ARTICLE

THE STATUTE OF ANNE AND THE GREAT ABRIDGEMENT SWINDLE

Ronan Deazley[*]

This special edition of the *Houston Law Review* has been commissioned with a view to marking—and celebrating—the tercentenary of the Statute of Anne 1710.[1]

There are many things that we know about the Statute of Anne with reasonable certitude. We know that it was prefaced by a period of sustained lobbying on the part of the book trade. For example, a number of influential members of the book trade submitted a petition to Parliament on December 12, 1709, complaining about the unauthorised reprinting of books "to the great injury of the Proprietors, even to their utter Ruin, and the Discouragement of all Writers in any useful Part of Learning."[2] We know that on January 11, 1710, a bill was introduced in the House of Commons in response to this petition and that less than three months later, on April 5, 1710, the act that is now commonly referred to as the Statute of Anne was passed.[3] We know that the Act that was passed on April 5th differed in many respects from the bill that was first introduced in January 1710.[4] We know, for example, that the bill "for securing the Property of Copies of Books to the rightful owners thereof" became an act "for the Encouragement of Learning, by Vesting the Copies of printed

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* Glasgow Law School, University of Glasgow. I am grateful to the participants of *The ©©© Conference: Celebrating Copyright's tri-Centennial* (a Symposium organized by the University of Houston Law Center's Institute for Intellectual Property and Information Law) and Isabella Alexander for their comments upon an earlier draft of this paper. The usual conditions apply.

1. Statute of Anne, 1710, 8 Ann., c. 19.
2. 16 H.C. JOUR. (1709) 240.
3. *Id.* at 260, 396.
4. 1 WILLIAM F. PATRY, COPYRIGHT LAW AND PRACTICE 11 & n.24 (1994).

Books in the Authors, or Purchasers, of such Copies."[5] And there were many other changes besides.[6] We also know that the Statute of Anne was not exactly a model of legislative clarity. The registration provisions provide a good example of the poor quality of drafting that might be said to characterize the Act. To ensure that the Stationers' Company was not able to deny anyone the benefit of the legislation, a clause was introduced in the House of Commons to the effect that if the clerk of the Company should refuse to register a work in accordance with the requirements of the Act, then the person who was refused registration would nevertheless be protected under the Act by publicly advertising that registration had been denied. However, in its final version, the Act actually conferred the remedy of securing protection by way of public advertisement upon the person *refusing* registration—that is, the clerk of the Company—rather than the person who had been *refused*.[7] This nonsensical outcome says little for the exacting nature of parliamentary scrutiny at this time.

There are, however, many things that we don't—or can't—know about the Statute of Anne. This Article considers one of those things: the extent to which the Act was intended to regulate the unauthorised production of derivative versions of published works (in this case, abridgements) if indeed it was intended to regulate the production of such works at all.

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It is well known—by historians of copyright in Britain at least—that the legality of abridging a copyright-protected work was first authoritatively pronounced upon in *Gyles v. Wilcox* (1741).[8] *Gyles* concerned an abridgement of a two-volume edition of Sir Matthew Hale's *Pleas of the Crown* first published by Fletcher Gyles, Thomas Woodward, and Charles Davis in July

5. *See* 16 H.C. JOUR. (1709) 260 (referencing the bill); 16 H.C. JOUR. (1709) 369 (referencing the enacted act).

6. For details of the various ways in which the bill was amended during its passage through Parliament, see RONAN DEAZLEY, ON THE ORIGIN OF THE RIGHT TO COPY 38–43 (2004).

7. Statute of Anne, 1710, 8 Ann., c. 19. For further commentary, see DEAZLEY, *supra* note 6, at 47–48.

8. Gyles v. Wilcox, (1741) 26 Eng. Rep. 489 (Ch.) 490; 2 Atk. 141, 143. For details, the original transcripts of this document are located at The National Archives at Kew, London (TNA), C33/375/274 and C11/1828/27, m.1–4. *See also* Harry W. Roberts, Jr., *The Law on Abridgement of Copyrighted Literary Material*, 30 KY. L.J. 297, 298 (1942). For a previous discussion of *Gyles* by this author, see Ronan Deazley, *Commentary on* Gyles v. Wilcox *(1741)*, PRIMARY SOURCES ON COPYRIGHT (1450–1900) (L. Bently & M. Kretschmer eds., 2008), http://www.copyrighthistory.org/cgi-bin/kleioc/0010/exec/ausgabeCom/%22uk_1741%22.

1736.[9] The litigation commenced in November 1737 when Gyles submitted his bill of complaint to the Court of Chancery about a work that was being prepared for publication by John Wilcox under the title *A Treatise of Modern Crown Law*. Before the resolution of the case, other bills of complaint that touched upon the question of abridgement were also lodged with the Chancery Court, in both *Austen v. Cave* (1739)[10] and *Read v. Hodges* (1740);[11] however, neither action elicited a meaningful ruling

9. *Gyles*, 26 Eng. Rep. at 489; 2 Atk. at 141; MATTHEW HALE, HISTORIA PLACITORUM CORONÆ: THE HISTORY OF THE PLEAS OF THE CROWN (Savoy, Gyles, Woodward & Davis 1736).

10. In *Austen v. Cave* (1739), the proprietors of Dr. Joseph Trapp's book, *The Nature, Folly, Sin and Danger of Being Righteous Overmuch*, complained that Edward Cave was publishing the whole of their work by instalment in the *Gentleman's Magazine*. Joseph Trapp, *The Nature, Folly, Sin and Danger of Being Righteous Overmuch*, 9 GENTLEMAN'S MAG. 288, 288–92 (1739). Cave, who has generally been credited with "inventing" the magazine format, entered a demurrer and answer to Austen's bill of complaint, denying that he ever intended to print Trapp's work in its entirety. Rather, he explained that for "several years last past" he had printed in his magazine "short Extracts, parts of Books, Pamphlets or other writings newly Published on Various subjects" without any intent "to prejudice the Proprietors" of those works. Austen v. Cave, TNA C11/1522/3. Indeed, he continued that the publication of such extracts "have many times if not mostly been agreeable to the Proprietors of the Books," and added that "the same hath never been Complained of by them as being contrary to the said Act of Parliament or detrimental to them." *Id.* As to the extent of his use of Austen's work, he set out that, while Trapp's book ran to around sixty-nine pages, he had only drawn upon thirty, and even then "several pages" were "wholly omitted" as well as "great parts of other pages" so that the material used occupied only three and a half pages of his magazine. *Id.* Such use, he argued, was never intended to be prevented by the Statute of Anne (1710), as to hold otherwise would be "greatly prejudicial to the spreading of knowledge and learning." *Id.* at TNA 11/1552/3. Lord Chancellor Hardwicke decided that Cave's demurrer was insufficient, and Cave was given additional time to resubmit his pleadings. No such pleadings were ever submitted. The only printed report of the case records that Lord Hardwicke rejected Cave's suggestion that the 1710 Act did not extend to the use of extracts from a work, commenting that "[i]t is not material what Title you give the Book, nor whether you print all at once or not." Injunction, 22 Eng. Rep. 440 (Ch.) 440–41; 2 Eq. Ca. Abr. 522, 522 (located at TNA 33.373/41, 224, 415, 535). This discussion is printed in full at *Primary Sources on Copyright (1450–1900)*. Deazley, *supra* note 8. The original *Austen v. Cave* documents can be located at TNA, C33/371/493, 535, 586, C33/373/41, 224, 415, 535, and C11/1552/3, m.1–2. For a recent discussion of this case, see Isabella Alexander, *All Change for the Digital Economy: Copyright and Business Models in the Early Eighteenth Century*, 25 BERKELEY TECH. L.J. (forthcoming 2010).

11. In *Read v. Hodges* (1740), James Read had published a three-volume edition of John Motley's work *The History of the Life of Peter the First Emperor of Russia*, before James Hodges published the work in one volume (*The Life and Reign of the Czar Peter the Great*). Read filed a bill of complaint with the Court of Chancery claiming that Hodges's work was "really and truly the very same" as his own, and that it did not "materially differ" from his own work "except that some of the publick memorials and Copies of Records are left out and omitted . . . merely with Intent and Design to reduce the bulk of the said Book . . . so that [he] might be able to Sell the same at an under Rate." Read v. Hodges, TNA, C11/538/36. On April 29, 1740, Hodges submitted an answer responding to the bill of complaint in three principal ways. First, Hodges disputed that the plaintiff has been to "very great Expence, Industry and Pains" in preparing the book, given that a:

from the Lord Chancellor.[12] In *Gyles*, however, Lord Chancellor Hardwicke set out a general point of principle concerning the legality of abridgements in the following terms:

> Where books are colourably shortened only, they are undoubtedly within the meaning of the act of Parliament, and . . . a mere evasion of the statute, and cannot be called an abridgement.
>
> But this must not be carried so far as to restrain persons from making a real and fair abridgement, for abridgements may with great propriety be called a new book, because not only the paper and print, but the invention, learning, and judgment of the author is shewn in them, and in many cases are extremely useful . . . .[13]

Just over thirty years later, in *Strahan v. Newbery* (1774), Lord Chancellor Apsley followed suit, commenting that: "[T]he act of abridgement is an act of understanding, employed in carrying a large work into a smaller compass, and rendering it less expensive, and more convenient both to the time and use of the reader."[14] For Apsley, an abridgement was "not an act of plagiarism upon the original work, nor against any property of the author in it, but an allowable and meritorious work."[15]

> [G]reat Part of the said Book is transcribed from and composed of Several Publick Tracts, Memorials, and Translations of Papers . . . and particularly that no less than one hundred and eight Pages [of the third volume] are transcribed . . . with little or no variation of phrase from a Book published in . . . 1722 entitled The Present State of Russia.

