's authorship, the second dwelt on the profitability of literary publishing that Nicolai had, on Kant's view, prioritised over other societal gains. A neat distinction on which Kant relied to criticise Nicolai's commercialism and at the same clarify the ethics of publishing is that between '*prudence in publication*'²¹⁰ and '*soundness of publication*'.²¹¹ A 'self-seeking'²¹² publisher such as Nicolai pandered to and shaped the 'market'²¹³ and 'fashion'²¹⁴ of the book trade without regard for the 'inner worth and content of the commodities he publishes'.²¹⁵ As a result, the reading public was allowed to remain 'deceived'²¹⁶ and, in the instance, of 'mocking imitation philosophers'²¹⁷ like Möser and Nicolai, uncomprehending of the importance of theoretical works that sought to clarify and demonstrate 'judgements of reason'.²¹⁸ For Kant, it was instead the publication of 'labors in the sciences which [were] all the more serious and well-grounded'²¹⁹ than the farcical commodities turned out by Nicolai that truly mattered. By Kant's logic, it would be Kant's Königsberg publisher, Friedrich Nicolovius, who published the two open letters and Kant's other works such as *Die Metaphysik der Sitten* ('The Metaphysics of Morals'), who fulfilled the responsibility of the publisher in the German Enlightenment.

Consistent with Kant's essays in the *Berlinische Monatschrift*, the two open letters conclude with the printed authorial name 'I. Kant', at once identifying Kant as their responsible 'speaker' and affirming Kant's 1785 understanding of the ethics of authorship and its material basis. The proper names 'Justus Möser' and 'Friedrich Nicolai', printed on Möser's posthumous collection as the names of the author and publisher respectively, allowed Kant to identify and hold accountable the 'speaker(s)' whose speech and action, in his view, obstructed the advance of enlightenment. If their texts and activities were to contribute to the process of enlightenment, they had to be critically appropriated—as Kant did in the two open letters—as opportunities to clarify the primacy of reason in questions of politics, authorship, and publishing. Kant's own authorial name, 'I. Kant', rendered himself accountable for his 1798 intervention into the discourse, while also inviting eighteenth-century German readers and us today to read those letters alongside his other writings, including his 1784 and 1785 periodical essays. These interventions reflected Kant's media-theoretical understanding of the authorial name as the material means by which responsibility was

²¹⁰ Kant, 'On Turning out Books: Two Letters to Mr. Friedrich Nicolai from Immanuel Kant', 626.

²¹¹ *ibid.*

²¹² *ibid.*

²¹³ *ibid.*

²¹⁴ *ibid.*

²¹⁵ *ibid.*

²¹⁶ *ibid.* 627.

²¹⁷ *ibid.*

²¹⁸ *ibid.*

²¹⁹ *ibid.*

assumed by and ascribed to individual participants in the German Enlightenment amidst the phenomenon of print proliferation. Rather than simply consolidating the myth of proprietary authorship (though, as we have suggested, this might have been one of its effects), the authorial name was bound up in an ethics of authorship that Kant understood to be central to enlightenment practice. The public use of reason materially depended on the printing of authorial names in textual publications.

Kant qua Proprietary Author?

Kant's argument against the unauthorised reprinting of books did not prevent his own publications from being reprinted and sold by illegitimate publishers and booksellers. For instance, in 1793, there appeared in Frankfurt and Leipzig an unauthorised edition of Kant's writings, *Zerstreute Aufsätze* ('Scattered Essays'), which included versions of both his 1784 and 1785 essays from the *Berlinische Monatschrift*.²²⁰ The illegitimacy of the text's reprinting is suggested by its title page, which excludes the names of its editor, publisher and printing house.²²¹ Such anonymity not only undermined the enforcement of the already-limited system of print privileges in eighteenth-century Germany, but also worked against the system of rights that Kant had conceived and attached to the printed book.

Though Kant's authorial name did appear in the 1793 edition, its form and placement so departed from that in the *Berlinische Monatschrift* as to effect a subtle variation of the author-function as Kant had understood it. As we have noted, the authorial name in Kant's 1785 essay, 'I. Kant', was a print remake of Kant's epistolary signature.²²² In both the original contents page of the May 1785 issue and the master contents page of the fifth volume of the periodical, Kant's authorial name was printed after and alongside the essay title in a more formal fashion that included his gendered and academic titles while omitting his forename entirely: 'Vom herrn Prof. Kant',²²³ 'Vom hrn. Prof. Kant'.²²⁴ Whereas the title pages of the periodical had foregrounded the names of the editor-publishers and printing house, the 1793 reprint instead designated the title 'scattered essays' as a single-authored collection re-grouped under the formal appellation adopted in those earlier content pages: 'Von / herrn Professor / Kant'.²²⁵ The more 'personal' figure of 'I. Kant'

²²⁰ See Immanuel Kant, 'Zerstreute Aufsätze (1793)', Münchener DigitalisierungsZentrum Digitale Bibliothek, accessed 30 April 2022, <https://www.digitale-sammlungen.de/en/view/bsb10927121?page=,1>.

²²¹ *ibid.*

²²² The same goes for that in the 1784 essay.

²²³ See http://ds.ub.uni-bielefeld.de/viewer/image/2239816_005/420/LOG_0052/ (accessed 30 April 2022).

²²⁴ See <https://www.digitale-sammlungen.de/de/view/bsb10926844?q=von+der+unrecht&page=12,13> (accessed 30 April 2022).

²²⁵ Kant, 'Zerstreute Aufsätze (1793)'.

(already to an extent de-personalised by the nominal abbreviation and the signature's re-mediation) gave way to the formal, revered figure of scholarly authority. Kant's interest in making authors responsible for their speech was subordinated to the more commercially relevant interest of securing the marketability of the literary commodity by attaching to it a brand name of an authoritative figure with institutional and gendered credentials. The eighteenth-century print machinery reworked the authorial name in accordance with the commercial imperative. Enclosed within a single-authored collection reprinted and sold for profit without the author's consent, Kant's essays on enlightenment and author's rights need not affirm the author's intended sign-off in the periodical whose typography he respected and recommended.²²⁶

Critical of the unauthorised reprinting of his own works, Kant relied on reputable daily periodicals to denounce and discredit pirated editions that came to his awareness, asserting his authorship in, and authority over, the original works through public notices that bore his authorial name. In the *Allgemeine Literatur-Zeitung*, a respected and prolific daily that rivalled Nicolai's *Allgemeine Deutsche Bibliothek*, we can find at least two such notices in which the authority of 'I. Kant' was re-asserted to disavow the reprints.²²⁷ On 12 June 1790, under the section *Literatur Zeigen* ('Literature Advertisements'), Kant posted an anti-advertisement of a reprint of his works indexed in a recent book catalogue:

In the Leipzig Catalogue of this year's Easter Fair, amongst the books to be published falsely is *I. Kant's Minor Writings, with Explanatory Notes* [*I. Kants kleine Schriften, mit erläüternden Anmerkungen*] without the name of the editor or publisher. I hope that the person behind this idea would think of something else, and leave the author to take care of this, together with the notes to be added, which should concern the changes in such concepts that have since happened, but without prejudice to the notes that the publisher might have made about it, and which he could also make known without the text as he pleased. Otherwise, the authentic edition in collision with the illegitimate one would be of detriment to the latter in all respects.

I. Kant.²²⁸

In its title appropriation of 'I. Kant', the 1790 pirated edition of Kant's texts to an extent masqueraded as a publication authorised by Kant himself. Given the similar non-disclosure of the names of the editor and publisher, neither Kant nor the reading public at large would have been

²²⁶ Kant, *The Conflict of the Faculties*, 209–13. See also chapter 4, 'Materiality of Type'.

²²⁷ On the commercial success of the *Allgemeine Literatur-Zeitung* and the factors that contributed to it, see Thomas Broman, 'The Profits and Perils of Publicity: Allgemeine Literatur-Zeitung, the Thurn Und Taxis Post, and the Periodical Trade at the End of the Eighteenth Century', *Notes and Records: The Royal Society Journal of the History of Science* 69, no. 3 (2015): 267–71. Other than the first public notice discussed below, see the second from 1793: https://digipress.digitale-sammlungen.de/view/bsb10501996_00535_u001/1 (accessed 30 April 2022).

²²⁸ See https://digipress.digitale-sammlungen.de/view/bsb10501984_00505_u001/1 (accessed 30 April 2022); my translation.

able to hold the pertinent print actors to account for the quality of its printing and the accompanying notes. It was left to Kant to re-appropriate his technologised epistolary signature and assert his own authority to comment on and update his writings. The presence of the author as a living being who evolved alongside, even beyond, the original publication, able to look back at different editions and assess their authenticity and limits, is critically staged by Kant's onymous note. In Kant's time, 'I. Kant' simultaneously contributed to the problem of print proliferation as a brand name exploited by publishers and acted as a material component of the author's solution to it, affording the assertion of authorial authority to (dis)authenticate and (dis)avow textual publications.

Today, if an Anglophone scholar is to read Kant's essay on author's rights, he is likely to refer to the English translation in the volume *Practical Philosophy* of *The Cambridge Edition of the Works of Immanuel Kant*.²²⁹ It is Mary J. Gregor's translation in this volume, first published by Cambridge University Press, New York, in 1996, that we have been reading alongside the original 1785 essay in the *Berlinische Monatschrift*. Between the publication of the contemporary translation and that of the late-eighteenth-century text is a supervening period of over two hundred years with attendant transformations in, and transactions between, German, American, European, and global Anglophone culture. With respect to legal culture, we may note that both Germany and the United States now have established national traditions of copyright law with their pertinent statutes.²³⁰ Notwithstanding some evident differences between these regimes of author's rights and copyright, they partake in and reproduce a shared proprietary perspective on the literary work as the original creation of its author.²³¹ Under sections 2(1) and 2(2) of the *Urheberrechtsgesetz* ('Act on Copyright and Related Rights'), *Sprachwerke* ('literary works') and other *Werke* ('works') protected under the Act are defined as *persönliche geistige Schöpfungen* ('personal intellectual creations'), which coheres with the European standard of originality.²³² Section 7 clarifies that the *Urheber* ('author') is the *Schöpfer des Werkes* ('creator of the work'). The author has *das ausschließliche Recht, sein Werk in körperlicher Form zu verwerten* ('the exclusive right to exploit the work in its material form'), including *das*

²²⁹ There is also the translation available on the digital archive 'Primary Sources on Copyright': see 'Kant: On the Unlawfulness of Reprinting, Berlin (1785)', Primary Sources on Copyright (1450-1900), eds L. Bently & M. Kretschmer, accessed 30 April 2022, https://www.copyrighthistory.org/cam/tools/request/showRecord.php?id=record_d_1785.

²³⁰ In Germany, the main copyright statute governing literary works is the 'Gesetz Über Urheberrecht Und Verwandte Schutzrechte'; in the United States, Title 17 of the United States Code.

²³¹ For some comparative accounts of civil law and common law regimes of copyright, see Jane Ginsburg, 'A Tale of Two Copyrights: Literary Property in Revolutionary France and America', in *Of Authors and Origins: Essays on Copyright Law*, ed. Brad Sherman and Alain Strowel (Oxford: Clarendon Press, 1994); Alain Strowel, 'Droit d'auteur and Copyright: Between History and Nature', in *Of Authors and Origins: Essays on Copyright Law*, ed. Brad Sherman and Alain Strowel (Oxford: Clarendon Press, 1994); Bently et al., *Intellectual Property Law*, 36.

²³² Gesetz Über Urheberrecht Und Verwandte Schutzrechte, sections 2(1) and 2(2). On 'originality' in European copyright law, see chapter 3, 'From Paratexts to Print Machinery'.

Vervielfältigungsrecht (‘the right of reproduction’). Similar to UK copyright law, the German statute provides for a presumption of authorship based on the conventional appearance of the author’s name on the published work.²³³ As previously discussed, section 102(a)(1) of Title 17 of the United States Code provides that ‘[copyright] protection subsists...in original works of authorship fixed in any tangible medium of expression’, including ‘literary works’.²³⁴ The US Supreme Court has clarified that authorship presupposes originality in the sense of ‘independent creation plus a modicum of creativity’.²³⁵ Similar to that in Germany, the owner of literary copyright in the United States is able to exercise a number of proprietary rights, including the right to reproduce it.²³⁶ In both jurisdictions, the literary work is apprehended as its author’s original creation. Though Kant dismissed uses of the property idiom to describe and regulate print publishing during the late eighteenth century, the myth of the proprietary author now prevails across copyright regimes.

The legal information included in the publisher’s peritext in *Practical Philosophy* reflects, ratifies, and reproduces the proprietary perspective on literature despite the death of the author Kant (who, in any case, contributed to the making of the original works at a time before copyright). On the same page bearing record of the publisher’s identity (‘Cambridge University Press’), year and place of first publication (‘1996’; ‘United States of America’; ‘New York’), and other related items, we find the copyright notice specifying that copyright in the volume, including the right of reproduction, has been vested in the university press since it was first published: ‘© Cambridge University Press 1996 / This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press’.²³⁷ The form of the notice meets the pertinent requirements relating to the symbol ©, the year of first publication and the name of the owner of copyright, stated under section 401(b)(2) of the Title 17 of the United States Code, for the purpose of giving ‘reasonable notice of the claim of copyright’²³⁸ to the public. Having purportedly financed and directed the publication of *Practical Philosophy* in the United States, Cambridge University Press holds a copyright in the ‘compilation’²³⁹ of Kant’s works, which entails ‘the collection and assembling of pre-existing materials or of data that are selected, coordinated or arrange in such a way that the resulting work as a whole constitutes an original work of

²³³ Gesetz über Urheberrecht und verwandte Schutzrechte, section 10(1).

²³⁴ Title 17 of the United States Code, section 102. See chapter 2, ‘Two Ways of Looking at a Printed Book’, and chapter 3, ‘From Paratexts to Print Machinery’.

²³⁵ *Feist Publications Inc. v Rural Telephone Service Co. Inc.* 111 S.Ct. 1282 (1991), 1288. 499 U.S. 340 (1991), 1288.

²³⁶ Title 17 of the United States Code, section 106.

²³⁷ Immanuel Kant, *Practical Philosophy*, ed. and trans. Mary J. Gregor, The Cambridge Edition of the Works of Immanuel Kant (Cambridge: Cambridge University Press, 1996).

²³⁸ See Title 17 of the United States Code, sections 401(b)(1)-(3) and 401(c).

²³⁹ *ibid* section 103.

authorship'.²⁴⁰ Like any 'literary work', the compilation is understood to be an 'original work of authorship' in which copyright protection subsists. For the purposes of copyright in compilation (not unlike in the instance of typographical copyright in the United Kingdom²⁴¹), the publisher is understood to be the author-creator of the compiled work. *Practical Philosophy* is apprehended as consisting in a literary compilation undertaken by and belonging to the university press.

