

(COPY)RIGHTING THE WRONGS:
HOW 19TH CENTURY PLAYWRIGHTS CAUSED LAWS IN THE DIGITAL AGE
BY
CHALLENGING THE LAWS OF THEIR OWN

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THE SETUP

Copyright law is an important topic for the arts. Artists (on the whole) are notoriously ignorant of the business practices of their day while the most successful artists are typically derided for producing “low” art (if their work even deserves, some say, the title of art at all). Copyright law has intersected with the arts and even entered into the minds of the general public during past decade because of the advent of a tool most of us take for granted every day called the Internet. Digitizable media (anything that can be reduced to ones and zeros) became copyable and sharable (via the Internet) with relative ease and a very modest technological skill set. Creating perfect copies of content and quickly sharing that content with others is now a cheap and easy process for anyone with access to a computer. Few people truly realize the importance of copyright law on their lives. The unexpected history of copyright law plays a large role in understanding the present state of those laws today.

A quick quiz¹: When did copyright begin? Seriously: think about this for a minute. If you were anything like the interviewees for the short documentary/experiment *The Public's Perception of Copyright* shot over two days in Chicago during the summer of 2006 you had no idea (or your guesses were way off). Before providing the answer let me give a little background on the questions and answers these documentarians were able to collect from the public. The filmmakers asked some basic questions about copyright: “When did copyright start? What do you think copyright is for? How did it get started? How do you feel about filesharing? Any other thoughts about copyright?” (Fogel, “Public's Perception”) Their synopsis of the responses captured on film are the following:

- [1] Most people felt that copyright is mainly about credit, that is, about preventing plagiarism.
- [2] Everyone was on the artist's side — everyone wants to feel that they're treating the artists right. Over and over again, we heard the sentiment that when someone goes to a concert they'll buy the CD “to support the band”, even if they already have all those songs on their computer already
- [3] Many people felt that copyright was about giving creators the means to make a

¹ Don't use the Internet to look anything up either!

living, but that in recent times it's been abused and corrupted by corporate interests. [4] No one — not even the interviewee who had just read a book on copyright — knew where copyright comes from. [5] Most people had the feeling it had been around for a while, though estimates varied widely on how long. One interviewee knew of the Constitutional clause that is the legal basis for copyright in the United States, but wasn't familiar with the history leading up to that clause. [6] People were ambivalent about filesharing. They don't feel like it hurts anyone, except perhaps the music distributors, but they still feel some residual guilt about it anyway. (Fogel, "Public's Perception")

If your own thoughts about copyright in the present day roughly correspond to the views of these interviewees from Chicago four years ago then this is an arguably accurate portrait of the public's perception of copyright law. What should be immediately apparent, though, is how uninformed artists, the public, and lawmakers are concerning copyright law. These misconceptions, to an extent, have been orchestrated throughout the history of copyright law and this poses unique problems for the theatre. In this brief history lesson I will illuminate the double-sided nature of copyright laws' uses and potential abuses. At the heart of the confusion and discontent is the "right to copy." This paper specifically addresses the origins and history of copyright law, the effect those ever-changing laws have had on the theatre and its practitioners (particularly during the tumultuous 19th century), and eventually questions the necessity and rationale for copyright in the future.

THE ORIGINS

Karl Fogel, an advocate at questioncopyright.org, has examined the history of copyright in depth. While his opinion (read: bias) is that copyright should be abolished², his historical research is in keeping with other scholars and economists on the topic. He notes that "... a close look at history shows that copyright has never been a major factor in allowing creativity to flourish. Copyright is an outgrowth of the privatization of government censorship in sixteenth-century England" (Fogel, "Surprising History"). This government censorship was a reaction to the new technology of the printing

² He states that it is no longer compatible with its original aims nor appropriate for the internet age.

press. New technology almost always causes radical breaks with the past and often influences the creation of new laws. The belief that Fogel wishes to shatter is that new technologies are somehow dangerous to artists, the creation of artistic work, and the stimulation of societal support for artists.

