

AUTHORIAL RIGHTS IN SHAKESPEARE'S TIME

Robert Detobel



The right of an author to receive payment for his works is such an elementary right that the major point can be easily overlooked. It was necessary for a stationer to obtain the author's permission to publish his work, and thus for copyright, even though the copyright was granted by the Stationers' Company.

Patterson: *Copyright in Historical Perspective*



IN his book, *Shakespeare, in Fact*, Irvin Matus displays a splendid self-assurance as he takes issue with Sir George Greenwood on the subject of authors rights in Shakespeare's time. In 1908, Greenwood, a lawyer, had responded to Sidney Lee's thesis of the absolute rightlessness of authors and the rights of publishers to print manuscripts without the authors having any say: "Mr. Lee does not seem to have considered whether such iniquitous proceedings would have been allowed by the common law of England." Matus retorts: "However incredible it might seem to Sir George Greenwood . . . there is *no evidence* there was in Shakespeare's lifetime *any concept of author's rights*" (85, emphasis added). It is not surprising that Greenwood has offered nothing in his own defense, having long since passed away. Unaware, apparently, that there has been any discussion of the question since 1908, Matus (not a lawyer) rejects the idea that the common law would not have allowed the publication of a manuscript without the consent of its author, declaring with self-imposed authority: "How a stationer came by the work he was entering, whether or not his copy was corrupt, whether or not the author wished it to be published, had been compensated for it, or could in any way be damaged by its publication, were not questions asked by the wardens of the company when licensing a work" (85).

This is the prevailing view of authorial rights in Shakespeare's time among most orthodox Shakespeare scholars, and has been for some time. But is it accurate? First promoted by Sidney Lee in 1899 (89-90), it has been adopted by Leo Kirschbaum (1955, *passim*) and Edwin H. Miller (1959, 140), among others. Though Miller takes a far more cautious stand than Lee, Kirschbaum, and Matus, he states it most succinctly:

The Elizabethan professionals . . . were in a hopeless economic predicament. They were powerless because unorganized and unprotected either by law or by

custom. While stationers effectively enhanced their powers, legal as well as economic, writers were compelled to be lackeys who supplied material for the printing presses without a fair share in the profits. It was not until a century later, in 1711, that authors were granted copyright for a period of fourteen years. (140)

Miller, at least, qualifies this view by remarking that an author could cause a publisher's copyright to lapse by revising his work. He also expresses his surprise at the fact that unauthorized publication was not more widespread (139, 141).

How, we might ask, if the stationers were such shrewd businessmen and the authors so powerless and lacking in rights, can it be explained that, apart from two small (but important) categories, authors were very rarely victims of stolen manuscripts? The two categories in which piracy did occur, were defined by A. W. Pollard as follows:

the appropriation of literary rights without permission or payment, which we call piracy, in so far as it can be proved, was largely concerned with the works of dead authors, or of *men whose rank would have forbidden them to receive payment for their books*. (32, emphasis added)

We feel that Shakespeare scholars, mistaking their particular tree for the entire forest, have obscured the actual situation with regard to author's rights, expanding what was in fact a small portion of the publishing spectrum to include its entirety, because it happened to be the sector occupied by their prime concern, Shakespeare.

Did authors, in fact, have no rights?

That only a publisher's and no author's copyright existed in Shakespeare's time is beyond doubt. Still, this is far from all there is to be said. A modern copyright has a corporeal and an incorporeal aspect; the corporeal or property or economic aspect covers an author's right to be paid for his work and to share in the earnings; the incorporeal or creative right is the right to determine, for example, the contents of his work and to decide when it is finished and ready to be published.

According to Matus, the Elizabethan author had no right to decide "whether or not his copy was corrupt, whether or not [he] wished it to be published." Yet, according to the Ger-

Robert Detobel, of Frankfurt Germany, is a translator and publicist and is co-editor (with Dr. Uwe Laugwitz) of the Oxfordian Neues Shakespeare Journal to which he has contributed several articles. The journal is the only Oxfordian publication in continental Europe. Before getting involved in the authorship debate in 1982 he published on Third World issues and translated some works from French (eg, the sociologist Alain Touraine). During the last eight years he has been working primarily on publication and chronology issues.

man copyright law historian, Prof. Walter Bappert, in early modern times copyright was very different from today in some ways, yet very much the same in others. It was different in that authors were often paid little or nothing for their manuscript and had no share in the sales proceeds, which went exclusively to the publisher. The view still prevailed that to take money for works of the mind was not honourable, a concept we find reflected today in our occasional use of the term *honorarium* for an author's receipts. But Bappert (writing in 1962) assures us that when it comes to the personal or creative rights, there is very little difference between then and now (162).