Having switched hands, eyes and technology, Kant's essay on publisher's and author's rights, in its 1996 renewal, need not bear its original paratexts with their assigned functions. The shift to digital typography printing has re-affirmed the obsolescence of the already-dated mechanisms of catchwords and signature marks to guide the order of printing in the hand-press period. Catered to an Anglophone readership accustomed to seeing and using serif typefaces, the 1996 essay is set in the ubiquitous Times New Roman font instead of the antiquated Breiskopf Fraktur, regardless of the author's preference for the latter. Similarly, the periodical's style of printing authorial names at the end of each contribution, as well as Kant's deliberate choice of his epistolary sign-off, are discarded in favour of the interests, considerations, and circumstances of the university press and its appointed editors. No 'I. Kant' concludes Kant's essay in *Practical Philosophy*. Instead, appearing at the top of alternate pages of Kant's essay and his other works in the volume is the typographically centred running head 'IMMANUEL KANT'.²⁴² The other set of running heads bear the work's title, here, a truncated version, 'WRONGFULNESS OF UNAUTHORIZED PUBLICATION'.²⁴³ Some relationship between author and work, between Immanuel Kant and the text, is reiterated across the pages and re-impressed on the reader as he or she flips from page to page. Whether this relationship is a *proprietary* relationship, one that reproduces the myth of proprietary authorship enshrined in copyright law, is left ambiguous, though not eliminated as a perceptual possibility. Since the cover page indicates at its top the full name of the series and edition, 'THE CAMBRIDGE EDITION OF THE WORKS OF / IMMANUEL KANT', the first set of running heads may also act as a reminder of the author-centred series, at once affirming Kant's authority as author of the constitutive works and the university press's involvement in producing the edition. Again, in spite of the copyright notice (which extends from and reproduces the prevailing order of copyright qua intellectual property), it remains ambiguous whether or not the form and placement of the authorial name privileges any proprietary perspective on books and authorship. But what we can say is that the editorial decision against transposing 'I. Kant' to the present text participates in an erasure of the function that Kant had assigned to the authorial name:

²⁴⁰ *ibid* section 102.

²⁴¹ See chapter 4, 'Materiality of Type'.

²⁴² Kant, 'On the Wrongfulness of Unauthorized Publication of Books (1785)'.

²⁴³ *ibid*.

a non-proprietary author-function of assuming and attributing responsibility for the text amidst print saturation.²⁴⁴

Notwithstanding this de-historicising omission, the new front matter of Kant's essay, considered collectively, evidences an awareness on the part of its contemporary literary producers of its medial-material conditions of possibility, which does echo Kant's. In the untitled prefatory note to *Practical Philosophy*, the volume is located within an authoritative series of translations of Kant's oeuvre to facilitate its study by contemporary Anglophone scholars: 'The purpose of the Cambridge Edition is to offer translations of the best modern German edition of Kant's work in a uniform format suitable for Kant's scholars'.²⁴⁵ Translating and compiling the dispersed works of Kant, previously published or unpublished, into a single series with a consistent format, including citation style and other scholarly aids, is the means by which the university press facilitates the study of Kant in the present, which is no less plagued by the problem of information overload than late-eighteenth-century Germany was.²⁴⁶ As a comprehensive volume purportedly containing 'all of Kant's writings on moral and political philosophy',²⁴⁷ *Practical Philosophy* acts as one of the technologies with which to manage the surfeit of print (and digital) materials in the here and now. The very production of *Practical Philosophy* is noted to be owed to a socio-technological machinery composed of participants, both human and non-human, in addition to the original author and his manuscripts: 'The volume has been furnished with a substantial editorial apparatus including translators' introductions and explanatory notes to each text and a general introduction to Kant's moral and philosophy by Allen Wood'.²⁴⁸ Supplemented with textual contributions by other authors and scholars, and also probably shaped in inestimable ways by others named on the list of 'General Editors'²⁴⁹ and members of the 'Advisory board',²⁵⁰ *Practical Philosophy* is not the 'personal intellectual creation' of an author. Rather, consistent with Kant's media-theoretical perspective on the book, the publication only emerges pursuant to the historical interactions between human bodies and technologies.

Given how entrenched the myth of proprietary authorship is, it may be tempting to read both the full authorial name, 'IMMANUEL KANT', and the author's portrait-style frontispiece, as

²⁴⁴ To the publisher's credit, 'I. Kant' does appear at the end of the open letters addressed to Friedrich Nicolai, which we discussed earlier: see Kant, 'On Turning out Books: Two Letters to Mr. Friedrich Nicolai from Immanuel Kant', 627.

²⁴⁵ Kant, *Practical Philosophy*.

²⁴⁶ See also Wellmon's study of information overload in the eighteenth century and the (re)conception of the modern research university as a technological solution: Chad Wellmon, *Organizing Enlightenment: Information Overload and the Invention of the Modern Research University* (Baltimore, Maryland: John Hopkins University Press, 2015).

²⁴⁷ Kant, *Practical Philosophy*.

²⁴⁸ Kant, *Practical Philosophy*.

²⁴⁹ *ibid.*

²⁵⁰ *ibid.*

materials that re-inscribe the author as creator and owner of the literary work. Rooted in biblical myth, the printed name ‘Immanuel’, meaning ‘God is with us’,²⁵¹ might suggest Kant to be a figure of sovereign authority who has created the work before us. The cover image consisting of Kant’s illuminated head with a penetrating downward gaze, as if ably critiquing the grounds of his own existence, could be seen as some kind of visual supplement to the myth of authorship as sovereign creation, or even personifying the Romantic ideal of the poetic genius. As we have been suggesting, however, such an interpretation, whilst possible, is resisted by the prefatory materials that reference and index the book’s emergence from a literary apparatus. Rather than simply presenting a secularised portrait of ‘God’, the frontispiece is perhaps better understood as sharing an affinity with the copper frontispieces of the *Berlinische Monatschrift*. In both instances, a ‘special, deserving’²⁵² figure of enlightenment, that is, a key theorist and practitioner of enlightenment, is presented as being worthy of notice. Instead of someone whose image is ‘not yet well known’,²⁵³ however, we have the already-canonised author Kant, who, as early as 1785, had reckoned with the eighteenth-century print machinery on which the public use of reason depended. Though materially dependent on the book and the print machinery for individual and collective emancipation, the human being, ‘*who is now more than a machine*’,²⁵⁴ is asserted by Kant to be more important and able to steer the print machinery. Thus considered, the authorial name and portrait in the cover page is equally if not more suited to carrying forward the humanism in Kant’s media theory.

In spite of much that resists the proprietary author-function, both at the rhetorical and material levels of Kant’s essay and the accompanying paratexts of its various editions, Kant has at times been cast in the role of an intellectual forerunner, even proponent, of intellectual property in copyright scholarship.²⁵⁵ The citationality (or, as Derrida puts it, ‘iterability’²⁵⁶) of Kant’s name and the texts bearing it, their material affordance to be transposed to an in-principle infinite number of signifying contexts, has allowed Kant to be (mis)read as an adherent of proprietary authorship and the contemporary juridical distinction between intangible property and its material embodiment. In a relatively recent instance, ‘Kant’ has acted as the third chapter title of Robert P.

²⁵¹ See, for example, ‘Immanuel’, in *Dictionary.Com*, accessed 30 April 2022, <https://www.dictionary.com/browse/immanuel>.

²⁵² Friedrich Gedike and Johann Erich Biester, ‘Vorrede’, Münchener Digitalisierungszentrum Digitale Bibliothek, 1783, accessed 30 April 2022, <https://www.digitale-sammlungen.de/de/view/bsb10926840?q=%28Berlinische+Monatsschrift.+1.+1781%29&page=8,9>. See also chapter 3, ‘From Paratexts to Print Machinery’.

²⁵³ Gedike and Biester.

²⁵⁴ Kant, ‘An Answer to the Question: What Is Enlightenment? (1784)’, 22.

²⁵⁵ Other than Robert P. Merges’ work discussed below, see Riccardo Pozzo, ‘Immanuel Kant on Intellectual Property’, *Trans/Form/Ação, São Paulo* 29, no. 2 (2006): 11–18. See chapter 1, ‘Introduction: A Medial Perspective on Authorship and Copyright’.

²⁵⁶ Jacques Derrida, ‘Signature Event Context’, in *Limited Inc* (Evanston: Northwestern University Press, 1988), 7.

Merges' *Justifying Intellectual Property* (2011), a monograph in search of a conceptual foundation for intellectual property law.²⁵⁷ Ignoring the tension between the concept of intellectual property and Kant's media-theoretically informed case for publisher's and author's rights, Merges opts to extend the coverage of Kant's property theory from the domain of physical objects to so-called intangibles such as literary or artistic works. Kant is characterised as a philosopher of liberal individualism, a worldview that begins with 'a lone individual, on stage with a single isolated object',²⁵⁸ with which the individual's personality may be so bound up as to be injured by another's use without the former's consent. In Merges' reading of Kant's *Rechtslehre* ('Doctrine of Right') (1797), property is a right in the object with corresponding duties owed by others to respect the right-holder's claim over the object, the object being involved in the individual's exercise of one's own will.²⁵⁹ While recognising Kant's focus on physical property in the doctrine of right, Merges lays claim to the presentist freedom to extend Kant's insights to 'intellectual creations' and 'intangible media': 'We are...free to apply Kant's idea to the building blocks of intellectual creations, just as we do for other assets such as blocks of marble or land. Many people in the modern world may choose to express themselves in intangible media'.²⁶⁰ Being dead for over two centuries, Kant is in no position to so deploy his epistolary signature as to reject the subordination of the text bearing his name to another's will.

Merges' treatment of Kant's 1785 essay presents an even more overt instance of the intellectual property scholar's cancellation and editing of Kant's text while staging it as authorised by the author Kant himself. As we have previously noted, from its outset the essay dismissed as mistaken the proprietary perspective on books and proceeded to depict a non-proprietary case against reprinting. The former perspective arose within a parenthesis that doubted its credence: 'For the author's property in his thought (even if one grants that there is such a thing in terms of external rights) is left to him regardless of the unauthorized publication'.²⁶¹ The possibility of construing thought and personhood in terms of property is, as Barron puts it, but a 'throwaway remark Kant makes at the beginning of the Essay',²⁶² which the rest of the essay demonstrates to be unnecessary to found a case against reprinting. Rather than dwelling on this scepticism, Merges elects to cross out the parenthetical remark so as to flatten out the contradiction between Kant's text and his interpretation of it: 'Though much has been made of the structure of this argument,

²⁵⁷ Robert P. Merges, 'Kant', in *Justifying Intellectual Property* (Cambridge, Massachusetts: Harvard University Press, 2011), 68–101. For the author's comments on the book's aims and structure, see the introductory chapter: *ibid* 1–27.

²⁵⁸ Merges, 72.

²⁵⁹ *ibid.* Merges refers to the translation in Immanuel Kant, 'The Metaphysics of Morals (1797)', in *Practical Philosophy*, ed. Paul Guyer and Allen W. Wood, trans. Mary J. Gregor (Cambridge: Cambridge University Press, 1996), 353–603.

²⁶⁰ Merges, 'Kant', 73–74.

²⁶¹ Kant, 'On the Wrongfulness of Unauthorized Publication of Books (1785)', 29.

²⁶² Barron, 'Kant, Copyright and Communicative Freedom', 41, footnote 137.

with some scholars finding in it evidence of Kant's rejection of a property claim to authorial works, the introductory passage cited earlier seems clear enough to me. Eliminating the parenthetical, it says, plainly enough, "For the author's property in his thought or sentiments ... is left to him regardless of the unauthorized publication."²⁶³ Perhaps conscious of the violence done to the text, Merges goes further to re-interpret the eliminated parenthetical remark as referencing the lack of copyright protection in Kant's time, at once substituting his own words for Kant's while presenting Kant as the author in whose name he is speaking: 'Kant was saying, in effect, "even if copyright is not in force in a given jurisdiction, counterfeiting is still wrong." And it is wrong, he says, by virtue of the "author's property in his thought."²⁶⁴ It is as if Merges is occupying the role of the medium, previously assigned by Kant to the publisher, and is now acting on the author's behalf. All this is, of course, simply staged. There is too much in the texts bearing Kant's name to suggest the author was a supporter of intellectual property. That Merges still seeks Kant's authorisation, or at least feels compelled to stage the latter's approval of his scholarship, attests to the present endurance and influence of the author-function.

Against such portrayals of Kant as justifying or anticipating the present dominance of intellectual property law and the enshrined myth of proprietary authorship, other Kantian copyright scholars have sought to recuperate Kant's 1785 essay as presenting a resolutely non-proprietary solution to the problem of reprinting in late-eighteenth-century Germany. As we have previously discussed, Drassinower, Borghi and Barron have mobilised Kant's concept of the book as speech act to rethink copyright law outside the utilitarian-proprietary paradigm.²⁶⁵ Egalitarian authorship, truth, and collective emancipation are some of the striking ideals that distinguish their respective projects, each of which builds in some way on Kant's recognition of publishing as involving the communication of a speech made to the public in the author's name. Separately but also in step with the three copyright scholars, Maria Chiara Pievatolo has thoroughly re-presented Kant's case against unauthorised reprinting as one that both eschews the idiom of intellectual property and remains deeply interested in enlightenment practice: Kant's 'justification of authors' right does not rely on intellectual property, but on the meaning and the function of both authors and publishers in the world of the public use of reason'.²⁶⁶ It is the deeply social and ethical concern of Kant's perspective, that is, its interest in safeguarding the freedom of persons to make public use of their own reason so as to achieve personal and collective emancipation, that renders it a

²⁶³ Merges, 'Kant', 78.

²⁶⁴ *ibid.*

²⁶⁵ See chapter 2, 'Two Ways of Looking at a Printed Book'.

²⁶⁶ Maria Chiara Pievatolo, 'Freedom, Ownership and Copyright: Why Does Kant Reject the Concept of Intellectual Property?', *Società Italiana di Filosofia Politica*, 2010, 2.

critical alternative to the utility-driven, liberal-individualist, and proprietary account of copyright law. Reconnected with the 1784 enlightenment essay and other philosophical works bearing Kant's authorial name, Kant's 1785 essay renews its non-proprietary commitment to public reason and human emancipation.

