**Law and the Culture of Commerce:**

**The Evolving Market for Literature in America, 1741-1825**

**Heather A. Haveman**
University of California
Department of Sociology and Haas School of Business
410 Barrows Hall, Berkeley, CA 94720-1980
haveman@berkeley.edu
510-642-3495

**Daniel N. Kluttz**
University of California
Department of Sociology
410 Barrows Hall, Berkeley, CA 94720-1980
dkluttz@berkeley.edu
919-744-8911

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## Abstract

Economic, sociological, and legal theories have disparate underlying assumptions and make different predictions about the factors that sustain markets, but they agree that property-rights law is essential. We build on recent thinking about "negative spaces" in intellectual-property law to offer a gentle correction to this interdisciplinary consensus. Many markets, such as those for fashion and databases, operate in negative spaces, where there is little or no legal protection for intellectual property. Yet participants in such markets create innovative products and thrive. We build on insights in sociological and legal theories, which suggest (but seldom argue explicitly) that, in the absence of formal property-rights protection, cultural institutions can sustain markets. We propose that cultural institutions in positive spaces – markets where the law does apply – coevolve with property-rights law and that they influence markets in related negative spaces by inducing changes in market participants' understandings and actions. We apply this argument to markets for literature in American magazines in the eighteenth and early nineteenth century, which was a negative space for copyright law, and derive insights for markets for literature in the Internet age.

Sociologists, economists, and legal scholars agree that property-rights law is fundamental to markets (Schumpeter 1942; Polanyi 1944; North 1981; Campbell and Lindberg 1990; Posner 2010). Property-rights law determines the technical possibilities of and limitations on markets by defining the rules that govern ownership and control over the means of production, as well as over products themselves. Legal-technical constraints on markets cover what can and cannot be sold and under what circumstances, who can and cannot sell and buy it, and who can and cannot profit from selling it. Property-rights law also creates cultural opportunities for and constraints on markets: new cognitive schemas about the roles market participants play, novel understandings of their power vis-à-vis exchange partners, and innovative conceptions of the nature of their exchanges (Gordon 1984; Edelman and Suchman 1997; Fligstein 2001). Thus, property-rights law determines both what is and is not feasible (technical opportunities and constraints) and what is and is not acceptable (cultural opportunities and constraints).

Recent legal scholarship challenges this interdisciplinary consensus about property-rights law and markets. This work examines "negative spaces" in intellectual-property law: markets that thrive in the absence of intellectual-property protection (Raustiala and Sprigman 2006). In art, the term "negative space" denotes the area around an image; in law, it denotes an area of activity outside the areas where the law applies. Examples of such negative spaces include markets for fashion, furniture design, fine food (recipes and actual food items), stand-up comedy, databases, and open-source software. Despite the lack of property-rights protection, participants in markets for these products continue to innovate. Without property-rights protection, market participants are free to copy each other's products. When innovative products are copied, innovators are pushed to innovate anew. Innovators profit from sales to customers who value technical sophistication or creativity, while imitators profit from sales to customers who prefer low prices.

In this paper, we use negative-space theory to analyze the market for literature in the American magazine industry during the first 85 years of its history, from 1741 to 1825. We study this period because it is when American copyright law and the market for literature first developed (Cairns 1898). We study magazines because they were important forums for literary expression in

this era (*e.g.*, Okker 2003; Gardner 2012). By detailing how this market for literary products – essays, biographies, scientific articles, poetry, tales, short stories, and serialized novels – developed, even though it was virtually untouched by copyright law, we offer a gentle correction to current thinking about law and markets.

Further, we integrate negative-space theory with sociological and legal theories on law and markets, which argue that cultural conceptions of market participants and their practices, in conjunction with actual practices, shape property-rights law (Gordon 1984; Edelman and Suchman 1997; Fligstein 2001). Cultural and economic institutions jointly construct in the minds of both legal actors (legislators, lawyers, and judges) and economic actors (buyers and sellers) understandings of what kinds of things may be owned, who may own them, under what conditions they may be owned, and how they may be exchanged in markets. With regard to negative spaces in property-rights law, this work suggests that cultural conceptions of market participants and products, which co-evolve with the law inside positive spaces (where the law applies), shape cultural conceptions and practices in both positive *and* negative spaces. Thus, our theoretical integration reveals indirect effects of property-rights law on markets in negative spaces – effects that are mediated by culture – which have not yet been explicated by negative-spaces scholars.

We begin by reviewing theories of law and markets developed in economics, sociology, and law, paying particular attention to property-rights law and noting points of conflict and convergence. Then we describe negative-spaces theory, connect it to other sociological and legal theories, and articulate the empirical implications. Next, we describe our research methods. Our empirical analysis has four parts: (1) we detail the evolution of copyright law and show how the magazine industry occupied a negative space in copyright law during this era; (2) we describe the direct effect of law on economic activity in this negative space, focusing on norms and practices of magazine publishers and editors; (3) we trace the coevolution of copyright law and cultural institutions outside the magazine industry, in positive spaces, focusing on general cultural conceptions of authors and their relationship to literary property; (4) we reveal the indirect effect of copyright law, operating through cultural institutions, on the magazine industry. We conclude by considering the

implications of our findings for theories of law and markets. In doing so, we shift from our historical example to reflect on how negative-space theory applies to contemporary markets for creative literary work in the Internet age.

## 1. Law and Markets

*Economic theory*. Both neoclassical and institutional economists hold that law directly shapes economic action and that actors' preferences determine how they will behave, given legal strictures. Economic theories assume that actors respond to rewards and punishments: they obey law to the extent that legal sanctions raise the expected cost of non-compliance above the expected benefits (Becker 1968). Economic theories are fundamentally rationalist and instrumentalist: rationalist in that they assume actors seek to attain *a priori* goals, instrumentalist in that they assume actors seek to maximize the benefits derived from attaining those goals, net of the costs of their actions. As a result, economic theories take actors' preferences as fundamental and law as an exogenous force to which actors react. Furthermore, economic theories focus exclusively on technical opportunities for and constraints on action. With regard to property rights, economic theories predict that both buyers and sellers will weigh the benefits and costs of attaining their goals, and that law will create technical opportunities for and constraints on both production and sale (North 1981).

*Sociological theory*. Congruent with economic theories, sociological theories assume that the state – and through it, the law – imposes technical constraints on economic action (Polanyi 1944). But contrary to economic theories, sociological theories hold that actors' preferences develop through social interaction (Berger and Luckmann 1967); specifically, through conversations and negotiations that take the law into consideration. Moreover, the meaning of the law itself and therefore its power arises from social interaction (Edelman and Suchman 1997), as laws governing markets are embedded in myriad webs of social relationships and cultural understandings (Fligstein 2001). Thus, with respect to property-rights law, law both reflects *and* refracts cultural conceptions of property and ownership. The upshot is that cultural factors, not just technical ones, shape the recursive relationships between property-rights law and markets.