The bulk of creative work has always depended, then and now, on a diversity of funding sources: commissions, teaching jobs, grants or stipends, patronage, etc. The introduction of copyright did not change this situation. What it did was allow a particular business model — mass pressings with centralized distribution — to make a few lucky works available to a wider audience, at considerable profit to the distributors. (Fogel, “Surprising History”)

These distributors, unsurprisingly, were operating for themselves and themselves alone. Their interest was in creating and maintaining a monopoly on printing for their own benefit. As Fogel notes:

The first copyright law was a censorship law... the English government grew concerned about too *many* works being produced, not too *few*. The new technology was making seditious reading material widely available for the first time, and the government urgently needed to control the flood of printed matter, censorship being as legitimate an administrative function then as building roads. (Fogel, “Surprising History”)

Despite the common (and seemingly perpetual) belief that copyright is heralded by and for artists, history paints a significantly different picture. The Company of Stationers' (guild of printers) alliance with the government in England (beginning in 1557) was for the purpose of censorship. “The Company of Stationers became, in effect, the government's private, for-profit information police force” (Fogel, “Surprising History”). In fact, the Stationers grew so good at their job of running all printed materials past the government censors that they began to perform the function of the censor themselves. They wouldn't even send certain works that they deemed risky to the government censors to be rejected. Instead, they would reject the work outright.

In order to demonstrate the finer point (by way of comparison) it will be helpful to look at the benefits of the law playwrights currently enjoy. Playwrights in the United States are quite organized and allied as a strong, singular force. There are standard contracts for all types of work. One of the

items listed in the “The Dramatist Bill of Rights” from the Dramatist’s Guild is the right to “BILLING CREDIT. You should receive billing (typographical credit) on all publicity, programs, and advertising distributed or authorized by the theatre. Billing is part of your compensation and the failure to provide it properly is a breach of your rights” (*Dramatists Guild* 4). A historical corollary can be found in the work of Shakespeare, whose work was not registered under his own name in the Stationer’s register. *The Chronicle History of Henry the fifth* was entered into the Register of the Stationers Company on August 14, 1600 by the bookseller Thomas Pavier (Goff). What is considered a basic right for playwrights today was then, in many ways, unthinkable.

Still, the Stationers are not commonly considered the world’s first copyright law even though their “...right was a *new* right... [b]efore this moment, copyright — that is, a privately held, generic right to prevent others from copying — did not exist.” (Fogel, “Surprising History”). Their “right to copy” was a form of monopolistic control and censorship.

What is regarded as the world’s first copyright law is known as the Statute of Anne. This statute was enacted in 1710 (how close was your guess earlier?) and was “[l]egislation conferring exclusive rights upon the author of books not yet printed or published for a period of 14 years and for a further 14 years if the author was still alive at the end of the first period. The legislation also provided the same rights for the authors or owners of books already in print for a single 21 year term” (Deazley). Some simple math will provide the entire length a work could remain under copyright: 28 years. Keep this number in mind as we move forward through the centuries. A question still remains to be asked. What brought about this new law giving (seemingly) a certain amount of rights to authors? Since the Stationer’s right was built out of the “necessity” for censorship, power, and control what could possibly have motivated a change in the situation? Their “right” eventually expired. Their agreement with government ended. Eventually they were losing control and power. Something had to be done.

On 12 December 1709, a consortium of influential stationers submitted a petition to the House of Commons complaining that "divers Persons have of late invaded the Properties of others, by reprinting several Books, without the Consent, and to the great Injury, of the Proprietors, even to their utter Ruin, and the Discouragement of all Writers in any useful Part of Learning. (Deazley)

There are two primary things to note here. The first language which forms the basis of the Statute of Anne as well as the first American Copyright Act in 1790: "...Discouragement of all Writers in any useful Part of Learning." This idea of discouragement and learning form the basis of the government's bartering on behalf of the public. The writers are discouraged from creating new material if unable to benefit in some way from having created those works. In the same breath, however, the public must be given the opportunities to enjoy and utilize those works for the benefit of society (read: "learning"). To recap: from the humble beginnings of censorship, copyright law begins with the negotiation between encouragement of creators and benefit for society.

Moving into American Copyright Law we will recognize the language in the Copyright Act of 1790. The full title of the act is "An Act for the Encouragement of Learning, by securing copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned" (Bently). This "Encouragement of Learning" would also form the basis for American Copyright law.