Much of the debate surrounding the relationship between Kant, his 1785 essay, and the enterprise of intellectual property has proceeded without the participants' reflection on its material basis. The authorial name, no less than the assemblage of texts it adorns, continually affords the various (mis)interpretations of Kant. From a media theorist who simultaneously noted the unruliness of the eighteenth-century print machinery and affirmed the human being's power to steer it in favour of public enlightenment, Kant has inverted into a liberal-individualist whose property theory lends support to the contemporary perspective on copyright as a species of intellectual property. This proprietary transformation of Kant has, in turn, provoked his rehabilitation and return to a humanist and enlightenment philosopher who envisioned a system of publishers' and authors' rights grounded instead in the author's personhood. As we have been suggesting, nonetheless, Kant exhibited in the texts bearing his name a far more profound understanding of the medial-material conditions in which authors operated than that evidenced in the recent copyright scholarship. The authorial name itself, be it 'I. Kant' or others appearing in other eighteenth-century publications, was understood and deployed by Kant to assume, ascribe, and exact responsibility for those publications. Along with Kant's preferred periodical, the *Berlinische Monatsschrift*, and other pertinent eighteenth-century inventions (including the modern research university) noted by scholars such as Wellmon, the authorial name acted as an enlightenment technology to manage the surfeit of print that threatened to overwhelm the human reader.²⁶⁷ Whilst being a humanist who affirmed the author's right and authority to speak through the medium of print, Kant was also a media theorist and practitioner that was conscious of the human being's involvement in a medial environment and print machinery that determined humanity's projects. This is our 'Kantian' addendum to the debate.

Conclusion

On 28 August 1799, there appeared in the *Intelligenzblatt* of the *Allgemeine Literatur-Zeitung* one of Kant's last public assertions of authorial responsibility for a text bearing his name.²⁶⁸ Earlier that

²⁶⁷ Other than Wellmon's monograph, see Multigraph Collective, *Interacting with Print: Elements of Reading in the Era of Print Saturation* (Chicago and London: The University of Chicago Press, 2018).

²⁶⁸ The original public declaration was untitled and published under the section *II. Erklärung*: see https://digipress.digitale-sammlungen.de/view/bsb10628812_00539_u001/1 (accessed 30 April 2022). For the English translation on which we rely here, see Immanuel Kant, 'Public Declaration Concerning Fichte's

year, another literary journal had published a book review that invited Kant, the author of *Kritik der reinen Vernunft* ('Critique of Pure Reason') (1781/1787), to comment on his pupil Fichte's *Grundlage der gesamten Wissenschaftslehre* ('Foundations of the Science of Knowledge') (1794), the latter which putatively advanced and fulfilled the former's transcendental philosophy.²⁶⁹ Under the authority of his full name 'Immanuel Kant' (which similarly appeared on the original and revised editions of the *Kritik*), Kant affirmed the *Kritik* to be a complete product of transcendental philosophy, and rejected Fichte's *Wissenschaftslehre* as a false practice of abstraction that denied the material basis of phenomena. For Kant, a 'pure theory of science [like Fichte's attempt] is nothing more or less than mere *logic*, and the principles of logic cannot lead to material knowledge, since logic, that is to say, *pure logic*, abstracts from the content of knowledge; the attempt to cull a real object out of logic is a vain effort and therefore something that no one has ever achieved'.²⁷⁰ Consistently, Kant disavowed the anonymous reviewer's suggestion that his *Kritik* was meant to be so read as to affirm its underlying 'standpoint' or 'spirit' rather than its letter, asserting instead that it was to be understood 'literally', 'exactly', and without additional supplement nor revision: 'Since the reviewer finally maintains that the *Critique* is not to be taken *literally* in what it says about sensibility and that anyone who wants to understand the *Critique* must first master the requisite *standpoint* (of Beck or of Fichte), because *Kant's* precise words, like Aristotle's will destroy the spirit, I therefore declare again that the *Critique* is to be understood by considering exactly what it says and that it requires only the common standpoint that any mind sufficiently cultivated in such abstract investigations will bring to it'.²⁷¹ Faced with another's (mis)use of his authorial name to align his text with Fichte's idealist project, Kant's response was to so redeploy his full authorial name—including his unabbreviated forename, as if leaving no room for ambiguity—as to publicly declare his project's commitment to materiality.

In the light of Kant's comments on, and uses of, the authorial name across his texts, it is probable that he intended for his proposed 1785 construal of books in terms of publishers' and authors' names to be taken quite literally and materially. It was through the printing of names on textual publications that the system of publishers' and authors' rights was to endure and facilitate public enlightenment. In Kant's media theory and practice, we find an acute appreciation of the

Wissenschaftslehre, August 7, 1799', in *Correspondence*, ed. and trans. Arnulf Zweig (United States of America: Cambridge University Press, 1999), 559–61.

²⁶⁹ See Immanuel Kant, *Critique of Pure Reason*, ed. and trans. Paul Guyer and Allen W. Wood (United States of America: Cambridge University Press, 1998); Johann Gottlieb Fichte, *The Science of Knowledge*, ed. and trans. Peter Heath and John Lachs (Cambridge: Cambridge University Press, 1982). For a discussion of the context in which Kant's public declaration arose, see Kant, 'Public Declaration Concerning Fichte's *Wissenschaftslehre*, August 7, 1799', 560–61, editorial footnote 1.

²⁷⁰ Kant, 'Public Declaration Concerning Fichte's *Wissenschaftslehre*, August 7, 1799', 559.

²⁷¹ *ibid* 560.

authorial name's role in enforcing authorial responsibility that coheres with Chartier's recognition of the materialities of the author-function. Before the authorial name came to be predominantly equated with the proprietary author, it implemented an ethically and socially concerned author-function in late-eighteenth-century Germany that Kant recognised to be important to the public use of reason. This historical status of the authorial name not only points to the limits of the copyright perspective to understand the material constitution of authorship, but also the contingent character of the myth of proprietary authorship that copyright law continues to preserve.

6. Conclusion: Authorial Responsibility without Ownership?

‘New’ Materialities of the Book

Between the times of the German Enlightenment and global literary culture, the materiality of books has undergone radical changes that seem to contest print’s predominance. The socio-technological assemblage of print actors and technologies, or what we called the ‘print machinery’ that produced Kant’s 1785 periodical essay, has long given way to an apparatus or apparatuses of new literary actors, objects, and techniques that properly define the digital present, which has also been called the ‘late age of print’.¹ Both adjectives, ‘digital’ and ‘late’, gesture to fundamental discontinuities in the history of literary culture that entail the displacement, or some transformation, of the central significance of the print medium in Western society. Consider the fact that today’s authored manuscripts tend not to be handwritten, but instead are often typed by means of a computer and its installed word processor. The dominant writing technologies of professional authors are no longer pen and paper (as they were in Kant’s time), but rather the keyboard and screen, the latter whose virtual space is a computer graphic with its own medial-material conditions of possibility that differ from those of the paper-page.²

Alongside the making of manuscripts, the mass (re)production of books has technically departed from the procedures extending from Gutenberg’s system of movable type. Whereas the turning out of books used to rely on hand, steam, and electric letterpresses, it now occurs mainly through offset lithographic and digital printing. In the case of electronic books or e-books, no equivalent method for producing physical paper-copies in bulk is required. Any digital device with a screen and the requisite software may access the e-book.³ Where printed books are made searchable and viewable on the Internet via mass digitisation projects, the techniques of photographic scanning and data processing via optical character recognition software are relied upon for the remediation of print. In terms of skills and instruments, or *technē* and technology, the

¹ See Jay David Bolter, *Writing Space: Computers, Hypertext, and the Remediation of Print*, 2nd ed. (Mahwah, New Jersey: Lawrence Erlbaum Associates, Publishers, 2001); Ted Striphas, *The Late Age of Print: Everyday Book Culture from Consumerism to Control* (New York: Columbia University Press, 2009).

² For an account of the electronic remediation of print, see Bolter, *Writing Space*. Before the predominance of computers, mechanical typewriters already were becoming the preferred tools of writers, initiating or aggravating the de-personalisation of writing with the appearance of homogenous typed characters and erasure of individual handwriting. On the relationship between the typewriter and the human being, see Martin Heidegger, *Parmenides*, trans. André Schuwer and Richard Rojcewicz (Bloomington and Indianapolis: Indiana University Press, 1992), 80–81; Friedrich Kittler, *Gramophone, Film, Typewriter*, trans. Geoffrey Winthrop-Young and Michael Wutz (Stanford University Press, 1999), 183–263.

³ For a history of the e-book, see Striphas, *The Late Age of Print*, 19–46.

making of identical book-commodities has long departed from the ‘first assembly-line’⁴ of Gutenberg’s letterpress. Though at present we may still be surrounded by print publications, such printed matter are often not products of the eighteenth-century print machinery that generated the *Berlinische Monatschrift*, nor even the predominant literary medium in our media ecology. As Jay David Bolter already noted in his assessment of the impact of electronic technology on print at the turn of the new millennium: ‘Although print remains indispensable, it no longer *seems* indispensable: that is its curious condition in the late age of print. Electronic technology provides a range of new possibilities, whereas the possibilities of print seem to have played out’.⁵ In line with Kittler, we could suggest instead that the rise of the digital medium might well be heavily indebted to print technology and its crucial role in the history of engineering, such that it would be misleading to represent digital pathways as distinct from the possibilities of print.⁶ Nonetheless, Bolter’s observation on the uncertain status of the print medium in contemporary culture suggests that the medial-material conditions for literary (re)production worldwide have already mutated, and are continuing to diverge from those of late-eighteenth-century Germany.

The ‘nature’ of the book, and the interaction between textual and human bodies, too, has significantly altered in the supervening centuries. Emblematically, Kant’s ‘original’ 1785 essay is split into its print and digital embodiments. There is the physical bound copy of the fifth volume of the *Berlinische Monatschrift* stored in the Bavarian state library, an instance of the multiple copies housed in Germany and Europe, variously bound, written in, and bearing the visible, tactile signs of wear and tear. But there is also the scanned, processed, and digitised copy made available online by the Munich Digitization Centre (MDZ), on which we have substantially relied.⁷ It is primarily through the screen that we have perceived the visible marks of Kant’s text, its ‘main text’ and ‘paratexts’. Accordingly, the opticality of the text has been emphasised in our analysis at the expense of its tactility. Not much has been made of the weight of the volume, the texture of its printed paper, nor of how it is handled with both hands, though the portability, durability, and other haptic dimensions of the codex have been suggested in media and print studies to be of profound importance to literary culture.⁸

⁴ Marshall McLuhan, *The Gutenberg Galaxy* (Toronto: University of Toronto Press, 2017), 124.

⁵ Bolter, *Writing Space*, 2.

⁶ Friedrich Kittler, ‘The Perspective of Print’, trans. Geoffrey Winthrop-Young and Michael Wutz, *Configurations* 10, no. 1 (2002): 37–50. See chapter 1, ‘Introduction: A Medial Perspective on Authorship and Copyright’.

⁷ This research was undertaken amidst the COVID-19 pandemic and closure of national borders.

⁸ On some suggested relationships between the physical attributes of communicative media and literary culture, see Harold A. Innis, *The Bias of Communication*, 2nd ed. (Toronto: University of Toronto Press, 2008); Elizabeth L. Eisenstein, *The Printing Press as an Agent of Change: Communications and Cultural Transformations in Early-Modern Europe Volumes I and II* (Cambridge: Cambridge University Press, 1979).

Of course, it would be inaccurate to divorce the sense of touch from our everyday engagement with digital texts. The haptics of digital modes of reading is foregrounded in the opening chapter of Andrew Piper's comparison of the ways in which we approach texts in print and electronic formats.⁹ The paradoxical situation where human bodies are apparently able to interact with the immaterial—yet visible—digital text has been staged in an interactive art installation, *Text Rain* (1999).¹⁰ There, participants were invited to stand before a screen on which their self-images were projected alongside falling digital letters that ostensibly responded to their corporeal movements, caught, lifted, and let fall by their hands and bodies. For Piper, the installation at once suggests the impossibility of truly grasping the electronic words (for the letters are neither felt by the skin nor even in direct visual contact with the participants' images) and invites us to consider the various ways in which our hands might be involved in our reading of digital texts.¹¹ Accordingly, Piper proceeds to outline some of our emergent interactions with digital communicative devices that differ from the older way of manually turning the page of the printed book, including the pressing of buttons and, more recently, tapping and swiping on touch screens.¹² Digital tactility, no less than print tactility, shapes the experience of reading. Whereas page-turning might entail 'slow',¹³ 'sedate rhythms'¹⁴, button-pressing could imply a 'punctuatedness, but also a repetitiveness that starkly contrast [with the former]',¹⁵ possibly leading to an erosion of meaning. In the case of touch screens, the rapid swiping of the hand, unencumbered by the density of the page nor by the resistance of the button, could have 'the effect of making everything on the page cognitively lighter, less resistant',¹⁶ which facilitates the skimming of texts. The hardware of digital communication, along with the digital data processing that presents to the viewer-user the on-screen image, reconfigures the temporality of reading.¹⁷ These snapshots of past and present modes of reading suggest that it is neither the case that books have been thoroughly de-materialised into ideal forms, nor that vision alone matters in digital literary culture. Rather, the corporeality of books and reading has co-evolved with the communicative infrastructure, the comprehension of which calls for comparisons with and returns to prior modalities of communication.

⁹ Andrew Piper, *Book Was There: Reading in Electronic Times* (Chicago and London: The University of Chicago Press, 2012), 1–23.

¹⁰ See Romy Achituv and Camille Utterback, 'Text Rain', Camille Utterback, accessed 30 April 2022, <http://camilleutterback.com/projects/text-rain/>.

¹¹ Piper, *Book Was There: Reading in Electronic Times*, 13–15.

¹² *ibid* 15–21.

¹³ *ibid* 17

¹⁴ *ibid*.

¹⁵ *ibid*.

¹⁶ *ibid* 18.

¹⁷ On the relationship between digital media and time, see also Friedrich A. Kittler, 'Real Time Analysis: Time Axis Manipulation', *Cultural Politics* 13, no. 1 (2017): 1–18.

Evolving Ambiguities of Authorship

Amidst the ongoing technological and social transformations in book publishing, the relationship between authors and books exhibits emergent shades of ambiguity, at once disclosing the distance between the practical realities of bookmaking and the established myth of proprietary authorship, and yet evidencing the latter's vitality and the resurgent centrality of authors to our understanding of literature. In respect of the print machinery of the German Enlightenment indexed in the various front matter of the *Berlinische Monatsschrift*, we learnt of the involvement of editors, printers, and other literary actors in the production of Kant's essay. Typesetting, papermaking, composition, imposition, and various presswork were only some of the technical procedures in the hand-press period that yielded the book-object.¹⁸ Far from being only peripheral or secondary to the presentation of Kant's essay before the public, these contributions were the very conditions that made it possible. To foreground the authorial paternity of texts (as Defoe and Addison did), or to characterise works as organic offshoots of poetic geniuses (as Young and Fichte did), was to obscure or underestimate the material and historical processes from which each book-artefact emerged. Similarly, in literary publishing today, we could find a usual series of operations within the book supply or 'publishing chain'¹⁹ that bring the book before the reader. As John B. Thompson has noted in regard to Anglo-American trade publishing, these often include the processes of content creation, acquisition, development, control, copy-editing, design, typesetting, proofreading, printing and binding, followed by those of sales and marketing, warehousing, wholesaling, and bookselling.²⁰ Though some of these 'stages' of book-production could seem straightforward or linear, they might well entail complex, oscillating forms of interaction between the pertinent actors: for instance, instead of simply acquiring the so-called rhetorical content generated by authors, publishers are often deeply involved in the creative processes, selecting, developing, and revising content by exercising forms of quality control such as commenting on drafts.²¹ The commercial character of trade publishing perhaps inevitably shapes the literary work, particularly when publishers perform the functions of 'financial investment and risk-taking',²² covering the costs of authors, agents, and others in publishing chain while ensuring the profitability of the venture.