Id. Second, he set out that he had "compiled, printed and published an Abridgement" of the plaintiff's work in which there was "not any one whole page of the complainants said Book transcribed . . . without variation or abridging the same." *Id.* Third, he argued that in any event his work was not the same work "but is of a different nature;" it was "in the nature of an abridgment." *Id.* He conceded that the two works must consist of the same "Matter and Substance" but continued that this "must be in the nature of things where an abridgment is fairly made." *Id.* An injunction was granted by Lord Chancellor Hardwicke "until the hearing of the Cause;" however, the matter progressed no further. *Id.* at TNA, C33/374/275, 299. This discussion is printed in full at *Primary Sources on Copyright (1450–1900)*. Deazley, *supra* note 8. The original *Austen v. Cave* documents can be located at TNA, C33/374/153, 250, 255, 275–76, 299 and C11/538/36, m.1–2. *See also* Alexander, *supra* note 10.

12. When *Read v. Hodges* was cited to Lord Hardwicke in the later case of *Tonson v. Walker*, he is reported to have commented that he had considered Hodges's publication "an evasive abridgment" and so had allowed the reinstatement of the injunction until hearing. Tonson v. Walker, (1752) 36 Eng. Rep. 1017 (Ch.) 1020; 3 Swans. 672, 679. However, in *Gyles* itself, Lord Hardwicke remarked that the decision in *Read* had been "upon a motion only, and at [the] time I gave my thoughts without much consideration, and therefore shall not lay any great weight upon it." *Gyles*, 26 Eng. Rep. at 490; 2 Atk. at 143.

13. *Gyles*, 26 Eng. Rep. at 490, 2 Atk. at 143.

14. Strahan v. Newbery, (1774) 98 Eng. Rep. 913, (K.B.) 913; Lofft 775, 775.

15. *Id.* at 913–14, Lofft at 775. For a useful discussion of the background to this case, and the decision itself, see Mark Leeming, *Hawkesworth's* Voyages: *The First*

Both *Gyles* and *Strahan* attracted much criticism throughout the latter part of the nineteenth century. George Ticknor Curtis, in 1847, rejected the jurisprudence of the English courts on this issue, contending instead that the exclusive right to print and publish a book included "the whole book and every part of it," as well as "the style, or language, and expression; the learning, the facts, or the narrative; the sentiment and ideas, as far as their identity can be traced; and the form, arrangement and combination which the author has given to his materials."[16] He continued: "These are, or may be, all distinct objects of the right of property; and in every work of originality, likely to be abridged . . . they are all important objects of that right."[17] Similarly, in 1870, the British copyright jurist Walter Arthur Copinger considered the principle established in *Gyles* to be "very unreasonable" and suggested that "[t]he law with reference to abridgements might . . . with justice receive some modification."[18]

These decisions also drew the attention of the author, playwright, and plagiarist Charles Reade.[19] In his 1860 work, *The Eighth Commandment*, Reade complained about a number of swindles by which authors were being deprived of their just deserts; these included: the adaptation swindle (concerning the publication of works in translation), the novel-dramatizing swindle, the drama-novelizing swindle, and the abridgement swindle.[20] That an author had no legal redress against another producing a fair abridgement of his or her work was, for Reade, "[m]onstrous, idiotic, heartless, illegal, and iniquitous."[21] As to *Strahan* in particular, Reade rejected it as an "idiotic and inhuman" decision and lamented that "[t]he property of authors

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'Australian' Copyright Litigation, 9 AUSTL. J. LEGAL HIST. 159, 159–63, 170–73 (2005). For another judicial pronouncement upon the legality of abridgement during this period, see *Dodsley v. Kinnersley*, (1761) 27 Eng. Rep. 270 (Ch.); Amb. 403.

16. GEORGE TICKNOR CURTIS, A TREATISE ON THE LAW OF COPYRIGHT IN BOOKS, DRAMATIC AND MUSICAL COMPOSITIONS, LETTERS AND OTHER MANUSCRIPTS, ENGRAVINGS AND SCULPTURE 273 (Boston, Charles C. Little & James Brown 1847).

17. *Id.*

18. WALTER ARTHUR COPINGER, THE LAW OF COPYRIGHT, IN WORKS OF LITERATURE AND ART 35–36, 101–02 (London, Stevens & Haynes 1870). Much of Copinger's commentary was influenced by, and at times directly lifted from, Curtis's treatise; for details, see Ronan Deazley, *Introduction* to WALTER ARTHUR COPINGER, THE LAW OF COPYRIGHT, IN WORKS OF LITERATURE AND ART, at iii, iii–xxiii (Law Book Exchange 2008) (1870).

19. For an account of Reade's plagiaristic activities, see ROBERT MACFARLANE, ORIGINAL COPY: PLAGIARISM AND ORIGINALITY IN NINETEENTH-CENTURY LITERATURE 130–57 (2007).

20. CHARLES READE, THE EIGHTH COMMANDMENT 116, 153 (Boston, Ticknor & Fields 1860).

21. *Id.* at 152.

is governed by judges' law, not by the Acts of the realm."[22] In short, for Reade, England was "an author-swindling nation."[23]

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Writing about the "history, law and practice of abridgments" in 1995, David Vaver remarks that "[e]ven after the first Copyright Act of 1710, British publishers frequently abridged one another's works without thinking to ask for anyone's permission."[24] Vaver's brief comment weighs heavy with presumption. It presupposes that the practice of abridgement was reasonably widespread in the early eighteenth century and, at the same time, presumes that the passing of the Statute of Anne might have had some bearing upon the unauthorised production of abridged versions of copyright-protected works. Read literally, the Statute of Anne provided protection only for the book in its entirety and not its constituent parts; but was it intended that the Act would render the production of unauthorised abridgements unlawful? In which case, should we interpret Reade's lament about the inadequacies of the existing judge-made law as an accusation of unwelcome judicial meddling with a statutory regime that was already fit-for-purpose?

The picture presented by William St. Clair's discussion of the publication of abridgements between the incorporation of the Stationers' Company in 1557 and the end of the nineteenth century differs considerably from that of Vaver. In the decades before 1600, St. Clair argues that anthologies, abridgements, and adaptations were frequently produced; whereas, between 1600 and 1774, there was a clamp-down within the book trade on each of these forms of derivative work. This clamp-down, he continues, remained in place until the decision of *Donaldson v. Becket* (1774),[25] after which there followed a flood of both verse and prose anthologies, as well as abridgements of classic works.[26] That is, by contrast with Vaver, St. Clair denies that the production of abridgements was widespread throughout either the seventeenth or the early eighteenth century, and he accords the Statute of Anne with no real significance in relation to the same.[27] However,

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22. *Id.*

23. *Id.* at 132.

24. David Vaver, *Abridgements and Abstracts: Copyright Implications*, 17 EUR. INTELL. PROP. REV. 225, 225 (1995).

25. Donaldson v. Beckett, (1774) 1 Eng. Rep. 837 (H.L.); 2 Brown. 129.

26. WILLIAM ST. CLAIR, THE READING NATION IN THE ROMANTIC PERIOD 66–83, 486 (hardcover ed. 2004).

27. *Id.* at 72–77.

St. Clair's account also begs another obvious question: if the decision in *Gyles* affirmed the legality of the production of "real and fair abridgements," why did that decision not lead to a flood of abridged texts as opposed to the decision in *Donaldson* over thirty years later?

Much of St. Clair's analysis turns upon the production of ballad versions of popular literary and dramatic works, the registration of which was prevalent in the late sixteenth century but scarce thereafter.[28] A re-appraisal of that particular body of evidence is beyond both the scope of this article and the expertise of this author. However, St. Clair also draws upon various instances of "corroborative historical documentary evidence" in this regard.[29] He notes, for example, that in 1631 Archbishop Laud refused to licence the printing of an abridgement of Foxe's *Book of Martyrs* on the basis that "abridgements, by their brevity and their cheapness, in short time work out the authors themselves,"[30] and that in 1633, a letter from Charles I was read to the Stationers' Court—on behalf of Adam Islip, Joyce Norton, and Richard Whittaker—prohibiting the printing of any abridgment or extract from John Gerard's *Herbal* (first published in 1597).[31]

Such corroborating evidence makes for fairly scant reading, and it is debatable as to whether it is sufficiently robust to substantiate St. Clair's assertion that by the 1630s "a regime to control abridgements was evidently fully in place."[32] Charles may have proscribed the printing of abridged versions of Gerard's *Herbal* but, equally, royal licences had been issued to endorse the abridgement of pre-existing works, as was the case with the 1621 grant to Helen Mason to print an abridgement of Foxe's *Book of Martyrs* compiled by her husband Thomas Mason,[33] and with Gilbert Diglen's 1624 abridgement of

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28. *Id.* at 72–75.

29. ST. CLAIR, *supra* note 26, at 72.

30. *Id.* at 498 (quoting Arnold Hunt, *Book Trade Patents, 1603–1640*, *in* THE BOOK TRADE AND ITS CUSTOMERS, 1450–1900, at 27, 33 (Arnold Hunt et al. eds., 1997)).

31. *Id.* (citing RECORDS OF THE COURT OF THE STATIONERS' COMPANY, 1602 to 1640, at 255 (William A. Jackson ed., 1957)).

32. *Id.* at 73. Adrian Johns is slightly more equivocal than St. Clair when he writes that during the seventeenth century the Stationers' Company's Court of Assistants "developed an elaborate practical taxonomy of similarities and differences between texts," and that "[a] book might be judged to offend if it constituted an 'epitiome,' an 'abridgment,' a 'translation,' or even a 'paraphrase' of another." ADRIAN JOHNS, THE NATURE OF THE BOOK 226 (1998).