This view is confirmed by Lyman Ray Patterson, in his authoritative book of 1968, *Copyright in Historical Perspective*:

To say that no rights of the author were recognized during the time of the stationer's copyright is to view the problem in a too simplistic manner. The relationship between authors and the Stationers had existed on a much more complex and sophisticated level over too long a period of time. (65)

Patterson, too, offers plenty of evidence to support this view. He describes cases in which the Stationers' Company granted a copyright to the author himself: on March 1, 1618, license was given to Reynold Smith:

. . . to ymprint his table & Computacon that he hath made and to sell them without interruption of the Company . . .

And on September 5, 1631 John Standish:

. . . became a Sutor to the Mr. Wardens & assistants for leave to print his book *the Psalms of David* accorded to the french & Germaine verses and tunes. . . . (65-6)

More examples can be found in the Stationers' Register. There is also evidence that, at least on occasion, an author could limit the term of a publisher's copyright. On March 11, 1607 was entered to the publisher John Browne:

a book called musicke of sundry Kyndes sett forthe in Two Bookes &c Composed by THOMAS FFORD . . . [Added below was the restrictive clause:] . . . yt is agreed 13 marcij Anno supradicto [1607]. that this cotype shall never hereafter be printed agayne without the consent of master FFORD the Aucthour, [signed] John Browne. (Arber 3: 344)

On December 8, 1627 we find an entry to William Jones for:

a book called *A Mathematical Manuell* by John Dansye. [Added is the following:] MEMORANDUM: that this booke is not to be reimprinted agayne, without the

consent of the author Master DANSYE. (Arber 4: 191)

And on September 22, 1628 is entered to the stationer William Jones:

A booke Called *A Just Apologie for the Jesture of kneeling in the Act of receiving the Lordes supper* by Master THOMAS PAYBODYE” [with the restrictive clause added:] “MEMORANDUM That I the afore said William Jones Doe promise not to reimprint the same booke againe with out the Authors Consent and that I the said William Jones shall surrender up the said Coppie to him againe, when he shall require it. By me William Jones. (Arber 4: 202)

In all these cases it does not seem that there was a special intervention by the author; the stationer seems simply to have communicated to the wardens of the company what had been agreed between himself and the author.

A similar clause was often added in the margin: on November 13, 1629 was entered to Master Bourne:

A breife Recitall of the 12 Herculeam Labours of Queene ELIZABETH. with her picture in Copper set forth by JOHN ARMYN.” In a marginal note we read: “3. Aprilis. 1635 - Crost out by Master Bournes Consent never to be printed [?again] with this License.” (191)

The addition in brackets is by Edward Arber and is probably justified as the statement as written is ambiguous. Whose license is meant in this case? Would the cancellation have been ordered by the supreme authority in licensing matters, the Archbishop of Canterbury, the consent of the stationer would have been pointless. The license or copyright by the Stationers’ Company was, on principle, perpetual. Only if it was afterwards found that another stationer had already a copyright in the same book would the wardens revoke an entry. In such cases no consent of the copyright owner was needed, it was simply ordered that the copyright belonged to another stationer and had therefore to be withdrawn. Nothing of this applies. Hence, the license is likely to refer to the consent of the author who either did not want another publication or was about to revise his work and had agreed with the publisher to wait until the revision was ready, as in the following entries:

On August 10, 1632 a book was entered to John Waterson:

called *Mithomystes a Survey of Poetry* by Henry Reynolds gent. [In the margin is added the note (without date):] crost out by his own Consent and resigned to the authour *ut patet supra* &c. (4: 282)

On April 18, 1633 was entered to the same William Jones:

. . . a booke called *The Art of Stenography* by THEODORE MEDCALFE. [In

the margin is written (probably on a later date as William Jones had died in the meantime):] This Copy by consent of Mistris Jones is Surrendered up to the Author to be by him disposed of W.W. [Clerk of the Company] (4: 295)

Though the author is not expressly referred to, the two following licenses were probably not prolonged because the author wanted it so:

On April 24, 1630 the stationer John Weaver consented that an entry to him for:

. . . *The Christians Profession* by J.G. [was] crost out by Order of Court and by a note under his hande upon the file. (4: 234)

Similarly on March 23, 1634:

. . . a booke called *The English Schoole &c.* by J.P. [which was recalled on November 13, 1637] . . . Crost out by order and Master Bellamy [his] consent. (4: 335)

On March 1, 1632 was entered to Henry Overton a book by Ephraim Huit:

The Prourcy [i.e. Prophecy] of DANIEL, explainned by a Periphrase Analysis and breefe Comentary. [On May 12, 1643 a note was added in the margin:] This entrance is made void by consent of Henry Overton. (4: 274)

Huit's book was republished in 1645, so it seems likely that he wanted the publisher to hold off until he had produced either a revised or enlarged copy.