¹⁸ For a fuller account of these procedures and how they altered in the machine-press period, see Philip Gaskell, *A New Introduction to Bibliography* (New Castle, Delaware: Oak Knoll Press, 1995).

¹⁹ See John B. Thompson, 'Introduction', in *Merchants of Culture: The Publishing Business in the Twenty-First Century*, 2nd ed. (United States of America: PLUME, 2012).

²⁰ *ibid.*

²¹ *ibid.*

²² *ibid.*

The mass printing of books, even an enlightenment periodical like the *Berlinische Monatsschrift*, has perhaps always been under the sway of economic realities. As Lucien Febvre and Henri-Jean Martin have noted: ‘From its earliest days printing existed as an industry, governed by the same rules as any other industry: the book was a piece of merchandise which men produced before anything else to earn a living, even when they were (as with Aldus and the Estiennes) scholars and humanists at the same time.’²³ Nonetheless, it is also true that the digital revolution has required that new strategies be adopted in trade publishing to deal with its threat to print’s predominance. The growing investments in electronic publishing since the turn of the millennium are but one of the more visible facets of the technological revolution and its impact on publishing practices that evidence the diminished role of authors in the book supply chain, who tend not to exert as much control over their works as the myth of proprietary authorship suggests.²⁴ Authors such as John Updike might value the printed, bound, and purchased book as ‘the site of an encounter, in silence, of two minds’,²⁵ which the digital screen and its ‘huge, virtually infinite wordstream...stripped of credited authorship’²⁶ could not afford; but an attachment to the print tradition alone might not withstand the surge in demand for digitised books and the growing e-book sales, which Thompson has shown to correlate with the successive launches of digital reading tablets like Amazon’s Kindle and other multipurpose devices like Apple’s iPad.²⁷

On top of transforming the paper-book into an electronic file, the digital revolution in publishing entails a reorganisation of its various constitutive processes in at least three other areas mapped out in Thompson’s study.²⁸ First, the internal informational, communicative, and management processes of publishing have been digitised through the installation of IT systems. The costs of establishing and maintaining up-to-date computerised operating systems in publishing, which could be difficult for smaller publishing houses to bear, has contributed to consolidation in the industry whereby corporations gained economies of scale. Second, consistent with the remaking of books in digital format, the publishing workflow has by and large been digitised. We have already noted that the initial production of authorial manuscripts has largely moved to the typing of keys on computers, while the increasingly popular method of digital printing relies on print-ready digital files rather than on lithographic plates. Along with the

²³ Lucien Febvre and Henri-Jean Martin, *The Coming of the Book: The Impact of Printing 1450-1800*, ed. Geoffrey Nowell-Smith and David Wootton, trans. David Gerard (London: NLB, 1976), 109.

²⁴ On the history of investments in electronic publishing since the late 1990s, see John B. Thompson, ‘The Digital Revolution’, in *Merchants of Culture: The Publishing Business in the Twenty-First Century*, 2nd ed. (United States of America: PLUME, 2012).

²⁵ John Updike, ‘The End of Authorship’, *The New York Times*, 25 June 2006.

²⁶ *ibid.*

²⁷ See Thompson, ‘The Digital Revolution’.

²⁸ *ibid.* This paragraph is based on Thompson’s book chapter.

practices of editing and copyediting, typesetting has been digitised, with the replacement of linotype machines from the 1970s by IBM mainframe typesetting machines of the 1980s and then by desktop publishing since the 1990s. Third, digital remediations in respect of book sales and marketing include, for instance, the display of book-titles online, perhaps open to on-demand digital printing and digital sampling, the disclosure of sales figures to online viewers, and e-marketing campaigns to increase the visibility of publications and readership. Notice that these examples of recent and emergent practices in trade publishing are very much conducted in response to digital innovations and their implications on traditional print-based modes of organisation. Once again, contrary to the popular imagination of authors as the central agents of literary creation, the realities of the publishing industry suggest that more determinative, trans-individual facets of society—particularly the crosscurrents of technology and capital—condition the mass production (and consumption) of books.²⁹ Whereas it was print media and the burgeoning book trade that Kant understood to be at once threatening and facilitative of enlightenment culture during the late eighteenth century, it is within and in relation to a digitally dominant medial ecology that we are experiencing the ongoing restructuring of publishing and literary culture.

At the same time, social media and other interactive, instantaneous forms of digital communication have afforded the assertion and cultivation of authorial identities, suggesting a recentralisation of authors in contemporary literary culture and experiences of reading. Reliant on editor-publishers and other intermediaries of the print machinery in his time, Kant's contributions to enlightenment discourse, including his theorisation and use of the authorial name as a means of ascribing and exacting responsibility for texts, were inevitably delayed. The substantial time lag between print publications meant that pirated editions (e.g., the edition of Kant's *Minor Writings* listed in the catalogue of the Leipzig Easter Fair of 1790) or wilful misreadings of his writings by others (e.g., Fichte's 1793 reading of Kant's 1785 essay) could be too belatedly disavowed or go entirely unnoticed by the author himself. In today's digital literary sphere, on the other hand, mass authorship and celebrity authorship could be readily performed by digital or digitally facilitated means of publishing, marketing, publicity, and authorial engagements with readers. Three such overlapping areas of evolution in digital authorship have been sketched by Simone Murray.³⁰ On

²⁹ See also Kathy Bowrey, *Copyright, Creativity, Big Media and Cultural Value: Incorporating the Author* (Abingdon, Oxon: Routledge, 2021).

³⁰ Simone Murray, 'Performing Authorship in the Digital Literary Sphere', in *The Digital Literary Sphere: Reading, Writing and Selling Books in the Internet Era* (Baltimore: John Hopkins University Press, 2018), 22–52. See also Simone Murray, 'Authorship', in *The Oxford Handbook of Publishing*, ed. Angus Phillips and Michael Bhaskar (Oxford: Oxford University Press, 2019).

one level of analysis, there is an apparent ‘disintermediation’³¹ in the publishing process, where digital-communicative channels such as crowding websites and self-publishing platforms permit the authorial bypassing of industrial intermediaries such as publishers, agents, and retailers. In turn, this has contributed to what resembles a ‘mass democratization’³² of authorship and erosion of the elite Romantic category of authors as original geniuses. Further, the proliferating social media channels for interactions between authors and readers, ranging from blogs, Facebook and Twitter pages, to vlogs, podcasting, and Instagram, have seemingly bridged the social, geographical, and temporal distances between authors and readers. Marketing and publicity of works, along with the formation and maintenance of relationships with readers, have been increasingly undertaken by authors themselves, so much so it has become more difficult to dissociate works from other ‘external’ communications by authors in the experience of reading.³³ Relatedly, with digital communities and fanbases formed around authors and books, the presence of authors in how we interpret and engage with books could seem never to have been stronger. The ‘para-sociality’³⁴ of texts in the digital sphere, that is, those interactive communities surrounding authors and their so-called creations, appears to attest to the longevity of authors in, and their indispensability to, contemporary literary culture.

And yet, we should also note (as Murray does obliquely) that in none of these areas of the digital literary sphere are phenomena complicating the suggested recentralisation and revivification of authors absent.³⁵ Though the readily accessible avenues for self-publishing may have rendered the category of authorship less exclusive, self-published authors still may not be as culturally esteemed without the validation of established literary publishers.³⁶ Indeed, self-publishing could be perceived to be but a means for authors to have their works subsequently validated and published by the traditional intermediaries.³⁷ Having a substantial number of followers or regular viewers of one’s social media content, for instance, could be pitched to publishers as evidence of actual and potential readership, which mitigates the risk of investing in the author’s work.³⁸ Disintermediation in the digital sphere unfolds as a step towards the ‘reintermediation’³⁹ of the publishing process, giving the lie to claims of the author’s independence and autonomy. Similarly, the heightened interactivity and para-sociality in the digital literary sphere has been suggested in

³¹ Murray, ‘Performing Authorship in the Digital Literary Sphere’, 31.

³² *ibid* 34.

³³ Murray cites the young adult novelist John Green, author of *The Fault in Our Stars* (2012), as an example: see Murray, ‘Performing Authorship in the Digital Literary Sphere’, 38–40.

³⁴ *ibid* 48.

³⁵ This paragraph is based on Murray’s chapter.

³⁶ *ibid* 33–35.

³⁷ *ibid*.

³⁸ *ibid*. On the relationship between social media and the financial risks of publishing, see *ibid* 37.

³⁹ *ibid* 33.

many cases, especially with respect to emerging scholars, to be thoroughly driven by commercial necessity.⁴⁰ Maintaining direct channels of communication with readers has increasingly become a *de facto* requirement for authors now bearing the burden of publicity, promotion and branding previously fulfilled by publicists.⁴¹ The promise of dialogue between authors and readers has also been disclosed, particularly in regard to celebrity authors with large readership, to be illusory. Social media accounts may not be managed by the authors themselves;⁴² nor is it the case that authors respond to messages from readers;⁴³ nor do readers tend to do more than passively spectate at heated disputes between authors.⁴⁴ The very act of disavowing social media and self-publicity could, in the present capitalist economy and medial ecology, be appropriated and apprehended as a self-promoting performance that forms part of one's authorial brand.⁴⁵ In digital literary culture, authors are simultaneously seen to be so empowered by its emergent communicative channels as to bypass traditional print intermediaries and connect directly with readers, and recognised as having their actions coerced, dictated, and (mis)understood by the market. Under these present conditions, the projected death of the author, jubilantly announced in the works of Barthes and Foucault, is suggested to be no less paradoxical, no less impossible.

Revisiting Authorial Responsibility

When Barthes and Foucault presented their visions of worlds without authors in the late 1960s, the question of authorial responsibility was not explicitly raised. The author was viewed not so much as a figure of accountability as one of repression. For Barthes, the mainstream understanding of literature was 'tyrannically centred on the author, his person, his tastes, his passions',⁴⁶ as if the latter were a sovereign despot that fettered textual and interpretive freedom. Similarly, Foucault saw the author-function as 'the principle of thrift in the proliferation of meaning',⁴⁷ which served an ideological function of sustaining 'the privileges of the subject'⁴⁸ in discourse. Both writers

⁴⁰ On Jonathan Franzen's interview comment on emerging fictional authors in America being 'coerced into this constant self-promotion', see *ibid* 45.

⁴¹ *ibid* 37–38.

⁴² On George R. R. Martin acknowledgement that the tweets posted in his name are not authored by himself, see *ibid* 42.

⁴³ On Stephen Fry's clarification that direct messages from his followers on Twitter are never read by himself, see *ibid* 50.

⁴⁴ On the voyeuristic spectatorship of the dispute between Jonathan Franzen and Salman Rushdie, see *ibid* 44–51.

⁴⁵ On the paradox of Jonathan Franzen's repudiation of social media, see *ibid* 46–47.

⁴⁶ Roland Barthes, 'The Death of the Author', in *Image Music Text*, trans. Stephen Heath (London: Fontana, 1977), 143.

⁴⁷ Michel Foucault, 'What Is an Author?', in *Textual Strategies: Perspectives in Post-Structuralist Criticism*, ed. and trans. Josué V. Harari (Ithaca, New York: Cornell University Press, 1979), 159.

⁴⁸ Michel Foucault, 'What Is an Author?', in *Language, Counter-Memory, Practice: Selected Essays and Interviews: Selected Essays and Interviews by Michel Foucault*, ed. Donald F. Bouchard (Ithaca, New York: Cornell University Press, 1977), 137.

envisioned instead counter-cultures where the non-identity or difference of literature, whether articulated under the category of the ‘neutral’⁴⁹ or ‘neuter’⁵⁰ of writing, or under that of a ‘pervasive anonymity’⁵¹ or ‘murmur of indifference’,⁵² was embraced as a model for community. If there were any sense of authorial ethics in Barthes’ and Foucault’s essays, it would perhaps extend from the aporetic anti-authorial authorship therein demonstrated, which struggled to liberate meaning from the totalising figure of the author. In these poststructuralist writings, responsibility tended to be understood not with reference to the identity of authors, but rather in regard to alterity or otherness.⁵³

In contemporary culture, the responsibility of authorship in the more usual sense of making known authorial identities has become a key question in both the areas of mass digital communications and specialised scientific scholarship. The problem of harmful anonymous or pseudonymous speech on the Internet, particularly social media, has been led commentators to review some of the key arguments for and against it, the latter of which tend to foreground the absence of accountability for such communications.⁵⁴ Though the non-disclosure of the legal identities of digital users has often been defended on the grounds of promoting freer and more open communications (especially from within authoritarian regimes, but also with respect to whistle-blowers, abuse victims, ethnic and sexual minorities, and other marginal figures threatened by social mores in liberalist contexts⁵⁵), it has also been criticised for repudiating personal responsibility for the pertinent communications, the denial of which could degrade the quality of online debate, foster cyber-bullying, and exacerbate other harms.⁵⁶ Whereas the readers of established print publications such as the *Berlinische Monatschrift* could, to some extent, rely on editorial forms of quality control with respect to its unnamed contributions, Internet users tend to be exposed to the largely unfiltered instantaneous communications shared between many more people and at low costs, yet minimally monitored by the pertinent digital service providers.⁵⁷ With the apparently reduced involvement of intermediaries in the production of social media content

⁴⁹ Barthes, ‘The Death of the Author’, 142.

⁵⁰ See also Maurice Blanchot, ‘René Char and the Thought of the Neutral’, in *The Infinite Conversation*, trans. Susan Hanson (Minneapolis and London: University of Minnesota Press, 2003), 298–306.

⁵¹ Foucault, ‘What Is an Author?’, 1977, 138.

⁵² *ibid.*

⁵³ See also Jacques Derrida’s ethical practice of deconstruction: for example, Jacques Derrida, ‘Force of Law: The “Mystical Foundation of Authority”’, in *Deconstruction and the Possibility of Justice*, ed. Drucilla Cornell, Michel Rosenfeld, and David Gray Carlson (Routledge, 1992), 3–67.

⁵⁴ See, for example, Eric Barendt, ‘Anonymity on the Internet’, in *Anonymous Speech: Literature, Law and Politics* (Bloomsbury Publishing, 2016), 122–54; Tim Jordan, ‘Does Online Anonymity Undermine the Sense of Personal Responsibility?’, *Media, Culture & Society* 41, no. 4 (2019): 572–77.

⁵⁵ See Barendt, ‘Anonymity on the Internet’, 129.

⁵⁶ *ibid.* 131–2, 135.

