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The End of Piracy
Rethinking the History of German Print Piracy in the Early
Nineteenth Century



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To Isak and Åsa

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1. What is Unauthorized Reprinting?

Aims and Questions

“What is unauthorized reprinting, what is it not?”¹ A deadlock in the Palais Thurn und Taxis prompted the Hamburg publisher Friedrich Christoph Perthes to pose this question in “Ueber den teutschen Buchhandel und die äussern Verhältnisse der teutschen Literatur” (1829). Since the conclusion of the Congress of Vienna in 1815, the assembly of the Deutscher Bund, meeting in the former post office in Frankfurt, had debated a controversial bill on unauthorized reprinting. If passed, the bill would bring the confederated states under the purview of a shared authorial rights law. Perthes hoped the provision would bring an end to a problem that had threatened the welfare of the German book trade since the late eighteenth century. South German print pirates ransacked original works published by respectable northerners and flooded the market with often heavily altered pirate editions. While most regional powers had already passed laws against book piracy by the late 1820s, only a confederal ban would be able to stop book pirates who operated across the borders between German states. German sovereigns had promised to deliver such a reform at the Congress of Vienna in 1815.² Since then, disagreement over the definition of unauthorized reprinting and other issues had slowed the already troubled negotiations nearly to a halt. Before legitimate publications could be protected against the threat from unauthorized reprints, the assembly in Frankfurt needed to define the difference between these two genres of books.

Perthes’s question addressed the problem that I explore in this dissertation, a study of unauthorized reprinting in the early part of the German nineteenth century. Its aim is to analyze efforts in the early nineteenth century at defining the difference between legitimate editions

¹ “Was ist Nachdruck, was ist es nicht?” Friedrich Christoph Perthes, “Ueber den teutschen Buchhandel und die äussern Verhältnisse der teutschen Literatur,” in *Jahrbücher für Geschichte und Staatskunst*, ed. Karl Heinrich Ludwig Pöhlitz, vol. 1 (Leipzig: J.C. Hinrichs, 1829), 36.

² See article 18d in *Deutsche Bundes-Acte. Authentischer Abdruck. Mit Bewilligung der Kaiserlich Oesterreichischen Gesandtschaft am deutschen Bundestag*. (Frankfurt am Main: Hermannische Buchhandlung, 1816).

and publications denounced with the term *Nachdruck*, the nineteenth-century word for books reprinted without the consent of their authors and contracted publishers. With this objective in mind, I set out to address the following questions: How did the historical actors define an unauthorized reprint of a book? How did they define a new and respectable publication? Who commanded the authority to define the difference?

The discussions that broke out over unauthorized reprinting constitute the main empirical focal point of this dissertation. This introductory chapter discusses their historical significance, as well as the approach I take to them. The next section elaborates my main arguments. There, I suggest that my research questions put the historical study of German reprinting on a new footing. While this dissertation portrays the concept of unauthorized reprinting as contentious, previous studies have approached unauthorized reprints as a stable and unproblematic genre of books. In my view, a novel conceptualization of authorship drove discussions about the nature of reprinting. In addition, the next section shows that debates about the nature of unauthorized reprinting shed new light on historical developments that have shaped and continue to shape Europe's place in the global economy today. They challenge the widespread assumption that an age of piracy came to an end in the early decades of the nineteenth century. Against this view, I argue that these debates helped make the size of the reprinting industry a contentious matter. Following sections outline the subsequent chapters, as well as their source material, parameters and methodology. They also elaborate on the theoretical approach that I take to language and terms such as unauthorized reprinting. The last section discusses in more detail the relationship of my work to existing research, with a focus on the history of authorship and the history of print piracy.

Nachdruck: A Contested Concept

The wave of reforms that swept the German language area in the early nineteenth century marks a turning point in the history of authorial rights, the continental equivalent to Anglo-American copyright law. It overthrew the privilege system that had governed the German book trade since early modern times and replaced it with one grounded in the ownership of intellectual property, or *geistiges Eigentum*, as Perthes's contemporaries called it.³ The laws that German states passed in the early nineteenth

³ The scholarship on this development is vast. See for example Ludwig Gieseke, *Die geschichtliche Entwicklung des deutschen Urheberrechts* (Göttingen: O. Schwartz, 1957); Ludwig Gieseke, *Vom Privileg zum Urheberrecht: die Entwicklung des Urheberrechts in*

century became the blueprint for much of the legal framework that continues to govern the way Europeans can handle not only printed books but also films, e-books, photographs, artwork and music.

Perthes's question calls attention to a significant but largely overlooked problem in the history of German intellectual property law. Thanks to studies by Martha Woodmansee and others, we now know a good deal about the cultural changes that led German states to pass laws against unauthorized reprinting in the nineteenth century.⁴ Until now, however, the question *why* it seemed necessary to protect legitimate editions against unauthorized reprints has overshadowed struggles concerning *how* to define the difference between these two genres of books. As a result, the arguments that Perthes's contemporaries marshaled for and against unauthorized reprinting have been extensively studied, while efforts to fix the concept of unauthorized reprinting have hardly been explored at all. Instead, the history of German print piracy in the early nineteenth century has been approached as if the historical actors had already answered the question that troubled the confederal assembly in the late 1820s. Unauthorized reprints and respectable publications have not only been treated as two distinct and unproblematic genres of books. They have also consistently been approached as categories of printed matter that can be quantified.

According to the consensus position in German book history, the size of the German reprinting industry changed dramatically between the late eighteenth century and the 1830s. In the first decades of the nineteenth century, Woodmansee writes, "piracy subsided" in the German language area.⁵ Woodmansee links the disappearance of piracy to changes in south German publishing. While southern states had depended on piracy until

Deutschland bis 1845 (Göttingen: O. Schwartz, 1995); Martha Woodmansee, "The Genius and the Copyright: Economic and Legal Conditions of the Emergence of the 'Author,'" in *Eighteenth-Century Studies*, 17:4, 1984, 425–48; Martha Woodmansee and Peter Jaszi, "Introduction," in *The Construction of Authorship: Textual Appropriation in Law and Literature*, ed. Martha Woodmansee and Peter Jaszi (Durham & London: Duke University Press, 1994); Martha Woodmansee, "On the Author Effect I: Recovering Collectivity," in *The Construction of Authorship: Textual Appropriation in Law and Literature*, ed. Peter Jaszi and Martha Woodmansee (Durham & London: Duke University Press, 1994), 15–28; Heinrich Bosse, *Autorschaft ist Werkherrschaft: Über die Entstehung des Urheberrechts aus dem Geist der Goethezeit* (Paderborn: Schöningh, 1981); Wolfgang von Ungern-Sternberg, "Schriftstelleremanzipation und Buchkultur im 18. Jahrhundert," in *Jahrbuch für internationale Germanistik*, 8:1, 1976, 72–98; Elmar Wadle, "Der langsame Abschied vom Privileg: das Beispiel des Urheberrechts," in *Das Privileg im europäischen Vergleich*, ed. Barbara Dölemeyer and Heinz Mohnhaupt, vol. 1 (Frankfurt am Main: Vittorio Klostermann, 1997), 377–99.

⁴ See the previous footnote.

⁵ Martha Woodmansee, "Publishers, Privateers, Pirates: Eighteenth-Century German Book Piracy Revisited," in *Making and Unmaking Intellectual Property: Creative Production in Legal and Cultural Perspective*, ed. Mario Biagioli, Peter Jaszi, and Martha Woodmansee (Chicago & London: University of Chicago Press, 2011), 192.

around 1800, they gradually began to cultivate a lively publishing culture in the first decades of the nineteenth century. When this process reached its completion in the 1830s, it has been argued, the German language area had successfully made “the transition to the new era.”⁶ In this new era, the historian August Schürmann wrote already in the late nineteenth century, the centers of unauthorized reprinting in the south and southwest had ceased to flood the market with unauthorized reprints. In her account of this process, Woodmansee argues that the subsiding of piracy marked the gradual disappearance of a genre of books that had defined the German book market before the early nineteenth century. In *The Author, Art, and the Market: Rereading the History of Aesthetics* (1994), she remarks that

[t]he practice of reprinting books without the permission of the publisher—a practice that would later be impugned as piracy—had existed since the late fifteenth century. In the eighteenth century, however, it grew to epidemic proportions.⁷

The view of unauthorized reprinting propounded by scholars such as Woodmansee and Schürmann differs from my approach. Instead of assuming the existence of a stable definition of unauthorized reprinting, this dissertation takes a step back and analyzes *the construction of this definition*. How, I ask, did Perthes’s contemporaries define the difference between authorship and unauthorized reprinting?