THE PROBLEMS

There was still a peculiar absence from copyright law with particularly difficult implications for the theatre: a public performance entitlement. While the playwrights were able to secure a copyright on their works in written form they were unable to obtain the same securities on productions of their works. Anyone who could obtain, by any means, a copy of the playwright's words or ideas was free to reenact them in performance without penalty, payment, or professionalism. As Eric Andersen notes in his dissertation *Pimps and Ferrets: Copyright and Culture in the United States 1831-1891*, "The assumption pervading early American copyright thought according to which copyright was a limited

economic privilege of making verbatim reproductions in print was not conducive to a public performance entitlement” (Anderson 80).

This limitation of the law caused some serious difficulties for dramatists during the early half of the 19th century. James Appleton Morgan notes an event in 1770 (writing in 1875) as “a new and elaborate question arose, for which [the courts] were entirely unprepared” (James Appleton Morgan 207). As the title of Morgan's writing suggests, *Piracy by Memorization* addressed a problem that occurred at the cross-section of theatre and (then future) copyright law. This situation would later begin to force copyright law to take into account the workings (and doings) of the mind.

The case was *Macklin v. Richardson* and the play was *Love a la Mode*. While this battle happened beyond American shores it pointed to problems America would soon face when enacting their own copyright law two decades later. Charles Macklin, the playwright of the piece, was quite intelligent when marketing his plays for profit. Macklin would keep his scripts under guard by not printing or publishing them for fear of their use in performance without permission. At the close of the performances with a theatre who had licensed his play (for a fee) for production he would reclaim the text into his own possession and move on to another potential theatrical producer to relicense his work (207).

The problem came when a magazine hired a “short-hand writer” to attend several performances and copy the script for publication. While Macklin won his case the same was not to be true for a surprising development in *Coleman v. Wathen*. This case involved the presentation of a play titled *The Agreeable Surprise* by O'Keefe which was being offered in two theatres at once. Only the first had licensed the work with the playwright. The second had obtained the script by other means and decided to present it themselves. At first glance it would seem that these cases would be similar. The second theatre's method of obtaining the script, however, was not from writing but from memory. The courts,

not wishing to apply the strictures of law onto the human mind's capacity for memory and repeating those memories to others, decided that the playwright and the first producer would simply have to suffer whatever losses occurred (208). This situation of memorization would cause difficulties for playwrights as late as 1867 (213). A public performance right, however, would eventually resolve many of the more common issues facing American playwrights regarding performance rights. This public performance right wouldn't come until the Copyright Act Amendment of 1856.

THE PLAYERS

In order to demonstrate the slow moving nature of the law I would like to briefly address two other major acts and amendments that paved the way to the 1856 amendment within the overall story of two playwrights. In fact, there was a substantial lobbying effort on the part of playwrights for the amendment's passage. Two of the major players in that effort were playwrights Dion Boucicault and Robert Montgomery Bird.

Since playwrights were forced into the position of printing or publishing their plays for the purpose of copyright, but unable to control performances of those printed works once in the hands of anyone who wanted to produce or appropriate them, they were in a difficult position that put attribution in direct conflict with the ability to require payment for their labors. Under these conditions there were a number of standard ways playwrights could be paid. Typically, they were either paid as an employee, in a lump sum, or received the proceeds of a benefit night (Bracha). There was, however, a growing phenomenon known as the "star system" and one particular actor who would dramatically champion the cause for native drama by American authors. This star's name was Edwin Forrest.

Richard Butsch, in his book *The Making of American Audiences*, traces the history of audience behavior from 1750 through 1990. This impressive range and specific focus (on the individuals on the

other side of the footlights) illuminates an important change that began to take place during the nineteenth century. Audiences in the nineteenth century did not sit quietly in the dark watching plays and admiring performers. “The terms 'passive' and 'active' do not appear in nineteenth-century discourses. Instead critics talk about audience rights or rowdiness, in all cases presuming an active audience” (Butsch 3). This active audience is in contrast to the one we witness when attending a play today. As Dorothy Chansky reveals in her book, *Composing Ourselves*, many of the behavioral and ideological assumptions we make about theatre today were formed by the Little Theatre Movement. “Audiences at the Neighborhood Players' productions in Newark, New Jersey, were asked to hold all applause until the end of the play, in contrast to the usual practice of breaking in to recognize star turns, entrances, scenery changes, and other high points” (Chansky 25). The “usual practice” included behaviors related to the excitement generated by star performers.