⁵⁷ On the (ir)responsibility of Internet intermediaries, see *ibid.* 131, 145–52.

(or, more critically, the dissimulation of their infrastructural conditioning of such content), the ethical affordances of the authorial name, that is, its promise to ensure that authors could be held to account for their communications, might seem to yield a valuable response to the effects of such digital modes of transmission. But whether affixing the authorial name to mass digital communications could become a legal requirement would have to grapple with the prevailing systems of rights and obligations, which differ between jurisdictions and exceed the remit of intellectual property law.⁵⁸ Various forms of civil and criminal liability (beyond that surrounding the reproduction and use of the copyrighted work) are attributed by means of authorial names, legally affirming communicative responsibility as prescribed and protected under the pertinent laws. In this respect, Foucault's suggestion about the historical link between the state's disciplining of its citizens and the identification of authors would seem to apply no less to the present.⁵⁹

Authorial responsibility in academic science comes closer to Kant's understanding of the role of the authorial name in the practice of enlightenment, though it also remains at some distance by virtue of its own disciplinary and institutional structures. It is true that Kant's 1785 discussion of authors' and publishers' names occurred within a proposed system of rights that presupposed legal-institutional forms of coercion. To enforce their contractual rights to relay the speech of authors through the activity of publishing, publishers would have to rely on the state to prevent or seek redress for the unauthorised reprinting of works. This legal-regulatory dimension of Kant's proposal coincides with that of mass digital communications. However, as we have noted, it was also as a technology of enlightenment amidst print saturation that the authorial name was both theorised and deployed by Kant. This profound concern with public discourse, particularly the public use of reason facilitated by the proper identification of speakers, would seem to align with the epistemological interests of academic science, the latter of which sees the ascription of authorial responsibility as a means of building reliable and credible forms of knowledge. As Mario Biagioli has noted in his study of multiauthor collaborations in the fields of biomedicine and physics, scientific authorship is interested not so much in property rights (nor in rights more generally) as in 'true claims about nature',⁶⁰ the production and validation of which is based on discipline- and institution-specific systems of credit and responsibility. Subjecting manuscripts to peer review prior to publication is but one of the more generally applicable processes to ensure that scientific credit, in the form of publishable claims recognised by an academic community of

⁵⁸ For a comparison between the US and UK approaches to anonymous speech, which span the laws relating to freedom of speech, defamation, hate speech, obscenity, harassment and more, see *ibid* 56–97.

⁵⁹ Foucault, 'What Is an Author?', 1977, 124–5.

⁶⁰ Mario Biagioli, 'Rights or Rewards? Changing Frameworks of Scientific Authorship', in *Scientific Authorship: Credit and Intellectual Property in Science*, ed. Mario Biagioli and Peter Galison (London and New York: Routledge, 2003), 254.

peers, is assessed and attributed.⁶¹ On top of having their claims published, scientific authors are rewarded in practical terms, with the quantity, quality, and impact of publications ‘[hitting] every aspect of their career trajectories, from thesis writing to hiring and promoting’.⁶² Just as such rewards are assigned to scientists through their authorial names affixed to the articles, so too is responsibility for those published claims ascribed to the scientists based on such naming practices.⁶³ As Biagioli recalls, there exist various tools to penalise authors for making fraudulent claims, including ‘firing them, denying them access to future funding...asking them to pay back the funds they have misused...[and other] forms of exile or ostracism from the scientific community’.⁶⁴ These professional techniques of authorial censure in academic science, perhaps more severe and overtly punitive than the rhetorical methods of irony and derision used by Kant against his contemporaries, are presently deployed to ensure the integrity of scholarship.

To understand the ethical function of the authorial name, that is, its relationship with responsibility, it is important to study it within, and alongside, the pertinent discourse. For varying understandings of authorial responsibility could emerge from the specific discursive situations under analysis. Whilst Kant’s private correspondence and published texts evince a desire for persons to be accountable as authorial speakers contributing to public enlightenment, the various fields of academic science may treat the names of scientists differently and generate varying sets of expectations surrounding the relationship between the named scientists and their works. Biagioli suggests as much in his comparative study of established and emergent frameworks of responsibility (and credit) in mass-collaborative biomedical and physics research.⁶⁵ Biomedical journals have tended to regard named joint authors as individually and fully responsible for the entire article regardless of the tasks they have performed, thereby equating multiauthorship with individual authorship.⁶⁶ On the other hand, it has also been proposed in the same field to list scientific names as those of ‘contributors’ rather than ‘authors’ beside their described tasks, which affords the evaluation of individual responsibility based on the stated contributions.⁶⁷ Where contributors are responsible for the entire work, they could be listed as ‘guarantors’.⁶⁸ Whereas the idea of guarantors might still resemble that of authors, in physics research there have been

⁶¹ *ibid.*

⁶² See Mario Biagioli and Peter Galison, eds., *Scientific Authorship: Credit and Intellectual Property in Science* (London and New York: Routledge, 2003), 2.

⁶³ Biagioli, ‘Rights or Rewards? Changing Frameworks of Scientific Authorship’, 260.

⁶⁴ *ibid.*

⁶⁵ Other than Biagioli’s chapter, see also his earlier study of scientific names: Mario Biagioli, ‘Documents of Documents: Scientists’ Names and Scientific Claims’, in *Documents: Artifacts of Modern Knowledge*, ed. Annelise Riles (Ann Arbor: The University of Michigan, 2006), 127–57.

⁶⁶ On this stance adopted by the International Committee of Medical Journal Editors, see Biagioli, ‘Rights or Rewards? Changing Frameworks of Scientific Authorship’, 261–64.

⁶⁷ On this proposal by Drummond Rennie and his collaborators, see *ibid.* 264–69.

⁶⁸ *ibid.* 267.

instances where authorial names of publications are based on regularly updated standard membership lists, which means that the listed authors may only have contributed indirectly to the work through their membership in the pertinent community. Responsibility for the work is enforced not by asking that contributors justify and defend their findings, but through more elaborate processes of peer review involving the invitation for comments from the listed authors, the possibility of withdrawing one's name from the final publication, and certain professional sanctions for misconduct.⁶⁹ In this cited area of physics research, scholarly responsibility would seem to be not so much a matter of personal or individual responsibility (as we tend to understand authorial responsibility to be) as a matter of corporate or organisational responsibility.⁷⁰ Biagioli traces and attributes these differences in perspectives on scientific authorial responsibility to 'specific disciplinary ecologies',⁷¹ the hypothesised existence of which would suggest that authorial ethics can only be grasped by attending to the specific discursive contexts at hand as opposed to assuming that there is any universally applicable standard. Kant's understanding of authorial responsibility may be a peculiar historical formation attached to the German Enlightenment. Any attempt to transpose it to the present would have to account for its interaction with the relevant discursive ecologies and their material practices.

Limits of Intellectual Property

Despite the importance of the question of authorial responsibility, the law of copyright qua intellectual property is ill-equipped to deal with it. Neither the utilitarian paradigm of copyright, nor its rivalling absolute protection approach, reserves room for serious consideration of the relationship between literature (and other cultural artefacts), the social order, and the regulatory regime governing literary (re)production. As Barron has sharply noted, both approaches are commonly delimited by a basic economic-theoretical precept, namely, that society is composed of rational economic agents chiefly interested in maximising their utilities.⁷² The profoundly ethical dimension of literary communications, the co-implication of literary objects, actors, and their wider communities, is reduced to calculable and mutually exploitative transactions between producers and consumers of information commodities.⁷³ In respect of utilitarian copyright, for instance, the ethics of authorship is suppressed or 'resolved' pursuant to the law's task of striking an optimal

⁶⁹ On the procedures of the Collider Defect at Fermilab Collaboration, see *ibid* 269–73.

⁷⁰ *ibid* 274.

⁷¹ *ibid*.

⁷² Anne Barron, 'Copyright Infringement: "Free-Riding" and the Lifeworld', in *Copyright and Piracy: An Interdisciplinary Critique*, ed. Lionel Bently, Jennifer Davis, and Jane C. Ginsburg (Cambridge: Cambridge University Press, 2010), 113–23.

⁷³ *ibid* 101–2.

balance between putatively competing interests, whether formulated in terms of the interests of authors and users (as discussed by Drassinower and Borghi), or in terms of ensuring incentives to create works and facilitating public access to these works (as noted by Lunney and Barron).⁷⁴ The decision of *Authors Guild v Google, Inc* is but one example of such an anaemic approach to literary reproduction, where the technology company's creation and exploitation of a universal digital database of books was legitimated as a primarily indexical activity that did not infringe the exclusive property rights granted to authors to promote their production of works. Nothing more was made of the social significance of literary (re)production, the role of authors and other literary actors, and how they connect with the law of copyright beyond the constitutionally reified reference to the advancement of science and the utilitarian rhetoric of incentives and rewards.⁷⁵

The idiom of ownership does little to address the ethical stakes of present digital challenges to authorship and copyright, including those of artificial intelligence. The phenomenon and prospect of computer-generated works, whilst to some degree provided for under the pertinent copyright laws of certain jurisdictions, has been accompanied by expanding commentary surrounding its implications on intellectual property rights.⁷⁶ Under section 9(3) of the UK's Copyright, Designs and Patents Act 1988, a computer-generated work is recognised to be relevant subject matter in which the programmer or other 'person by whom the arrangements necessary for the creation of the work are undertaken' may hold copyright as its rightful author. Instead of expiring seventy years after the death of the author (as in the case of non-computer generated works), copyright protection lasts for fifty years from the year in which the computer-generated work was made.⁷⁷ In respect of AI-generated paintings such as *The Next Rembrandt*, an artwork in the style of Rembrandt van Rijn constituted in Amsterdam through deep learning algorithms, facial recognition techniques, and the data of the artist's works, the pertinent authors under UK copyright law (assuming its applicability for the purpose of analysis) would perhaps be the team of collaborating scientists and art historians seen as 'behind' the creation. Jane Ginsburg and her co-author Luke Ali Budiardjo have adopted such a position, viewing the basic problem presented by computer-generated (or, in their preferred formulation, 'computer-enabled'⁷⁸) works as one of

⁷⁴ See chapter 2, 'Two Ways of Looking at a Printed Book'.

⁷⁵ Constitution of the United States, article 1, section 8, clause 8. See also the opening paragraph on the law of fair use in *Authors Guild v Google, Inc* No. 13-4829 (2d Cir. 2015).

⁷⁶ Other than UK copyright law, see New Zealand's Copyright Act 1994, section 5(2). On some studies in the area of intellectual property and artificial intelligence, see Jane C. Ginsburg and Luke Ali Budiardjo, 'Authors and Machines', *Berkeley Technology Law Journal* 34, no. 2 (2019): 343–448; Daniel J. Gervais, 'The Machine as Author', *Iowa Law Review* 105, no. 5 (2020): 2053–106; Pamela Samuelson, 'AI Authorship?', *Communications of the ACM* 63, no. 7 (July 2020): 20–22.

⁷⁷ Compare sections 12(2) and 12(7) of the Copyright, Designs and Patents Act 1988.

⁷⁸ See Ginsburg and Budiardjo, 'Authors and Machines', 348, footnote 17.

identifying the human authors behind those works' conception and execution.⁷⁹ In their view, authorship in copyright jurisprudence involves 'elaborating a detailed creative plan for the work'⁸⁰ ('conception' in short) and '[converting] the plan to concrete form'⁸¹ (or 'execution').⁸² Though purportedly derived from the US case law pertaining to analogue media, this model of authorship is seen to be no less applicable to computer-enabled works.⁸³ The question of whether computers could or should be regarded as authors of works under copyright law is dismissed as a 'wrong question'⁸⁴ that overestimates the creative and expressive competences of computers, which are regarded as little more than tools designed and used by human actors. Rather, the 'right question'⁸⁵ entails evaluating the contributions of those human authors involved in the design and use of the digital machines based on copyright law's model of authorship. Whilst initially appearing to destabilise the central position of the author qua creator and first owner of the copyright work, artificial intelligence is eventually seen as but a technological extension of the human that poses no existential threat to the myth of proprietary authorship.

In contrast, Kant did not underestimate the role of media, particularly print media, in the social order that he inhabited, theorised, and sought to shape as an enlightenment discussant. Rather than seeing the emergent phase of the technology's evolution as a mundane occurrence that could be reconciled with and governed by the existing system of privileges, he understood that a new regulatory system of rights with a new concept of the book that accounted for its place in society had to be proposed to address the problem of print proliferation. In both the 1784 and 1785 essays, the printed book was recognised to be a deeply paradoxical phenomenon. On the one hand, as we have noted alongside Chad Wellmon, the book was first figured in the earlier essay as a threat to enlightenment in its usurpation or divestment of the person's will to exercise his own faculty of reason. Yet, Kant also saw books to be the necessary communicative media by which the public use of reason was practised, and the human being's exit from immaturity, achieved. Both the editor-publishers of the *Berlinische Monatsschrift* and Kant affirmed and enacted their responsibility as enlightenment actors to so steer the print machinery and its assembly and distribution lines as to assist the public to identify, read, preserve, and share those books contributing to enlightenment. The mediality of books was revisited in the 1785 essay, where

⁷⁹ *ibid* 428, footnote 312; 435–36, footnote 333.

⁸⁰ *ibid* 346.

⁸¹ *ibid*.

⁸² See also Ginsburg-Budiardjo's mid-way proposal of an 'adoption theory' (367) of authorship, which, rather than 'curing deficiencies in conception' (366), disclose the limits of an analytical model of authorship that attempts to reduce the complexities of literary production to two distinct stages: *ibid* 366–74.

⁸³ *ibid* 354–92.

⁸⁴ *ibid* 393–403.

⁸⁵ *ibid* 404–16.

books were described as material objects composed of visible letters that relayed authorial speech. Kant's account of the book as an enlightenment technology was situated in the oscillation between the book's material and communicative dimensions, that is, in the interrelation between the textual artefact and the literate human. Instead of idealising the author as creator-owner of the literary work, Kant recognised authorship to be dependent on such material practices as the printing of authorial names, which both enable authorial responsibility and incessantly threaten to divest it of meaning. For the materiality of books at once evidences the influence of authors over their texts and points to the larger socio-technological machinery that produced them.