33. Arnold Hunt, *Book Trade Patents, 1603–1640*, *in* THE BOOK TRADE AND ITS CUSTOMERS, 1450–1900, at 27, 28–29, 33 (Arnold Hunt et al. eds., 1997). About this privilege, Hunt writes: "Mason's edition, however, never appeared, perhaps because the

Camden's *Britannia*.[34] Moreover, there are many examples to be found of historical, religious, scientific, and literary texts published in abridged form throughout the latter half of the seventeenth century. These include, for example: Alexander Ross's *The Marrow of Historie,* condensing Walter Raleigh's *History of the World*;[35] Lawrence Echard's *An Abridgment of Sir Walter Raleigh's History of the World*;[36] *An Abridgment of Sir Richard Baker's Chronicle of the Kings of England*;[37] *The Poor Man's Help*,[38] which included an abridgement of John Pearson's *Exposition of the Creed*;[39] William Alingham's *Geometry Epitomiz'd*, which provided the reader with "a compendious contraction of the First, Third, Fourth, Fifth and Sixth Books of *Euclid*";[40] the abridgement of *The Works of the Learned and Valiant Josephus*, published by Abel Roper and Richard Basset in 1699;[41] Edmund Stacy's *The Whole Duty of Man, Epitomiz'd for the Benefit of the Poor*;[42] and a number of abridged treatments of English translations of *Don Quixote* by Cervantes.[43]

Stationers' Company bought the privilege in order to suppress it." *Id.* at 33. St. Clair's commentary upon this incident is as follows: "The granting of Letters Patent for abridgements, that is the attempted creation by the state of a whole new class of intellectual properties of which the state could sell franchises, is successfully resisted by the Stationers' Company." ST. CLAIR, *supra* note 26, at 498.

34. Hunt, *supra* note 33, at 33. Hunt does note, however, that "[t]he patent was never enrolled, but the book is probably to be identified with *The Abridgment of Camden's Britannia with the maps* . . . published by John Bill in 1626 [and dedicated to James], and Diglen presumably sold the sheets to Bill along with any privilege he may have obtained." *Id.*

35. ALEXANDER ROSS, THE MARROW OF HISTORIE, OR AN EPITOME OF ALL HISTORICAL PASSAGES FROM THE *CREATION*, TO THE END OF THE LAST *MACEDONIAN* WAR (London, John Stephenson 1650) (noting on the book's cover that the book was"[f]irst set out at large by Sir Walter Rawleigh And now Abreviated by A.R.").

36. LAURENCE ECHARD, AN ABRIDGMENT OF SIR WALTER RALEIGH'S HISTORY OF THE WORLD (London, Matthew Gelliflower 1698).

37. AN ABRIDGMENT OF SR. RICHARD BAKERS CHRONICLE OF THE KINGS OF ENGLAND (London, John Kidgell 1684).

38. HUMPHREY BRALESFORD, THE POOR MAN'S HELP (London, R. Clavell 1689).

39. JOHN PEARSON, AN EXPOSITION OF THE CREED (London, John Williams 1659). Pearson was the Bishop of Chester from 1672 until his death in 1686. Hugh de Quehen, *Pearson, John (1613–1686)*, *in* 43 OXFORD DICTIONARY OF NATIONAL BIOGRAPHY 324, 326–27 (H.C.G. Matthew & Brian Harrison eds., 2004).

40. WILLIAM ALINGHAM, GEOMETRY EPITOMIZ'D (London, J.M. & B.B. 1695) (noting his work was a comprehensive condensation of several books of *Euclid* in the Preface).

41. THE WORKS OF THE LEARNED AND VALIANT JOSEPHUS, EPITOMIZ'D FROM THE GREEK ORIGINAL (London, A. Roper & R. Basset 1699).

42. EDMUND STACY, THE WHOLE DUTY OF MAN EPITOMIZ'D FOR THE BENEFIT OF THE POOR (London, John Lawrence 1700).

43. Edwin Knowles discusses four different "short" versions of *Don Quixote*, including: a chapbook version (published in 1686) of Thomas Shelton's translation of *Don Quixote*; a much more lengthy abridgement (published in 1689) of John Philip's reworking

Albeit anecdotal, these examples might go some way to unsettling the strident nature of the analysis that St. Clair proffers (at least in relation to the late seventeenth century).[44] At the same time, they lend credence to the complaints that the bookseller John Dunton and the author Daniel Defoe had articulated prior to the passing of the Statute of Anne about the propriety of abridging published work.[45] Dunton complained in 1705 about the "army of Hackney Authors that keep their grinders moving by the travail of their pens."[46] He continued:

> These Gormandizers will eat you the very life out of a *Copy* so soon as it ever appears; for, as the times go, *Original* and *Abridgment* are almost reckoned as necessary as Man and Wife; so that I am really afraid that a *Bookseller* and a *good conscience* will shortly grow some strange thing in the earth.[47]

The previous year, Defoe had published his *Essay on the Regulation of the Press* in which he complained of two forms of "Press-Piracy."[48] One type of piracy concerned what we might ordinarily understand as the unauthorised reprinting of a work: "pirating Books in smaller Print, and meaner Paper, in order to sell them lower than the first Impression."[49] The second concerned unauthorised abridgements. In relation to the latter he complained that when:

> An Author prints a Book, whether on a Civil or Religious Subject, Philosophy, History, or any Subject, if it be a large Volume, it shall be immediately *abridg'd* by some

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of Shelton's translation (published in 1687); and a third, published in 1699, that once again drew primarily upon Shelton's original work. Edwin B. Knowles, Don Quixote *Abridged*, *in* 49 THE PAPERS OF THE BIBLIOGRAPHICAL SOCIETY OF AMERICA 19, 19–29 (1955).

44. Robert Mayo analyzes the reproduction of prose fiction in magazines and miscellanies in the second half of the eighteenth century. He writes that with a few notable exceptions "no book-length novels, neither older nor more recent works, were ever reprinted in the miscellanies after 1753." However, he continues: "But '*reviews*,' *epitomes*, *abridgments*, and *detached episodes* were widely recognized as effective substitutes that avoided the practical, as well as the legal, obstacles in the way of wholesale piracy. They are encountered everywhere in a great variety of hybrid forms, and they represent an important class of magazine fiction." ROBERT D. MAYO, THE ENGLISH NOVEL IN THE MAGAZINES, 1740–1815, at 235 (1962).

45. On Defoe's relationship with Dunton, see MAXIMILLIAN E. NOVAK, DANIEL DEFOE: MASTER OF FICTIONS 110, 259 (hardcover ed. 2001) (discussing Dunton's published references to Defoe).

46. 1 JOHN DUNTON, THE LIFE AND ERRORS OF JOHN DUNTON, CITIZEN OF LONDON 52 (London, J. Nichols et al. 1818) (1705).

47. *Id.*

48. DANIEL DEFOE, AN ESSAY ON THE REGULATION OF THE PRESS 20 (London, n. pub. 1704).

49. *Id.*

> mercenary Bookseller, employing a Hackney-writer, who shall give such a contrary Turn to the Sense, such a false Idea of the Design, and so huddle Matters of the greatest Consequence together in abrupt Generals, that no greater Wrong can be done to the Subject . . . .[50]

For Defoe, the right to abridge a work lay with the proprietor of the work (who, of course, was generally not the author of the work).[51] Defoe also returned to this point in the Preface to the *Second Volume of the Writings of the Author of the True-Born Englishman*, lamenting that "Piratick Printers or Hackney Abridgers fill the World, the First with spurious and incorrect Copies, and the Latter with imperfect and absurd Representations, both in Fact, Stile, and Design."[52] He continued: "'Tis in vain to exclaim at the Villany of these Practices, while no Law is left to punish them."[53]

In time, both piratical printers and hackney abridgers (to use Defoe's parlance) would set upon his most popular and enduring work: *Robinson Crusoe*.

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The adventures of *Robinson Crusoe* were first published, by William Taylor, in three separate volumes between 1719 and 1720.[54] The first volume, *The Life and Strange Surprising Adventures of Robinson Crusoe*, proved to be an enormous success, running to four editions within the first six months of publication.[55] Unauthorised editions appeared almost

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50. *Id.* Defoe continued: "[T]hus the sale of a Volume of twenty Shillings is spoil'd, by perswading People that the Substance of the Book is contain'd in the Summary of 4 [shillings] price, the Undertaker is ruin'd, the Reader impos'd upon, and the Author's perhaps 20 Years Labour lost and undervalued . . . ." *Id.*

51. Defoe states:

> [N]o Man has a Right to make any Abridgment of a Book, but the Proprietor of the Book; and I am sure no Man can be so well qualified for the doing it, as the Author, if alive, because no Man can be capable of knowing the true Sense of the Design, or of giving it a due Turn like him that compos'd it.

Id.

52. DANIEL DEFOE, A SECOND VOLUME OF THE WRITINGS OF THE AUTHOR OF THE TRUE-BORN ENGLISHMAN, (London, n. pub. 1705), *available at* http://gateway.proquest.com/openurl?ctx_ver=Z39.88-2003&xri:pqil:res_ver=0.2&res_id=xri:ilcs-us&rft_id=xri:ilcs:ft:ep2:Z000625564:0.

53. *Id.*

54. The three volumes were entitled: *The Life and Strange Surprising Adventures of Robinson Crusoe*; *The Farther Adventures of Robinson Crusoe*; and *Serious Reflections During the Life and Surprising Adventures of Robinson Crusoe*. WILLIAM LEE, DANIEL DEFOE: HIS LIFE, AND RECENTLY DISCOVERED WRITINGS, at xlii–xliii, 292–93, 299 (London, Hotten 1869).