*Critical legal history*. Critical legal history frames law as central to all social life (Gordon 1984, 1997; see Tomlins 2012 for a review). Contrary to economic theories, it holds that law is not used purely instrumentally. Legal relations between economic actors and cultural conceptions of law cannot be explained solely by actors' preferences; to explain them, scholars must attend to the political, economic, and cultural contexts within which actors exchange goods and services. And legal relations between actors do not simply condition how they relate to one another; instead, law constitutes both those relations and actors' understandings of them. Thus, consistent with sociological theories, law and context are mutually constitutive. Property-rights law in particular creates and sustains relations between buyers and sellers, not simply by its own authoritative weight, but by the intrinsic connectedness of law, society, and actors' consciousness. Property-rights law shapes the interests and goals of both buyers and sellers: it can "persuade people that the world described in its images and categories is the only attainable world in which a sane person would want to live" (Gordon 1984: 109).

*Commonalities*. These lines of thought differ in many ways, but they agree that property rights are essential to markets: without property-rights law, markets cannot be created or sustained. The absence or under-enforcement of property rights generates four problems: opportunism, meaning appropriation of property by others; misuse of productive resources, such as by polluting; over-use of resources, such as over-fishing; and diminished production of innovative goods and services. These problems stem from the lack of accounting for the costs and benefits of using productive resources: if no-one owns resources, who will care to weigh costs and benefits? In turn, the lack of cost-benefit calculation yields inefficiencies.

*Negative spaces in intellectual-property law*. In contrast to the arguments discussed above, negative-space theory focuses on thriving markets where novel products (technologically innovative or culturally creative) are *not* protected by intellectual-property law – legislative, administrative, or judicial (Raustiala and Sprigman 2006). Theorists label such markets "negative spaces" in intellectual-property law. In negative spaces, competitors are free to copy each other. In some markets, like fashion and fine food, the most prestigious participants are the ones who create novel

products, which less prestigious participants copy. For example, in the fashion industry, innovations by high-end designers are copied by "fast fashion" enterprises like Zara as soon as new designs appear on runways, without the latter running afoul of the law. Such copying pushes prestigious participants to continuously create novel products. Prestigious participants profit from sales to customers who reward novelty; imitators profit from sales to customers who reward low prices. In other markets, such as typefaces, the innovate → copy → innovate cycle is similar, although the innovators may be less prestigious incumbents or newcomers.

This dynamic is similar to what economic sociologists have termed "Red Queen competition" (Barnett 2008): simply to maintain their competitive positions, firms must constantly innovate, either creating novel products or improving their production or distribution processes. Rivals' actions drive firms to innovate: a focal firm innovates and becomes a stronger competitor; in response, its rivals innovate and become stronger themselves; as a result, the focal firm must innovate anew or lose in the amped-up competitive arena. Consequently, firms must run hard just to maintain their positions in the competitive race – as the Red Queen tells Alice in *Through the Looking-Glass*. But this theory is silent about the role law plays in this competitive dynamic and has been applied to markets where property-rights law applies, such as breweries and banks.

*Negative spaces and culture.* Although sociological theory holds that property rights are essential to markets, it also suggests, but seldom argues explicitly, that culture (cognitive conceptions of what is appropriate and acceptable) can allow markets to operate in the absence of property rights (Fligstein 2001). Similarly, legal theory holds that informal norms may substitute for formal law (Ellickson 1991). To avoid cutthroat competition, market participants might collectively agree on rules of exchange. Social scientists have only recently begun to investigate this dynamic (*e.g.*, Fauchart and von Hippel 2008 on anti-copying norms among French chefs), building on theories of norms regulating the commons (Ostrom 1990).

Here, we argue that as intellectual-property law and culture co-evolve, law has both direct *and* indirect effects on economic activity in negative spaces, and that the indirect effects are mediated by (operate through) culture. In positive spaces for intellectual-property law, where the law applies,

law and culture coevolve. The resulting cultural institutions affect market actors and activities in positive spaces, but they may also spill over to actors and activities in related negative spaces – spaces that are related because the same actors are involved in both (Fligstein and McAdam 2012). For example, new norms governing actors' behavior and new understandings of their roles can emerge in a market where the law does apply, then subsequently be applied to a related market where the law does not, but where the same actors participate.

Figure 1 illustrates this dynamic. At the top is the recursive relationship between intellectual-property law and cultural institutions. At the bottom are positive and negative spaces for this law. Law casts a narrow "shadow" on positive spaces only, but cultural institutions cast a broader "shadow" on both positive and negative spaces. This figure also shows (in brackets) the components of our empirical case, the young American republic: copyright law, conceptions of authors and accepted practices for literary exchange, and three spaces in copyright law. The first space is positive, encompassing markets for charts, maps, books, and prints. These were protected by federal copyright law. The other spaces are negative, encompassing (1) markets for work by foreign authors published in any medium and work published by domestic authors outside the U.S., and (2) any work published in magazines: These were not protected by federal copyright law. The positive and negative spaces were related because many of the same actors – authors, publishers, and readers – participated in two or all three.

[Figure 1 about here]

The dynamic shown in this figure might play out as follows. First, in markets where intellectual-property law applies, law and cultural conceptions of authors (widely shared understandings of who authors are, why they write, and their legal relationship with literature) will coevolve. Second, the cultural conceptions of authors that emerge from this coevolutionary process may be used by participants in related markets where intellectual-property law does *not* apply. Third, this cultural spillover may make authors more likely to demand credit and payment for their work, even in markets where they have no clear rights over their property, and may make publishers more likely to accede to these demands.

## 2. Research Methods

*Research site.* To investigate this dynamic, we focus on the eighteenth and nineteenth centuries, when copyright law and literary markets first developed in America. Although much research on relationships between copyright law and the market for literature focuses on books (*e.g.*, Davidson 1986; Buinicki 2006), magazines were important forums for literary expression in this era (Cairns 1898; Okker 2003; Gardner 2012). Magazines were proving grounds for new forms of fiction, notably the tale and the serialized novel (Charvat 1968; Dauber 1990). They fostered the flourishing of poetry (Charvat 1968). And they published much philosophical, theological, historical, scientific, and other non-fiction writing (Mott 1930; Marti 1979; Hatch 1989), genres that constituted the main forms of "polite literature" in this era (Warner 1990). Finally, they had considerable impact on the book trade: many novels were published in serial form in magazines before coming out as books, books were advertised in magazines, and book reviews published in magazines were the primary means by which book authors' reputations were made (Zboray 1993).

Our study period runs from 1741, the first year American magazines were published, to 1825, when the industry began to grow rapidly. The magazines we study come from a list encompassing virtually every magazine published in America from colonial times to the Civil War, derived from a dozen primary and a hundred secondary sources (Haveman 2015). The data on magazines include only those publications that meet industry historians' definition (Mott 1930; Tebbel and Zuckerman 1991): publications containing a variety of written and pictorial material, with more than transient interest, printed at regular intervals. We excluded newspapers and pamphlets based on histories of publishing (*e.g.*, Mott 1930), bibliographies of the magazine and newspaper industries (*e.g.*, Brigham 1962; Albaugh 1994), and inspection of archived periodicals.