Brought to bear on the problem of artificial intelligence and the scholarship concerning its impact on intellectual property, Kant's non-proprietary account of the book offers an alternative way of approaching its threat to our established modes of understanding and regulating literary (re)production. Computers that appear to be capable of generating literary and other cultural works are troubling not because their 'originating' acts meet the definition of author under copyright law. Nor are they un-troubling because of their failure to meet the prevailing standard of original authorship reserved for humans. Rather, they call into question the legally ratified myth of proprietary authorship, which not only denies the complex realities of literary (re)production, but also obscures the socio-ethical function of literature in contemporary culture. As noted by Ginsburg and Burdiardjio, the production of computer-generated works still depends on the interrelation between digital machines, human programmers, and other users. Despite the evolution in the materiality of books since the late eighteenth century, the relationality between human and non-human components of the literary machinery observed by Kant has endured, giving the lie to the myth of proprietary authorship. The law of copyright qua intellectual property has concerned itself with incentivising literary production through the granting of intellectual property rights to authors without seriously questioning its foundational concept of authorship nor developing an account of the social significance of literature (beyond vaguely alluding to the goals of scientific progress and knowledge advancement). Kant's humanist perspective on the book as an enlightenment technology to be deployed alongside the printed name for the purpose of ascribing authorial responsibility is but one response to a historical situation involving an emergent phase of medial evolution. Rather than definitively prescribing the need to affix authorial identities to computer-enabled outputs, Kant's perspective invites us to be reattuned to the evolving interrelation of literary actors, objects, techniques; the relationship between literature (and other cultural works) and the communities that we inhabit; and the demands of these works on our thinking of authorial or literary responsibility. The possibility of there being responsible

authorship without rights of ownership, preliminarily suggested by way of our preceding engagement with Kant's 1785 essay, remains to be worked out.

Futures of the Literary Unconscious

In Lacan's return to Freud, the concept of the unconscious was so revised as to foreground its trans-subjective, material structure, which Lacan claimed to be faithful to an immanent logic of Freud's works from *The Interpretation of Dreams* (1900) to *Beyond the Pleasure Principle* (1920).⁸⁶ Wrought in the terms of Ferdinand de Saussure's structural linguistics, Lacan's theory was modelled after the structure of language or 'the letter', which alluded to the material slope of literature that perpetually threatened to reclaim the meaning it had brought to life.⁸⁷ 'By "letter", I designate the material medium [*support*] that concrete discourse borrows from language'.⁸⁸ In line with Saussure, Lacan declined to see the sign as referring to any referent in the world, but instead as a self-referential 'signifying chain'⁸⁹ from which meaning emerged, but also in which it incessantly disappeared. The experience of non/sense was that of interminable movement along the chain of the signifier, 'an incessant sliding of the signified under the signifier',⁹⁰ which applied to every subject within the field of the unconscious. Interpreting dreams, parapraxes and other perceptible phenomena was but to patiently follow the movements of the signifier (which Lacan more specifically theorised as consisting in the processes of metaphoric substitution and metonymic displacement).⁹¹ For Lacan, the truth of Freudian psychoanalysis resided in its status as a thoroughly materialist practice, namely, a practice that recognised the material conditions of meaning: 'Of course, as it is said, the letter kills while the spirit gives life. I don't disagree...but I also ask how the spirit could live without the letter. The spirit's pretensions would nevertheless remain indisputable if the letter hadn't proven that it produces all its truth effects in man without

⁸⁶ For selections, see Sigmund Freud, *The Interpretation of Dreams*, trans. A. A. Brill (Wordsworth Editions, 1997); Sigmund Freud, 'Beyond the Pleasure Principle', in *The Freud Reader*, ed. Peter Gay (New York and London: W. W. Norton & Company, 1989), 594–626. This paragraph is based on Jacques Lacan, 'The Instance of the Letter in the Unconscious, or, Reason Since Freud', in *Écrits: The First Complete Edition in English*, trans. Bruce Fink (New York and London: W. W. Norton & Company, 2006), 412–41. But see also Jacques Lacan, 'Seminar on "The Purloined Letter"', in *Écrits: The First Complete Edition in English*, trans. Bruce Fink (New York and London: W. W. Norton & Company, 2006); Jacques Lacan, 'The Function and Field of Speech and Language in Psychoanalysis', in *Écrits: The First Complete Edition in English*, trans. Bruce Fink (New York and London: W. W. Norton & Company, 2006), 197–268; Jacques Lacan, 'The Freudian Thing, or the Meaning of the Return to Freud in Psychoanalysis', in *Écrits: The First Complete Edition in English*, ed. Bruce Fink (New York and London: W. W. Norton & Company, 334AD).

⁸⁷ On the two slopes of literature, see also Maurice Blanchot, 'Literature and the Right to Death', in *The Work of Fire*, trans. Charlotte Mandell (Stanford: Stanford University Press, 1995), 300–44.

⁸⁸ Lacan, 'The Instance of the Letter in the Unconscious, or, Reason Since Freud', 413.

⁸⁹ *ibid* 418.

⁹⁰ *ibid* 419.

⁹¹ On Lacan's translation of Freud's dreamwork processes of 'condensation' and 'displacement' into those of 'metaphor' and 'metonymy', see *ibid* 421–35.

the spirit having to intervene at all. This revelation came to Freud, and he called his discovery the unconscious'.⁹²

This thesis has sought to uncover some aspects of the materiality of literature and literary culture, not so much by retracing the properly linguistic shifts of its phenomena (though we inevitably also have done) as by mapping out some of the broader medial-material conditions relating to the production, perception, and regulation of books. Specifically, through our paratextual study of Kant's 1785 essay, we have excavated the print machinery that generated it and other print publications in the German Enlightenment, affording the various contributions to, reflections on, and interventions in the phenomenon of print proliferation; and brought it to bear on the myth of proprietary authorship presently enshrined in our copyright laws. In our interpolation, the 'literary unconscious' is a medial unconscious that, in late-eighteenth-century Germany, was substantially made up of the technologies and practices of print.⁹³ The phenomenon of authorship in the eighteenth century, no less polyphonous nor less multifaceted than that in the present, was bound up with the configurations of the proliferating printed matter, which implemented various instances of the author-function. Whereas proprietary senses of authorship could well have been relayed and reinforced by the appearance of authorial names on the front matter of books and their other parts, in the instance of Kant's we have learnt of a deeply socio-ethical approach to authorship that was intimately connected with his understanding of enlightenment practice. In the light of this material history of books, publishers, and authors, copyright law's proprietary treatment of literature is shown to be quite contingent and limited, premised as it is on a denial or suppression of the realities of literary (re)production and their conditions of possibility. With all the contemporary talk about the ascendancy of digital media, it is important to recognise that the literary unconscious has perhaps long evolved from its print-dominant embodiment while also noting that print is neither dead nor irrelevant to the history of digital literary culture. In step with the traditions of psychoanalysis, media and literary studies, I would ask that further work be done on the historical evolution of the literary unconscious, particularly that of the shifting medial-material conditions of literary (re)production, which inevitably bear on our received understandings of authorship and copyright. If to revisit the unconscious is, as Lacan claimed, to have a chance to 'change the course of...history by modifying

⁹² *ibid* 423–24.

⁹³ A more thorough exploration of the coexistence of print with other medial forms and practices should be attempted in a further study. On the need to account for print's place in the media ecology, see again Multigraph Collective, *Interacting with Print: Elements of Reading in the Era of Print Saturation* (Chicago and London: The University of Chicago Press, 2018), 1–14.

the moorings of...being',⁹⁴ then returning to the literary unconscious could be a way to shape the future of literary culture.

⁹⁴ Lacan, 'The Instance of the Letter in the Unconscious, or, Reason Since Freud', 438.

Bibliography

- Achituv, Romy, and Camille Utterback. 'Text Rain'. Camille Utterback. Accessed 30 April 2022. <http://camilleutterback.com/projects/text-rain/>.
- Addison, Joseph. *The Spectator*. Edited by Donald F. Bond. 5 vols. Oxford: Clarendon Press, 1965.
- . *The Tatler*. Edited by Donald F. Bond. 3 vols. Oxford: Clarendon Press, 1987.
- Arendt, Hannah. 'Truth and Politics'. In *Between Past and Future*, 223–59. Penguin Books, 2006.
- Bain, Peter, and Paul Shaw, eds. *Blackletter: Type and National Identity*. New York: Princeton Architectural Press, 1998.
- Balganesh, Shyamkrishna, and Taisu Zhang. 'Book Review: Legal Internalism in Modern Histories of Copyright'. *Harvard Law Review* 134 (2021): 1066–1130.
- Barendt, Eric. *Anonymous Speech: Literature, Law and Politics*. Oxford and Portland, Oregon: Bloomsbury Publishing, 2016.
- Barron, Anne. 'Copyright Infringement: "Free-Riding" and the Lifeworld'. In *Copyright and Piracy: An Interdisciplinary Critique*, edited by Lionel Bently, Jennifer Davis, and Jane C. Ginsburg, 93–127. Cambridge: Cambridge University Press, 2010.
- . 'Copyright Law and the Claims of Art'. *Intellectual Property Quarterly* 4 (2002): 368–401.
- . 'Copyright Law's Musical Work'. *Social & Legal Studies* 15, no. 1 (2006): 101–27.
- . 'Kant, Copyright and Communicative Freedom'. *Law and Philosophy* 31, no. 1 (2012): 1–48.
- . 'The Legal Properties of Film'. *Modern Law Review* 67, no. 2 (2004): 177–208.
- Beckett, Samuel. *Texts for Nothing*. London: Calder & Boyars, 1974.
- Benjamin, Walter. 'The Work of Art in the Age of Mechanical Reproduction'. In *Illuminations*, edited by Hannah Arendt, translated by Harry Zohn. London: Fontana Press, 1992.
- Bently, Lionel, Brad Sherman, Dev Gangjee, and Phillip Michael Johnson. *Intellectual Property Law*. Oxford: Oxford University Press, 2018.
- Biagioli, Mario. 'Documents of Documents: Scientists' Names and Scientific Claims'. In *Documents: Artifacts of Modern Knowledge*, edited by Annelise Riles, 127–57. Ann Arbor: The University of Michigan, 2006.
- . *Galileo, Courtier: The Practice of Science in the Culture of Absolutism*. United States of America: The University of Chicago Press, 1993.
- . 'Galileo the Emblem Maker'. *Isis* 81, no. 2 (1990): 230–58.

- . ‘Genius against Copyright: Revisiting Fichte’s Proof of the Illegality of Reprinting’. *Notre Dame Law Review* 86, no. 5 (2011): 1847–68.
- . ‘Rights or Rewards? Changing Frameworks of Scientific Authorship’. In *Scientific Authorship: Credit and Intellectual Property in Science*, edited by Mario Biagioli and Peter Galison, 253–79. London and New York: Routledge, 2003.
- Biagioli, Mario, and Peter Galison, eds. *Scientific Authorship: Credit and Intellectual Property in Science*. London and New York: Routledge, 2003.
- Blackstone, William. *Commentaries on the Laws of England*. 4 vols. Chicago: The University of Chicago Press, 1979.
- Blanchot, Maurice. ‘Literature and the Right to Death’. In *The Work of Fire*, translated by Charlotte Mandell, 300–344. Stanford: Stanford University Press, 1995.
- . ‘René Char and the Thought of the Neutral’. In *The Infinite Conversation*, translated by Susan Hanson, 298–306. Minneapolis and London: University of Minnesota Press, 2003.
- Bolter, Jay David. *Writing Space: Computers, Hypertext, and the Remediation of Print*. 2nd ed. Mahwah, New Jersey: Lawrence Erlbaum Associates, Publishers, 2001.
- Borghi, Maurizio. ‘Copyright and Truth’. *Theoretical Inquiries in Law* 12, no. 1 (2011): 1–27.
- . ‘Owning Form, Sharing Content: Natural-Right Copyright and Digital Environment’. In *New Directions in Copyright Law*, edited by Fiona MacMillan, Vol. 5. Edward Elgar Publishing, 2007.
- Borghi, Maurizio, and Stavroula Karapapa. *Copyright and Mass Digitization*. Oxford: Oxford University Press, 2013.
- Bornstein, George. *Material Modernism: The Politics of the Page*. Cambridge: Cambridge University Press, 2001.
- Bowrey, Kathy. *Copyright, Creativity, Big Media and Cultural Value: Incorporating the Author*. Abingdon, Oxon: Routledge, 2021.
- . ‘Law, Aesthetics and Copyright Historiography: A Critical Reading of the Genealogies of Martha Woodmansee and Mark Rose’. In *Research Handbook on the History of Copyright Law*, edited by Isabella Alexander and H. Tomás Gómez-Arostegui, 27–52. Cheltenham, UK: Edward Elgar Publishing, 2016.
- Boyle, James. *The Public Domain: Enclosing the Commons of the Mind*. New Haven and London: Yale University Press, 2008.
- . ‘The Second Enclosure Movement and the Construction of the Public Domain’. *Law and Contemporary Problems* 66 (2003): 33–74.

- Breitkopf, J. G. I. *Breitkopf on Punchcutting and Typefounding: A Critique of Enschedé's 1768 Type Specimen*. Translated by Dan Reynolds. Berlin-Neukölln, 2019.
- Brewer, David A. 'The Tactility of Authorial Names'. *The Eighteenth Century* 54, no. 2 (2013): 195–213.
- Brin, Sergey. 'A Library to Last Forever'. *The New York Times*, 8 October 2009.
- Broman, Thomas. 'Periodical Literature'. In *Books and the Sciences in History*, edited by Marina Frasca-Spada and Nick Jardine, 225–38. Cambridge: Cambridge University Press, 2000.
- Brown, Cynthia J. *Poets, Patrons, and Printers: Crisis of Authority in Late Medieval France*. Ithaca and London: Cornell University Press, 1995.
- Bruford, W. H. *Germany in the Eighteenth Century: The Social Background of the Literary Revival*. Great Britain: Cambridge University Press, 1935.
- Buringh, Eltjo, and Jan Luiten van Zanden. 'Charting the "Rise of the West": Manuscripts and Printed Books in Europe, a Long-Term Perspective from the Sixth through the Eighteenth Centuries'. *Journal of Economic History* 69, no. 2 (2009): 409–45.
- Burke, Seán. *The Death and Return of the Author: Criticism and Subjectivity in Barthes, Foucault and Derrida*. Edinburgh: Edinburgh University Press, 1992.
- Carter, Harry. *A View of Early Typography: Up to About 1600*. London: Hyphen Press, 2002.
- Chartier, Roger. 'Figures of the Author'. In *The Order of Books: Readers, Authors, and Libraries in Europe between the Fourteenth and Eighteenth Centuries*, translated by Lydia G. Cochrane, 25–59. Stanford, California: Stanford University Press, 1994.
- . 'Foucault's Chiasmus: Authorship between Science and Literature in the Seventeenth and Eighteenth Centuries'. In *Scientific Authorship: Credit and Intellectual Property in Science*, edited by Mario Biagioli and Peter Galison, 13–31. London and New York: Routledge, 2003.
- . 'Publishing Cervantes'. In *The Author's Hand and the Printer's Mind*, translated by Lydia G. Cochrane, 150–57. Cambridge: Polity Press, 2014.
- . *The Author's Hand and the Printer's Mind*. Translated by Lydia G. Cochrane. Cambridge: Polity Press, 2014.
- Coombe, Rosemary J. 'Challenging Paternity: Histories of Copyright'. *Yale Journal of Law & the Humanities* 6, no. 2 (1994): 397–422.
- Coyle, Karen. 'Managing Technology: Mass Digitization of Books'. *The Journal of Academic Librarianship* 32, no. 6 (3 November 2006): 641–45.
- Darnton, Robert. 'Google & the Future of Books'. *The New York Review of Books*, 12 February 2009.
- . 'What Is the History of Books?' *Daedalus* 111, no. 3 (1982): 65–83.
- de Hooch, Pieter. *La Mère*. 1660.