55. H.C. Hutchins, *Two Hitherto Unrecorded Editions of Robinson Crusoe*, 8 LIBRARY 58, 58–59 (1928).

immediately in both London and Dublin,[56] while at the same time the work was serialized in newspapers.[57] The first abridged version of *Crusoe*, published by Thomas Cox, appeared just a few weeks after the publication of *The Life and Strange Surprising Adventures*.[58] When Taylor published *The Farther Adventures of Robinson Crusoe*—the second instalment of the *Crusoe* trilogy—he included an advertisement in the *St. James's Post* on August 7, 1719, warning against the "pretended abridgment" of the first volume.[59] He set out that Cox's edition "consists only of some scattered passages, incoherently tacked together, wherein the author's sense throughout is wholly mistaken, the matters of fact misrepresented, and the moral reflections misapplied."[60] "It's hoped" he continued "the publick will not give encouragement to so base a practice" before stating his intention "to prosecute the venders according to law."[61] One of Defoe's early biographers, Paul Dottin, writes that Defoe and Taylor "attempted to take legal action against these fraudulent practices, but, finding that they were getting nowhere with it, they gave it up."[62] Pat Rogers simply notes that Taylor began a suit in Chancery, the outcome of which remains unknown.[63] In fact, it seems unlikely that the threatened litigation was ever initiated; certainly no evidence has ever been found among the existing records that Taylor made good on his threat.[64]

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56. *Id.* at 58.

57. Pat Rogers, *Classics and Chapbooks*, *in* BOOKS AND THEIR READERS IN EIGHTEENTH-CENTURY ENGLAND 27, 31 (Isabel Rivers ed., 1982); *see* MAYO, *supra* note 44, at 58–59 (detailing newspapers that serialized *Robinson Crusoe*, starting in 1719); R.M. WILES, SERIAL PUBLICATION IN ENGLAND BEFORE 1750, at 27 (1957) (identifying the *Original London Post* as a newspaper where *Robinson Crusoe* was reprinted in "thrice-a-week portions").

58. Rogers, *supra* note 57, at 32.

59. 3 WALTER WILSON, MEMOIRS OF THE LIFE AND TIMES OF DANIEL DE FOE 433 (London, Hurst, Chance & Co. 1830).

60. *Id.*

61. *Id.* The preface to this work also lambasted the abridging of the first volume; it was:

> [A]s scandalous, as it is knavish and ridiculous; seeing, while to shorten the Book, that they may seem to reduce the Value, they strip it of all those Reflections, as well religious as moral, which are not only the greatest Beautys of the Work, but are calculated for the infinite Advantage of the Reader.

The Preface continued: "The Injury these Men do the Proprietor of this Work, is a Practice all honest Men abhor; and he believes he may challenge them to shew the Difference between that and Robbing on the Highway, or Breaking open a House." DANIEL DEFOE, THE FARTHER ADVENTURES OF ROBINSON CRUSOE, at A2 (London, W. Taylor, 3d. ed. 1722).

62. PAUL DOTTIN, THE LIFE AND STRANGE AND SURPRISING ADVENTURES OF DANIEL DEFOE 202 (Louise Ragan trans., Octagon Books 1971) (1929).

63. Rogers, *supra* note 57, at 32.

64. I am indebted to Tomas Gomez-Arostegui for his extraordinary work in this area. For further details, see H. Tomas Gomez-Arostegui, *Register of Copyright Infringement Suits*

Cox's edition was an abridgement of Defoe's first volume only. The first work to abridge all three volumes of the *Crusoe* saga (within one text) appeared in 1722, printed by Edward Midwinter, and sold by Arthur Bettesworth, John Brotherton, William Meadows, and Matthew Hotham.[65] As Rogers notes, Midwinter et al. were "none of them fly-by-night operators or fringe publishers" but rather "all figures of substance in the trade," a fact which, for Rogers, suggests that "they considered themselves to possess a defensible right in law to issue abridged editions."[66] The 1722 abridgement was itself reissued a number of times—in 1724, 1726, and 1733—before an even more attenuated abridgement appeared in 1734 (now only 154 pages in length): an "Epitome" of the work "contracted into as narrow a Compass as possible."[67] So far as we know, Cox only printed one edition of his abridgement. However, if *Crusoe* was such a popular and lucrative work, then the question begs as to why Taylor (and, after him, Woodward and Meads[68]) would allow these cheaper abridgements to go unchallenged.[69] St. Clair postulates that the Midwinter abridgement "was probably commissioned by the owners of the main text which, being three volumes long, [was] too long to be suitable for children's reading."[70] Henry Hutchins, on the other hand, writes "that the abridgment of 1722 was spurious there can be no question."[71] If Hutchins is right, then what, if

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& Actions from c. 1560 to 1800, OLDCOPYRIGHTCASES.ORG, http://www.oldcopyrightcases.org (follow "The attached PDF (v 1.0.7)" hyperlink) (last visited Nov. 11, 2010).

65. HENRY CLINTON HUTCHINS, ROBINSON CRUSOE AND ITS PRINTING, 1719–1731: A BIBLIOGRAPHICAL STUDY 129–30, 134 (1967). For a discussion of the various abridgements of Defoe's work produced at this time, see *id.* at 129–40.

66. Rogers, *supra* note 57, at 32.

67. HUTCHINS, *supra* note 65, at 129–37; DANIEL DEFOE, THE WONDERFUL LIFE AND MOST SURPRIZING ADVENTURES OF ROBINSON CRUSOE, at A3 (London, Bettesworth et al. 1737). Lovett suggests that this shorter abridgement was actually first published in 1724 (also printed by Midwinter). *See* LOVETT, *supra* note 54, at 7–8. There were other abridged versions of *Crusoe* published prior to the decision in *Donaldson v. Becket* (1774) including: VOYAGES AND TRAVELS: BEING THE LIFE AND ADVENTURES OF ROBINSON CRUSOE (1750); THE LIFE AND MOST SURPRISING ADVENTURES OF ROBINSON CRUSOE (Birmingham, Sketchley 1765); THE LIFE AND MOST SURPRISING ADVENTURES OF ROBINSON CRUSOE (Edinburgh, Alex M'Caslan 1768); THE WONDERFUL LIFE AND MOST SURPRIZING ADVENTURES OF ROBINSON CRUSOE (London, J. Fuller 1770); and THE LIFE AND MOST SURPRISING ADVENTURES OF ROBINSON CRUSOE (London, 10th ed. 1770). *See id.* at 11–17.

68. After Taylor's death in 1724, the copyright in the first two parts of *Robinson Crusoe* were sold in auction to Woodward and Mears (in 1726) for £30; the total amount paid for Defoe's entire back-catalogue came to £1,220. Terry Belanger, *Booksellers' Trade Sales, 1718–1768*, 30 LIBRARY 281, 295, 297 (1975).

69. The *Catalogue of Modern Books* lists the price for *Crusoe* in two volumes as five shillings whereas the price for the abridged version is two shillings and a sixpence. A COMPLETE CATALOGUE OF MODERN BOOKS 19 (London, n. pub. 1766).

70. ST. CLAIR, *supra* note 26, at 73 n.28.

71. HUTCHINS, *supra* note 65, at 135.

anything, does the absence of litigation over the Midwinter abridgement suggest? Does it suggest that members of the book trade had little confidence (or interest) in the legal mechanisms available to them for controlling the unauthorised publication and sale of their registered work? Should we surmise that, in an attempt to avoid costly and unpredictable litigation, the relevant parties negotiated a commercial settlement satisfactory to all concerned? Or, does it imply that Taylor considered (or conceded) that abridgements did not fall within the perimeters of the Statute of Anne?

When John Wilcox submitted his answer in response to Fletcher Gyles's bill of complaint, he argued that since the passing of the 1710 Act "several very valuable and learned works" had been "abridged and translated by other persons without the consent of the Authors or Proprietors of the Original works."[72] It had never been his understanding, he continued, "that such Abridgments or translations were within the words or meaning of the said Act of Parliament or were ever judged or considered so to be."[73] At least two other members of the book trade from this period had previously publicly articulated a similar belief: John Stone and Richard King. On October 28, 1726, *Gulliver's Travels* was first published, by Benjamin Motte, in two octavo volumes at the relatively expensive price of eight shillings and sixpence.[74] As with *Crusoe*, *Gulliver* proved to be an immediate success and a further two editions appeared before the end of the year.[75] Again, as with *Crusoe*, *Gulliver* appeared in serial form in at least two newspapers,[76] was reproduced in at least one contemporary magazine,[77] and was the subject of a number of unauthorised editions.[78] When Stone and King

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72. Answer of John Wilcox, Gyles v. Wilcox, (1741) 26 Eng. Rep. 489 (Ch.); 2 Atk. 141 (located at TNA, C11/1828/27, m.4).

73. *Id.*

74. 3 IRVIN EHRENPREIS, SWIFT: THE MAN, HIS WORKS, AND THE AGE, 497 (1983). In January 1728, Benjamin Motte, *Gulliver*'s publisher, issued a two volume duodecimo edition, this time priced at five shillings. *Id.* at 499; A COMPLETE CATALOGUE OF MODERN BOOKS, *supra* note 69, at 19.

75. A BIBLIOGRAPHY OF THE WRITINGS OF JONATHAN SWIFT 192 (Arthur H. Scouten ed., H. Teerink rev., Univ. of Pa. Press 1963) (1937).