As Julie Walker writes, “[t]hroughout the nineteenth century, the American theatre was primarily an actors' theatre, attracting audiences with the magnitude of its star power rather than the promise of a well-written play” (Walker 90). This carried over into the business models available to playwright's as well, and the effect of “star power” on playwrights was quite dramatic.

Edwin Forrest would be the first “champion” of native drama by American authors because of his play contests. “Forrest began offering prizes for plays by American authors in 1828 and two of the prize winners proved very important to Forrest's career” (Brockett & Hildy 309). The first winner of Forrest's contest (1828-9) was playwright John Augustus Stone who penned the very successful star vehicle *Metamora, or the Last of the Wampanoags* for the actor. Stone was paid “\$500 plus half the proceeds of the third night's performance” (Walker 90). Despite securing Forrest's success and helping the actor reap “enormous profits,” Stone never earned another cent from his play. Stone tried to obtain additional payment from Forrest but was unsuccessful. Stone subsequently killed himself in 1834.

Popular lore cites Forrest as the motivating factor in his suicide (91).

Stone was not alone, however, in his less-than-desirable relationship with Edwin Forrest. Robert Montgomery Bird shared a similar playwright/actor alliance with the star. As Clement Foust notes in his *The Life and Dramatic Works of Robert Montgomery Bird*, “[u]nhappily for both, there was in those days, as we have seen, no copyright law which defined the rights of an author and an actor in a play” (Foust 68). Bird composed *The Gladiator* for Forrest in 1931. The play went on to earn Bird an honorary member status in London's Dramatic Authors Society as it enjoyed international success (64-5). It was immediately accepted by Forrest and the actor wrote to the playwright about the date of future performance saying “... I will be control'd entirely by your directions...” (38). Forrest's seeming sense of goodwill (in word) at the beginning of their relationship was soon to be in question when compared to his actions towards the playwright.

Bird, like Stone before him, was promised a share of the profits should his plays prove successful for Forrest. Since the plays were successful Bird rightly expected his money. Verbal agreement, however, was the only contract Bird had and he did not have, at that time, the law on his side. In addition to the original works Bird penned for Forrest he also apparently charged \$2000 for a substantial re-write of Stone's *Metamora*. After a number of years without being paid (beyond his initial prize money for the contest plays) Bird invited Forrest to his home in 1837 to discuss being paid and to reclaim his re-write of *Metamora* (which Forrest claimed he never used). At that time Bird was owed \$6,000 (not an insubstantial sum in 1837) (70-1). Forrest refused to pay him, or even return the manuscript for *Metamora*. “When asked by his wife who his visitor was, Dr. Bird replied, 'That scoundrel! He is not fit to be in the presence of a lady.'” This meeting was to mark Bird's complete resignation from playwriting and the theatre (71). Bird would turn to writing novels where the law was clearer.

Unfortunately the relationships between playwrights and actors were frequently like the events described above due to the lack of certain verbiage in the copyright law. As Bird wrote to George Boker (another playwright who lobbied for copyright law changes): “The only condition of success was to surrender every aspiration to literary fame and trust your work as the only means of communication with the world to a theatrical company, which more often than not ranted and mangled it in the acting” (Foust 68-9).

Copyright law did not, however, only affect the payment model(s) available to playwrights. The law also caused difficulties for what playwrights were able to actually write. As it would turn out, copyright law compounded the difficulty of having truly “American” plays. That effect was because of theatrical producers' general unwillingness to gamble on dramatic works native to the relatively newly formed country. Most of the works presented were British or French.

This reliance on and preference for of foreign drama is due, in large part, to the absence of an international copyright law. In essence, foreign authors had no rights to ownership in the United States. “Pirated” books from other countries could easily be brought into the country and reprinted without ever paying the authors of those works. When speaking of playscripts, producers and managers had little incentive to pay larger sums for untested native plays when they could rest assured (from audience reception in other countries) that cheaper (and unauthorized) translations of newer foreign comedies or presentations of successful foreign melodramatic works were a much safer business decision. It is in this context that we may marvel at the genius of playwright Dion Boucicault.