- Defoe, Daniel. *An Essay on the Regulation of the Press (1704)*. Oxford: Basil Blackwell for Luttrell Society, 1948.
- Derrida, Jacques. *Limited Inc.* Evanston: Northwestern University Press, 1988.
- Friedrich Schiller Archiv. 'Die Horen'. Accessed 30 April 2022. <https://www.friedrich-schiller-archiv.de/schriften/horen/>.
- Doctorow, Cory. 'Why Publishing Should Send Fruit-Baskets to Google'. *Boing Boing* (blog), 14 February 2006.
- Drassinower, Abraham. 'A Rights-Based View of the Idea/Expression Dichotomy in Copyright Law'. *Canadian Journal of Law and Jurisprudence* 16 (2003): 3–21.
- . 'Authorship as Public Address: On the Specificity of Copyright Vis-A-Vis Patent and Trade-Mark'. *Michigan State Law Review* 1 (2008): 199–232.
- . 'From Distribution to Dialogue: Remarks on the Concept of Balance in Copyright Law'. *Journal of Corporation Law* 34, no. 4 (2009): 991–1007.
- . 'Taking User Rights Seriously'. In *In the Public Interest: The Future of Canadian Copyright Law*, edited by Michael Geist, 462–79. Irwin Law, 2005.
- . *What's Wrong with Copying?* Cambridge, Massachusetts: Harvard University Press, 2015.
- Dürer, Albrecht. *The Painter's Manual: A Manual of Measurement of Lines, Areas, and Solids by Means of Compass and Ruler*. Translated by Walter L. Strauss. New York: Abaris Books, 1977.
- Eisenstein, Elizabeth L. *The Printing Press as an Agent of Change: Communications and Cultural Transformations in Early-Modern Europe Volumes I and II*. Cambridge: Cambridge University Press, 1979.
- . *The Printing Revolution in Early Modern Europe*. Cambridge: Cambridge University Press, 1983.
- Elden, Stuart. 'The Textual Issues around Foucault's "What Is an Author?"' *Progressive Geographies* (blog), 11 April 2017. <https://progressivegeographies.com/2017/04/11/the-textual-issues-around-foucaults-what-is-an-author/>.
- . 'What Is Author? From Paris to Buffalo'. *Progressive Geographies* (blog), November 2021. <https://progressivegeographies.com/resources/foucault-resources/foucault-minor-resources/what-is-an-author-from-paris-to-buffalo/>.
- Febvre, Lucien, and Henri-Jean Martin. *The Coming of the Book: The Impact of Printing 1450-1800*. Edited by Geoffrey Nowell-Smith and David Wootton. Translated by David Gerard. London: NLB, 1976.
- Fergus, Jan, and J. Luke Wood. *Jane Austen: A Literary Life*. New York: Palgrave Macmillan, 1991.

- Fichte, Johann Gottlieb. *The Science of Knowledge*. Edited and translated by Peter Heath and John Lachs. Cambridge: Cambridge University Press, 1982.
- . ‘Über Belebung und Erhöhung des reinen Interesse für Wahrheit.’ *Friedrich Schiller Archiv*, 17 September 2013. <https://www.friedrich-schiller-archiv.de/die-horen/die-horen-1795-stueck-1/iv-ueber-belebung-und-erhoehung-reinen-interesse-fuer-wahrheit/>.
- Primary Sources on Copyright (1450-1900), eds L. Bently & M. Kretschmer. ‘Fichte: Proof of the Unlawfulness of Reprinting, Berlin (1793)’. Accessed 30 April 2022. http://www.copyrighthistory.org/cam/tools/request/showRecord.php?id=record_d_1793.
- Fisher, William. ‘Theories of Intellectual Property’. In *New Essays in the Legal and Political Theory of Property*, edited by Stephen R. Munzer. Cambridge: Cambridge University Press, 2001.
- Foucault, Michel. *Dits et écrits: 1954-1988*. Edited by Daniel Defert, François Ewald, and Jacques Lagrange. Vol. 1. Gallimard, 1994.
- . ‘Qu’est-ce qu’un auteur’. *Bulletin de la Société française de Philosophie* 63, no. 3 (1969): 73–104.
- . ‘The Discourse on Language’. In *The Archaeology of Knowledge and the Discourse on Language*, translated by A. M. Sheridan Smith, 215–37. New York: Pantheon Books, 1972.
- . ‘The Enunciative Function’. In *The Archaeology of Knowledge and the Discourse on Language*, translated by A. M. Sheridan Smith, 88–105. New York: Pantheon Books, 1972.
- . ‘What Is an Author?’, in *Language, Counter-Memory, Practice: Selected Essays and Interviews: Selected Essays and Interviews by Michel Foucault*, edited by Donald F. Bouchard. Ithaca, New York: Cornell University Press, 1977.
- . ‘What Is an Author?’ In *Textual Strategies: Perspectives in Post-Structuralist Criticism*, edited and translated by Josué V. Harari, 141–60. Ithaca, New York: Cornell University Press, 1979.
- . ‘What Is an Author?’ In *The Foucault Reader*, edited by Paul Rabinow. New York: Pantheon Books, 1984.
- Freud, Sigmund. *General Psychology Theory: Papers on Metapsychology*. Edited by Philip Rieff. New York: Collier Books, 1963.
- . *The Freud Reader*. Edited by Peter Gay. New York and London: W. W. Norton & Company, 1989.
- Ganley, Paul. ‘Google Book Search: Fair Use, Fair Dealing and the Case for Intermediary Copying’. Working Paper, 13 January 2006. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=875384.
- Gaskell, Philip. *A New Introduction to Bibliography*. New Castle, Delaware: Oak Knoll Press, 1995.
- Genette, Gérard. *Palimpsests: Literature in the Second Degree*. Translated by Channa Newman and Claude Doubinsky. Lincoln and Lincoln: University of Nebraska Press, 1997.

- . *Paratexts: Thresholds of Interpretation*. Translated by Jane E. Lewin. Cambridge: Cambridge University Press, 1997.
- . *Seuils*. Collection Poétique. Paris: Éditions du Seuil, 1987.
- . *Seuils*. Points Essais. Paris: Éditions du Seuil, 2002.
- Gervais, Daniel J. ‘The Machine as Author’. *Iowa Law Review* 105, no. 5 (2020): 2053–2106.
- Gibbons, Victoria Louise. ‘Toward a Poetics of Titles: The Prehistory’. PhD thesis. Cardiff University, 2010.
- Ginsburg, Jane. ‘The Concept of Authorship in Comparative Copyright Law’. *DePaul Law Review* 52 (2003): 1063–92.
- Ginsburg, Jane C., and Luke Ali Budiardjo. ‘Authors and Machines’. *Berkeley Technology Law Journal* 34, no. 2 (2019): 343–448.
- Griffin, Robert J. ‘Anonymity and Authorship’. *New Literary History* 30, no. 4 (1999): 877–95.
- , ed. *The Faces of Anonymity: Anonymous and Pseudonymous Publication, 1600-2000*. New York: Palgrave Macmillan, 2003.
- . ‘The Profession of Authorship’. In *A Companion to the History of the Book*, edited by Simon Eliot and Jonathan Rose, 2nd Edition. United Kingdom: John Wiley & Sons, 2020.
- Gumbrecht, Hans Ulrich, and Karl Ludwig Pfeiffer, eds. *Materialities of Communication*. Stanford: Stanford University Press, 1994.
- Gutjahr, Paul C., and Megan L. Benton. ‘Introduction: Reading the Invisible’. In *Illuminating Letters: Typography and Literary Interpretation*, edited by Paul C. Gutjahr and Megan L. Benton, 1–16. Amherst and Boston: University of Massachusetts Press, 2001.
- Habermas, Jürgen. *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*. Translated by Thomas Burger. Great Britain: Polity Press, 1962.
- Harari, Josué V., ed. *Textual Strategies: Perspectives in Post-Structuralist Criticism*. Ithaca, New York: Cornell University Press, 1979.
- Hargrave, Francis. *An Argument in Defence of Literary Property (1774): Four Tracts on Freedom of the Press (1790-1821)*. Edited by Stephen Parks. New York: Garland Publishing, Inc, 1974.
- Heidegger, Martin. *Parmenides*. Translated by André Schuwer and Richard Rojcewicz. Bloomington and Indianapolis: Indiana University Press, 1992.
- Heinzmann, Johann Georg. *Appel an Meine Nation: Über die Pest der deutschen Literatur*. Bern, 1795.
- Hellmuth, Eckhart, and Wolfgang Piereth. ‘Germany, 1760-1815’. In *Press, Politics and the Public Sphere in Europe and North America, 1760-1820*, edited by Hannah Barker and Simon Burrows, translated by Angela Davies, 69–92. Cambridge: Cambridge University Press, 2002.

- Hesse, Carla Alison. *Publishing and Cultural Politics in Revolutionary Paris, 1789-1810*. Berkeley, Los Angeles, Oxford: University of California Press, 1991.
- Hinske, Norbert, and Michael Albrecht. *Was ist Aufklärung? Beiträge aus der Berlinischen Monatsschrift*. Darmstadt: Wissenschaftliche Buchgesellschaft, 1977.
- Hoche, Johann. *Vertraute Briefe über die jetzige Lesesucht und über den Einfluß der-selben auf die Verminderung des häuslichen und öffentlichen Glücks*. Hanover: Ritscher, 1794.
- Hoffmann, E. T. A. 'The Golden Flower Pot'. In *The Best Tales of Hoffmann*, edited by E. F. Bleiler, 1–70. New York: Dover Publications, Inc., 1967.
- Holmes, Richard. *Shelley: The Pursuit*. New York: New York Review of Books, 2003.
- Universität Bielefeld: Universitätsbibliothek. 'Immanuel Kant: Von der Unrechtmäßigkeit des Büchernachdrucks (1785)'. Accessed 30 April 2022. http://ds.ub.uni-bielefeld.de/viewer/image/2239816_005/430/LOG_0055/.
- Innis, Harold A. *Empire and Communications*. United States of America: Rowman & Littlefield Publications, Inc., 2007.
- . *The Bias of Communication*, 2nd ed. Toronto: University of Toronto Press, 2008.
- Universität Bielefeld: Universitätsbibliothek. 'J. F. W. Zöllner: Ist es rathsam, das Ehebündniß nicht ferner durch die Religion zu sancieren? (1783)'. Accessed 30 April 2022. http://ds.ub.uni-bielefeld.de/viewer/image/2239816_002/535/LOG_0076/.
- Jaszi, Peter. 'Toward a Theory of Copyright: Metamorphoses of "Authorship"'. *Duke Law Journal*, 1991, 455–502.
- Johns, Adrian. *The Nature of the Book: Print and Knowledge in the Making*. Chicago and London: The University of Chicago Press, 1998.
- Jordan, Tim. 'Does Online Anonymity Undermine the Sense of Personal Responsibility?' *Media, Culture & Society* 41, no. 4 (2019): 572–77.
- Kant, Immanuel. *Correspondence*. Edited and translated by Arnulf Zweig. United States of America: Cambridge University Press, 1999.
- . *Critique of Judgment (1790)*. Translated by W. S. Pluhar. Indianapolis: Hackett, 1997.
- . *Critique of Pure Reason*. Edited and translated by Paul Guyer and Allen W. Wood. United States of America: Cambridge University Press, 1998.
- . *Practical Philosophy*. Edited and translated by Mary J. Gregor. The Cambridge Edition of the Works of Immanuel Kant. Cambridge: Cambridge University Press, 1996.
- . *The Conflict of the Faculties*. Translated by Mary J. Gregor. New York: Abaris Books, Inc., 1979.

- . ‘Toward Perpetual Peace (1795)’. In *Practical Philosophy*, edited by Paul Guyer and Allen W. Wood, translated by Mary J. Gregor, 315–51. Cambridge: Cambridge University Press, 1996.
- . ‘Zerstreute Aufsätze (1793)’. Münchener Digitalisierungszentrum Digitale Bibliothek. Accessed 30 April 2022. <https://www.digitale-sammlungen.de/en/view/bsb10927121?page=,1>.
- Münchener Digitalisierungszentrum Digitale Bibliothek, ‘Immanuel Kant: Von der Unrechtmäßigkeit des Büchernachdrucks (1785)’. Accessed 30 April 2022. <https://www.digitale-sammlungen.de/de/view/bsb10926844?page=433>.
- Primary Sources on Copyright (1450-1900), eds L. Bently & M. Kretschmer. ‘Kant: On the Unlawfulness of Reprinting, Berlin (1785)’. Accessed 30 April 2022. https://www.copyrighthistory.org/cam/tools/request/showRecord.php?id=record_d_1785
- Kapf, Albert. *Fraktur: Form und Geschichte der gebrochenen Schriften*. H. Schmidt, 1993.
- Kawohl, Friedemann, and Martin Kretschmer. ‘Johann Gottlieb Fichte, and the Trap of *Inhalt* (Content) and *Form*: An Information Perspective on Music Copyright’. *Information, Communication & Society* 12, no. 2 (2009): 205–28.
- Kelly, Kevin. ‘Scan This Book!’ *The New York Times Magazine*, 14 May 2006.
- Killius, Christina. *Die Antiqua-Fraktur Debatte um 1800 und ihre historische Herleitung*. Wiesbaden: Harrassowitz Verlag, 1999.
- Kittler, Friedrich. ‘Authorship and Love’. *Theory, Culture & Society* 32, no. 3 (2015): 15–47.
- . *Discourse Networks 1800/1900*. Translated by Michael Metteer and Chris Cullens. Stanford: Stanford University Press, 1990.
- . *Gramophone, Film, Typewriter*. Translated by Geoffrey Winthrop-Young and Michael Wutz. Stanford University Press, 1999.
- . *Optical Media: Berlin Lectures 1999*. Translated by Anthony Enns. Polity, 2010.
- . ‘The Perspective of Print’. Translated by Geoffrey Winthrop-Young and Michael Wutz. *Configurations* 10, no. 1 (2002): 37–50.
- . ‘There Is No Software’. *Ctheory*, 1995. https://web.stanford.edu/class/history34q/readings/Kittler/There_is_No_Software.html.
- . ‘Towards an Ontology of Media’. *Theory, Culture & Society* 26, no. 2–3 (2009): 23–31.
- . ‘Unpublished Preface to Discourse Networks’. Translated by Geoffrey Winthrop-Young. *Grey Room* 63 (2016): 90–107.
- Klopstock, Friedrich Gottlieb. *Die deutsche Gelehrtenrepublik: ihre Einrichtung, ihre Gesetze, Geschichte des letzten Landtags, auf Befehl der Aldermänner durch Salogast und Wlemar*. Hamburg: J. J. C. Bode, 1774.