My effort to answer this question places the term Nachdruck at the centre of attention. This term poses an interpretative challenge of the first order, especially if one writes in a language other than German. The historical actors used it in different and often conflicting ways. To complicate matters, its meanings have also changed over time. While encyclopedias today define the term Nachdruck as a second and legitimate edition of a book, encyclopedias from the nineteenth century define it as an unauthorized reprint, a book produced without the prior permission of the author or the contracted publisher.⁸ Though this is the closest one can get to a literal translation of the nineteenth-century use of the word Nachdruck, most of the historical actors studied in this

⁶ August Schürmann, “Übergang zur Neuzeit,” in *Die Rechtsverhältnisse der Autoren und Verleger, sachlich-historisch* (Halle: Verlag der Buchhandlung des Waisenhauses, 1889).

⁷ Martha Woodmansee, *The Author, Art, and the Market: Rereading the History of Aesthetics* (New York: Columbia University Press, 1994), 45.

⁸ See for example Heinz Göschel and Günter Gurst, eds., “Nachdruck,” in *Meyers neues Lexikon: Lymph - Nazor*, vol. 9 (Leipzig: VEB Bibliographisches Institut, 1974), 635; “Nachdruck,” in *Brockhaus die Enzyklopädie in vierundzwanzig Bänden. Zwanzigste, überarbeitete und aktualisierte Auflage: MOC-NORD*, 19th ed., vol. 15 (Leipzig & Mannheim: F.A. Brockhaus, 1998), 320.

dissertation would still argue that it failed to convey the true meaning of the word. According to them, a more proper English translation would be piracy, a metaphor suggesting that a grave transgression had taken place during the reprinting process.⁹

Though the authorial rights reform subjected unauthorized reprinting to a process of vilification in the early nineteenth century, the term Nachdruck did not signify an act of transgression to everybody. On the contrary, those who viewed reprinting as a piratical activity had to make an active effort to convince others that the unauthorized reprinting of books constituted an offense similar to the ones perpetrated by oceangoing pirates. To complicate matters, most cases of unauthorized reprinting continued to be legal even though anti-piracy advocates had managed to convince the political authorities to criminalize the activity in the first decades of the nineteenth century. The legal and political heterogeneity of the German language area in the early nineteenth century accounts for this fact. Until 1837, when German states were joined together under a shared authorial rights law, it continued to be legal for an unauthorized reprinter in one German state to reprint a book originally published in another.¹⁰

Setting out to explore the nature of unauthorized reprinting in the early nineteenth century, the following chapters study the history of a contested

⁹ Germans also used maritime metaphors such “book merchant pirates” (buchhändlerischen Piraten), “book capers” (Bücherkaper), “literary-musical filibusters” (literarisch-musikalisch Flibustier), and “literary freebooters” (literarischen Freibeuter). However, terms such as these were used as synonyms to the much more common expression die Nachdrucker. See Friedrich Arnold Brockhaus, ed., “Nachdruck, Nachdrucker,” in *Allgemeine deutsche Realencyclopädie für die gebildeten Stände (Conversations-Lexicon): Supplementband für die Besitzer der fünften und frühern Auflagen* (Leipzig: Friedrich Arnold Brockhaus, 1824), 648; Schmid Johann, ed., “Commissionsbericht in Betreff des Büchernachdrucks (Beilage Nro. 1. zum Prot. vom 23. May 1821),” in *Verhandlungen in der Kammer der Abgeordneten des Königreichs Württemberg im Jahre 1820-21*, 12 (Stuttgart: Metzlerschens Buchhandlung, 1822), 12; “Ueber musikalien-Nachdruck,” in *Caecilia: Eine Zeitschrift für die musicalische Welt*, 30:50 (Mainz, Paris, Antwerpen: B. Schott’s Söhnen, 1831), 96; August Friedrich Ferdinand von Kotzebue, *Denkschrift über den Büchernachdruck, zugleich Bittschrift um Bewürkung eines deutschen Reichsgesetzes gegen denselben. Den bei dem Congress zu Wien versammelten Gesandten deutscher Staaten überreicht im Namen deutscher Buchhändler* (Leipzig: Kummer, 1814), 33.

¹⁰ Out of respect for this situation, I translate the term Nachdruck as “unauthorized reprinting,” or in some cases, just “reprinting.” Having said that, I often use expressions such as piracy, pirate edition and pirate to characterize and describe the debates studied in this dissertation. I view the term pirate edition as a synonymous but more antagonistic way to describe an unauthorized reprint. Nachdruck is not the only difficult word one comes across in German texts from the early nineteenth century. In fact, many important nineteenth-century catchwords such Bildung and Geist do not have any obvious counterpart in English. To make it easier for readers to compare the translation and the original text, footnotes reproduce quoted texts in the source language. Except where indicated, the translations are my own. Occasionally, the footnote reproduces whole sentences tough translations in the main body of the text might not.

concept. “Legal scholars as well as authors and book merchants hold very diverging views on this subject,” Perthes wrote in his 1829 report on the matter.¹¹ According to him, the quarrels that had broken out over the nature of unauthorized reprinting had a disastrous effect on the legal and political discussions about a confederal ban. The question paralyzed the Frankfurt assembly and caused the negotiations to falter considerably. In 1829, Perthes observed, the definition of the term *Nachdruck* had become a “severe task.”¹² Though Perthes tried to be optimistic, a resolution to the problem seemed unlikely to him. He proved prescient. While the confederal assembly managed to pass the anti-piracy bill in 1837, the nature of unauthorized reprinting continued to cause controversy until the end of the century.

Confederal discussions about the nature and definition of unauthorized reprinting revolved around books such as compilations, adaptations, translations and other publications that transformed the original editions in some fashion. “Does it [the concept of *Nachdruck*] apply to compilations, excerpts, composite works, adaptations?” Perthes asked.¹³ Books from southern and southwestern states such as Württemberg and Austria made this question particularly pressing. Unauthorized reprinters from cities such as Vienna and Stuttgart, it was argued, did not just reprint the original edition word for word. They also introduced changes over the course of the reprinting process. While these unauthorized changes made the books marketable as new and respectable publications, critics found them appalling. In a vitriolic attack on reprinters from the German south, the Saxon publisher Friedrich Arnold Brockhaus called the changes imposed on original editions by Württemberg reprinters a form of “literary barbaresque,” a reference to the Barbary pirates that sailed the Mediterranean from the coast of North Africa.¹⁴ This practice might bear a superficial resemblance to legitimate writing practices, Brockhaus conceded. In reality though, it mutilated and distorted the original edition.¹⁵

¹¹ “die Meinungen sowohl der Gesetzkundige, als der Literatoren und Buchhändler sind hierüber sehr verschieden”. Perthes, “Ueber den teutschen Buchhandel und die äussern Verhältnisse der teutschen Literatur,” 36–37.

¹² “Was ist *Nachdruck*, was ist es nicht? – das giebt eine Schwere Aufgabe.” Ibid., 36.

¹³ “Gilt es Sammlungen, Auszüge, Zusammensetzungen, Bearbeitungen...” Ibid., 36–37.

¹⁴ “Wie übrigens diese literarischen Barbaresken im Württemberg das Vermehren, Ergänzen, Feilen und Schmücken verstehen oder üben, kann man schon aus jenem mechanischen Zuscheinden ihrer kurzen Waare hinlänglich ersehen.” Friedrich Arnold Brockhaus, *Darf Macklot in Stuttgart mir, dem rechtmäßigen Verleger, und dem Privilegium seines eigenen Königs zum Hohn, das Conversations-Lexicon zum zweiten Mal nachdrucken? Eine Warnung - für das Publicum, und eine Rechtsfrage an den königlich Württembergischen Geheimenrath und an den königl. Bairischen Regierungsrath Krause in Baireuth* (Leipzig: Friedrich Arnold Brockhaus, 1818), 12.

¹⁵ Ibid.

A novel conceptualization of authorship complicated the situation. In the late eighteenth century, philosophers such as Immanuel Kant and Johann Gottlob Fichte set out to rethink the nature of authorship and help legitimate the criminalization of unauthorized reprinting.¹⁶ For good reasons then, this effort has been portrayed as an attempt to combat the scourge of unauthorized reprinting.¹⁷ As we shall see, however, the definition of authorship that Kant and Fichte elaborated in the late eighteenth century also helped legitimate the view that unauthorized revisers, adapters, compilers, translators, abridgers, and anthologizers were engaged in authorial practices. According to its critics, the implementation of this view in the legal domain narrowed the definition of unauthorized reprinting and led to undesirable results. Legal authorities, especially those in the German south, helped the worst piratical offenders whitewash their publications and market them as new and respectable books. For this reason, critics such as Brockhaus and Perthes feared that the authorial rights reforms that swept the German language area threatened to distort their contemporaries' understanding of the German book trade. Contemporaries, it was feared, seemed to think that the deluge of unauthorized reprints that flooded in from cities such as Vienna and Stuttgart had dried up and instead been replaced by a torrent of new and original works.