On March 21, 1629 was entered to the stationers Philemon Stephens and Christopher Meredith *A Guide to Godlines* by John Downam, a divine. Obviously this copy had been presented before by another stationer, William Bladon, without the author's consent. William Bladon probably thought that Downam would not object, following a not unusual convention with university men and men of rank not to put their own works into print; that is, unless by means of some standard covention such as a "well-willing friend" who brings them to the printer without their knowledge or in their absence, (4: 209). But Downam did complain. A memorandum was added to the entry:

The said master kingston and master Weaver doe affirme that William Bladon hath noe right to this Copie and is willing to assigne it over to whom master DOWNHAM should nominate.

According to Irvin Matus this would have been an impossibility: there would have been absolutely no way for John Downam to prevent William Bladon from printing his work.

Nor, according to Matus, could the following case have occurred. On September 16 1624, were entered to Ralph Rounthwaite two works of Thomas Farnaby, another divine: *Phrases oratoriae elegantiores et poeticae and Figuræ, Tropi et Schemata.* Another stationer,

Christopher Meredith, had a share in the copyright. Again, both stationers might have thought that Farnaby would show no interest in the printing of his works. The author, however, did complain to the Stationers' Company, which on December 6, 1626 made their decision:

It was ordered by Mr. Bonham Norton, Clement Knight, Felix Kingston, Adam Islip and Edmund Weaver that the Copies entered to Raffe Rounthwaite and Christopher Meredith shalbe crossed out of the booke of Entrances for Copies and be wholly left to Mr Farnaby to dispose of to some other of the Company to whom he will, and that Philemon Stephens and Christopher Meredith shall give to Mr Farnaby for 750. wch was last printed to recompense him for the printing of it against his will 45 to be paid the last day of Candlemas terme. (Court Book C 191)

On June 15, 1627 the works were reentered to another stationer. This case illustrates three facts, all of which are denied by Matus. First, the author had a right to be paid (Stephens and Meredith had to indemnify Farnaby for the unauthorized printing); second, the author could choose his own publisher and printer; and third, he could determine when and if his book should be printed.

That the author had a right to be paid for his manuscript is also proven by several other cases. On February 7, 1619 the Court of Assistants ordered:

Whereas Thomas Jones and Lawrence Chapman have printed a book called *The Woodman's Bear* without the consent of Mrs. Silvester being of her husband Mr Silvester's doing and compiling. It is ordered that the said Jones and Chapman shall give Mrs. Silvester 20 shillings for a recompense. (119)

Again, the Stationers' Company did recognize not only the *incorporeal* personal or creative right of the author, but the *corporeal* property right as well. The former, being vested in the person of the author, perished with his death; the latter was hereditary.

“Troubles” arising from the author

In 1602 the stationers Burby and Dexter were ordered by the Stationers' Company to indemnify the author whose work they had printed without authorization:

And all charges aswell to the Auctor as otherwise to be equally borne between them parte and parte like. (B 1881)

On May 7, 1582 the following entry is likely to refer to the author:

Receaved of him for printinge a booke of phisicke called *the pathwaie to health for the poore* Translated and gathered by PETER LEVENS And the said Edward

hathe undertaken to beare and discharge all troubles that maie arise for the printinge thereof. (Arber 2: 411)

Since Levens's book was first published in 1587 and reprinted at least six times by 1664, the "troubles" that might have arisen are not likely to have stemmed from censorship. And though not explicitly stated, the troubles referred to in the following entry were also probably expected to arise from the author. On December 1608 was entered to William Jaggard:

for his copie under the handes of Master ETKINS and The wardens A booke called *Brytans Troye*. PROVIDED that yf any question or trouble growe hereof. Then he shall answere and discharge yt at his owne Losse and costes. (3: 397)

Authority was given by the Episcopal censor Etkins, and since no proviso was made as to a possible copyright by another stationer, the only possible source of troubles was the author, who was Thomas Heywood. In fact, Heywood did complain about Jaggard's printing of *Troia Britannica* in his epilogue to *An Apology for Actors* (1609):

The infinite faults escaped in my booke of Britaines Troy by the negligence of the printer, as the misquotations, mistaking of sillables, misplacing half lines, coining of strange and never heard of words, these being without number, when I would have taken a particular account of the errata, the printer answered me, hee would not publish his owne disworkemanship, but rather let his owne fault lye upon the necke of the author. . . ." (xx)

At first glance, this might be taken as evidence that Heywood had no rights at all. However, this would seem to be contradicted by the fact that the wardens of the Stationers' Company obviously expected troubles from the author together with Heywood's praise of the printer Nicholas Okes: ". . . and finding you, on the contrary, so carefull and industrious, so serious and laborious to doe the author all the rights of the presse, I could not choose but gratulate your honest indeavours with this short remembrance." If we do not deprive the phrase "all the rights of the presse" of meaning, it is clear that Heywood is speaking of the author's rights as recognized by the Stationers' Company.

Why, then, did Heywood not intervene? The wording of the proviso is similar to that used for Silvester's heirs, Cuthbert Burby and Dexter, Farnaby, and Peter Levens. The wardens were aware of possible troubles ahead arising from unauthorized printing, which in this case means: *not authorized by the author*.