Boucicault found himself in a peculiar predicament after the success of his play *London Assurance*. Such early and great success, it seemed, would have awarded him the ability to sell his next play quite easily. He was, however, met with opposition:

I was a beginner in 1841, and received for my comedy *London Assurance* £300... [t]hree years later I offered a new play to a principal London theatre. The manager offered me £100 for it. In reply to my objection to the smallness of the sum he remarked, "I can go to Paris and select a first-class comedy; having seen it performed, I feel certain of its effect. To get this comedy translated will cost me £25. Why should I give you £300 or £500 for your comedy of the success of which I cannot feel so assured?" The argument was unanswerable and the result inevitable, I sold a work for £100 that took me six months' hard work to compose, and accepted a commission to translate three French pieces at £50 a piece. This work afforded me child's play for a fortnight. Thus the English dramatist was obliged to relinquish the stage altogether or to become a French copyist. (Hogan 33)

This difficulty was felt in the United States as well. The lack of an international copyright law made for relatively cheap foreign works. Translated or adapted foreign works made for cheap theatrical performances and a more certain bet for theatre managers interested in making money. Boucicault was so good at manipulating the system that he stopped using a collaborator for translation and adaptation because they "halved the profits." Instead, he "...decided to go to Paris to see the French plays... learn their techniques and arrange them for the English stage himself" (Krause 21).

It was a relief, then, for Boucicault (and probably somewhat welcomed by former playwrights Bird, Stone, and Boker) when the lobbying efforts that began with Bird in the late 1830's and Boker in the early 1850's were finally realized in 1856. As Bracha notes in his commentary on the amendment:

The agitation for a public performance entitlement that began in the 1830s and culminated in the 1856 amendment to the Copyright Act were intertwined with changes on the intellectual and material levels. The prevalent understanding of copyright gradually changed from a limited right of reprint to ownership of an intellectual work that entitled the owner to the market profits from any exploitation of the work, irrespective of changes of form and medium. (Bracha)

The Copyright Act Amendment of 1856 gave playwrights (finally) the ability to control the productions of their written work. This meant that no one could represent their work without specifically negotiating with the playwright. This area had singlehandedly caused most of the problems for playwrights during the century. The most public acts of theft were mostly eliminated and relegated to the past.

Looking back at Forrest's exploitation of playwrights it is interesting to note that “[t]he most common argument for a public performance right to playwrights was the encouragement of native American drama” (Bracha). After losing at least one playwright to suicide (Stone) and several others to mistreatment (e.g. Bird) it is no doubt that the performance entitlement in copyright law had prevented native American drama.

Copyright law, however, was fundamentally (and forever) changed because of this ruling. “The addition of the new entitlement also played a role on the first level of copyright's expansion. Although there is no strict logical connection between the two, setting copyright loose from its grounding in printed reproduction fueled the abstraction process” (Bracha). This abstraction was soon to be felt by one of the playwrights who pushed for the passage of the law in the first place. In *Daly v. Palmer* “Dion Boucicault discovered that the public performance right for which he lobbied was a double-edged sword” (Bracha). Boucicault had stolen material from Daly's play *Under the Gaslight*. The scene in question is the stereotypical melodramatic scene involving a daring rescue, an approaching train, and a victim tied to the railroad tracks. What makes this case special is that Boucicault didn't steal Daly's words but his situational setup. Boucicault, particularly savvy in courts (as he had defended his rights in courts before) removed what he felt would have been infringing for his production. “Virtually all the specific details and the dialogue of the railroad scene were changed in Boucicault's version” (Bracha). Boucicault, however, lost. “...the court found that '[a]ll that is substantial and material in the plaintiff's 'railroad scene' has been used by Boucicault, in the same order and sequence of events, and in a manner to convey the same sensations and impressions to those who see it represented” (Bracha). Copyright (the “right to copy”) had been “unmoored... from its traditional attachment to reproduction in print and paved the way for further moves in that direction” (Bracha). The end of the century would see

additional changes and extensions to copyright law. These changes originated, largely, in the struggle of American playwrights during the nineteenth century.

THE PRESENT

In the digital age of computers, the internet, and file sharing, consumers and artists are in many ways closer than ever before. The ability to share, obtain, and manipulate information and content is unprecedented in the pre-digital history of the world. The advancements made because of the printing press are dwarfed in comparison. However, just as the English government reacted badly to the newly accessible ability of its citizens to print with a restrictive censorship law our current governments are reacting poorly to our newest abilities to “copy.”