The debate that sprang up over the nature of unauthorized reprinting and authorship raises a pressing question about the alleged fate of unauthorized reprints in the early decades of the nineteenth century. Why did they disappear? This dissertation draws on disputes over unauthorized reprinting to shed new light on the state of the German piracy industry in the early nineteenth century. However, the view that piracy disappeared from the German language area around this time participates in a broader historical narrative about piracy and modernization.¹⁸ According to this

¹⁶ Woodmansee, "The Genius and the Copyright."

¹⁷ Ibid.

¹⁸ The literature on modernization continues to steadily grow. For important discussions, see Zygmunt Bauman, *Liquid Modernity* (Malden & Cambridge: John Wiley & Sons, 2013); Zygmunt Bauman, *Modernity and Ambivalence* (Malden & Cambridge: John Wiley & Sons, 2013); Anthony Giddens, *The Consequences of Modernity* (Cambridge & Malden: John Wiley & Sons, 2013); Bruno Latour, *We Have Never Been Modern* (Cambridge, Massachusetts: Harvard University Press, 2012); Henri Lefebvre, *Introduction to Modernity: Twelve Preludes, September 1959-May 1961* (London & New York: Verso, 1995). Studies that focus on piracy and modernization include James Arvanitakis and Martin Fredriksson, "On Piracy," in *Piracy: Leakages from Modernity*, ed. James Arvanitakis and Martin Fredriksson (Sacramento CA: Litwin Books, LLC, 2012); Martin Fredriksson, "Copyright Culture and Pirate Politics," in *Cultural Studies*, 28, 2014, 1–26; James Arvanitakis and Martin Fredriksson, eds., *Piracy: Leakages from Modernity* (Sacramento CA: Litwin Books, LLC, 2012); Ravi Sundaram, "Recycling Modernity: Pirate Electronic Cultures in India," in *Third Text*, 13:47, 1999, 59–65; Ravi Sundaram, *Pirate Modernity: Delhi's Media Urbanism* (New York: Routledge, 2009); Kavita Philip, "What Is a Technological Author? The Pirate

narrative, the piratical threat to European authors, inventors and innovators, which used to come from within the region, now originates in places outside Europe's borders. If piratical merchandise seemed to flow from Vienna, Frankfurt and Stuttgart around 1800, Shanghai, Beijing and other cities outside the Western hemisphere now swamp the global market with knockoffs and counterfeits of Western goods. As Kavita Philip has observed, the dominant view of piracy in the West portrays modernization as a unilinear process that Western states have completed while "the coming of full-fledged modernity to backward nations" still lies in the future.¹⁹ Once states such as the People's Republic of China give up piracy, following the trail blazed by Europeans in the nineteenth century, they will join the family of civilized states that respect intellectual property and uphold the rule of law.

As the historian Adrian Johns observes in *Piracy: The Intellectual Property Wars from Gates to Gutenberg* (2009), the notion that piracy has been eradicated in the West is "a myth." Yet, as he hurries to point out, "the myth matters."²⁰ It continues to shape the narrative historians, business analysts, politicians and policy makers tell about piracy not only in Europe.²¹ It also impinges on the world outside the Western hemisphere. Third World countries have been portrayed as analogous with a pre-modern Europe that had yet to leave its dark, piratical past behind. While this view continues to shape historical studies of German book piracy, scholars such as Philip, Johns, Lawrence Liang and Martin Fredriksson have begun to challenge this orthodox narrative in recent years.²² Instead of viewing the figure of the pirate "as some comfortingly distinct outsider," they have instead argued that piracy is a conflict-ridden

Function and Intellectual Property," in *Postcolonial Studies*, 8:2, 2005, 199–218; Kavita Philip, "Keep on Copyin' in the Free World? Genealogies of the Postcolonial Pirate Figure," in *Postcolonial Piracy: Media Distribution and Cultural Production in the Global South*, ed. Lars Eckstein and Anja Schwarz (London, New Delhi, New York & Sydney: Bloomsbury Publishing, 2014); Lars Eckstein and Anja Schwarz, "Introduction: Towards a Postcolonial Critique of Modern Piracy," in *Postcolonial Piracy: Media Distribution and Cultural Production in the Global South*, ed. Lars Eckstein and Anja Schwarz (London, New Delhi, New York & Sydney: Bloomsbury Publishing, 2014), 1–25; Joe Karaganis, ed., *Media Piracy in Emerging Economies* (SSRC, 2011); Lawrence Liang, "Piracy, Creativity and Infrastructure: Rethinking Access to Culture," in *SSRN Scholarly Papers* (Rochester, New York, 2009); Lawrence Liang, "Beyond Representation: The Figure of the Pirate," in *Making and Unmaking Intellectual Property: Creative Production in Legal and Cultural Perspective*, ed. Mario Biagioli, Peter Jaszi, and Martha Woodmansee (Chicago: University of Chicago Press, 2011), 168–80.

¹⁹ Philip, "What Is a Technological Author?," 201.

²⁰ Adrian Johns, *Piracy: The Intellectual Property Wars from Gutenberg to Gates* (Chicago & London: University of Chicago Press, 2009), 14.

²¹ *Ibid.*

²² See the literature listed in footnote 18.

concept that upsets boundaries and thresholds.²³ In this model, Liang has argued, the pirate poses a “representational problem.”²⁴

I share the view that the concept of piracy, or unauthorized reprinting, must be approached as conflict-ridden. As the following chapters make evident, Perthes’s contemporaries quarreled fiercely over not only the proper definition of unauthorized reprinting, but also the detection of books suspected of being unauthorized reprints. These conflicts clearly make the assertion that print piracy had disappeared from the German language area problematic. The aim here, however, is not to question this assertion. Instead, this dissertation conceptualizes the quantification of unauthorized reprinting *as a historical problem*. What assumptions about authorship and reprinting underwrote the notion that piracy had disappeared in the early decades of the nineteenth century? As I see it, those who quantified the German reprinting industry in competing ways tended to do so because they subscribed to competing definitions of unauthorized reprinting. Conflicting measurements were tied to conflicting assumptions about the things being measured. In this regard, debates about the nature of unauthorized reprinting and authorship transcended the bounds of a conceptual dispute. They impinged on the detection, quantification and prosecution of contested activities.

The notion that unauthorized reprinters had disappeared in the early years of the nineteenth century does appear to have been widely held in the early nineteenth century. For the historical actors, however, the assertion that this had happened could be deployed as an *argument in a debate*. Like most arguments, it responded to a counter-argument—that unauthorized reprints had not disappeared from the market. Upon closer inspection, critics warned, the former view would turn out to be a false one. If one looked at the book trade from the right angle, it would become clear that pirate editions continued to flood the market. Though the validity of such assertions cannot be assumed uncritically, those who opposed the established order can still serve an important purpose. On a metaphorical level, they took up the position of the “stranger” who does not accept at face value the beliefs of the majority.²⁵

²³ Johns, *Piracy*, 4.

²⁴ Liang, “Beyond Representation: The Figure of the Pirate,” 167. Also see, Ramon Lobato, “The Paradoxes of Piracy,” in *Postcolonial Piracy: Media Distribution and Cultural Production in the Global South*, ed. Lars Eckstein and Anja Schwarz (Bloomsbury Publishing, 2014), 129; Adrian Johns, *The Nature of the Book: Print and Knowledge in the Making* (University of Chicago Press, 1998), 174; Arvanitakis and Fredriksson, “On Piracy,” 5.

²⁵ Nedim Karakayali, “The Uses of the Stranger: Circulation, Arbitration, Secrecy, and Dirt*,” in *Sociological Theory*, 24:4, 2006, 312–30; S. Dale McLemore, “Simmel’s ‘Stranger’: A Critique of the Concept,” in *The Pacific Sociological Review*, 13:2, 1970, 86–94; Alfred Schutz, “The Stranger,” in *Collected Papers II*, ed. Arvid Brodersen, *Studies in Social Theory* (The Hague: Springer Science & Business Media, 1976); Margaret Mary Wood, *The*

As scholars such as Alfred Schütz, Steven Shapin and Simon Schaffer have argued, the unfamiliarizing viewpoint of the stranger can help social scientists see familiar events and historical processes from a new angle. In the chapters that follow, critics of the view that unauthorized reprints had disappeared in the early nineteenth century play the role of metaphorical strangers. Their opposition to the notion reveals that efforts at quantification cannot be disentangled from broader discussions about the nature of unauthorized reprinting and authorship. As I see it, those who could command the authority to define unauthorized reprinting wielded the power not only to say *who* deserved be called a print pirate and *where* piratical activities took place, but also to determine who produced new and respectable publications, where those appeared, and whether their production had grown, stagnated or fallen behind. In short, by gaining the power to define the meaning of words, the historical actors also gained the power to define the culture they lived in.