Cooperation between authors and stationers

The following two examples show that not only was there often close cooperation

between authors and stationers regarding a work's contents and title but also that additions to a work were regarded as engendering a new copyright and, as a consequence, a new entry:

On March 20, 1624 was entered to Robert Milbourne:

. . . under the handes of master Doctor GOAD [episcopal corrector] and Master Cole [warden] A booke called *The foote out of the snare* by JOHN GEE. (4: 114)

The entry was crossed out and a new entry was made on May 1, 1624 to Milbourne:

. . . under the handes of master Doctor GOAD and Master Cole A booke called *the foote out of the snare* whereunto is added A Catalogue of popis bookes: *preists and Jesuites Phisitions and Apoticaries with a gentle excuse to MUSKETT for stilinge him a Jesuite* by JOHN GEE master of Artes. (118)

In another entry the title of a work is changed on request of the author. On 27 September 1618, a book was entered as: "*The churches glory* containing certaine sermons by master Thomas Adames." A note was added below stating that "The title of this Booke [is altered] by Consent of the Author and Called *The happiness of the Church*" (3: 633). These examples are by no means exhaustive.

Milton, Bright, Erasmus

If an author had no rights at all, one must puzzle over why the following clause would have been necessary between John Milton and the publisher of *Paradise Lost*:

And the said John Milton . . . doth covenant with the said Samll Symons, . . . that he . . . shall at all times hereafter have, hold, and enjoy the same, and all impressions thereof accordingly, without let or hindrance of him, the said John Milton. . . . And that the said John Milton . . . shall not print or cause to be printed, or sell, or dispose, or publish, the said Book or Manuscript, or any other Book of the same tenor or subject, without the consent of the said Samll Symons. . . ." (Patterson 74)

Without such a clause Milton would have been able to enlarge or change his work and so make obsolete Simons's copyright.

Another case in point is the entry of 24 October 1586. The work was Timothy Bright's *Treatise of Melancholy*. A memorandum was added to the entry: "that master Doctor Bright has promised not to meddle with augmenting or altering the said book until the impression which is printed by the said John Windet be sold" (2: 457).

Outside of England, we find Erasmus brandishing this personal right as early as 1513. In 1508 his *Adagia*, a collection of famous quotations and proverbs, was printed in Venice by Aldus Manutius; five years later a reputable printer in Basle reprinted them. Angrily, Erasmus threatened the printer in Basle with enlarging his book so as to make the former version void and, by the same token, the publication by the Swiss printer, Froben, worthless (Gieseke 26). If a publisher could not reach an explicit agreement with an author which guaranteed that the author would not substantially change his work and thereby create the need for a new copyright, it was the publisher who was defenceless, not the author. This could hardly show more clearly the Stationers' Company's recognition of the spiritual control of the author over his own work.

The case of Samuel Daniel's *Civil Wars* exemplifies several aspects of the author's rights. On April 20, 1612 was entered to Nicholas Oakes "A booke called A brevyary of the history of England the 3 first bookes by SAMUELL DANYELL." (Arber III.481). This was crossed out by order of the Court of Assistants on June 22, 1612. Obviously Daniel had objected, for on June 27 we find the following entry in the name of Simon Waterson, his usual publisher, "A booke called *The first parte of the History of England* by SAMUEL DANYELL." In Court Book C we find under the date of January 2, 1613:

Mr. Samuel Daniel yt is agreed that he shall deliv' into the hall 200 perfect bookes whereof 40 be in thandes of wydowe Crosley of Oxon whiche the Companie shall receive of her as parcell of the said 200 bookes. And also that he shalbe presently paid for the said 200 bookes xxli. Also he promiseth that yf he mend or add any thing to the book thereafter. That then yt shalbe prynted according to the orders of the Companie. (57)

First, as has already been shown by the example of Thomas Farnaby (above), the stationers allowed the author to choose his own publisher; which choice by Daniel caused the cancellation of Oakes's copyright (Oakes had printed the work). Second, the Stationers' Company bought 200 copies of Daniel's work and paid him £20 for it, so that it was now the Stationers' Company which held the copyright as a corporation. Third, in order that they not lose the copyright through revision of the work, an explicit statement had to be written into the Register that if Daniel "mended or added anything" later, the book would be printed according to the rules of the stationers, that is, with entry in the Register and the publisher's copyright granted by means of this entry. Which also means that, in spite of having sold the work to the Stationers' Company, Daniel retained the right of revision, and that the right of this revision was recognized by the stationers as a new work by decision of the author as the creator of the work.¹

From the foregoing and many other similar examples, too many to reproduce here, it

seems obvious that the condition of the author's consent could take the form either of a memorandum under the entry or as a note in the margin. It could also be integrated into the entry proper as in the case of a Latin work by Joseph Hall on December 9, 1611. Entered to Samuella Macham was, first, the Latin work and, in a second entry, the copyright "of the same booke to be printed in Englishe yf the Author please to have it translated" (Arber 3: 473).