76. *Gulliver* was serialized in both *The Penny London Post* and *Parker's Penny Post*. H. TEERINK, A BIBLIOGRAPHY OF THE WRITINGS OF JONATHAN SWIFT 203–04 (Arthur H. Scouten ed., Univ. of Pa. Press 2d ed. 1963) (1937).

77. Ehrenpreis notes that "Abel Boyer summarized the book—with long stretches of direct quotation—in his monthly *Political State of Great Britain*." EHRENPREIS, *supra* note 74, at 502.

78. ZOHAR SHAVIT, POETICS OF CHILDREN'S LITERATURE 115–16 (1986); *see, e.g.*, JONATHAN SWIFT, TRAVELS INTO SEVERAL REMOTE NATIONS OF THE WORLD: BY CAPT. LEMUEL GULLIVER (London, n. pub. 1727); JONATHAN SWIFT, TRAVELS INTO SEVERAL

published their abridged version, they did so noting that "the Original . . . is generally complain'd of, as too expensive, and may, without Injury to the celebrated Author, be reduced into a narrower Compass"; their "faithful Abridgment" they hoped "would lessen the Expence, [and] might meet with Acceptance."[79] The practice of publishing abridgements was, they argued, typical "where the Books have been put at an extraordinary Price to the Publick, either from the Bulk of the Work, or the Art and Avarice of the Proprietor."[80] It was a practice that had been "follow'd, and, as it were, establish'd, by Custom and the Example of several considerable Men in the Bookselling Trade."[81] In support of their argument, they listed a number of notable works that had been published in abridged form, including John Locke's *Essay on Human Understanding*,[82] Camden's *Britannia*,

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REMOTE NATIONS OF THE WORLD, IN FOUR PARTS. BY LEMUEL GULLIVER (Dublin, Risk, Ewing, & Smith 1727).

79. JONATHAN SWIFT, TRAVELS INTO SEVERAL REMOTE NATIONS OF THE WORLD, BY CAPT. LEMUEL GULIVER, FAITHFULLY ABRIDGED, at A2 (London, J. Stone & R. King 1727) [hereinafter SWIFT (Stone & King 1727)].

80. *Id*. Another (form of) abridgement appeared in the guise of COROLINI DI MARCO, LEMUEL GULLIVER'S TRAVELS INTO SEVERAL REMOTE NATIONS OF THE WORLD, COMPENDIOUSLY METHODIZED FOR PUBLICK BENEFIT; WITH OBSERVATIONS AND EXPLANATORY NOTES THROUGHOUT (London, Curll 1726).

81. SWIFT (Stone & King 1727), *supra* note 79, at A2.

82. The abridgement of Locke's *Essay* was produced, with Locke's approval, by John Wynne. On January 31, 1695, Wynne wrote to Locke in praise of the book and suggested that:

> It would be very useful to publish an abridgment . . . to be put into the hands of our young men, and to be read and explaind to them instead of those Triffling and Insignificant Books, which serve only to perplex and confound, instead of enlightning and improving our Reasons.

Letter from John Wynne to John Locke (Jan. 31, 1695), *in* 5 THE CORRESPONDENCE OF JOHN LOCKE 260–62 (E.S. De Beer ed., 1979). Locke responded by suggesting that Wynne himself might prepare an abridgement, and Wynne willingly agreed. The abridgement was published by Locke's publisher, Awnsham Churchill, the following year, after Churchill had issued a third edition of the *Essay*. G.A.J. Rogers, *Introduction* to JOHN WYNNE, AN ABRIDGEMENT OF MR. LOCKE'S ESSAY CONCERNING HUMAN UNDERSTANDING (Thoemmes Antiquarian Books 1990) (1731). For the relevant correspondence between Locke and Wynne, see the letters printed in 5 THE CORRESPONDENCE OF JOHN LOCKE, *supra* at 260–62, 272–74, 318–19, 346–47. As to the success of the abridgement, Rogers writes as follows:

> That the *Abridgement* was a success is in part testified by its succeeding editions, not only in England but elsewhere. Wynne produced a second edition in 1700, which was based on the fourth edition of the *Essay* (also published in 1700) and thus included Locke's two additional chapters to that edition, 'Of the Association of Ideas' (Book II, Chapter 33), and 'Of Enthusiasm' (Book IV, Chapter 19). A third, corrected edition was issued in 1721, and a fourth, corrected edition in 1731. The fifth edition was published in London in 1737 and the sixth in Glasgow in 1744. Further editions were published in Glasgow in 1752 and in Edinburgh in 1770. The first American edition was published in Boston in 1794, nine years before the first American edition of the *Essay*, which was also published in Boston, in 1803. There was a French translation of the

Burnet's *History of His Own Times* (although Burnet himself abridged his own work), and, naturally, the adventures of *Robinson Crusoe*.[83]

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Were Wilcox, Stone, and King correct in their claims about the Statute of Anne and the ordinary practice of the book trade? Surprisingly little has been written on the use of abridgement as a literary or commercial practice in the Augustan period. Robert Mayo has, however, convincingly demonstrated that abridgements and "epitomes" of popular prose fiction were prevalent in English magazines, although his analysis of this phenomenon is necessarily confined to the second half of the eighteenth century.[84] That said, Mayo does suggest that between 1720 and 1740 weekly miscellanies provided readers with "an intermittent stream of fugitive odes and epistles, epigrams, verse tales, dialogues, scenes from new plays, accounts of celebrated criminals, and extracts and abridgments of pamphlets and new books."[85] He attributes the fact that "predatory" magazine editors would and could publish abridgements as well as serializations of popular works to the "permissive copyright legislation of 1710."[86] But is Mayo correct to describe the Statute of Anne as "permissive" in this regard? In other words, with respect to the question of unauthorised abridgement, how should we read the 1710 Act?

In the mid-1730s, various members of the London book trade began to lobby for legislation to replace the Statute of Anne. In doing so, they levelled a number of complaints at the 1710 Act: the fourteen-year term of protection was too short, as was the

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Abridgement, published in Geneva in 1738, and one in Italian published in Milan in 1815.

Rogers, *supra*.

83. SWIFT (Stone & King 1727), *supra* note 79.

84. *See generally* MAYO, *supra* note 44, at 14–16, 68, 238–39.

85. *Id*. at 55–57. Mayo also writes:

> The number of serial novels and novelettes, long extracts, and abridgements of works of fiction thus published by British periodicals from 1720–1740 is a highly speculative figure, owing to the great abundance of newspapers and journals circulated during that period and the extremely ephemeral character of most of them. The surviving papers indicate a certain literary activity of this kind, extending roughly over a quarter of a century, but it can easily be exaggerated . . . by citing titles out of context, and therefore making a major enterprise of what was really a series of peripheral events, or the regular practice of a special few.

Id. at 59.

86. *Id*. at 58, 61.

three-month time limit for taking action against infringers; litigation was costly and unpredictable, and the penalties set out within the Statute of Anne were inadequate.[87] Their efforts led to a number of abortive attempts to legislate,[88] but of interest in the current context is the Bill that was first read before the House of Commons on March 3, 1737.[89] This Bill provided that should anyone within three years of the first publication of a work "print, publish, import, or sell any abridgement of the same, or any translation thereof . . . without the consent of the author or proprietor first obtained in writing" then they would be subject to the same penalties as had been set out for the unauthorised printing and publication of the entire work.[90] That is, the 1737

87. DEAZLEY, *supra* note 6, at 96 & n.40. For complaints about the inadequacies of the Statute of Anne, see THE CASE OF AUTHORS AND PROPRIETORS OF BOOKS 3 (1903) (discussing how authors were defeated of earnings as a result of the act). *See* A Letter from an Author to a Member of Parliament occasioned by a Late Letter concerning the Bill now depending in the House of Commons (1735) (located at the Bodleian Library, MS Carte 207, 16); A Letter to a Member of Parliament concerning the Bill now depending in the House of Commons (1735) (located at the Bodleian Library, MS Carte 207, 9); A Second Letter from an Author to a Member of Parliament containing some Further Remarks on a Late Letter concerning the Bill now depending in the House of Commons (1735) (located at the Bodleian Library, MS Carte 207, 19); Farther Reasons Humbly Offer'd to the Consideration of the Honourable House of Commons, for making more effectual an Act passed in the 8th Year of Q Anne, (located at the British Library, BM 816.m.12.(51)); Reasons for renewing the privilege of the term of 21 years in old copies; Reasons for granting authors a Privilege for 21 years rather than for 14, (located at the Bodleian Library, MS Carte 207, 4); Some Reasons Humbly Offered to the Parliament of Great Britain for Making more effectual an Act made 8 Ann. cap.49, (located at the British Library, BM 18th century reel 3019/24).

88. For a discussion of bills that failed in the House of Lords related to property rights of books in the early 1700s, see DEAZLEY, *supra* note 6, at 94–110.

89. 22 H.C. JOUR. (1737) 769.

90. An Act for the Encouragement of Learning (Draft) (1737), *available at* http://www.copyrighthistory.org/cgi-bin/kleioc/0010/exec/ausgabe/%22uk_1737b%22. The Bill continues:

> And whereas the Authors and Proprietors, of Works composed with great Labour and long Study, are often greatly injured by such hasty and incorrect Abridgements or Translations of the same, as not only lessen the Sale, but also frequently sink the Reputation of the original Composition; be it further enacted, That if any Person or Persons shall, within Three years after the Publication of any Book, print, publish, import, or sell any Abridgement of the same, or any Translation thereof, into any other Language, without the Consent of the Author or Proprietor first obtained in Writing, to be signed in the Presence of Two or more credible Witnesses, then such Offender shall forfeit such Abridgement or Translation, and every Sheet and Part thereof, to the Proprietor or Proprietors of the original Book, who shall damask or make waste Paper thereof; and every such Offender shall likewise forfeit the Sum of Five Shillings for every Sheet thereof, to the Proprietor or Proprietors of the original Book so abridged or translated, which shall have been printed, imported, or knowingly sold by him, her, or them, or which shall be found in his, her, or their Custody, either printed, or printing, published or exposed to Sale, contrary to the Intent of this Act . . . .