In the 1990's a music sharing program called Napster arose and fell as a service linking internet users (a still growing but numerous portion of the population) with one another in order to share their music collections and eventually bit those same consumers in their collective tushes as lawsuits emerged from the Recording Industry Association of America (RIAA) against those consumers of music who dared to share and copy with this new technology. The music business has since been taken over by iTunes (originally a DRM³ only loaner of music content but since forced to somewhat “open” their content) which provides a similar product that is ultimately more restrictive and less usable.

The newest technology to be embraced by consumers and (simultaneously) attacked by content owners is known as a torrent. Very similar to programs like Napster, torrents can be used for any filetype (including major motion pictures) which are uploaded by many individuals at once and thus quickly downloaded by those who wish to obtain that content. The Motion Picture Association of America's (MPAA) own website on piracy concerns has the following bullet point of steps they will take

3 “Digital Rights Management” but often derided in internet communities (I think appropriately and more accurately) as “Digital Restrictions Management” as it is used to prevent copying. Oftentimes, the limitations placed on DRM'ed content is more restrictive than even copyright law would allow and often prevents consumers from engaging with the material under the law of “fair use.”

to address the problem: “Partnering with the technology community to expand the diversity of legitimate choices available to consumers, so they can enjoy the genuine article -- authentic copies of movies & TV shows -- at a fair price and in flexible and hassle-free ways” (“Motion Picture Association of America”).

The idea of “copies” and “piracy” are slippery ones rooted in the very specific history of technological advances spurring changes to written law. This history often paints a markedly different picture than what we might at first believe. The MPAA's use of the term “piracy” is an interesting one considering their entire industry was built upon the very same “piracy” they now actively fight to suppress (and often limit far more stringently than is legitimately worthy of concern, appropriate ethically, or even legal).

After a long period of competitive fighting, in 1908 the major producers of film and movie equipment – including the Edison Film Manufacturing Company and the Biograph company – formed a cartel in the form of the Motion Picture Patents Company. Through this instrument, they demanded licensing fees from all film producers, distributors, and exhibitors. They vigorously prosecuted “independent” filmmakers who refused to pay royalties. In 1909 a subsidiary of the MPPC, the General Film Company, tried to confiscate equipment used by the unlicensed companies, disrupting their operations. (Boldrin & Levine 20)

So why exactly did Hollywood move “West?” The reason was simple: in order “[t]o avoid the legal battles and royalties payments” owed to Edison (20). Boldrin & Levine note that since copyright law was actually limited at that time (in this case involving the patent on film and movie equipment) and, as a result, by the time the Wild West was “tamed” there was already an industry which had escaped for long enough to be built on someone else's “intellectual property.” In this case, that individual was Thomas Edison.

Edison, surprisingly, was really no better. As Wikipedia notes:

[In] 1902, agents of Thomas Edison bribed a theater owner in London for a copy of *A Trip to the Moon* by Georges Méliès. Edison then made hundreds of copies and showed

them in New York City. Méliès received no compensation. He was counting on taking the film to the US and recapture its huge cost by showing it throughout the country when he realized it had already been shown there by Edison. This effectively bankrupted Méliès. (“Thomas Edison - Wikipedia, the free encyclopedia”)

We should take note that the entire movie industry, an industry which now seeks to punish its own consumers (and call them “pirates”), was built by consciously (and illegally) ignoring someone else's legal “right” to compensation for a mechanical invention allowing the development of that field. This is not, however, an isolated incident. The “piracy” of Napster created the distribution model of iTunes. The history of copyright is imperative to an understanding of the necessity for constant reevaluation.

The newest battle ground is known as “remix culture.” This culture has developed as a direct result of the benefits of the digital age. Access to any piece of information as well as the endless and cheap ability to copy that information allows for the use of computers to easily combine those various pieces into new works. Often these works are a blending of various art forms including literature, performance, film, and music. These “remixes” are always in communication with the larger remix culture and, as such, are interactive. The culture remixes remixes of remixes.