After 1825, the first golden age of magazines began, which saw a dramatic increase in the legitimacy, circulation, and number of magazines (Mott 1930; Charvat 1968; Tebbel and Zuckerman 1991). However, after 1825, archival data became increasingly subject to bias due to selective

deposit in archives.[1] The samples we analyzed are likely biased toward magazines that focused on serious subjects – general-interest, literary, religious, and scientific magazines. Since these subjects were what people in this era termed polite literature (Warner 1990), the results of our analysis should be representative of the discourse we seek to capture.

*Analysis.* To understand both law on the books and law in action, we traced the evolution of copyright law in multiple ways, triangulating among data sources. We located every constitutional provision about copyright, all constitutional debates related to copyright, and relevant materials from the Continental Congress. We read the full text of each state and federal copyright statute enacted during this period (Library of Congress 1905, 1906; Crawford 1975). To identify case law, we searched Lexis-Nexis and Westlaw. Coverage began with the inception of the highest state appellate court for 18 of the 24 states admitted to the Union before 1825 and with the first official case report for 6 other states. Coverage extended to lower courts for Connecticut, Delaware, Maryland, New York, South Carolina, and Virginia, and into the colonial period for Massachusetts, Maryland, Pennsylvania, and Virginia. We also consulted the digest of copyright decisions from 1789 to 1909 (Library of Congress 1980) and legal treatises on copyright published closest in time to our study period (Maughan 1828; Curtis 1847). Finally, to determine whether and how magazines actually used copyright law, we searched magazines for formal copyright notices and articles about this topic.

We conducted multi-faceted searches for data on attitudes toward copyright, the practice of reprinting, and cultural conceptions of authors and the exchange of literary property. We started with magazine prospectuses and editorial statements in each magazine. Then we read the second issue of every magazine available in the archives (533 out of the 902 published 1741-1825) and coded the authorship of all articles (signed *vs.* pseudonymous or unsigned). We chose second issues because first issues usually contained idiosyncratic material – not just editorial statements and prospectuses, which we analyzed, but also legitimating devices like encomiums and lists of

[1] Among magazines founded in the eighteenth century, 61% (91 of 148) were available in the archives; among those founded in the first quarter of the nineteenth century, 58% (442 of 758) were available. But among those founded in the second quarter of the nineteenth century, only 13% (382 of 2,781) were available.

subscribers, which took space from substantive content. We searched the American Periodical Series Online, which contains digitized images of American magazines, including over half of all magazines published during our study period, for articles containing these key words and phrases: anonymity, anonymous, author*, copyright*, professional author, and property right[s].

We also calculated how often magazine founders hid their identities behind anonyms and pseudonyms. Doing so allowed us to analyze all magazines in this era, including those that were not in the archives, and provided a second, albeit indirect, measure of cultural conceptions, through magazine founders' actions. Finally, we augmented the primary data analysis with close readings of research by historians and literary scholars.

## 3. The Development of Copyright Law

There are two dominant philosophies of copyright: as recognition of a perpetual ownership right for authors in the literary property over which they labored and as a statutorily granted motivation for authors to produce creative work that benefits the public (Abrams 1983; Bracha 2008a). From the eighteenth to the nineteenth century, American copyright law shifted away from the first philosophy and toward the second.

In colonial America, the few copy privileges granted by colonial courts reflected a conception of copyright geared more toward monopolies for publishers than toward rights imbued in authors (Abrams 1983; Bracha 2008b, 2010b). Because most colonial authors were gentlemen-scholars who did not seek to profit from their writing, it was publishers, not authors, who usually sought copyright privileges (Bugbee 1967; Bracha 2010a). Around the Revolution, however, Americans began to view copyright as rooted in authors more than publishers. For example, in 1772, the Connecticut colonial assembly was the first to grant copyright privilege to an author rather than a publisher (Silver 1958). After the Revolution, the shift toward authors gained momentum and a discourse about authors' rights emerged (Bracha 2008c, 2010a, 2010b). American writers, such as poet Joel Barlow and spelling-book author Noah Webster, lobbied state legislators for copyright protection (Barlow 1783; Webster 1843). They maintained that such protection would

unite the new nation by promoting a national cultural identity, pointed to authors' rights as justification for state copyright regimes, and claimed that copyright law was necessary for the U.S. to reach cultural parity with European powers. For example, Barlow (1783: no page) argued:

> America has convinced the world of her importance in a political and military line by the wisdom, energy and ardor for liberty which distinguish the present era. A literary reputation is necessary in order to complete her national character; and she ought to encourage that variety and independence of genius, in which she is not excelled by any nation in Europe. As we have few Gentlemen of fortune sufficient to enable them to spend a whole life in study, or enduce others to do it by their patronage, it is more necessary, in this country than in any other, that the rights of authors should be secured by law.

After petitioning by Barlow, the Continental Congress adopted a resolution recommending that states craft legislation protecting authors' and publishers' copyright privileges in their works (U.S. Continental Congress 1922 [1783]). With copyright legitimized by the Continental Congress and with continued lobbying by authors, all states except Delaware enacted copyright statutes by 1786. The idea that copyright served to protect authors' rights was the dominant theme in these statutes: all twelve mentioned "authors" as recipients of protection, while only two also mentioned "publishers" or "purchasers" of copies (Patterson 1968; Abrams 1983).

In 1787, the Constitutional Convention adopted, without debate, the Copyright Clause of the U.S. Constitution, which granted Congress the power "to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Rights to their Writings and Discoveries" (U.S. Constitution, Art. I, § 8, cl. 8). This pronouncement, embedded as it is in the foundational document of the U.S. government, reveals a national interest in promoting learning, while at the same time centering copyright squarely on authors (Patterson 1968: 193).

Three years later, Congress passed the first federal Copyright Act, entitled "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" (U.S. Congress 1790). Unlike most state statutes, the federal statute mentioned "proprietors" (*i.e.*, publishers or booksellers) along with "authors." To obtain a copyright under the statute, authors or proprietors had to comply with statutory requirements: pay a fee, deposit a copy of the title of the work in their local district court,

publish a copy of the record in a newspaper for four weeks, and file a copyright claim with the Secretary of State (U.S. Congress 1790). The onerous procedural requirements for securing copyright, combined with the explicit mention of proprietors in the statutory text, indicate that the Act emphasized copyright as a statutory grant as much as authors' property right (Abrams 1983; Patterson 1968; Bracha 2010a).

There was one glaring omission in American copyright law in this era: it explicitly excluded works by foreign authors. This enabled American publishers to reprint foreign works and sell them without paying royalties. Not until 1891 were foreign authors protected by American copyright law (Barnes 1974).