Defining Unauthorized Reprinting as an Object of Study

The previous section discussed the principal arguments that I advance in this dissertation. There, I proposed that early nineteenth century debates about the nature of unauthorized reprinting shed new light on the fate of piracy in the German language area. Against the view that piracy came to an end in the first decades of the nineteenth century, this dissertation shows that the invention of new ways of thinking about authorship prompted discussions about the number of unauthorized reprints and new publications that circulated on the book market. The exploration of these discussions makes a contribution to the historical scholarship on authorship and piracy. The final two sections discuss these fields in more detail. In this section, I briefly outline the chapters that follow, as well as their parameters, key concepts, methodology and source material. On a more fundamental level, this section discusses unauthorized reprinting as an object of historical inquiry. What kind of object of study is this, and how will I approach it?

Stranger: A Study in Social Relationships (New York: Columbia University Press, 1934); Georg Simmel, "Exkurs über den Fremden," in *Soziologie: Untersuchung über die Formen der Vergesellschaftung* (Berlin: Duncker & Humblot, 1908), 509–12. More specifically, my metaphorical use of the concept of the stranger draws on the work of Shapin and Schaffer. As Shapin and Schaffer write in their revisionist account of the nature of the Scientific Revolution, strangers can help historians "deconstruct the taken-for-granted quality of their antagonists' preferred beliefs and practices, and they do this by trying to display the artifactual and conventional status of those beliefs and practices." Steven Shapin and Simon Schaffer, *Leviathan and the Air-Pump: Hobbes, Boyle, and the Experimental Life*, 3rd ed. (New Jersey & Oxfordshire: Princeton University Press, 2011), 7.

Perthes's contemporaries debated the nature of unauthorized reprinting during a moment when printed books arose to become the dominant medium for public communication in not only the German language area but also Europe more generally.²⁶ Thanks to this development, the romantic Friedrich Schlegel wrote in 1804, Germans lived in an "age of books."²⁷ In an age defined by printed books, the norms, conventions and laws that regulated their publication drew attention outside the legal domain. Since then, interest in the ways media can be circulated, borrowed, owned, copied, purloined, and pirated has continued to expand even further. In the so-called information age, debates about intellectual property, piracy, authorial rights, fair use, copyright infringement, free culture and remixing leave few unaffected. As the sociologist Manuel Castells observes in his study of the information age, "[i]nformation generation, processing, and transmission [constitute] the fundamental sources of productivity and power in the age of networked computers."²⁸

Scholars such as Castells have argued that life in the information age differs in profound and fundamental ways from life in preceding historical epochs.²⁹ However, as historians of intellectual property have convincingly argued, past attempts to grapple with issues such as piracy, authorship and intellectual property have shaped and continue to shape in important ways discussions over (for example) file-sharing, Western bio-

²⁶ For more on this development, see especially the introduction to Andrew Piper, *Dreaming in Books: The Making of the Bibliographic Imagination in the Romantic Age* (Chicago & London: University of Chicago Press, 2009); Lynne Tatlock, "Introduction: The Book Trade and 'Reading Nation' in the Long Nineteenth Century," in *Publishing Culture and the "Reading Nation": German Book History in the Long Nineteenth Century*, ed. Lynne Tatlock (Rochester & New York: Camden House, 2010), 1–25.

²⁷ "Zeitalter der Bücher" Friedrich Schlegel coined the term in his essay on the novel. See Schlegel "Briefe über den Roman," in *Kritische Friedrich-Schlegel-Ausgabe*, ed. Ernst Behler, vol. 2 (München: F. Schöningh, 1958), 332.

²⁸ Manuel Castells, *The Rise of the Network Society*, vol. 1 of *The Information Age: Economy, Society, and Culture* (Malden & Oxford: John Wiley & Sons, 2011), 21, fn. 31.

²⁹ Castells discusses the question of newness explicitly. "In discussions in my seminars in recent years a recurrent question comes up so often that I think it would be useful to take it to the reader. It is the question of newness. What is new about all this? Why is this a new world? I do believe that there is a new world emerging in this end of the millennium. In the three volumes of this book I have tried to provide information and ideas in support of this statement." Manuel Castells, *End of Millennium*, vol. 3 of *The Information Age: Economy, Society, and Culture* (Malden & Oxford: John Wiley & Sons, 2010), 372, fn. 1. Castells's view has faced much criticism. Peter Burke, for example, argues that "[w]e should not be too quick too assume that our age is the first to take these questions [of information] seriously." Peter Burke, *Social History of Knowledge: From Gutenberg to Diderot* (Cambridge & Malden: Polity Press, 2013), 1. Robert Darnton makes a similar point. "[E]very age was an age of information, each in its own way, and ...communication systems have always shaped events," he writes in his study on news in eighteenth century Paris. Robert Darnton, "An Early Information Society: News and the Media in Eighteenth-Century Paris," in *The American Historical Review*, 105:1, 2000, 1. For an historical look at the information age, see Toni Weller, *Information History in the Modern World: Histories of the Information Age* (Palgrave Macmillan, 2010).

prospecting in Third World countries, brand hijacking in Southeast Asia and other activities claimed to be piratical in the information age.³⁰ Current intellectual property laws and systems of policing have arisen from long, open-ended, variable and complex historical developments. In recent years, these historical developments have attracted the attention of scholars from a wide range of fields such as the history of science, book history, literary history and economic history.³¹ Drawing on cultural-historical methodologies, historians such as Woodmansee, Johns, Stina Teilman-Locke, Fredriksson and many others have questioned the assumption that intellectual property law regulates culture from an autonomous and distant domain. Against this view, it has been argued that culture shapes law and vice versa. Reflecting on this conceptualization of the legal domain, Naomi Mezey observes that “[l]aw and culture are mutually constituted and legal and cultural meanings are produced precisely at the intersection of the two domains, which are themselves only fictionally distinct.”³²

This dissertation subscribes to the view that the law cannot be understood in isolation. Though different aspects of the troubled legal developments that Perthes observed in the late 1820s constitute the empirical focal point of this study, it is not primarily concerned with legal history. Instead, it conceives of the legal and political discussions about unauthorized reprinting and authorial rights as the most visible manifestation of a broader cultural debate about the proper way to govern, discipline and regulate the domain of print during a time when traffic in printed matter accelerated.³³ The expansive approach I take to legal history means that I do not consider the law to be an autonomous field. Instead, the assumptions about authorship and reprinting that informed German laws against piracy in the early nineteenth century shaped the legal and political discourse from the outside.

This broader discussion gravitated around novel ideas of authorship. In the landmark anthology *The Construction of Authorship: Textual*

³⁰ “[t]o understand what piracy is today,” Johns argues for example, “one needs to understand its history. We cannot even ask the right questions about our own culture—let alone answer them, without grasping how they took shape in that earlier age.” Johns, *Piracy*, 11.

³¹ See for example the range of articles in Mario Biagioli, Peter Jaszi, and Martha Woodmansee, eds., *Making and Unmaking Intellectual Property: Creative Production in Legal and Cultural Perspective* (University of Chicago Press, 2011).

³² Mezey Naomi, “Law as Culture,” in *Cultural Analysis, Cultural Studies, and the Law: Moving Beyond Legal Realism*, ed. Austin Sarat and Jonathan Simon (Durham & London: Duke University Press, 2003), 53.

³³ Mark Rose, *Authors and Owners: The Invention of Copyright* (Cambridge, Massachusetts: Harvard University Press, 1993); Mark Rose, “The Author as Proprietor: Donaldson v. Becket and the Genealogy of Modern Authorship,” in *Representations*, 23, 1988, 51–85; Meredith L. McGill, *American Literature and the Culture of Reprinting, 1834-1853* (Philadelphia: University of Pennsylvania Press, 2007); Woodmansee, “The Genius and the Copyright.”

Appropriation in Law and Literature (1994), Woodmansee and Peter Jaszi propose that “a quite radical reconceptualization of the creative process” changed the way that authorship was understood around the turn of the nineteenth century.³⁴ In an earlier epoch, they argue, writing had been conceived as a craft of no greater merit than the other branches of the book-making trade. When this view of authorship collapsed around 1800, the author became “an individual who is the sole creator of unique ‘works’ the originality of which warrants their protection under laws of intellectual property known as ‘copyright’ or ‘author’s right’.”³⁵

Woodmansee rightly links the reconceptualization of authorship to the philosophical revolution that transpired in the German language area towards the end of the eighteenth century. Thinkers such as Kant and Fichte brought the weight of their philosophical systems to bear on the debate about unauthorized reprinting that had broken out in the German public press. According to them, authors imbued books with their unique personality, style and voice. For this reason, proponents of the new regime argued that books consisted of more than their materials. Books constituted ideal objects, that is to say, artifacts that harbored the intellectual properties of their creators.³⁶ The ideal nature of books made them unique, Fichte argued. “We have nothing comparable to books,” he wrote in 1793; “[t]hings that appear to be more or less similar differ a great deal on many accounts.”³⁷

Piracy: A Threat to Humankind?