Author's rights

"Of the two basic types of rights, property rights and personal rights, it is the former which the stationers most clearly and obviously recognized in the author" (Patterson, 67).

The two types of rights are not always clearly distinguished and much confusion has been caused by their being blurred. The conclusion that authors were without any rights until the Statute of Anne in 1709 is generally drawn from the fact that they did not have the kind of property rights given them by the modern copyright law. It does not mean, however, that the Stationers' Company recognized no property rights at all. Examples of payment or compensation to the author have been mentioned above. "The basic aspect of the property right was the right of the author to be paid for his work, and the evidence indicates that the stationers recognized this right from the beginning" (67). In fact, writes Patterson, quoting Pollard, piracy was mainly restricted to the dead and to those who, because of their rank, could not take money. However, the Stationers also recognized a property right beyond the mere sale of the manuscript, or rather: a right which partakes of both property and personal rights:

The right of an author to receive payment for his works is such an elementary right that the major point can be easily overlooked. It was necessary for a stationer *to obtain the author's permission to publish his work, and thus for copyright*, even though the copyright was granted by the Stationers' Company. (69, emphasis added)²

As for those authors most victimized by piracy (dead men and men of rank) the dead could hardly refuse, withdraw or suspend their permission and although men of rank certainly could, other concerns usually worked to prevent them.³ Although on principle, according to the copyright regulations established by the Stationers' Company, *de jure* men of rank could take money and prevent unauthorized publication of their literary work circulating in manuscript, *de facto*, it rarely happened.

The answer of the Stationers' recognition of the author's creative rights is not so readily apparent as the answer to the problem of his property rights. . . . But just as clearly, the stationers respected the unique interest an author has in his works,

even though they perhaps did so as a matter of self-interest. (Patterson 71)

Contrary to the short-sighted opinion of some that it would not have been in the interest of the stationers to pay the author or to respect his rights, it should be clear that, on the contrary, their long-term and fundamental interest lay in respecting authorial rights. When early in the sixteenth century men like Erasmus and Luther castigated surreptitious printing, or rather reprinting, it was not to protect the author of a work, but rather its original printer or publisher. While the original printer had to invest a great deal, those who merely reprinted the work, having to invest less, were able to sell it at a lower price if they chose, thus outdoing the first printer and ruining his chance to make a profit. To remedy this inequity it was necessary to define a legal basis on which to ground the exclusion of other printers from reproducing the same work. Thus we can see that a printer would hardly be justified in urging a prohibition against other printers to prevent them from appropriating the work he had printed first if he himself were in the habit of overreaching his authors in much the same way (Bappert 165). It was along these lines that patentees in 1584 were arguing against efforts by less privileged printers seeking to abolish their privileges, as they pointed out their costs:

And further if privileges be revoked no bookes at all shoulde be prynted, within shorte tyme, for commonlie the first prynter is at charge for the Authors paynes, and somme other suche like extraordinarie cost, where an other that will print it after hym, commeth to the Copie gratis. (Arber 2: 805)

It was along these same lines that the stationers were arguing in April 1642 as they petitioned Parliament, which was considering abolishing the Stationer's monopoly. To do away with the regulation of the printing trade would lead to anarchy, cause many printers to leave the business for fear of the uncertain situation, thereby causing great damage to education and discouraging authors from writing some works that could be reprinted by any printer at low cost (Arber I.587). And again about seven decades later when the monopoly of the small circle of booksellers was threatened once more by the Statute of Anne:

After the expiration of the twenty-one-year period of grace provided for the Stationers' copyright by the Statute of Anne, the booksellers sought to perpetuate their monopoly. First, they lobbied for new legislation from Parliament, and failing in this, they resorted to litigation. Their argument in the courts was simple and appealing; the author, they said, has a perpetual common-law copyright in his work, based on his natural rights, since he had created it. Having this statutory copyright, the author could assign it to the book-seller. (Patterson 15)

Despite the self-interested nature of the argument, it reflected the common practice of the Stationers' Company over the whole period of its existence.