### 4. Magazines and Copyright

American copyright law created one clear negative space in intellectual-property law: the work of foreign authors, which anyone could reprint freely (Spoo 2013). This negative space helped the nascent magazine industry by greatly reducing the cost of acquiring contents.

Concerning domestic work, the situation was more complicated. During this period, only "maps, charts, and books" (U.S. Congress 1790, ch. 15 § 1) and "prints" (U.S. Congress 1802, ch. 36 § 2) were defined as copyrightable in federal law. No version of federal copyright law included the word "periodical" until the 1891 revision declared that, for purposes of copyright registration, "each number of a periodical shall be considered an independent publication" (U.S. Congress 1891, ch. 565 § 11). Periodicals did not explicitly become their own category of copyrightable text until the 1909 revision (U.S. Congress 1909, ch. 320 § 5(b)). Moreover, during this period, copyright statutes did not identify individual articles in magazines as copyrightable. Additionally, neither our searches of court records nor studies by legal scholars (Ginsburg 1990; Brauneis 2008) revealed any court decisions concerning magazines and copyright. Finally, the earliest treatise on American copyright law, published two decades after this period ended, noted unresolved tensions in American copyright law with regard to periodicals (Curtis 1847: 227-229).

Given the lack of explicit guidance from federal statutes and American courts during this period, we looked to British law, on which American law was based. Although both legal traditions expanded copyright protection during this period (Hughes 2005: 602-604), British courts tended to recognize copyright protection in literary works beyond conventional "books" than American courts. Americans were aware of British legal developments through treatises and periodicals; see, for example, discussion of a British case upholding copyright in a newspaper (*Saturday Evening Post* 1824: 33). Had there been any litigation (and there is no evidence that there was), American courts might have followed British law and considered magazines and original contributions to them as copyrightable "books" so long as their authors or assignees met the procedural requirements. But even British law was not clear on copyright as applied to magazines and magazine contributions until the statutory revision of 1842 (5 & 6 Vict. ch. 45 § 18 (1842); see Maugham 1828: 171-172).

Even if copyright law had clearly covered magazines, the onerous procedural requirements for securing copyright constituted serious obstacles. If copyright law treated each issue of a magazine as a book, for example, a publisher would have had to meet these requirements for every issue. In practice, these requirements excluded magazines from copyright (Netanel 1996). We thus conclude that during our study period, domestic magazine literature occupied a negative space in American copyright law.

Given this, it is not surprising that very few magazines even claimed copyright. Between 1790 and 1825, only 39 magazines (7.2%) printed copyright notices in their first issues, and one more printed a notice in its third issue.[2] A few others claimed intellectual-property rights in editorials. For example, Noah Webster, founder of the *American Magazine*, claimed copyright over his periodical, forbade the reprinting of its contents, and threatened lawsuits against reprinters:

> Printers throughout the United States are requested to observe, that this publication circulates as the Editor's property…. Several trespasses upon the property of the Editor, in different parts of the country, have been already committed – and will be passed without further notice. But a repetition of the injuries, will call, before the proper tribunal, a legal

[2] In this, magazines were similar to books: the vast majority of books published between 1790 and 1820 were not copyrighted (Khan 2005; Johns 2009).

> question of considerable importance; and produce some trouble and expense, which every man of a specific disposition would wish to prevent. (Webster 1788: 2)

But Webster's admonition was the exception, not the rule. Analysis of magazine prospectuses and editorial statements revealed a lack of concern with and attention to copyright law. Indeed, some copyrighted magazines allowed others to reprint their contents:

> The Copy right is secured that the Association may realize the benefit of a future Edition, if the public favor should justify the measure, but it is not meant to restrain printers of news papers, from making occasional extracts, for the information or amusement of their readers; nor can it be understood as designed to prevent an Author of a Communication to this Work, from publishing the same in any volume of his own. (*Useful Cabinet* 1808: 3)

In sum, magazines in this period occupied a negative space in copyright law for both foreign and domestic work.

## 5. Magazines and the Norm of Reprinting

The negative space in American copyright law had one important direct effect on magazines: it engendered a widely shared culture of reprinting both foreign and domestic work, creating a literary commons in which all could share.

*Foreign work.* The lack of copyright protection opened the way for rampant reprinting of work by foreign authors (Spoo 2013). For example, between 1790 and 1797, *New York Magazine* reprinted 86 articles from the venerable *Edinburgh Magazine*, including travel stories, articles about new inventions, essays on morality and science, short stories, and biographies (Pitcher 2000: 129-149). Magazines often signaled their intention to reprint work from foreign sources by mentioning in their titles "foreign publications" or "foreign masters," or explicitly stating the source countries. Others laid out their intentions in prospectuses. The *Atheneum*, "having secured a regular supply of the most popular productions of the Magazine class, issued in England" proposed "to select such of the contents … as are calculated to interest readers in the United States (*Atheneum* 1817: III), and the *Museum of Foreign Literature, Science & Art* stated that "the periodical works of Great Britain and France contain a mass of literary and scientific intelligence, which does not reach the American public for want of a suitable channel, but which would be read among us with equal pleasure and profit" (Littell 1822: no page).

Some magazines claimed to save subscribers money by obviating the need to subscribe to foreign magazines or purchase foreign books:

> The middling class of society is, at present, almost wholly deprived of [foreign magazine material]; for the price of any one foreign journal exceeds the price [$5.00 per year] at which the present compilation will be offered. (Bronson 1809: 2)

> …the utility of such a [domestic medical periodical] work is greatly enhanced, by the exorbitant price of imported books…. arrangements have been made for procuring from Europe the best periodical works, and a summary of their contents will be exhibited in the *Lycæum*, as succinctly and promptly as possible. (Potter 1811: 2)

Others averred that much published in Europe was not of interest to Americans, and that they would sift out and reprint only the most interesting and worthy pieces:

> Journals, Magazines, and Reviews, have been established in Europe. … They abound with the speculations of men of genius, which deserve to be separated from the wretched effusions which disgrace their pages. (Ewing 1809: 2)

> The matter which [European publications] contain is altogether of a mixed nature, and of merits the most unequal…. These publications are, at this time, so numerous, so costly, and so difficult to be procured, that really they can only be consulted … through a medium somewhat similar to the one now proposed. (*Eclectic Repertory and Analytical Review* 1810: 2)

Still others reasoned that reprinting was a sounder strategy than relying on original contributions:

> To give the public confidence in the stability and permanence of this work, the editors announce it as their intention to assume as the basis of their publication, the selecting and arranging from foreign periodical publications … thereby securing an inexhaustible fund of the most entertaining articles from those sources, and superseding the necessity of a steady reliance on the tardiness or paucity of editors and contributors, and also enabling the publishers to appear with the utmost punctuality at the stated day of publication. (Goodrich 1819: 1)

Finally, some declared that America itself would benefit from exposure to more refined European literary culture:

> [America] has hitherto confined herself almost entirely to the "useful," in the narrow sense of the word,—to jurisprudence and science… It is only in the more refined states that *literature* can be cultivated. The useful must precede the ornamental; and the necessities of man must be satisfied before their luxuries. (*Museum of Foreign Literature, Science, & Art* 1824: 91)

*Domestic work*. Without explicit recognition and use of copyright law, magazines also reprinted domestic work without fear of sanction. Over half (245 of 478) of magazines with

prospectuses and editorial statements available in the archives openly advertised their willingness to reprint:

> Such articles and documents of various kinds and upon all proper subjects, will be selected, as shall be thought most worthy of preservation. (Sampson, Chittenden, and Crosswell 1802: 1)

> It will be a leading object to republish from other Magazines such productions as shall appear best calculated to promote useful knowledge, sound morality and vital piety. (*Religious Instructor* 1810: 3)

Some even asked others to reprint their work, accepting this even when not acknowledged as the original source:

> Editors throughout the United States are respectfully requested to notice this publication, and the favour will be reciprocated when the opportunity offers. If they avail themselves of our labours, by republishing any of the articles, and acknowledge the source of information, this will be duly appreciated; but if the title of the *Minerva* should be omitted, we shall never find fault with this, as it is our wish, that every thing contained in its pages, calculated to increase the stock of human knowledge, should be extensively circulated. (Houston and Brooks 1822: 7)

Reprinting was often reciprocal. One editor remarked, "we have not infrequently been flattered, in the course of our editorial exchanges, by a literal return of sundry specimens of our taste in selecting" (Foote 1825: 206). For example, during the early 1800s, the *Balance & Columbian Repository* exchanged much material with the *Impartial Gazetteer*. Of the 210 articles published in the first three volumes of the *Balance*, 50 were published in both magazines (Pitcher 2000: 151-181). And the *Impartial Gazetteer* exchanged much material with the *Philadelphia Repository*: some 400 articles appeared in both, 90% within one year of their first appearance (Pitcher 2000: 183-205).

Yet editors struggled to balance the benefits of having their contents reprinted in other periodicals and their desire to control what they labored to create:

> We have secured the copy-right of the Panoplist. This is not done from any selfish design; but merely to prevent barefaced mutilations and piracies of original articles, of which not a few instances have occurred hitherto, *other similar aggressions having been contemplated on a systematic plan*. Permission is freely given to [five other magazines] … to extract any articles from the Panoplist, provided they give credit for each article, and publish a general notice that, though the copy-right of the Panoplist is secured, they have our express permission to make selections without restraint; it being understood, that this permission may be revoked in the same public manner in which it is now given. … It has given us pleasure to see some of the most valuable articles in our work reprinted in respectable publications; but it ought

> to be known, that more time and expense have been laid out upon the Panoplist than upon any similar magazine in the country. (Evarts 1816: 48, emphasis in the original)

When this religious magazine closed four years later, the editor blamed unauthorized reprintings, claiming that subscriptions dwindled "in consequence of having so great a part of our most interesting material immediately taken from us, and published in all the religious newspapers of the day" (Evarts 1820: 357). Thus, although reprinting was widespread and often valued, not all industry participants appreciated it.

*Conclusion*. The prevalence of reprinting indicates that magazine editors and publishers ascribed to an informal norm that allowed sharing of contents – a "culture of reprinting" (McGill 2003) that created what observers have labelled variously a textual, literary, or cultural commons (Brewer 2005; Tomc 2012; Spoo 2013) in which all could share. The roots of this culture run deep in American history: colonial merchants imported pirated English books from Scotland and Ireland, and colonial publishing houses freely reprinted European work (Johns 2009; Spoo 2013). This culture also pervaded the market for music during this era (Bracha 2010b). Even postal law supported this culture (Kielbowicz 1989). Under the 1792 Postal Act, newspaper printers could "send one paper to … every other printer of newspapers within the United States, free of postage" (U.S. Congress 1792, § 21). As many newspaper publishers launched magazines (Haveman, Habinek, and Goodman 2012), the culture of reprinting spread from newspapers to magazines, which publishers frequently exchanged, even when they had to pay postage (Mott 1930; Kielbowicz 1989; Jackson 2008). Finally, the culture of reprinting was sustained by a belief that magazines' subscriber bases did not overlap much, if at all, because of geographic limits on magazine distribution, so reprinting material from one magazine in another would not undermine either's readership (Mott 1930; Johns 2009). In sum, editors did not mind others lifting material from their pages because they did the same thing. Most viewed this practice as beyond the reach of law.

## 6. Coevolution of Copyright Law and Culture: Conceptions of Authors and Editors

Copyright law and cultural conceptions of literary property – who authors were, why they wrote, and their legal relationship with their work – coevolved over our study period.

In the eighteenth century, the few Americans who produced literature were gentlemen-scholars who crafted ponderous tomes about religion, history, political economy, and natural philosophy. For them, writing was an avocation, a byproduct of their learning, made possible by comfortable economic circumstances that afforded them time to think and write. Such gentlemen-scholars as lawyer-polemicist William Livingston, minister-essayist Aaron Burr, and scientist-poet James Bowdoin sought to further their own political, artistic, religious, or scholarly objectives, not to make money (Charvat 1968; Dauber 1990). Accordingly, they were unconcerned with claiming property rights; indeed, they shunned publicity and generally published anonymously or pseudonymously. Perhaps most notable was Thomas Jefferson, who disavowed and threatened to burn the first edition of his only book, *Notes on the State of Virginia*: "Do not view me as an author, and attached to what he has written," he cautioned James Madison (quoted in Ferguson 1984: 34). In the same vein, one essayist, explaining his decision to write under a pseudonym, proclaimed that the "sincerity of my character shall be the principal characteristic" by which his essays would be judged (Rhapsodist 1789: 464).

The twin conceptions of authors as gentlemen and amateurs (those who wrote for the love of it rather than for money) were reinforced by the economics of authorship in eighteenth-century America, where there were few wealthy aristocrats to flatter with prose and poetry. Even in the nineteenth century, only a tiny fraction of American authors found wealthy patrons to underwrite their literary aspirations. A lucky few, including poet Joel Barlow, who accepted a sinecure as army chaplain, and poet-essayist Philip Freneau, whom President Jefferson hired as a translator, received remunerative political appointments that freed them to write (Charvat 1968).