When authors acquired this new kind of ownership over their books, it became possible to argue against unauthorized reprinting in a new way. Before books had been imbued with idealistic conceptions of authorship, it had proven difficult to argue that unauthorized reprints infringed upon the rights of authors and publishers. Afterwards, however, the practice seemed to violate natural law and individuals’ rights to their own persons.³⁸ On a conceptual level, the transformation of authorship also

³⁴ Woodmansee and Jaszi, “Introduction,” 3.

³⁵ Woodmansee, “On the Author Effect I: Recovering Collectivity,” 15.

³⁶ Johann Gottlieb Fichte, “Beweis der Unrechtmäßigkeit des Büchernachdrucks. Ein Raisonement und eine Parabel,” in *Berlinische Monatsschrift*, ed. Johann Erich Biester, 21 (Berlin, 1793), 447.

³⁷ “wir gar nichts Aenliches haben, und das, was demselben einigermassen ähnlich zu sein scheint, wieder in Vielem sich gar sehr davon unterscheidet.” *Ibid.*, 445.

³⁸ Diethelm Klippel and Karl Graf Ballestrem, “Naturrecht und Politik im Deutschland des 19. Jahrhunderts,” in *Naturrecht und Rechtsphilosophie im 19. Jahrhundert: Eine Bibliographie. 1780 Bis 1850* (Berlin: Duncker & Humblot, 1993), 27–48; Diethelm Klippel, “Die Idee des geistigen Eigentums in Naturrecht und Rechtsphilosophie des 19. Jahrhunderts,” in

helped change the meaning of Nachdruck, the key term of this dissertation. This term had not always brought villainy to mind. In the eighteenth century, it had even been convincingly argued that unauthorized reprinters helped spread the light of knowledge and civilization to the dark corners of the German language area where books, an expensive luxury commodity at the time, seldom reached.³⁹

For a long time, such utilitarian attitudes seemed to make the criminalization of unauthorized reprinting nearly impossible. The German political elite did, however, acquiesce to reformist demands. When the authorial rights reform commenced around 1800, the meaning of the term Nachdruck also changed, becoming synonymous with theft to a growing number of people. The introduction into the German language of piracy as a metaphor for unauthorized reprinting testifies to this process of vilification. Sometime in the late eighteenth century, it seems, the Nachdrucker had become known as pirates. As the Weimar publisher and anti-piracy advocate Friedrich Justin Bertuch put it in an article in *Deutsche Museum*, “And now a word to you, the pirates of Germany, otherwise known as the unauthorized reprinters.”⁴⁰

The use of a maritime concept was not new. Piracy had served as a metaphor for literary thievery since the mid-seventeenth century, when Caribbean buccaneering entered its golden age. English men of letters introduced the term to decry misconduct in the print-based public sphere that was beginning to take form during the English Civil Wars.⁴¹ This comparison cast the unauthorized reprinter not just in the role of a criminal who violated the rights of individual victims. Pirates constituted an enemy of all. Piracy made the seas unsafe and travel by water bound humanity together. This notion of piracy harkens back to the ancient world, when maritime piracy was conceived of as a crime against humanity and a deadly threat to civilization.⁴² In a paradigmatic

Historische Studien zum Urheberrecht in Europa. Entwicklungslinien und Grundfragen, ed. Elmar Wadle (Berlin: Duncker & Humblot, 1993), 121–38.

³⁹ Reinhard Wittmann, “Der gerechtfertigte Nachdrucker? Nachdruck und literarisches Leben im achtzehnten Jahrhunderts,” in *Buch und Buchhandel in Europa im achtzehnten Jahrhundert: The Book and the Book Trade in Eighteenth-Century Europe: Proceedings of the Fifth Wolfenbütteler Symposium, November 1-3, 1977*, ed. Giles Barber and Bernhard Fabian (Hamburg: Hauswedell, 1981), 293–321; Woodmansee, “Publishers, Privateers, Pirates: Eighteenth-Century German Book Piracy Revisited,” 2011.

⁴⁰ “Und nun noch ein Wörtgen an euch, Piraten Deutschlands, sonst Nachdrucker genant [sic].” Friedrich Justin Bertuch, “Frage and das deutsche Publikum über die Erhaltung der poetischen Werke des alten deutschen Meister Sängers Hans Sachsens,” in *Deutsches Museum*, vol. 2 (Leipzig: Weygand, 1778), 95.

⁴¹ Adrian Johns, “The Invention of Piracy,” in *Piracy*, 17–41.

⁴² Daniel Heller-Roazen, *The Enemy of All: Piracy and the Law of Nations* (Zone Books, 2009).

formulation, the Roman statesman Marcus Tullius Cicero defined the pirate as “the common foe of all.”⁴³

Germans appear to have imported the piracy metaphor from across the channel sometime in the late eighteenth century, that is to say, the period when a German public sphere came into existence. When the English talked about the *Nachdrucker*, the Anglophile Georg Lichtenberg observed in one of his *Sudelbücher*, they call their activity “to pirate.”⁴⁴ The use of such a powerful metaphor testifies to the importance that Germans attributed to the public discussion of shared concerns from the late eighteenth century onwards. In terms that Jürgen Habermas adopted in his influential study on the bourgeois public sphere, Immanuel Kant argued that public debating propelled the process of enlightenment and drove the emancipation of mankind.⁴⁵ Since unauthorized reprinting violated the codes of conduct that governed, or ought to govern, discourse in the print-based public sphere, it also threatened to undermine the credibility of print as a medium of enlightenment and the emancipation of man.

When anti-piracy advocates argued that the German language area needed a confederal ban against unauthorized reprinting, they did so along these lines. In an article celebrating the confederal ban from 1837, the Austrian politician Johann Nepomuk Berger suggested that unauthorized reprinting constituted a mortal threat to humankind. Since unauthorized reprinting posed such a threat, Berger continued, it also negated the nature of the printing press, “the mediating moment in the free and unending development of humankind.” A Young Hegelian on the radical left, Berger conceptualized the relation between unauthorized reprinting, the press and the unfolding of humanity in terms established by Georg Wilhelm F. Hegel in *Die Phänomenologie des Geistes* (1807), his philosophical Bildungsroman about the travails of the spirit (*der Geist*).⁴⁶ In this work, Hegel narrated the protagonist’s journey towards

⁴³ Marcus Tullius Cicero, *De Officiis*, III:107; translation in *On Duties*, ed. and trans. M. T. Griffin (Cambridge: Cambridge University Press, 1991), 141–142.

⁴⁴ “To pirate sagen, glaube Ich, die Engländer von einem Nachdrucker.” See F 60 in Georg Christoph Lichtenberg, “Sudelbücher I,” in *Lichtenberg Schriften und Briefe*, ed. Wolfgang Promies (München: Carl Hanser Verlag, 1968), 470.

⁴⁵ “Even before public opinion became established as a standard phrase in the German-speaking areas,” Habermas writes, “the idea of the bourgeois public sphere attained its theoretically fully developed form with Kant’s elaboration of the principle of publicity.” Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry Into a Category of Bourgeois Society*, trans. Thomas Burger (Cambridge, Massachusetts: The MIT Press, 1991), 102.

⁴⁶ For this characterization of Hegel’s phenomenology of the spirit, see Jean Hyppolite’s influential commentary *Genesis and Structure of Hegel’s “Phenomenology of Spirit,”* trans. Samuel Cherniak (Evanston: Northwestern University Press, 1979), 11–12; Berger did not explicitly present his counterargument as an Hegelian one. According to his friend Kajetan Felder, however, Berger’s political views made him a “true Hegelian” (echt Hegelian). During

absolute self-awareness, knowledge and freedom as a gradual unfolding of the potential bestowed on the human spirit. From within this framework, Berger construed the printing press as a mediating technology that facilitated the gradual and endless unfolding of not one human being, but of humankind, whose full development the absence of a confederal ban on piracy had imperiled until 1837. For Berger, “the seed of the total negation of the free and unending unfolding of the press, as well as of the press itself, lies in unauthorized reprinting”.⁴⁷

Methodology, Parameters and Source Material

If, on the level of philosophical principles, it seemed increasingly certain that unauthorized reprinting posed a threat to humankind, the identity of the unauthorized reprinter proved less unambiguous. Who was an unauthorized reprinter in the early nineteenth century? The disagreements that broke out over the term *Nachdruck* make the history of German reprinting a compelling but challenging subject. The historical actors spoke as if a group of card-carrying pirates roamed the book market. But disputes over the conceptual limits of reprinting generated contention over the boundaries not only between books but also between groups, publication practices and even geographical regions. In the early nineteenth century, participants in these debates had to contend with a moving target. Publication practices that seemed dubious to some appeared wholly respectable to others.