To the question of whether the stationers recognized the author's creative rights and if such rights were compatible with the interest of the stationers, Patterson writes:

The answer is yes, for the stationer's copyright was literally a right to copy, that is, a right to reproduce a given work for sale. The basic purpose of this right was to provide order for the book trade by establishing a method to enable publishers to have the exclusive right to publish a work without competition as to that work. And the sanctions for copyright came from the company, for it was the company, not the author, which granted the copyright. From the stationer's viewpoint, copyright was protection against rival publishers, not against authors, and the existence of continuing rights of the author in his work was consistent with the existence of the copyright in the stationers'. (71)

The stationer's copyright was not a modern copyright either. It had its rationale and its limit in the rights of the author, the creator of the work. The recognition of these rights of the author was essential for the regulation of the trade. It could not be restricted to a particular class of books or authors. Only in the case of a dead author or of a member of the ruling elite did these rights become derelict in fact, if not in intent. This explains Pollard's famous remark on illegitimate appropriation of literary rights, both property and creative rights. Patterson concludes:

Of two points about the author's conveyance, we can be certain: it was not a conveyance of copyright, but it was more than the sale of a manuscript. . . . The author's conveyance was in effect a *negative* covenant, that is, a contract *not to object to the publication* of the work, rather than a contract granting a right to publish it. (73, emphasis added)

The formulation may seem casuistic. What it amounts to is that the author, as has been seen, could prevent the printing of his work. This right was recognized by the Stationers' Company. Recognition of that right was an essential condition of the exclusivity of the copyright granted by the company to an individual publisher, a basic element of the organisation of the printing trade.

Patterson did not point to an ordinance of the Stationers' Company which Arber tentatively dates to 1588, though it supplies further evidence for his thesis that the rationale for *the exclusivity of the publisher's copyright was grounded in the creative right of the author*.

The contest over privileges

In the late 1570s and throughout the 1580s the Stationers' Company was facing a con-

trov­ersy among its mem­bers at some times leading up to outright rebellion. At the heart of the con­tro­versy were priv­ileges or patents granted by the Crown to certain stationers. The most con­tested were, of course, patents for the best-selling items: the ABC and Catechisms (John Day), Almanacs and Prognostications (James Roberts and Richard Watkins), Bibles and Testaments (John Juge), law books (Richard Tottel), Latin books used in the grammar schools (Thomas Marsh), some Latin books and the New Testament (Thomas Vautrollier; later Richard Field), psalters, primers, and prayer books (William Serres), grammars (Francis Flowers) and music books (William Byrd, the composer, who had been granted a royal patent for music books) (15). (The latter two were not mem­bers of the Stationers' Company.)

The competitive edge such patents gave the tenants over other stationers transcended the boundaries of the privilege as such:

A profitable copyright enables one to purchase other copyrights and since power breeds power, it is not difficult to see how perpetual copyright could enable a small group to establish their control over the trade by controlling the most profitable copyrights. (90)

But not only did the printing monopoly of such bestsellers deprive other stationers from present and future income and working opportunities, the problem was aggravated by the large number of apprentices who were “freed” of the Company who became journeymen between 1571 and 1576 (92); and, additionally, by such illicit practices as the employment of strangers or apprentices in order to further lower expenses. Ensuring a fair distribution of trading opportunities among its members was the very *raison d'être* of the corporation and, although the privileged printers were among the most influential of its members, the Company as a body had to take measures to remedy the situation or, at least, to show that it was prepared to do so.

In October 1577, the Court of Assistants, the Company's leading body, ordered that bookbinders should give priority of employment to English people over strangers and should work promptly (Court Book B 3), an indication that privileged stationers were sometimes accumulating tasks which they were not able to carry out within a reasonable term. On January 27, 1578 was recorded a petition by the poor men of the Company for relief (93). Among the claims we find that the Company should take the necessary steps to provide more work, that foreigners or people not belonging to the company not be given work, and that the number of apprentices attached to one stationer be limited so as to prevent an excessive employment of apprentices at the expense of journeymen.

Article 5 of the Ordinance of 1588

It is in this context that we consider an undated ordinance of the Stationers' Company, one Arber tentatively dates to the spring of 1588 (2: 43). It is easy to see why Arber places it in the 1580s, as it steps up the measures against monopolizing practices, though it is not entirely clear why exactly in 1588. Despite its obvious significance, the document has hitherto received little attention. It is composed of five articles; the first paragraph prohibits keeping forms of letters standing; the second imposes some limits on the number of printed books at each impression; the third regulates the employment of apprentices instead of workmen; the fourth defines an exception to the former; and the fifth and last paragraph reads:

5. And lastly that yf it shall happen at any tyme hereafter the copy [i.e. a publication enjoying what was then roughly equivalent to our existing copyright protection] of any man to be out of prynt and that after the warninge shalbe gyven him and registred in the hall book at a Court of Assistentes for the repring thereof, the owner of the same doo not within Sixe monethes (after such warning and regestring in the said book) repring or begyn to repring the same and procede orderly with the ympression to ye finishyng thereof as he conveniently may *so that the Aucthor of any suche copy be no hinderance thereunto* That then it shalbe Lawfull for the Journemen of the said Company to cause and gett any suche book or copy to be printed to ye use of ye Company during ye Impression then to be printed of ye same copy. Saving and allowinge to the owner of the copie a ratable parte with them in ye same Impression in profitt and charge as yt shall fall out to every severall partener in every suche Impression According to the order and discretion of the Master, and Wardens of the Company for the tyme beyng. (Court Book B 3, emphasis added)