- Knudsen, Jonathan B. *Justus Möser and the German Enlightenment*. Cambridge: Cambridge University Press, 1986.
- Kretschmer, Martin, and Friedemann Kawohl. ‘The History and Philosophy of Copyright’. In *Music and Copyright*, edited by Simon Frith and Lee Marshall, 21–52. Routledge, 2004.
- Kuehn, Manfred. ‘Dating Kant’s “Vorlesungen über Philosophische Enzyklopädie”’. *Kant-Studien* 74, no. 3 (1983): 302–13.
- Lacan, Jacques. *Écrits: The First Complete Edition in English*. Translated by Bruce Fink. New York and London: W. W. Norton & Company, 2006.
- Latham, Sean, and Robert Scholes. ‘The Rise of Periodical Studies’. *The Modern Language Association of America* 121, no. 2 (2006): 517–31.
- Laursen, John Christian. ‘The Subversive Kant: The Vocabulary of “Public” and “Publicity”’. In *What Is Enlightenment? Eighteenth-Century Answers and Twentieth-Century Questions*, edited by James Schmidt, 253–69. Berkeley and Los Angeles, California: University of California Press, 1996.
- Lee, Haimin. ‘15 Years of Google Books’. *Google Blog* (blog), 17 October 2019.
- Lemley, Mark A. ‘Property, Intellectual Property, and Free Riding’. *Texas Law Review* 83 (2005): 1031–75.
- Lessig, Lawrence. ‘For the Love of Culture’. *The New Republic*, 26 January 2010.
- . *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity*. New York: The Penguin Press, 2004.
- . ‘Google Sued’. *Lessig Blog Archives* (blog), 22 September 2005.
- . *Is Google Book Search Fair Use?* YouTube, 2006.
- . ‘On the Google Book Search Agreement’. *Lessig Blog Archives* (blog), 29 October 2008.
- Liptak, Adam, and Alexandra Alter. ‘Challenge to Google Books Is Declined by Supreme Court’. *The New York Times*, 18 April 2016.
- Lunney, Glynn S. ‘Reexamining Copyright’s Incentives-Access Paradigm’. *Vanderbilt Law Review* 49, no. 3 (1996): 483–656.
- Mak, Bonnie. *How the Page Matters*. Toronto, Buffalo and London: University of Toronto Press, 2011.
- Manchester, Colin. ‘The Newspapers, Printers and Reading Rooms Repeal Act 1869: A Case for Repeal?’ *Legal Studies* 2, no. 2 (1982): 180–88.
- Manguel, Alberto. ‘A Brief History of the Page’. In *A Reader on Reading*, 120–27. Yale University Press, 2010.
- McGann, Jerome J. *The Textual Condition*. Princeton: Princeton University Press, 1991.
- McKenzie, D. F. *Bibliography and the Sociology of Texts*. Cambridge: Cambridge University Press, 1986.

- McLuhan, Marshall. *The Gutenberg Galaxy*. Toronto: University of Toronto Press, 1962.
- . *Understanding Media: The Extensions of Man*. Cambridge, Massachusetts: The MIT Press, 1994.
- Mendelssohn, Moses. ‘On the Question: What Is Enlightenment? (1784)’. In *What Is Enlightenment? Eighteenth-Century Answers and Twentieth-Century Questions*, edited and translated by James Schmidt, 53–57. Berkeley and Los Angeles, California: University of California Press, 1996.
- Merges, Robert P. *Justifying Intellectual Property*. Cambridge, Massachusetts: Harvard University Press, 2011.
- Morison, Stanley. *First Principles of Typography*. Cambridge: Cambridge University Press, 1951.
- Möser, Justus. *Vermischten Schriften*. Edited by Friedrich Nicolai. Friedrich Nicolai, 1796.
- Multigraph Collective. *Interacting with Print: Elements of Reading in the Era of Print Saturation*. Chicago and London: The University of Chicago Press, 2018.
- Murray, Simone. ‘Authorship’. In *The Oxford Handbook of Publishing*, edited by Angus Phillips and Michael Bhaskar. Oxford: Oxford University Press, 2019.
- . ‘Performing Authorship in the Digital Literary Sphere’. In *The Digital Literary Sphere: Reading, Writing and Selling Books in the Internet Era*, 22–52. Baltimore: John Hopkins University Press, 2018.
- Naragon, Steve. ‘Chronology of Kant’s Life’. In *The Palgrave Kant Handbook*, edited by Matthew C. Altman, xxxi–xliv. London: Palgrave Macmillan, 2017.
- Netanel, Neil W. *Copyright’s Paradox*. New York: Oxford University Press, 2008.
- . ‘Why Has Copyright Expanded? Analysis and Critique’. In *New Directions in Copyright Law*, edited by Fiona Macmillan, 6:3–34. Cheltenham, UK: Edward Elgar, 2007.
- Newton, Gerald. ‘*Deutsche Schrift*: The Demise and Rise of German Black Letter’. *German Life and Letters* 56, no. 2 (2003): 183–211.
- Ong, Walter J. *Orality and Literacy: The Technologizing of the Word*. 30th Anniversary Edition. London and New York: Routledge, 2012.
- Oxford English Dictionary*. 2nd ed. Oxford: Oxford University Press, 2004.
- Pasanek, Brad, and Chad Wellmon. ‘Enlightenment, Some Assembly Required’. In *The Eighteenth Centuries: Global Networks of Enlightenment*, edited by David T. Gies and Cynthia Wall. University of Virginia Press, 2018.
- Phares, Gloria C. ‘An Approach to Why Typography Should Be Copyrightable’. *The Columbia Journal of Law & the Arts* 39, no. 3 (2016): 417–20.
- Pievatolo, Maria Chiara. ‘Freedom, Ownership and Copyright: Why Does Kant Reject the Concept of Intellectual Property?’ *Società Italiana di Filosofia Politica*, 2010, 1–10.

- Piper, Andrew. *Book Was There: Reading in Electronic Times*. Chicago and London: The University of Chicago Press, 2012.
- Popkin, Jeremy D. 'Periodical Publication and the Nature of Knowledge in Eighteenth-Century Europe'. In *The Shapes of Knowledge from the Renaissance to the Enlightenment*, edited by Donald R. Kelly and Richard H. Popkin, 203–13. Springer Science & Business Media, 1991.
- Pottage, Alain. 'Literary Materiality'. In *Routledge Handbook of Law and Theory*, edited by Andreas Philippopoulos-Mihalopoulos, 409–29. London and New York: Routledge, 2019.
- . 'Paper Prototypes'. In *Knowledge, Technology and Law*, edited by Emilie Cloatre and Martyn Pickersgill, 223–38. Abingdon, Oxon: Routledge, 2015.
- Rahmatian, Andreas. 'Originality in UK Copyright Law: The Old "Skill and Labour" Doctrine Under Pressure' 44, no. 4 (2013): 4–34.
- Raven, James. 'The Anonymous Novel in Britain and Ireland, 1750-1830'. In *The Faces of Anonymity: Anonymous and Pseudonymous Publications from the Sixteenth to the Twentieth Century*, edited by Robert J. Griffin, 141–66. New York: Palgrave Macmillan, 2003.
- Primary Sources on Copyright (1450-1900), eds L. Bently & M. Kretschmer. 'Reimarus: Book Publishing, Hamburg (1791)'. Accessed 30 April 2022. http://www.copyrighthistory.org/cam/tools/request/showRecord.php?id=record_d_1791.
- Richardson, Samuel. *English Publishing, the Struggle for Copyright, and the Freedom of the Press: Thirteen Tracts 1664-1774*. Edited by Stephen Parks. New York: Garland Publishing, Inc, 1975.
- Ricketson, Sam. *The Berne Convention for the Protection of Literary and Artistic Works: 1886-1986*. London: Centre for Commercial Law Studies, Queen Mary College and Kluwer, 1987.
- Ricketson, Sam, and Jane Ginsburg. 'The Berne Convention: Historical and Institutional Aspects'. In *International Intellectual Property: A Handbook of Contemporary Research*, edited by Daniel J. Gervais, 3–36. Cheltenham, UK: Edward Elgar Publishing Limited, 2015.
- Rosati, Eleonora. 'Originality in a Work, or a Work of Originality: The Effects of the *Infopaq* Decision'. *Journal of the Copyright Society of the USA* 58, no. 4 (2010): 795–817.
- Rose, Mark. *Authors and Owners: The Invention of Copyright*. Cambridge, Massachusetts: Harvard University Press, 1993.
- . 'The Author as Proprietor: *Donaldson v. Becket* and the Genealogy of Modern Authorship'. *Representations* 23 (1988): 51–85.
- Samuelson, Pamela. 'AI Authorship?' *Communications of the ACM* 63, no. 7 (July 2020): 20–22.
- . 'Challenges in Mapping the Public Domain'. In *The Future of the Public Domain: Identifying the Commons in Information Law*, edited by Lucie Guibault and P. Bernt Hugenholtz, 7–25. Alphen aan den Rijn: Wolters Kluwer Law & Business, 2006.

- Schiller, Friedrich. 'Vorwort'. Friedrich Schiller Archiv, 17 September 2013. <https://www.friedrich-schiller-archiv.de/die-horen/die-horen-1795-stueck-1/vorwort/>.
- Schmidt, James. 'Introduction: What Is Enlightenment? A Question, Its Context, and Some Consequences'. In *What Is Enlightenment? Eighteenth-Century Answers and Twentieth-Century Questions*, edited by James Schmidt, 1–44. Berkeley and Los Angeles, California: University of California Press, 1996.
- . 'Misunderstanding the Question: "What Is Enlightenment?": Venturi, Habermas, and Foucault'. *History of European Ideas* 37 (2011): 43–52.
- . 'The Question of Enlightenment: Kant, Mendelssohn, and the *Mittwochsgesellschaft*'. *Journal of the History of Ideas* 50, no. 2 (1989): 269–91.
- Selwyn, Pamela E. *Everyday Life in the German Book Trade: Friedrich Nicolai as Bookseller and Publisher in the Age of Enlightenment, 1750-1810*. University Park, Pennsylvania: The Pennsylvania State University Press, 2000.
- Sherman, Brad. 'Appropriating the Postmodern: Copyright and the Challenge of the New'. *Social and Legal Studies* 4 (1995): 31–54.
- . 'What Is a Copyright Work?' *Theoretical Inquiries in Law* 12, no. 1 (2011): 99–121.
- Sherman, Brad, and Lionel Bently. *The Making of Modern Intellectual Property Law*. Cambridge: Cambridge University Press, 2003.
- Siebert, Fredrick Seaton. *Freedom of the Press in England 1476-1776: The Rise and Decline of Government Controls*. Urbana: University of Urbana Press, 1952.
- Siegert, Bernhard. *Relays: Literature as an Epoch of the Postal System*. Translated by Kevin Repp. Stanford: Stanford University Press, 1999.
- Simone, Daniela. 'Kogan v Martin: A New Framework for Joint Authorship in Copyright Law'. *Modern Law Review* 83, no. 4 (2020): 877–92.
- Siskin, Clifford, and William Warner. *This Is Enlightenment*. Chicago and London: The University of Chicago Press, 2010.
- Steinberg, S. H. *Five Hundred Years of Printing*. Mineola, New York: Dover Publications, Inc., 1955.
- Stoicheff, Peter, and Andrew Taylor, eds. *The Future of the Page*. Toronto, Buffalo and London: University of Toronto Press, 2004.
- Striphas, Ted. *The Late Age of Print: Everyday Book Culture from Consumerism to Control*. New York: Columbia University Press, 2009.
- 'The Author as Proprietor: Donaldson v Becket and the Genealogy of Modern Authorship'. *Representations* 23 (1988): 51–85.

- The Copyright Committee of Great Britain. *Report of the Copyright Committee*. Her Majesty's Stationery Office, 1952.
- The Political State of Great Britain*. Vol. 3. London: J. Baker, 1712.
- Thompson, John B. *Merchants of Culture: The Publishing Business in the Twenty-First Century*, 2nd ed. United States of America: PLUME, 2012.
- Microsoft Typography. 'Times New Roman Font Family'. Accessed 30 April 2022. <https://docs.microsoft.com/en-us/typography/font-list/times-new-roman>.
- Treiger-Bar-Am, Leslie Kim. 'Kant on Copyright: Rights of Transformative Authorship'. *Cardozo Arts & Entertainment Law Journal* 25, no. 3 (2008): 1059–1103.
- Trimbur, John. 'Delivering the Message: Typography and the Materiality of Writing'. In *Rhetoric and Composition as Intellectual Work*, edited by Gary A. Olson, 188–202. Carbondale and Edwardsville: Southern Illinois University Press, 2002.
- Updike, Daniel Berkeley. *Printing Types: Their History, Forms, and Use; A Study in Survivals*. Harvard University Press, 1922.
- Updike, John. 'The End of Authorship'. *The New York Times*, 25 June 2006.
- Vaidhyanathan, Siva. *The Googlization of Everything (And Why We Should Worry)*. Berkeley and Los Angeles: University of California Press, 2011.
- Vareschi, Mark. *Everywhere and Nowhere: Anonymity and Mediation in Eighteenth-Century Britain*. Minneapolis: University of Minnesota Press, 2018.
- Venturi, Franco. *Utopia and Reform in the Enlightenment*. Cambridge University Press, 1971.
- Wellmon, Chad. *Organizing Enlightenment: Information Overload and the Invention of the Modern Research University*. Baltimore, Maryland: John Hopkins University Press, 2015.
- Wellmon, Chad, and Brad Pasanek. 'The Enlightenment Index'. *The Eighteenth Century: Theory and Interpretation* 56, no. 3 (2015): 357–80.
- Wilson, Adrian. 'Foucault on the "Question of the Author": A Critical Exegesis'. *The Modern Language Review* 99, no. 2 (2004): 339–63.
- Woodmansee, Martha. 'Publishers, Privateers, Pirates: Eighteenth-Century German Book Piracy Revisited'. In *Making and Unmaking Intellectual Property: Creative Production in Legal and Cultural Perspective*, edited by Mario Biagioli, Peter Jaszi, and Martha Woodmansee, 181–97. Chicago and London: The University of Chicago Press, 2011.
- . *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, no. 4 (1984): 425–48.

- Woodmansee, Martha, and Peter Jaszi, eds. *The Construction of Authorship: Textual Appropriation in Law and Literature*. Durham, North Carolina: Duke University Press, 1994.
- Young, Edward. *Conjectures on Original Composition: In a Letter to the Author of Sir Charles Grandison*. London: A. Millar and R. and J. Dodsley, 1759.
- . *The Correspondence of Edward Young 1683-1765*. Edited by Henry Pettit. Oxford: Clarendon Press, 1971.