Id. For a discussion of the 1737 Bill, see DEAZLEY, *supra* note 6, 103–08.

Bill specifically addressed the issue of abridgements (and translations) in a manner that the Statute of Anne did not. This point was taken up by Theodore Barlow, the barrister of the Middle Temple who had been commissioned by John Wilcox to write *A Treatise of Modern Crown Law*.[91]

Barlow began abridging Hale's *Pleas of the Crown* in August 1736 with the aim of producing a text that was no more than a quarter of the length of the original work, one that omitted much of the historical material that Hale's treatise included, and one that was intended for "students of the Com[m]on Law" (as opposed to more experienced practitioners who would otherwise rely upon Hale's work or William Hawkins's *Treatise of the Pleas of the Crown*[92]).[93] When Barlow entered his answer to Gyles's bill of complaint, he made much of the fact that the 1737 Bill proposed to prohibit the production of unauthorised abridgements. Indeed, he claimed to have stopped working on his abridgement while the Bill was in session.[94] More importantly, the substance of the unsuccessful Bill confirmed Barlow's previous understanding of the 1710 Act.[95] Ever since the introduction of the 1737 Bill:

> [I]t appeared thereby to be manifestly the Sense and Construction of the Honourable House of Commons in Parliament upon the said Act of Parliament [the Statute of

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91. For details, see Answer of Theodore Barlow, Gyles v. Wilcox, (1741) 27 Eng. Rep. 682 (Ch.); Barn. C. 368 (original located at TNA, C11/1828/27, m.3).

92. WILLIAM HAWKINS, A TREATISE OF THE PLEAS OF THE CROWN (Savoy, Walthoe 1716) (explaining the criminal law of England in two volumes). A second edition of this work was published in 1724, followed by a third in 1739. *See* CHARLES SWEET, A DICTIONARY OF ENGLISH LAW, at xi (London, Henry Sweet 1882) (listing publication information of the second edition in the Table of Abbreviations); FREDERICK C. BRIGHTLY, BIBLIOTHECA BRIGHTLIENSIS 108 (Philadelphia, n. pub. 1885) (cataloguing the third edition as a book owned by Mr. Brightly).

93. Answer of Theodore Barlow, *supra* note 91.

94. In his answer to Gyles's bill of complaint, Barlow wrote as follows:

> And this defendant was so unwilling to offend or seem to offend against any Law for Securing property, and particularly of the proprietors of [Hale's *Pleas of the Crown*], that during the Session of Parliament which was in the tenth year of his present Majesty this Defendant being Informed that there was a Bill then depending in parliament among other things for the more effectual securing the Right of printing Books in which Bill there was some Provision to refrain or prohibit the abridging or translating of Books within three years Only after their first publication without the consent of the Author or Proprietor thereof this Defendant at that time forbore to proceed in compiling [the abridgement] . . . .

Id.

95. "And this defendant saith that he had read the said Act of Parliament [the *Statute of Anne*] in the bill mentioned before he undertook the said [abridgement] and did not understand that it prohibited abridgement or translations." *Id*.

> Anne] . . . that Abridgements or Translations were not curtailed by the said Act and that Abridgements or Translations were by no means in Equal mischief (if any) compared with reprinting commonly called pirating of Original Works.[96]

That is, for Barlow, reading the 1737 Bill in conjunction with the 1710 Act could lead to only one conclusion: the Statute of Anne prohibited the reprinting, the pirating, of works in their entirety but not the abridgement, or translation, of the same. This reading seems entirely plausible, and it is one that finds support in another related body of evidence: the text and substance of the numerous royal printing privileges issued both prior to and throughout Queen Anne's reign.

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In 2000, Shef Rogers produced an invaluable bibliography of printing privileges granted in England between the lapse of the 1662 Licensing Act (in 1695) and the end of George II's reign (in 1760).[97] In that article, Rogers reproduces the full text of a privilege granted in December 1743 to Thomas Longman, John Shuckburgh, Thomas Osborne, Charles Hitch, and Stephen Austen in relation to Thomas Salmon's *Modern History: Or, the Present State of All Nations*. The terms of the privilege prohibit "all our Subjects, within Our Kingdoms and Dominions, to reprint or abridge the same, either in the like, or any other Volume or Volumes whatsoever, or to import, buy, vend, utter, or distribute, any Copies thereof reprinted beyond the Seas, during the . . . Term of Fourteen Years."[98] For the copyright historian, the express inclusion of a prohibition on abridgement within this privilege is of considerable interest. For Rogers however, in "forbid[ding] any reprinting, abridging, or importing of the book," the substance of this sample privilege was simply "typical in most respects."[99] However, in relation to the privileges that were

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96. *Id.*

97. Shef Rogers, *The Use of Royal Licences for Printing in England, 1695–1760: A Bibliography*, 1 LIBRARY 133, 133–92 (2000) (listing the works granted royal licences between 1695 and 1760 compiled from research through English Public Records). During the course of my research for this Article, I uncovered one additional privilege granted during this period that is not listed in Rogers's bibliography—a privilege granted to Jacob Tonson on May 24, 1723 (original located at TNA SP/44/361A, 36).

98. Rogers, *supra* note 97, at 134–35.

99. *Id*. at 135. Indeed, in his bibliography, Rogers makes specific reference to the fact that two privileges (the first granted to John Baskett on June 20, 1713 and the second granted to Samuel Buckley on February 19, 1717) only protected the "sole printing and publishing [of the work], with no reference to abridgments, translations, imported

granted during Anne's reign, it appears that Rogers overstates his case.

One of the first printing privileges issued in Anne's name was to William Delaune, the Vice-Chancellor of the University of Oxford, regarding the University's three-volume edition of Clarendon's *History of the Rebellion and Civil Wars in England*. The first volume first appeared in 1702, after which an abridged version of that first volume was published by John Nutt.[100] It seems likely that the appearance of Nutt's abridgement prompted Delaune to petition for a royal licence, and, on June 24, 1703, a fourteen-year privilege was granted to the University:

> Forbidding all Our Subjects to Reprint or Abridge the said History, or any Part of it, or to Import, Buy, Vend, Utter, or Distribute any Copies of the same, or any Part thereof, Reprinted beyond the Seas, within the said Term, without the Consent and Approbation of Our said University.[101]

Privileges in similar terms were also granted to Jacob Tonson for Lawrence Echard's *Complete History of England*[102] and to William Nichols for his *Comment on the Book of Common Prayer*.[103] Moreover, other privileges from this period prohibited more than abridging the text. For example, the privilege granted on August 17, 1707 to John Chamberlayne for *Magna Britannia Notitia* provided him with the right of "[s]ole Printing and Publishing the said Work . . . for . . . the term of Fourteen Years," while "strictly charging, prohibiting, and forbidding all our Subjects to Reprint, Translate, or Abridge the said Work, or any part of it; or to import, buy, vend, utter, or distribute any Copies of the same, or any part thereof."[104]

However, of the twenty-five printing privileges granted during Anne's reign, only seven (or, less than a third) specifically prohibited the printing of variant forms of the protected work

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copies, or other possible violations." *Id* at 154, 157. Details of this kind reinforce the more general observation that Rogers makes about the substance and form of the Longman privilege (granted in December 1743) being "typical" in prohibiting both the reprinting and the abridgement of the work. *Id*. at 135, 168.

100. EDWARD HYDE CLARENDON, THE HISTORY OF THE REBELLION AND CIVIL WARS IN ENGLAND, BEGUN IN THE YEAR 1641, FAITHFULLY ABRIDG'D (London, Nutt 1703).

101. TNA, SP/44/350, 354–55; *see* CLARENDON, *supra* note 100 (printing the text of the privilege at the beginning of the book).

102. TNA, SP/44/353, 118 (privilege granted on February 5, 1706 forbidding subjects "to reprint or abridge the said History or any part thereof"); Rogers, *supra* note 97, at 150.

103. TNA, SP/44/353, 416 (privilege granted on November 20, 1708 forbidding subjects "to reprint or abridge the said work or any part of it"); Rogers, *supra* note 97, at 152.

104. TNA, SP/44/354, 341–43; Rogers, *supra* note 97, at 151. The terms of the privilege are also reproduced in JOHN CHAMBERLAYNE, MAGNA BRITANNIA NOTITIA: OR, THE PRESENT STATE OF GREAT-BRITAIN, at A3 (London, Timothy Goodwin et al. 1708).

(whether by abridgement, or translation, or both).[105] More typical was the privilege granted to the bookseller Richard Smith on June 5, 1708 in relation to a new edition of sermons and other works by Dr. William Beveridge, which forbade "all our subjects within our kingdoms and dominions to reprint the same, either in whole or in part, or to import, buy, vend, utter or distribute any copys thereof reprinted beyond the seas."[106] This, as with seventeen other privileges granted in Anne's name, makes no mention of, or reference to, abridging the work in question. So, at least in relation to the privileges granted during the early part of the eighteenth century, an express prohibition on the abridgement of a work proved to be the exception (albeit a fairly substantial exception) rather than the rule.