After the Revolution, Americans increasingly came to view authors as professionals who should receive value in exchange for their efforts:

> A man who has devoted the most valuable period of life to the acquisition of knowledge; who has grown "pale o'er the midnight lamp;" who labors to decipher ancient manuscripts, or purchases copies at three thousand percent above the usual price of books, is indubitably entitled to the executive advantages resulting from his exertions and expenses. (Webster 1788: 2)

Others viewed authorship as a potentially lucrative profession: "My grand object … was money. The ways & means were Authorship" (Dennie 1795, in Pedder 1936: 145). This author-lawyer defended his foray into writing a series of essays collectively titled "Farrago":

> I … was advised to establish a miscellanious [*sic*] paper intended as a vehicle for those Essays which I had already written or might in future write …. I am not printer nor Editor, but receive for my *Farrago* this important addition to my income …. The Essays of Addison & Johnson were published in this manner … and shall I be ashamed to tread the path they have pursued? Belive [*sic*] me … it leads to property, it leads to … my legal & to my literary eminence. (Dennie 1795, in Pedder 1936: 146-147)

Later, authorship was equated with other professions:

> And shall not the MAN OF LETTERS—he whose occupations more than those of any other class of society, are largely and intimately linked with those qualities and attributes which gave to man his superiority over the brute creation—shall not the man of letters be admitted to the same privilege [as the lawyer, physician, scientist, and architect]? Shall a profession so manifold in its departments, and in each so important, be unpermitted to the claims of distinction freely granted to the practitioners of sciences, which however honourable and deserving they may be of the respect of mankind, are nevertheless incalculably more limited in their range, than the almost boundless field within which the literary character pursues his researches? (G. 1818: 402; emphasis in the original)

One commentator wrote about authors' "careers" (*Aeronaut* 1820: 2), something that could not be conceived of if authors were not professionals.

Cultural conceptions of magazine editors also shifted from gentlemen-scholars to professionals. In the earliest years of the magazine industry, editors were generally part-time volunteers who had other occupations to sustain them economically. Over the early nineteenth century, they became full-time paid professionals motivated by the prospect of sustaining themselves economically (Greene 1970; Lanzendörfer 2013). For example, one stated baldly that "…pecuniary profit is acceptable … this is the best proof which [the editor] can receive that his endeavours to amuse and instruct have not been unsuccessful" (Brown 1803: 5). The editors of the *New York Medical Magazine* (1814: 1-2), admitted giving up their "more legitimate occupation" for full-time work as editors and, reacting to the charge that their subscription price was too high, noted flatly "that it is self-evident, that a work which does not defray its own expenses, cannot be continued." The conception of a professional magazine editor-founder with profit motives had become entrenched enough by 1811 that non-pecuniary motivations were the exception rather than the

norm: "Bookmaking … has become a trade so common, that the world has been led to suspect most literary proposals, as projects to extract money" (Potter 1811:1). In this vein, one editor solicited subscribers' help to increase his periodical's circulation and thus profits; he claimed earning higher profits would benefit readers: "After all, this is the main-spring that causes the most of us to exert ourselves, and is the best security for good conduct" (Niles 1819: 391). By the end of our study period, magazine editor had become an occupation with skills distinct from founder or publisher (Lanzendörfer 2013), as evidenced by one founder lauding the "literary attainment" of the editor he hired (*United States Catholic Miscellany* 1822: 1).

Cultural shifts in conceptions of authors and editors were congruent with shifts in economic conditions. As American society became more market-oriented (Sellers 1991), literature came to be viewed as goods to be exchanged through markets, and authors and editors came to be viewed as imbued with economic rights in literary property and as members of paid professions. Although editors could often secure a living from their publications, the situation of authors remained precarious: only Americans with independent means or easy and remunerative sinecures could indulge in writing. One essayist stated that the profession of authorship "…has certainly not attained to that degree of public estimation, that high honourable distinction among the employments of mankind, to which the intellectual nature of its pursuits undoubtedly entitles it" (*American Monthly Magazine* 1824: 89). Not until the 1830s could even a handful of Americans like Washington Irving and James Fenimore Cooper earn reasonable livings as professional writers (Charvat 1968; Dauber 1990; Jackson 2008). This situation was similar to that of the twentieth century, when only 5% of American authors earned all of their income from writing (Kingston and Cole 1986).

The shift toward professional authors and editors was deeply entwined with changing conceptions of copyright law. As noted above, early lobbying by authors Noah Webster and Joel Barlow pressured American legislators to draft copyright statutes. A later magazine commentator explicitly linked property-rights law and the professional conception of authors: "If there is any kind of property which ought to be protected by law it is [literary property]. If there is any kind of labour

that ought to be rewarded, it is the labour of the mind; it is that labour, … which more than all others results in benefits to mankind" (*Rhode Island Repository*, 1815: 594). Moreover, as conceptions of authors shifted, people became aware of having to comply with copyright requirements. One editor quoted the notice and deposit requirements of the Copyright Act, saying that it was the section "less attended to than any other" and urging contributors to secure copyright: "It would be well for authors and engravers to attend to these suggestions, as we understand there are several valuable works, which, through the negligence in relation to the law of copy-right, might be reprinted … without incurring a penalty" (*National Register* 1819: 275). In conclusion, then, cultural conceptions of authors and editors evolved in tandem with understandings of copyright law.

## 7. Evolving Conceptions of Authors: Impact on Magazines

Shifts in cultural conceptions of authors had two effects on magazine-publishing practices: eroding the acceptance of authorial anonymity and fostering the practice of paying authors for original contributions.

*The prevalence of anonyms and pseudonyms.* Early contributors to magazines often remained anonymous to preserve their dignity and privacy, two characteristics of gentlemen-scholars (Charvat 1968).[3] One essay argued the virtue of anonymity ("the mark of invisibility") for the budding author: "Should he at length find that he has mistaken his abilities … he may at once relinquish his plan, without discredit to himself, and have the satisfaction to know that his performances have defrauded him of but little time" (Quince 1805: 1-2). Indeed, editors often preferred authorial anonymity: "That we may judge without partiality, we wish to have all original communications intended for publication for in the Mirror, transmitted to us without the name of the author" (*Boston Mirror* 1808: 1). Given widespread acceptance of anonymous authors, it is not surprising that editors who revealed authors' names apologized for doing so: "To the piece entitled 'Constancy,' in our last

[3] The practice of anonymous and pseudonymous authorship was not limited to magazines. Many books were also published anonymously or pseudonymously.

number, the signature of Malvinia was affixed through mistake, it should have stood as anonymous" (*Lady's Weekly Miscellany* 1807: 363).[4]

Even many of those running magazines preferred to cloak their identities: the *Lady's Magazine* (1792-1793) was edited by "a literary society" and the *Aeronaut* (1816-1822) by "an association of gentlemen." Others hid their identities behind pseudonyms: "Robert Rusticoat" founded the *Wasp* (1802-1803) and "An American Patriot" edited *Periodical Sketches* (1820). Figure 2 shows that between 1741 and 1825, 14% of magazine founders (usually their editors and/or publishers) used anonyms or pseudonyms to hide their identities. This practice was most common in the first two decades of the nineteenth century: while only 5% of magazines founded in the eighteenth century had anonymous or pseudonymous founders, 18% of those founded 1801 to 1810 did. The practice then declined, with 15% of magazines founded 1811 to 1820 having anonymous founders, and just 4.7% of magazines founded 1821 to 1825.