The six month limit

When a copy was out of print the Court of Assistants could order the copyright owner to reprint it. If after six months the copyright owner had not yet or had only hesitatingly started printing, the company was entitled to allow one impression of that copy to another stationer. The copyright ownership continued; it was provisionally suspended for only one impression and the owner was allowed a share fixed by the wardens. However, *if the author refused his consent, the Company could not allow this, by its own statutory rules*. Here we have the only direct statutory evidence that the Stationers' Company recognized the author's con-

sent as an essential condition of reprinting.⁴

As the purpose of the ordinance was to limit monopolizing practices it is only logical to extend the meaning of "out of print" to include "not yet in print." To monopolize copies by delaying the first printing would have the same effect as to delay the reprinting of a sold-off first edition. Empirical evidence of this may be found in the Stationers' Register and the Court Books. In an entry of December 5, 1606 we find the clause: "PROVYDED that this cotype must be prynted before Mydsommer next" (Arber 3: 334). This is somewhat longer than six months, but given the fact that Elizabethans were used to fix time limits to the nearest holiday, six months seems to have been a standard deadline.

A record in Court Book C of December 5, 1625 states:

This day one Mr Morgan complained that Mr Okes hath had a booke called *Speculum animæ* five years to print and hath done onely sixe sheetes. It is ordered that the said Nich. Okes shall bring them p̄ntely [presently] to the hall and goe forward in printing before Candlemas next & finish the booke before Easter terme next otherwise he is to loose the said Copie and so much of it as shalbe then printed: Nich. Okes. (191)

The Easter term was probably the closest to the end of a six-month- period. A second Court Book record is dated May 6, 1631:

This day Mr Farnaby came to complain of Mr Stansby for not printing Martial & Juvenal & Persius. And Mr Stansby has promised that they shalbe printed by Allhallowtide next [one week short of six months]. (227)

As a corollary to that inhibitory clause in Paragraph 5 of this Ordinance and contrary to what is generally thought, simply to enter a work in the Stationers's Register did not provide an absolute guarantee against its being printed by another stationer than the one who had entered it and had thereby acquired the copyright. If the printer delayed the printing over a period estimated as unreasonably long by the Stationers' Company, Paragraph 5 of the Ordinance of 1588 entitled the Company to allow a single impression to another stationer.

In other words, a printer could not simply secure the copyright of a work and then delay the printing. Entry alone did not suffice; if there was to be a delay, a clause was required explaining to the wardens and the Court of Assistants that *the author had not yet consented* to printing or reprinting it and that he had made it conditional upon the delivery of his consent. A clause similar to that in the above quoted entry of Joseph Hall's Latin work on December 9, 1611: "to be printed in Englishe yf the Author please to have it translated" would have been needed. Such a clause could have been: "if the Author please to have it printed." Entries making a reprint conditional upon prior consent of the author did

protect against the application of Paragraph 5 of the Ordinance of 1588, for example the above-mentioned memoranda excluding reprinting without the consent of the author.

The three authorities

The more general conclusion to be drawn is that for a book to be allowed for printing three sources of authorities existed, each of which had to give its approval. The first authority was the Episcopal censorship, generally named first in the entries in the Stationers' Register and always marked out in Arber's transcription by the use of capitals. Either the work in question had been submitted to and was allowed by the censors before submitting or it was not. If it was not, the wardens could either require that it be submitted before printing, without any consequences for the copyright, or license it, grant the copyright, without requesting prior approval by the censors, in the terminology of the register either with or without "further aucthority," "lawful aucthority," "better aucthority," etc.

The second authority was that of the wardens, or of the Court of Assistants if it happened to hold a session on that particular day. The wardens could refuse the licence if another stationer had already acquired the copyright of the same work. If it was not immediately clear whether such a copyright existed, we find, in various forms, a conditional clause such as "*salve juro cuiuscumque*" or "provided that it is no other man's copy" or some equivalent formula.

If the printing was made conditional upon none of the former authorities it is to the third source of authority, the author, that we must look. As is the case for several entries, this was sometimes explicit, sometimes implicit—or, perhaps we should say, less explicit.

Enter Shakespeare

Fortunately, we have at hand three entries of plays by William Shakespeare to demonstrate at least two and possibly all three sources of authorities. The first is the entry of *Hamlet*:

12 July 1602

James Robertes. Entred for his Copie under the handes of master PASFEILD
and master waterson warden A booke called '*the Revenge of HAMLETT Prince
Denmarke*' as yt was latelie Acted by the Lord Chamberleyne his servantes.
(Arber 3: 212)

The play was approved by the Episcopal censor Zachariah Pasfield, a prebendary of St. Paul's, before application for copyright to the wardens. Not so another play:

7 February 1603

master Robertes Entred for his copie in full Court holden this day to print when he hath gotten sufficient aucthority for yt, The booke of 'TROILUS and CRESSEDA' as yt is acted by my lord Chamberlens Men. (226)