Moreover, a similar pattern can be traced in relation to printing privileges granted throughout the seventeenth century. For example, of the eight privileges on Rogers's list granted during the last seven years of William III's reign, only one—issued to the booksellers Awnsham and John Churchill for their *Collection of Voyages and Travels*—prohibited abridging the work.[107] Similarly, of the seventy-six privileges listed in Arnold Hunt's analysis of privileges granted between 1603 and 1640, only two specifically prohibit the abridgement of the works protected: Thomas Wilson's seven-year privilege in relation to a number of works that had been translated by Arthur Golding and Wilson himself (granted in 1607),[108] and William Alley's seven-year privilege for Thomas Middleton's *The Peacemaker* (granted in 1618).[109] And,

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105. In addition to the four already discussed, the remaining three privileges were granted as follows: to Richard Blome for *Britannick Empire* (forbidding subjects "to epitomize the same in any Volume, or in any language of speech whatsoever"), TNA, SP/44/353, 99 (Sept. 21, 1705); to Richard Smith for *Ezechielis Spanhemii Liberi Baronis* (forbidding subjects "to reprint, translate, or abridge the said work or any part of it"), TNA, SP/44/354, 183 (Apr. 14, 1706); and, to Egbert Sanger, Edmund Curl, and John Pemberton for Bulstrode Whitlocke's *Memorials of the English Affairs, from the suppos'd expedition of Brute to this Island, to the end of the reign of King James the First* (forbidding subjects "to reprint or abridge the same either in the like or in any other volume or volumes whatsoever"), TNA, SP/44/353, 456 (Apr. 16, 1709). *See* Rogers, *supra* note 97, at 150–53 (providing details on these three privileges).

106. TNA, SP/44/353, 377–78; *see* Rogers, *supra* note 97, at 151.

107. A COLLECTION OF VOYAGES AND TRAVELS: SOME NOW FIRST PRINTED FROM ORIGINAL MANUSCRIPTS, OTHERS TRANSLATED OUT OF FOREIGN LANGUAGES, AND NOW FIRST PUBLISH'D IN ENGLISH (London, Awnsham & J. Churchill 1704).

108. Hunt writes that the privilege granted to Wilson was "to print 'manie workes of greate volume and importance' translated by Arthur Golding and Thomas Wilson, together with any other works which Wilson may in future translate, and any abridgements of the said works." Hunt, *supra* note 30, at 42.

109. Hunt writes that the privilege granted to William Alley, "at the nomination of Thomas Middleton," was for *The Peacemaker* "and any epitome or abridgement of it." *Id.* at 47.

while a comprehensive bibliography of privileges granted between the Restoration and the lapse of the Licensing Act has yet to be compiled, it would appear that the majority of these privileges simply prohibited the printing, sale, and importation of the protected work (but not the abridgement thereof).[110]

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110. Of a survey (carried out for the purposes of this Article) of twenty privileges granted between 1660 and 1695, only four were found to specifically prohibit the abridgement of the protected work. For those that make no explicit reference to abridgement, see the privileges granted: in July 1663 to Thomas Stanley for his *Greek Tragedies of Æschylus*, THOMAS STANLEY, GREEK TRAGEDIES OF ÆSCHYLUS, at (a) (London, Jacobi Flesher 1664); in May 1665 and in March 1667 to John Ogilby for his versions of *Æsop's Fables*, JOHN OGILBY, THE FABLES OF ÆSOP (London, Thomas Roycroft 2d ed. 1668), Virgil (translated), JOHN OGILBY, THE WORKS OF PUBLIUS VIRGILIUS MARO (London, Thomas Roycroft 2d ed. 1668) , and Homer's *Iliad*, 1 JOHN OGILBY, HOMER: HIS ODYSSES (London, James Flesher 1669); in October 1667 to Matthew Poole for *Synopsis Criticorum Aliorumque S. Scripturæ Interpretum*, MATTHEW POOLE, SYNOPSIS CRITICORUM ALIORUMQUE S. SCRIPTURÆ INTERPRETUM (London, J. Flesher & T. Roycroft 1669); in November 1669 for John Ogilby's *Africa*, JOHN OGILBY, AFRICA (London, Johnson 1670); in November 1673 to Gilbert Burnet for *The Memoires of the Lives and Actions of James and William, Dukes of Hamilton and Castleherald*, GILBERT BURNET, THE MEMOIRES OF THE LIVES AND ACTIONS OF JAMES AND WILLIAM: DUKES OF HAMILTON AND CASTLEHERALD (London, R. Royston 1677); in June 1676 to Henry Bond for *The Longitude Found*, HENRY BOND, THE LONGITUDE FOUND (London, W. Godbid 1676); in April 1677 to John Spotswood for *The History of the Church and State of Scotland*, JOHN SPOTSWOOD, THE HISTORY OF THE CHURCH AND STATE OF SCOTLAND (London, R. Royston 1677); in February 1677 to Elisha Coles for *A Dictionary, English-Latin, and Latin-English*, ELISHA COLES, A DICTIONARY, ENGLISH-LATIN, AND LATIN-ENGLISH (London, Parker & Guy 2d ed. 1679); in May 1677 to Richard Wallis for *London's Armory*, RICHARD WALLIS, LONDON'S ARMORY (London, Richard Wallis 1677); in November 1681 to John Browne for *A Compleat Treatise of the Muscles as They Appear in Human Body*, JOHN BROWNE, A COMPLEAT TREATISE OF THE MUSCLES AS THEY APPEAR IN HUMAN BODY (Savoy, Newcombe 1681); in August 1684 to Johannes Weidenfeld for *Secretis Adeptorum*, JOHANNIS SEGERI WEIDENFELD, SECRETIS ADEPTORUM (London, H. Hills 1684); in October 1685 to Daniel Newhouse for *The Whole Art of Navigation*, DANIEL NEWHOUSE, THE WHOLE ART OF NAVIGATION (London, n. pub. 1685); in December 1687 to Francis Sandford for *The History of the Coronation of the Most High, Most Mighty, and Most Excellent Monarch, James II*, FRANCIS SANDFORD, THE HISTORY OF THE CORONATION OF THE MOST HIGH, MOST MIGHTY, AND MOST EXCELLENT MONARCH, JAMES II (Savoy, T. Newcomb 1687); and in June 1693 to John Dunton for *The History of the Famous Edict of Nantes*, 1 JOHN DUNTON, THE HISTORY OF THE FAMOUS EDICT OF NANTES (London, J. Dunton 1694). Of those that make specific reference to the issue of abridgement, see the privileges granted: in March 1670 to Elias Ashmole for *The Institution, Laws & Ceremonies of the Most Noble Order of the Garter*, ELIAS ASHMOLE, THE INSTITUTION, LAWS & CEREMONIES OF THE MOST NOBLE ORDER OF THE GARTER (London, N. Brooke 1672), a 15-year privilege forbidding the reprinting of the book "or any part thereof, or any Abridgement of the Laws or Ceremonies therein contained"; in January 1677 to Francis Sandford for his *A Genealogical History of the Kings of England*, FRANCIS SANDFORD, A GENEALOGICAL HISTORY OF THE KINGS OF ENGLAND (Savoy, T. Newcomb 1677), a 15-year privilege prohibiting reprinting the work "or any Part thereof, or any Abridgement of the Laws or Ceremonies therein contained"; in February 1692 to Greenvile Collins for *Great Britain's Coasting Pilot*, GREENVILE COLLINS, GREAT BRITAIN'S COASTING-PILOT (London, F. Collins 1693), a 14-year privilege prohibiting printing and publishing the work "or to Epitomize the same . . . or any part thereof"; and, in June 1693 to John Slezer for his three-volume work *Theatrum Soctiæ*, JOHN SLEZER, THEATRIUM SCOTIÆ (London, A. Swalle 1693), a 14-year privilege prohibiting printing the books "or any Abridgement, or any part of them."

The language and substance of the printing privileges granted prior to and during the reign of Queen Anne provide an important context within which to locate the text of the Statute of Anne. A minority of them are obviously explicit about the lawfulness of abridgement (and sometimes translation) in a way that the legislation is not, and that specificity may provide an insight into the intended scope of the legislation. Moreover, abridgements published prior to the Statute of Anne adopted a variety of rhetorical strategies to justify their very existence: they were meeting a demand in relation to works that had become scarce in their original format;[111] they opened the work up to a new audience that might otherwise find it inaccessible whether by virtue of the content or (as was more often the case) by virtue of the price of the original;[112] or they were improving the original work in excising mistakes, obsolete material, and unnecessary digressions.[113] Taken together, these paratextual commentaries

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111. For example, the preface to *The History of Scotch-Presbytery: Being an Epitome of the Hindlet Loose* notes that the original book "it self is not easily got." ALEXANDER SHIELDS, THE HISTORY OF SCOTCH-PRESBYTERY: BEING AN EPITOME OF THE HINDLET LOOSE (London, J. Hindmarsh 1692).

112. The preface to *The Novum Organum of Sir Francis Bacon, Epitomiz'd for a Clearer Understanding of his Natural History* suggests that the work "might be of a singular use to such Vertuosi amongst us, as are not perfectly acquainted with the Latine Tongue." FRANCIS BACON, THE NOVUM ORGANUM OF SIR FRANCIS BACON (London, n. pub. 1676); *see* THOMAS BENNET, AN ANSWER TO THE DISSENTERS PLEAS FOR SEPARATION, OR AN ABRIDGMENT OF THE LONDON CASES *2 (Cambridge, Alexander Bosvile 1700) (abridging "Cases and other Discourses" for readers without the time or money to enjoy the more extensive versions); BRALESFORD, *supra* note 38, at E3, 61 (characterizing the piece as being designed especially for the poor); 1 WILLIAM CAMDEN, CAMDEN'S BRITANNIA ABRIDG'D; WITH IMPROVEMENTS, AND CONTINUATIONS, TO THIS PRESENT TIME, at A3 (London, Joseph Wild 1701) (limiting the size and price of the Britannia so "it might be of Publick Use"); STACY, *supra* note 42, at Preface (describing the book as having been designed specifically for the poor).