The following chapters mainly analyze the effects these controversies had on the social standing of book merchants from the south and southwest, the regions reputed to be the main headquarters of the German reprint industry. However, the controversy also affected individuals traditionally portrayed as respectable members of the book trade. Leading

their university years, Berger and Felder “studied Hegel day and night” (“Hegel Tag und Nacht studierte”). According to Felder, Berger, like Hegel, even let his hair grow long. Kajetan von Felder, *Erinnerungen eines Wiener Bürgermeisters*, ed. Felix Czeike (Vienna: Forum Verlag, 1964), 121. Berger’s Young Hegelian outlook also shaped his views on the freedom of the press. See for example Berger’s *Die Preßfreiheit und das Preßgesetz* (Vienna: Tendler und Compagnie, 1848).

⁴⁷ “So liegt im Nachdruck der Keim der totalen Negation der freien und unendlichen Entfaltung der Presse, somit der Presse selbst, weil diese ihre wahre Bedeutung eben nur darin hat, das vermittelnde Moment der freien und unendlichen Entwicklung der Menschheit zu sein”. Johann Nepomuk Berger, “Der Nachdruck ist nicht rechtswidrig: Eine wissenschaftliche Erörterung, begleitet von einigen Bemerkungen zu dem beigefügten, den versammelten Ständen des Königreichs Sachsen am 21. Nov. 1842 vorgelegten Gesetzentwürfe, den Schutz der Rechte an literarischen Erzeugnissen u. Werken der Kunst betreffend, v. Dr. Lud. Höpfner beurtheilt v. J. N. Berger.” in *Österreichische Zeitschrift für Rechts- und Staatswissenschaft*, vol. 3 (Vienna: Sollinger, 1843), 321.

anti-piracy advocates also accused each other of piracy.⁴⁸ At least one group that had formed to combat the scourge nearly collapsed from internal strife after its members found evidence of dubious conduct *within* their ranks. In 1822, members of the Wahlausschuss der deutschen Buchhändler accused one of the organization's founding fathers, the esteemed Carl Christian Horvath, of dealing in piratical merchandise on the side.⁴⁹

On a methodological level, I approach the construction of the boundaries of unauthorized reprinting from a historicist perspective. This obliges me to view the past from the standpoints of the historical actors. I treat the various parties in debates on unauthorized reprinting in an even-handed fashion. Seeing the past in this way requires restraint. I refrain from passing judgment on the right way to draw lines of demarcation or on the relative value of competing definitions. I forgo the privilege of defining piracy, authorship, originality and copying. Instead, I seek to understand past efforts to stabilize, demarcate, fix and define the boundaries of print piracy.

This study of German authorship and unauthorized reprinting in the early nineteenth century places the meaning of words at the forefront of the analysis. However, I do not aim to offer a conceptual history, or Begriffsgeschichte.⁵⁰ Instead, I approach disputes over definitions as a means to study the *detection* of authorship and unauthorized reprinting in the early nineteenth century. As I have already argued, the detection and definition of unauthorized reprinting went hand in hand. Historical actors discussed the meanings of words in order to define the proper way to detect cases of authorship and unauthorized reprinting. In this regard, they strove to bridge the gap between the level of abstract principles and the messy world of things and practices. To Perthes's contemporaries, much hung in the balance. To be able to measure the number of reprints circulating on the market, the historical actors needed a working definition of unauthorized reprinting. By the same token, any ban on unauthorized reprints would prove difficult to enforce without such a definition. Without conceptual stability, Perthes's contemporaries would

⁴⁸ Pamela E. Selwyn, *Everyday Life in the German Book Trade* (University Park: Penn State Press, 2008), 119–120.

⁴⁹ Stephan Füssel, "Die Reformbestrebung im Buchhandel bis zur Gründung des Börsenvereins (1765–1825)," in *Der Börsenverein des Deutschen Buchhandels 1825–2000: Ein geschichtlicher Aufriss*, ed. Stephan Füssel et al. (Leipzig: Buchhändler-Verein, 2000).

⁵⁰ The term Begriffsgeschichte refers to the kind of conceptual history that Reinhart Koselleck advanced with his pioneering study on the historical Grundbegriffe of the modern era. For more on this kind of conceptual history, see Koselleck's last publication *Begriffsgeschichten: Studien zur Semantik und Pragmatik der politischen und sozialen Sprache* (Frankfurt am Main: Suhrkamp, 2006).

not only want to ban different publications practices. They would also measure the size of the reprint industry in conflicting ways.

Empowered by state authority, politicians and agents of the law carried more clout than others in discussions about piracy. However, in addition to state actors, lobbyists such as Perthes wanted a hand in the debates, as did philosophers, men of science and other members of the learned community. In keeping with this, each of the following three chapters casts a wide net. Combined, they draw on an extensive range of sources. In addition to fair catalogs, I have consulted documents such as parliamentary protocols, paratexts, legal texts, lawsuits, journal articles, and lobbying pamphlets.⁵¹ When the need arises, this dissertation analyzes events that transpired both before and after the first decades of the nineteenth century. However, it mainly focuses on the years between 1810 and 1840, when unauthorized reprinting is said to have declined in the German language area. The authorial rights reforms that German states passed in the first decades of the nineteenth century made this period particularly rife with heated discussions about the difference between authorial practices and unauthorized reprinting. When the time came to ban unauthorized reprinting for the first time, it also became necessary to define and codify the nature of these practices in a more rigorous fashion.

Outline of Study

In addition to this introduction and a concluding chapter, this dissertation consists of three chapters. Chapter two explores the history of the expression *mechanical reproduction*, a term used in the confederal ban on unauthorized reprinting to elucidate the meaning of Nachdruck. One dominant use of this expression, I argue, portrayed the unauthorized reprinter as a machine of the kind that industrialization had brought to the German language area in the 1830s. Like the steam press, for example, these unauthorized reprinters produced exact or only insignificantly different duplicates of the original. According to the same line of reasoning, reprinters who did significantly change the original edition imprinted the reprint with the marks of authorship of the kind that Fichte

⁵¹ To find these, I have visited archives in Vienna (Österreichisches Staatsarchiv) and Stuttgart (Hauptstaatsarchiv Stuttgart); special collections such as Houghton Library and Beinecke Rare Book and Manuscript Collection as well as a wide range of digital repositories including Münchener digitale Bibliothek, Europeana, Hathi Trust Digital Library, Deutsche Digitale Bibliothek, journals@UrMEL, Deutsche Text Archiv, Google Books and UB Bielefeld: Zeitschriften der Aufklärung.

and Kant had proposed. As a new work, this altered edition no longer qualified as a reprint and did not violate the rights of the original author.

Those who protested against this use of the phrase mechanical reproduction helped establish the legal framework that governs intellectual property today, when unauthorized adaptations counts as infringements on the rights of authors. According to scholars such as Woodmansee, idealistic and romantic conceptions of authorship underpin this model.⁵² Here, however, I will argue that critics of the term mechanical reproduction tried to purge the definition of piracy that philosophers such as Kant and Fichte had promoted from German authorial rights laws. In addition to an analysis of this term, chapter two also studies the way in which Kant and Fichte defined the difference between piracy and authorship in the late eighteenth century.

Chapter three descends from the philosophical heights and explores the publication and reception history of an individual book from the German southwest. It pays particular attention to the *Conversationslexicon* (1816–20) published by the Württemberg book merchant Carl Erhard in the late 1810s. Erhard produced this book by altering and adding new material to an encyclopedia previously published by the Saxon book merchant and lobbyist Friedrich Arnold Brockhaus. Though Erhard cancelled the publication in 1820, Brockhaus's fierce protestations failed to convince the authorities to take action against him. In the scholarship, it has been argued that Württemberg's protection of book merchants such as Erhard made the kingdom an anomaly in the German confederation. In contrast, I use the reception of Erhard's encyclopedia to gain a ground-level view of broader discussions about unauthorized reprinting. Borrowing a term from James Secord's study of the reception history of *Vestiges of the Natural History of Creation* (1844), I treat Erhard's encyclopedia as a "cultural tracer" that makes this broader discussion available to historical inquiry on the concrete level of publication practices.⁵³

Chapter four focuses on the Leipzig book fair and its accompanying catalog. The fair catalog plays a special role in the scholarship on German print piracy, as a tool for measuring authorial output in the German language area in the first decades of the nineteenth century. Used in this way, fair catalogs have been called upon as proof of the assertion that between 1810 and 1840, south German publishing rates caught up to those in the north. In large part thanks to the contributions of south

⁵² See for example Woodmansee, "On the Author Effect I: Recovering Collectivity." I return to discuss this issue in a later section of this introduction.