[Figure 2 about here]

That eighteenth-century magazine founders were less likely to hide their identities than early-nineteenth-century ones may reflect the importance of personal reputation for those who launched and ran magazines in the industry's earliest years. This is consistent with a studies of later industries, including museums, electricity producers, and management-consulting firms (DiMaggio 1982; Granovetter and McGuire 1998; David, Sine, and Haveman 2012). Personal reputation can substitute for direct measurement of a venture's worth by suppliers and customers, which is especially valuable for very new industries, where suppliers and customers are highly skeptical (Aldrich and Fiol 1994). Such skepticism declines as an industry develops, reducing the need for founders to stake their ventures on their personal reputations.

As the professional conception of authors displaced the gentlemen-scholar conception, however, the meaning of anonymity changed. Both magazine editors and contributors began to denigrate anonymous ideas and opinions. One compared signed authors with civilized, upright

[4] Yet the "modesty" attached to anonymity did not mean authors felt no pride in their writing. One chided his editor for misattributing another anonymous piece to him (Portico 816: 79-80).

combatants and anonymous ones with savages who ambushed opponents (*Balance & Columbian Repository* 1803). Such opinions became increasingly common:

> As to experiments, anonymous, or signed by fictitious characters, they certainly cannot be brought into account. Where there is no responsibility, there is no authority. (Davidge 1806: 145)

> There can be no secure nor confident reliance on the truth of narratives, resting on the credit not only of no name of respectability, but no name at all. It is inconsistent with the plainest rules of evidence and common sense, to give implicit belief to statements whose authors are unwilling to stamp them with their own character, and to support them by the pledge of their own reputations. (*Analectic Magazine* 1817: 485)

> The publication is anonymous, and therefore the pretensions of the writer to personal knowledge and experience are entitled to no weight. (*Masonic Miscellany* 1822: 453)

> The value of an anonymous communication [is] *Nothing*. (*New England Galaxy* 1824: 344; emphasis in the original)

> It is … wrong to give anonymous details of historical facts, while so much depends upon personal authority. (Rafinesque 1824: 202)

Editors, like authors, were increasingly expected to reveal their names. One correspondent raised this issue with the editors of the *Christian Repository*: "The first question that arises is, Why has [*sic*] the Editors concealed their names from the public? The answer is given in the oracles of infallible truth. '*Every one that doeth evil* hateth the light, neither cometh to the light, lest his deeds should be reproved'" (Plain Sense 1822: 103; emphasis in the original). Reflecting this cultural shift, editors often refused to accept anonymous essays. But they struck a balance between contributors who wished to remain cloaked and a society that increasingly expected writers to have named authority by requiring authors to provide their names to editors, who would vet them and assure readers of authors' probity: "It is anonymous—but I know the hand-writing, and can assure the readers of the Register that the author of it is perfectly acquainted with the nature of the things disclosed, and that, in my opinion, he is incapable of misrepresenting facts" (Niles 1820: 79). Similarly: "We have hesitated as to the admission of this piece, because *a name* may always be reasonably required when extraordinary things are related" (Silliman 1822: 34). Having investigated, the editor concluded that the article seemed to represent current beliefs and published it: "[W]e

have concluded to let the thing take its chance with the public, without in any way committing ourselves as to the truth of the opinion entertained."

Contributors also became increasingly willing to reveal their identities in part because they wanted to assure readers of their integrity. For example, the editor of the *American Register* anonymously published "Account of the massacre in St. Domingo [Haiti], in May, 1806." He annotated the article with a caveat:

> The above narrative is an anonymous performance… Its only claim to credit must arise from the probable nature of the incidents contained in it. Imperfect as this kind of testimony is, it is, in general, the only kind accessible to a minute historian of contemporary events, where official intelligence is wanting. (*American Register* 1807: 137)

The author responded by stating his name and declaring the article to be truthful:

> I have thought proper, in order that its future existence, as a relation of a historical fact, may be placed upon as firm a basis as my veracity will allow, to acknowledge that I was the author of the publication in question…. My presence in Cape Français at the time, enabled me to inform myself fully of every particular that I have stated, and I pledge myself on its correctness, as to date, particularity, and truth, as far as human investigation can extend. (Raguet 1808: iv)

This exchange reveals the growing sensibility that authors could claim to be authoritative professionals only if their names were known.

*Paying contributors*. As authors came to be viewed as professionals, magazines became increasingly willing to pay them, which further encouraged the shift from gentlemen-scholars to professionals. The pioneer was the *Columbian Magazine*, which paid Jeremy Belknap for his contributions as early as 1787 (Wood 1949: 17-19). The *Port-Folio* and the *Examiner* began to pay contributors as early as 1812, with the *Examiner* offering $2.00 per page for well-written communications. The *Analectic Magazine* commissioned respected authors such as Gulian Verplanck and James K. Paulding during the War of 1812 (Lanzendörfer 2013: 290-293) and in 1816 extended the practice widely, offering $3.00 per page for "any original articles deemed worthy of insertion" (Allen 1917). One editor explained why this shift occurred:

> The efforts made to establish and conduct periodical publications … have been divided. These publications have, therefore, received but a partial support, have been of circumscribed usefulness, and of short continuance. To avoid these evils, an attempt will now be made to attain a concentration of labors. A method in which it is supposed this

> object may be effected is to allow a compensation to those who contribute to the pages of the proposed work. To make such compensation, is not only necessary, but just. Those who will thus labour for the public good, are not rich, and will need the reward to which they are entitled. (*Christian Spectator* 1819: iii)

Even editors who relied on unpaid contributions increasingly recognized writers as professionals motivated by money: "Money … will raise our ideas, 'twill guide the pen to themes engaging and enrapturing, 'twill … make us ever assiduous to please" (Bement 1812: 153).

Although paying authors was a cultural breakthrough, respecting as it did their property rights, the sums involved were not enough to earn a living. The average monthly income of white-collar workers at this time was about $34 (Margo 2000). To earn at this level, a contributor to the *Analectic*, which had 90 pages per monthly issue and set a relatively generous rate, would have had to be paid for at least 12 pages of text each month. Net of the short, unpaid items it published, the *Analectic* could pay at most a half-dozen authors each month.

Despite the small sums involved, this innovation had enormous impact, as large-circulation magazines like the *Atlantic Magazine* began to pay contributors. Even august literary reviews, whose writers were most likely to view themselves as gentlemen-scholars, adopted this market-oriented practice. For example, the *North American Review* began paying contributors in the mid-1820s. In turn, the rising value of literary property led magazines to trumpet their most popular authors, which increased their legitimacy and popularity: "The increase in readers has rendered all standard literary property of higher certain value, and must tend to improve literature by heightening the recompense of successful exertion" (*Atheneum* 1823: 125).