113. The preface to Lawrence Echard's *An Abridgment of Sir Walter Raleigh's History of the World* sets out that Raleigh had "not been without some considerable Imperfections in respect to History, which he has shewn in his too frequent and long Digressions, and Observations." ECHARD, *supra* note 36, at A3. Echard continues that: "All that I have done, besides the Expunging and shortning of some Passages, is the Correcting and Altering of the Style, which in most places was too obsolete . . . ." *Id.*; *see* BENNET, *supra* note 112, at *2–3 (describing the abridgment as preserving the material aspects of the original work while eliminating repetition); CAMDEN, *supra* note 112, at A3–A4 (updating the Britannia); FLAVIUS JOSEPHUS, THE WORKS OF THE LEARNED AND VALIANT JOSEPHUS, at A4 (London, A. Roper & R. Basset 1699) (describing the abridgment as preserving the accuracy of the original work while eliminating unnecessary stylistic, repetitious, and peripheral elements). See also the preface to John Savage's abridgement of *The Turkish History* (by Richard Knolles and Paul Rycaut) in which he explained that "by weeding out the superfluous embellishments of their stiles, cutting off excrescencies, and avoiding unnecessary digressions" he was able to "couch the matter more concisely" and give the reader "a nearer sight, and a clearer understanding of things, than when they are darkened with foreign additions, foisted in to no other purpose than to humour the author's ambition, in seeing their names in the title pages of large folios." J. SAVAGE, THE TURKISH HISTORY (London, Roper, Bosvile, & Basset 1701).

might also provide a useful backdrop against which to consider the legislation. That is, at a time when Defoe and Dunton had publicly declaimed the practice of unauthorised abridgement, and when influential booksellers such as Awnsham Churchill[114] and Jacob Tonson secured legal protection against abridgement by way of a royal licence,[115] in not explicitly extending the scope of the legislation to prohibit the abridgement of protected works, can we perhaps divine an intention on the part of the legislature to encourage—or at least not to fetter—the unauthorised production of works of this kind?[116] It is impossible to answer that question with any degree of certainty but considered in this light the opinions of Hardwicke and Apsley, in *Gyles* and *Strahan* respectively, need not smack of judicial meddling or of an unwelcome encroachment upon the proprietary entitlements of either authors or booksellers. Instead, they might be read as decisions that are in line with both the literal language and the spirit of the legislation: an act "for the Encouragement of Learned Men to Compose and Write useful Books."[117] As such, perhaps Reade was misguided in laying the charge of this particular swindle at the door of the judiciary. Perhaps he should have directed his invective towards the legislature instead.

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And yet, an alternative interpretation of *Gyles* is entirely tenable. Consider, for example, Burrell and Coleman's analysis that, while *Gyles* established that a "real and fair abridgement" would not infringe copyright, "the starting point for this

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114. It is of some interest that Awnsham Churchill was a Member of Parliament at the time the Statute of Anne was passed. Mark Knights, *Churchill, Awnsham (1658–1728)*, *in* 11 OXFORD DICTIONARY OF NATIONAL BIOGRAPHY 590–91 (H.C.G. Matthew & Brian Harrison eds., 2004).

115. As Michael Suarez notes, while these privileges often functioned primarily as endorsements or imprimaturs, "a significant number were sought for works especially likely to be pirated." Michael F. Suarez, *To What Degree Did the Statute of Anne (8 Anne, c. 19, [1709]) Affect Commercial Practices of the Book Trade in Eighteenth-Century England? Some Provisional Answers about Copyright, Chiefly from Bibliography and Book History*, *in* GLOBAL COPYRIGHT: THREE HUNDRED YEARS SINCE THE STATUTE OF ANNE, FROM 1709 TO CYBERSPACE 54, 58 (L. Bently et al. eds., forthcoming 2010).

116. Wiles suggests that the lack of protection for abridgements within the Statute of Anne was merely an oversight on the part of those drafting the legislation. Interestingly, he continues that it was because of this omission that "some proprietors who despaired of being able to enjoy without interference the total protection nominally provided by the statute and had recourse to special licences or patents issued in the name of the King himself." WILES, *supra* note 57, at 162.

117. Statute of Anne, 1710, 8 Ann., c. 19.

conclusion was almost the exact opposite of that which would be taken today."[118] They continue:

> The Statute of Anne provided that 'the author of any book or books . . . shall have the sole liberty of printing and reprinting such book and books'. Read literally, the result of this wording would have been that unless it could be shown that the defendant had *reprinted* the plaintiff's book there would be no infringement. Yet almost from the outset the courts did not proceed in this way. By starting with the unobjectionable proposition that making a merely colourable alteration to an earlier work would not be sufficient to avoid the statute, the courts were able to expand copyright protection well beyond cases that could meaningfully be described as a case of reprinting.[119]

In short, perhaps the swindle we should be attentive to here is not one that was perpetuated against authors (or the booksellers that purchased and published their manuscripts) but rather a judicial sleight of hand that extended the reach of the 1710 Act—and so, the rights of copyright owners—beyond that originally articulated by the legislature.

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Three hundred years on, definitive readings as to the meaning, impact, and legacy of the Statute of Anne, and the case law that it prompted, remain as elusive as ever. Much ink has already been spilt by legal commentators upon the significance of the decision in *Gyles* v. *Wilcox* both in terms of its relationship to the Statute of Anne as well as its influence upon the subsequent development of copyright jurisprudence within Britain and elsewhere.[120] Yet few of these commentators have sought to

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118. ROBERT BURRELL & ALLISON COLEMAN, COPYRIGHT EXCEPTIONS: THE DIGITAL IMPACT 255–56 (2005).

119. *Id.*

120. *See* BENJAMIN KAPLAN, AN UNHURRIED VIEW OF COPYRIGHT 7–12 (1966) (categorizing *Gyles* as an early test of the meaning of the Statute of Anne); WILLIAM F. PATRY, THE FAIR USE PRIVILEGE IN COPYRIGHT LAW 3, 6–7, 26–27 (2d ed. 1995) (arguing that *Gyles* not only contributed substantially to the British fair-use jurisprudence, but also influenced the U.S. fair-use doctrine); Peter Jaszi, *Toward a Theory of Copyright: The Metamorphosis of "Authorship,"* 1991 DUKE L.J. 455, 472–74 (citing *Gyles* as an early example of narrow judicial interpretation of the Statute of Anne as protecting only verbatim copies of the author's original work and explaining how that concept has changed); Pierre N. Leval, *Nimmer Lecture: Fair Use Rescued*, 44 UCLA L. REV. 1449, 1451–53 (1997) (explaining the role of *Gyles* in early fair use jurisprudence); Roberts, *supra* note 8, at 298–302 (citing *Gyles* as the foundation for modern rules on the abridgment of copyrighted works in both Britain and the United States); John Tehranian, *Et Tu, Fair Use? The Triumph of Natural-Law Copyright*, 38

ground their analysis within the contemporary experience and attitude of the book trade with respect to abridgements.[121] This Article has attempted to flesh out certain aspects of that broader context, albeit imperfectly. Indeed, the attentive reader will have noted a thread of anxiety winding its way throughout this Article. This is not the anxiety of influence but of ignorance and conjecture. Put another way: to what extent can a legal historian claim, with any degree of confidence or authority, to distil the meaning of Lord Chancellor Hardwicke's pronouncement in *Gyles* without proffering any significant insight as to the contemporary impact (or the lack thereof) which that decision had upon the kind of intellectual and commercial activities that it sought to influence and regulate? The attentive reader also will have noticed that I have proffered no such insight herein.

Alternatively, consider the two pre-eminent moments in the history of copyright in eighteenth century Britain (pre-eminent, that is, from a legal historian's point of view): the passing of the Statute of Anne and the decision of the House of Lords in *Donaldson* v. *Becket*. The relevance and importance of both has recently been called into question by distinguished scholars working outside of legal academia. James Raven, for example, has argued that the *Donaldson* decision has "gained an importance in histories of the trade quite in excess of its true worth."[122] Similarly, Michael Suarez has recently suggested that the 1710 Act, for many years, had only "a limited practical effect on the rights of authors and, more significantly still, on actual commercial book trade practice."[123] While I would not want to uncritically endorse the assessment of Suarez or Raven in either respect, their work makes clear that a history of copyright (or rather, a history of the norms of copying) when confined to a history of positive laws is both a limited and a limiting exercise.[124] It goes without saying that an awareness and understanding of the history of those positive laws is vital, but taken by itself it will always remain a somewhat impoverished history. Perhaps

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U.C. DAVIS L. REV. 465, 478–80 (2005) (commenting on the influence of *Gyles* on early abridgement law).

121. For an exception, see Alexander, *supra* note 10.

122. JAMES RAVEN, THE BUSINESS OF BOOKS: BOOKSELLERS AND THE ENGLISH BOOK TRADE, 1450–1850, at 231 (2007).

123. Suarez, *supra* note 115, at 57. He continues that the Act "did relatively little in practice to alter the working routines of the vast majority of printers, booksellers, and publishers." *Id.* at 66.

124. *See generally* Martin Kretschmer, Lionel Bently & Ronan Deazley, *Introduction: The History of Copyright History: Notes from an Emerging Discipline*, *in* PRIVILEGE AND PROPERTY: ESSAYS ON THE HISTORY OF COPYRIGHT 1 (Ronan Deazley et al. eds., 2010) (discussing the nature of copyright history as a discipline).

the greatest swindle to reflect upon in all of this is the intellectual swindle that comes with disciplinary insularity.