⁵³ James A. Secord, *Victorian Sensation: The Extraordinary Publication, Reception, and Secret Authorship of Vestiges of the Natural History of Creation* (Chicago & London: University of Chicago Press, 2003), 3.

German publishers, the fair catalog grew much thicker in this period. The historical actors suspected other reasons for the catalog's sudden expansion, and tried to reform it or find alternative means to measure authorial output. The fair catalog provided a distorted and unreliable view of the German book trade, they argued. As I will show, these critics held that the ban on piracy imposed by the fair organizers in the 1770s had been so poorly enforced that pirates had begun to use the fair catalog to whitewash their wares and sell them in the guise of new and respectable publications.

For concerned observers, the growing thickness of the catalog did not suggest that south German book merchants had ceased to pirate the works of their colleagues from the north. On the contrary, it seemed instead that piracy had been redefined as a legitimate publication practice. Chapter four uses this line of criticism to rethink the historical significance of the ban on unauthorized reprinting at the fairs. In general, scholars have approached the supposed absence of unauthorized reprints in the fair catalogs as a simple problem of evidence. "The modern book historian," the bibliographer Bernhard Fabian contends, "must accept the absence of this category of publications [in the fair catalog] and try to fill in the gaps with other sources."⁵⁴ Fabian draws what might appear to be a logical conclusion from the fact that the fair catalog did not include unauthorized reprints. I argue, however, that the ban offers an opportunity to ask questions about the definition of unauthorized reprinting. What did the ban on unauthorized reprinting mean in practice? What kinds of books did it deny access to the catalog? What kinds of books did it allow? How did the historical actors react to these decisions?

Theoretical Reflections on Language, Boundaries and Authority

This section discusses the theoretical approach that I take to the concept of Nachdruck. What kind of word was this? How should one characterize it? The conflicts that broke out over the meaning of Nachdruck make the history of the concept special, though not unique. It belongs to a broad family of words that the social scientist Walter Bryce Gallie has called

⁵⁴ "Der moderne Buchforscher muß das Fehlen dieser Kategorien von Publikationen akzeptieren und versuchen, die Lücken durch andere Quellenfunde aufzufüllen". Bernhard Fabian, "Die Meßkataloge des achtzehnten Jahrhunderts," in *Buch und Buchhandel in Europa im achtzehnten Jahrhundert: The Book and the Book Trade in Eighteenth-Century Europe: Proceedings of the Fifth Wolfenbütteler Symposium, November 1-3, 1977*, ed. Giles Barber and Bernhard Fabian (Hamburg: Hauswedell, 1981), 330.

“essentially contested concepts.”⁵⁵ Gallie defines these “as concepts the proper use of which inevitably involves endless disputes about their proper uses on the part of their users.”⁵⁶ According to him, participants in debates about the proper use of concepts such as artwork expect to be able to resolve them by referring to logic and empirical evidence. Nevertheless, despite such attempts, the concepts continue to be under dispute. This persistence of controversy leads Gallie to argue that some words balance on the line between descriptive and appraising uses of language.

In his discussion of open-ended and complex concepts in the field of politics, the political scientist William E. Connolly draws on the notion of essentially contested concepts to argue that language users’ normative standpoints, with regards to situations and actions, influence the words they use to describe those situations and actions. Under such circumstances, Connolly observes, to describe “is to characterize a situation from the vantage point of certain interests, purposes, or standards.”⁵⁷ Connolly illustrates the point by drawing attention to concepts such as democracy and genocide. These words can be defined in a number of ways, depending on the normative outlook that shapes the political commitments of the language user. Conditions considered democratic or genocidal by some will differ greatly from conditions described in the same way by others.

Nachdruck deserves a place on the list of essentially contested concepts. Even though the historical actors agreed that unauthorized reprinting ought to be outlawed, they did not necessarily define Nachdruck in the same way. Without an agreed definition, they also detected cases of piracy in competing ways. To be able to categorize books in the same way, the historical actors needed a shared normative position on the nature of unauthorized reprinting. I argue that the lack of this shared normative position explains why the historical actors failed to agree on the definition of Nachdruck. In my view, historically changing assumptions about the nature of authorship and reprinting linked books to words and concepts such as piracy. Nothing in the books themselves compelled readers to categorize them in a certain way. In this regard, the detection of piracy says much about the normative outlook of the historical actors and less about the material artifact being scrutinized. The historical actors attributed this quality to the material artifacts that did not

⁵⁵ W. B. Gallie, “Essentially Contested Concepts,” in *Proceedings of the Aristotelian Society*, vol. 56, 1955, 167–98.

⁵⁶ *Ibid.*, 169.

⁵⁷ William E. Connolly, “Essentially Contested Concepts,” in *Democracy, Pluralism & Political Theory*, ed. Samuel A. Chambers and Terrell Carver (New York: Routledge, 2007), 266.

have them unless someone said so. Saying so would, however, not automatically make it so. Attribution, identification and detection are social practices. They prove successful if others find them convincing. Otherwise, they face refutation. Once challenged, acts of detection lose their veneer of disinterestedness and take on the appearance of a normative appraisal. Detections that go unchallenged also appraise objects from a normative standpoint, but do not seem to do so.

To my knowledge, the historical actors did *not* view the term in this fashion. While they did recognize its controversial nature, individuals such as Perthes also expected there to be a correct way to use this word. In cases of dispute, they believed, the true nature of a book would reveal itself through the diligent study of the material artifact. When differing interpretations of the material evidence arose, parties on different sides of the debate about the nature of piracy accused each other of incompetence or of having ulterior motives. To seem convincing, the historical actors needed the power to communicate their interpretations in such a way that others would feel compelled to view them as statements of fact. In other words, they needed to speak from a position of hermeneutical authority.

My definition of hermeneutical authority draws on the sociologist Thomas F. Gieryn's concept of epistemic authority, "the legitimate power to define, describe, and explain bounded domains of reality."⁵⁸ Gieryn coined the expression in an attempt to explain why some theories and practices gain acceptance as scientific while others are discarded as fraudulent and pseudoscientific. According to Gieryn, such decisions have little to do with scientific merit. The boundary between science and pseudoscience is socially constructed through an activity that Gieryn calls "boundary work," the "attribution of selected characteristics to an institution ... for purposes of constructing a social boundary that distinguishes some intellectual activities as outside that boundary."⁵⁹ Drawing on Gieryn's notion of boundary work, I view the process of distinguishing between pirate editions and original works as a social process. The boundary that I explore did not exist unless someone made the effort to define it. Alternative boundaries could have been drawn, and it did not necessarily seem obvious to the historical actors why one ought to be favored over another. To gain legitimacy, the proponents of a

⁵⁸ Thomas F. Gieryn, *Cultural Boundaries of Science: Credibility on the Line* (University of Chicago Press, 1999), 1. Weber defines *Herrschaft*, or authority as "the probability that certain specific commands ... will be obeyed by a given group of persons" See Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, ed. Guenther Roth and Claus Wittich, vol. 1 (Berkeley, Los Angeles & London: University of California Press, 1978), 53.

⁵⁹ Thomas F. Gieryn, "Boundary-Work and the Demarcation of Science from Non-Science: Strains and Interests in Professional Ideologies of Scientists," in *American Sociological Review*, vol. 48, 6, 1983, 782.

particular line of demarcation needed to mount convincing arguments in its favor.

Studies on Piracy

The historical developments that molded the German book market around 1800 have attracted a significant amount of attention in the scholarship. This section does not aim to provide an exhaustive account of earlier research on this period in German cultural history. Instead, it focuses on two areas: the history of authorship and the history of piracy. It begins with a discussion of the figure of the pirate. How has piracy been conceptualized in the secondary literature?