The full court, that is, the Court of Assistants instead of the wardens (who were members of the court) required that Roberts ulteriorly fulfill the condition he had fulfilled previously in the case of *Hamlet*, here expressed by the adjective "sufficient" instead of "better" or "further." The third case:

xxijo Iulij 1598

James Robertes. Entred for his copie under the handes of bothe the wardens, a booke of the *Marchaunt of Venyce* or otherwise called *the Iewe of Venyce*. Provided that yt bee not printed by the said James Robertes; or anye other whatsoever without lycence first had from the Right honorable the lord Chamberlen. (122)

Submission to a censor had not taken place, nor was it required by the wardens, perhaps because *The Merchant of Venice* was sufficiently known for the wardens not to foster any doubts as to its admissibility and no proviso was expressed as to a possible existing copyright of another stationer.

It would be logical to conclude that the required licence in question was nothing else than the licence or permission of the author. Moreover, that the clause "that yt bee not printed by the said James Robertes; or anye other whatsoever"—was a reference, recognizable to the wardens, that the author's consent, the absence of authorial "hindrance," to use the term in Paragraph 5 of the Ordinance of 1588, had, precisely, the purpose of reminding the wardens that this paragraph was not applicable. In any other case, it would be superfluous. Had Roberts wanted simply to protect the play against piracy by entering it, such a proviso would have been senseless. But if Roberts intended to wait—as he actually did—the entrance became subject to an application of paragraph 5, or rather would have become so had not the sole possibility to prevent that application, namely the missing consent of the author, been expressed in the entry itself. Thus, with the first two authorities bypassed, logic requires that we regard "the Lord Chamberlain" as the third authority, namely *the author*.

The question of who was meant by "the Lord Chamberlain" and whether or not any other interpretation is possible than that he was referred to in the above entry as the author of *The Merchant of Venice*, will be examined in some depth in Part Two of this article, to be published in a subsequent edition of THE OXFORDIAN. _____

End Notes

- 1 Nevertheless, in 1618 the copyright of the Stationers' Company lapsed when Daniel obtained a privilege for the whole of the work.
- 2 See cases of Farnaby, Downam, etc. Paterson shows further cases from Court Book C (245, 310).
- 3 A proper examination of the reasons why custom prevented noblemen from publishing their own works while still alive (or at least, publishing them under their own names) requires a separate treatment at another time. Sociologists like Max Weber (*Economy and Society*) or Norbert Elias (*The Courtly Society*), historians like Marc Bloch (*The Feudal Society*) or Ferdinand Braudel (*The Mediterranean World*), Theodor K. Rabb (*Enterprise and Empire: Merchant and Gentry Investment in the Expansion of England, 1575-1630*), etc. have discussed this fundamental characteristic of aristocratic societies in general and the western societies of early modern times in particular. Contemporary authors dealing with it are: G. Muzio (*Il Gentiluomo*, 1571) and Sabba de Castiglione (*Ricordi Overo Ammaestramenti*, 1562).
- 4 Compare Kirschbaum: "And, of course, there is no evidence that the Stationers' company ever engaged in the interests of the author against the stationers to decree that the former's consent was necessary before any of his works could be printed" (201).

Works Cited

- Arber, Edward. *A Transcript of the Registers of the Company of the Stationers, 1554-1640 A.D.* 5 vols. London: 1875.
- Bappert, Walter. *Wege zum Urheberrecht [Ways to Copyright]*. Frankfurt am Main: Vittorio Klostermann, 1962.
- Gieseke, Ludwig. *Vom Privileg zum Urheberrecht: die Entwicklung des Urheberrechts in Deutschland bis 1845, [From Privilege to Copyright: The Development of Copyright in Germany till 1845]*. Göttingen: Ludwig Schwartz, 1995.
- Greg, W.W. and E. Boswell, eds. "Court Book B." *Records of the Court of the Stationers' Company, 1576-1602*. London: The Bibliographical Society, 1930.
- Jackson, William A., ed. "Court Book C." *Records of the Court of the Stationers' Company, 1602-1640*. London: The Bibliographical Society, 1957.
- Kirschbaum, Leo. *Shakespeare and the Stationers*. Columbus: Ohio State UP, 1955.
- Lee, Sidney. *A Life of William Shakespeare*. London: 1899.
- Matus, Irvin Leigh. *Shakespeare, in Fact*. New York: Continuum, 1994.
- Miller, Edwin Haviland. *The Professional Writer in Elizabethan England*. Cambridge, MA: Harvard UP, 1959.
- Patterson, Lyman Ray. *Copyright in Historical Perspective*. Nashville: Vanderbilt UP, 1968.
- Pollard, A.W. *Shakespeare's Fight With the Pirates and the Problems of the Transmission of His Text*. Cambridge: CUP, 1973.