Finally, the marketing of literary property laid to rest the custom of literary anonymity. In 1824, one editor argued against allowing editors and contributors to hide behind pseudonyms because "it savours of roguery" (Sands 1824: 8). Another declared, "The author's name must accompany all communications" (Campbell 1822: 3), a sentiment reflected in the low rate of anonymous and pseudonymously published magazines founded from 1821 to 1825 (4.7%, compared to 15% in the 1810s, as seen in Figure 2).

## 8. Discussion and Conclusion

Despite the complete absence of copyright protection for foreign work, uncertainty about whether domestic work published in magazines was copyrightable, and the lack of use of copyright law by magazines to protect domestic work, a market for literature developed in the American magazine industry between 1741 and 1825. In this negative space for copyright law, magazines freely reprinted both foreign and domestic work, creating a widespread market for literature as the industry grew. Copyright law had a direct effect on this market, engendering a norm of reprinting and sharing literary work among magazine editors and publishers. Because copyright law and cultural institutions were mutually constitutive, law also had indirect effects on this market, mediated by culture. First, the development of copyright law was promoted by and reflected in a shift in understandings of authors' roles in the book market, from gentlemen-scholars to professionals. The shift led to two changes in the magazine industry – a movement away from anonymous authorship toward named authorship and widespread adoption of the practice of paying authors for contributions. These changes reshaped the market for literature in magazines, increasing the flow of new writing and ushering in the first golden age (Mott 1930; Charvat 1968; Tebbel and Zuckerman 1991).

Our findings have clear implications for theories of law and markets. First, in negative spaces (areas of economic activity where intellectual-property law does not apply), there are direct effects of the law's absence, as negative-space theory would predict: copying abounds (Raustiala and Sprigman 2006). In this historical case, market participants viewed copying as sharing. This norm fostered market growth by providing magazines with free material – something that standard accounts in economics, sociology, and law would not expect. Second and more complexly, in positive spaces where the law operates, law and cultural institutions coevolve, as sociological and some legal theories predict (Gordon 1984; Edelman and Suchman 1997; Fligstein 2001). In this historical case, copyright law both shaped and was shaped by broadly held cultural conceptions of authors. Moreover, these cultural institutions have spillover effects in related areas that are negative spaces in the law, which is not predicted by standard sociological and legal theories or by negative-

space theory. In this historical case, the new professional conception of authors in the book market led magazines to shun anonymous authorship and pay authors for their contributions. Our analysis shows that such indirect effects of law on negative spaces can be profound. Future research should investigate other markets to search for indirect effects of property-rights law. It should also determine the limits of such spillovers, based on participation by actors in multiple markets or social ties among actors in different markets.

Finally, our analysis has implications for literary property rights in the Internet age. The practice of reprinting previously published work continues. Consider the *Utne Reader*, which selects much of its contents from independent-press periodicals. Of course, modern print magazines, unlike their predecessors two centuries ago, pay for this privilege. In contrast, online news aggregators like the *Huffington Post* and the *Drudge Report* republish material that first appeared in other news sources – and, like their predecessors, they do so without compensating these sources. The legality of this practice is currently under dispute. Perhaps more fundamental are challenges to copyright from the "copyleft" movement, which allows users the freedom to reproduce and distribute texts but requires them to pass that same freedom to subsequent users (Dusollier 2003), and the Creative Commons licensing system, which provides standardized copyright licenses that enable authors to choose which rights they reserve and which they waive, in contrast to the conventional and more restrictive "all rights reserved" approach (Lessig 2004; Creative Commons 2013). It may be that interactions among participants in Internet-based markets for literary work will result in changes to both copyright law and our understandings of authorship in those markets, thereby giving rise to novel on-the-ground practices in related, print-based markets.

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**Figure 1: Direct and Indirect Effects of Law on Markets**
(example: copyright law and markets for literary property in America 1790-1825)

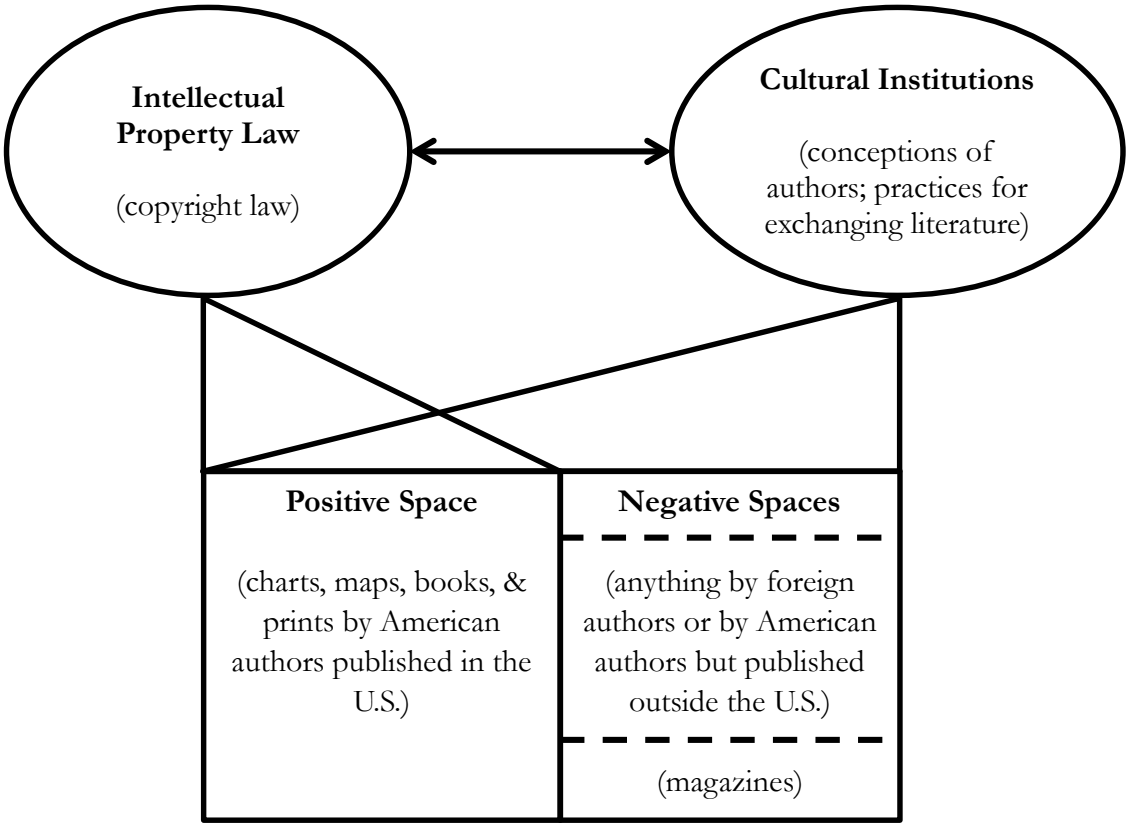


**Figure 2: Anonymity and Pseudonymity among Magazine Founders**