The rise of the digital age and this new culture of give and take has perturbed content owners (or, as we learned from the nineteenth century, “printers”) and the model is refusing to change. However, unlike previous encounters with copyright law it is not governments, publishers, and artists in contention with one another, it is big businesses (still using a dying distribution model) fighting the future by directly taking legal action against their own consumers. As Lawrence Lessig (professor of law at Harvard Law School) notes in his book *Remix*, “[f]or most of American history it was extraordinarily rare for ordinary citizens to trigger copyright law” (Lessig 100). The computer's revolutionary ability to costlessly copy any content that is digitizable has changed the market and challenged the rationale of the current state of copyright law.

One brief (of the many, many possible) example(s) is the musician Girl Talk, an artist who samples well known musical works by other recording artists and modifies them into complex, beat-driven new aural creations. His work is constantly under scrutiny due to its use of copyrighted content. He is, however, a pioneer of the digital remix culture and one (of many) site(s) where problems with the current law can be perceived.

An extraordinary effort is devoted by lawyers to identifying samples used without permission in successful records. The threat of copyright liability is huge, so the payoff to make litigants go away is also huge. The system loves the game; the game thus never ends. But this is much more than a game. There's a profound injustice in the difference of the law here, especially as it affects an emerging class of artists. (Lessig 104-5)

It is important to support this "emerging class of artists." Just as the copyright laws of the nineteenth century had to change, so too do those of the current age to protect our current artists. Copyright law's abstraction from the idea of a physical copy "...had its origin, not in philosophical debates over the nature of copyright but in the struggle of American playwrights for material benefits and status [in the nineteenth century]" (Bracha). Now, we must unite for a new struggle... and another change.

WORKS CITED

- Anderson, Eric. "Pimps and Ferrets: Copyright and Culture in the United States, 1831-1891." 2007. Web. 14 Apr. 2010.
- Bently, Kretschmer, M., ed. "Copyright Act (1790): Primary Sources on Copyright (1450-1900)." Web. 29 Apr. 2010.
- Boldrin, Michele, and David K. Levine. *Against Intellectual Monopoly*. 1st ed. Cambridge University Press, 2008. Print.
- Bracha, O. (2008) 'Commentary on the U.S. Copyright Act Amendment 1856', in *Primary Sources on Copyright (1450-1900)*, eds L. Bently & M. Kretschmer, www.copyrighthistory.org." Web. 2 May 2010.
- Brockett, Oscar G., and Franklin J. Hildy. *History of the Theatre, Foundation Edition*. 1st ed. Allyn & Bacon, 2006. Print.
- Butsch, Richard. *The making of American audiences*. Cambridge University Press, 2000. Print.
- Chansky, Dorothy. *Composing Ourselves*. SIU Press, 2005. Print.
- Deazley, R. (2008) 'Commentary on the Statute of Anne 1710', in *Primary Sources on Copyright (1450-1900)*, eds L. Bently & M. Kretschmer, www.copyrighthistory.org. Web. 15 Apr. 2010.
- Fogel, Karl. "The Public's Perception of Copyright -- Video Interviews with Randomly-Selected People in Chicago | QuestionCopyright.org." Web. 15 Apr. 2010.
- . "The Surprising History of Copyright and The Promise of a Post-Copyright World." *Question Copyright* 9 Oct. 2005. Web. 14 Apr. 2010.
- Foust, Clement Edgar. *The life and dramatic works of Robert Montgomery Bird*. Knickerbocker Press, 1919. Print.
- Goff, Moira. "Henry V - Shakespeare in quarto." Web. 3 May 2010.
- Hogan, Robert. *Dion Boucicault*. New York: Twayne Publishers, 1969. Print.
- James Appleton Morgan. "Piracy by Memorization." *The American Law Register (1852-1891)* 23.4 (1875): 207-214. Print.
- Krause, David. "The Theater of Dion Boucicault." Oxford: The Dolmen Press, 1964. Print.
- Lessig, Lawrence. *Remix*. Penguin Group, 2008. Print.
- "Motion Picture Association of America." Web. 15 Apr. 2010.

The Dramatists Guild Resource Directory 2010 The Writer's Guide to the Theatrical Marketplace. Focus
Pub R Pullins & Co, 2010. Print.

“Thomas Edison - Wikipedia, the free encyclopedia.” Web. 15 Apr. 2010.

Walker, Julia A. *Expressionism and modernism in the American theatre.* Cambridge University Press,
2005. Print.