In “What is a Technological Author? The Pirate Function and Intellectual Property” (2005), the postcolonial scholar Kavita Philip discusses the figure of the pirate in a way that aligns with my approach. Philip’s study on piracy in the global economy today does not attempt to define piracy. Instead, she investigates the workings of “the pirate-function,” a discursive mechanism analogous to the author-function that Michel Foucault elaborated in his influential article on authorship.⁶⁰ Philip’s pirate-function defines the range of practices that will be labeled piratical and transgressive. “My purpose here is not so much to make the subaltern pirate speak, in all her oppositional authenticity, as to ask how the figure of the pirate is emerging.”⁶¹ Philip’s analysis takes part in a broader effort to problematize piracy as a stable and clearly definable cultural practice. Scholars of piracy such as Philip, Ramon Lobato, Johns, Anja Schwarz, James Arvanitakis and Fredriksson have pointed to the contested nature of piracy. Lobato argues that “semiotic instability” defines the concept.⁶² In a similar vein, Fredriksson and Aravanitakis contend that “piracy is neither homogenous, nor essential.” They see it as “a label that certain actors slap on others for specific reasons.”⁶³

Adrian Johns’s study of printing in early modern England takes a historical approach to the topic of piracy. Chapter three discusses in more detail the difference between this study and Johns’s. Here, I wish instead draw attention to the similarities. In early modern England, as Johns showed in *The Nature of the Book: Print and Knowledge in the Making* (1998), the concept of piracy became a battleground where disputing

⁶⁰ Michel Foucault, “What Is an Author?,” in *Language, Counter-Memory, Practice: Selected Essays and Interviews* by Michel Foucault, ed. Donald F. Bouchard, trans. Donald F. Bouchard and Sherry Simon (New York: Cornell University Press, 1980), 113–39.

⁶¹ Philip, “What Is a Technological Author?,” 205.

⁶² Lobato, “The Paradoxes of Piracy,” 129.

⁶³ Arvanitakis and Fredriksson, “On Piracy,” 5.

parties quarreled over the range of publication practices that deserved to be called piratical. With these quarrels in mind, Johns discusses the proper way to conceptualize piracy as an object of study.

As an attributed quality, piracy was a label attached to an object by users, not one residing in the object itself. That attachment was always contestable, and two texts did not have to be identical for one of them to qualify as a piracy. Epitomes, translations, and extracts might be accounted improper, as also might the unauthorized use of maps to make globes.⁶⁴

Johns adopts a non-essentialist understanding of piracy, construing it as a label that historical actors attributed to objects. For this reason, he does not aim to pass judgment on historical battles over the nature of piracy. Instead, he takes up the task of studying categorizations made by historical actors. Historians who do otherwise, Johns writes, run the risk of becoming participants in fights that they ought to be dispassionate observers of. As Johns rightly points out, “resolving to determine the inherent truth or falsity of a piracy allegation commits the historian to refighting old battles.”⁶⁵

Book piracy has been conceptualized differently in studies of German history. If they have been addressed at all, the representational problems raised by the concept of piracy have been construed as an obstacle that might be overcome. An article by Woodmansee provides an example. In “Publishers, Privateers, Pirates: Eighteenth-Century German Book Piracy Revisited” (2011), Woodmansee asks if “the abstract and spectral figure of the pirate” might be given flesh and blood. “Might this spectral figure be fleshed out?” she wonders. Woodmansee answers in the affirmative and turns to the Viennese book merchant Thomas von Trattner, a man accused by his enemies of being the Continental Nachdruckerfürsten in the late eighteenth century. For Woodmansee, Trattner embodies the figure of the unauthorized reprinter.

Woodmansee’s view of the figure of the pirate mirrors her understanding of the geography of German book piracy. She contends that legitimate publishers and unauthorized reprinters can be located in clearly demarcated regions of the German language area. Economic and cultural underdevelopment, she argues, drove states in the Catholic south to exploit the book culture that thrived in the more prosperous and culturally advanced north. The German language area was “divided

⁶⁴ Adrian Johns, *The Nature of the Book: Print and Knowledge in the Making* (University of Chicago Press, 2009), 174.

⁶⁵ *Ibid.*, 161.

developmentally down the lines between the north and the south.”⁶⁶ To Woodmansee, this divide bears a striking resemblance to the one between the West and the Global South that “marks our own world.” According to her, the “economic and cultural cleavage” that divided the Protestant north and the Catholic south “gives the eighteenth-century German book trade ... particular relevance to the globalizing trend that we are presently witnessing in information commerce.”⁶⁷ In making this analogy, she sets out to “provide historical perspective on present day international piracy.”⁶⁸

Woodmansee’s analysis of south German publishing participates in a scholarly tradition that harkens back to the Kulturkampf in the late nineteenth century. During the political struggle that Otto von Bismarck and his liberal enablers waged against Catholicism in the German Empire, members of the Prussian school of historical research constructed grand historical narratives that depicted the Catholic south as an obstacle that Prussia and other states in the Protestant north had to overcome in their struggle for modernization and national unification.⁶⁹ Around the turn of the twentieth century, scholars such as Schürmann, Johann Goldfriedrich and Friedrich Kapp promoted the Prussian paradigm in research on the history of the book. As Monica Estermann has put it, “the cultural protestant dominance” that shaped the political climate in the Wilhelmine Empire also informed Goldfriedrich’s views on the history of the German book trade.⁷⁰ In his contributions to the foundational work *Geschichte des Deutschen Buchhandels* (1886–1913), Goldfriedrich argued that a process of “bibliopolarization” sundered the German book trade in the eighteenth century.⁷¹ By then, cities such as Weimar and Leipzig had experienced the period of cultural blossoming now known as the Goethezeit. To keep up, publishers in the culturally destitute south began to reprint the books of their colleagues in the north.

⁶⁶ Martha Woodmansee, “Publishers, Privateers, Pirates: Eighteenth-Century German Book Piracy Revisited,” in *Making and Unmaking Intellectual Property* (Chicago & London: University of Chicago Press, 2011), 182.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Georg G. Iggers, “The High Point of Historical Optimism—the ‘Prussian School,’” in *The German Conception of History: The National Tradition of Historical Thought from Herder to the Present* (Middletown: Wesleyan University Press, 2012), 90–124.

⁷⁰ “der kulturprotestantischen Dominanz” Monica Estermann, “Buchhandelsgeschichte in kulturhistorischer Absicht: Johann Goldfriedrich und Karl Lamprecht,” in *Buchkulturen: Beiträge zur Geschichte der Literaturvermittlung*, ed. Monika Estermann, Ernst Fischer, and Ute Schneider (Wiesbaden: Otto Harrassowitz Verlag, 2005), 20.

⁷¹ Johann Goldfriedrich, “Das bibliopolische Deutschland,” in *Geschichte des Deutschen Buchhandels vom Beginn der klassischen Litteraturperiode bis zum Beginn der Fremdherrschaft (1740–1804)*, vol. 3 (Leipzig: Verlag des Börsenverein der deutschen Buchhändler, 1909).

In a recent reassessment of the literature on Austria's political history, the historian Jonathan Deak discusses the impact of the Prussianist paradigm. He observes that

[p]ositive assessments of the Habsburg monarchy, ones that put the monarchy squarely in the middle of European history, are few and far between. For a long time, the history of imperial Austria in the modern era has been a story of backwardness, a failure to innovate, and thus a story of decline and fall.⁷²

While historians such as Deak have begun to challenge this Prussianist paradigm, the political historiography of the German south continues to be molded by the idea that the region was overshadowed by the politically and culturally more advanced northern states. In an article assessing the historiography of publishing in the south, Reinhart Siegert discusses the impact of the northern bias in German book history. Thanks to the influence of scholars such as Goldfriedrich, he observes, book merchants from the south are the “step children” of the field.⁷³ In the few studies that do exist, south German publishing has invariably been characterized in a negative fashion.⁷⁴ While Siegert's assessment continues to be valid, the scholarship on south German publishing is currently undergoing a process of change and revision.⁷⁵ Thanks to the efforts of scholars such as Siegert, Johannes Frimmel, Ursula Kohlmeier and Peter Frank, a number of studies have appeared that deal with various aspects of Austria's book history in a more nuanced fashion.⁷⁶ In a recent

⁷² John Deak, *Forging a Multinational State: State Making in Imperial Austria from the Enlightenment to the First World War* (Stanford: Stanford University Press, 2015), 2.

⁷³ Reinhart Siegert, “Nachdruck und Reichsbuchhandel: Zu Zwei Stiefkindern der Buchhandelsgeschichte,” in *Buchkulturen: Beiträge zur Geschichte der Literaturvermittlung*, ed. Reinhard Wittmann et al. (Wiesbaden: Otto Harrassowitz Verlag, 2005).

⁷⁴ Siegert, “Nachdruck und Reichsbuchhandel: Zu Zwei Stiefkindern der Buchhandelsgeschichte.”

⁷⁵ Johannes Frimmel, “History of Books,” in *18th Century Studies in Austria, 1945-2010*, ed. Thomas Wallnig, Johannes Frimmel, and Werner Telesko (Bochum: Winkler Verlag, 2011).

⁷⁶ Peter R. Frank and Johannes Frimmel, *Buchwesen in Wien 1750–1850: kommentiertes Verzeichnis der Buchdrucker, Buchhändler und Verleger* (Wiesbaden: Otto Harrassowitz Verlag, 2008); Ursula Kohlmeier, *Der Verlag Anton Schrambl* (Vienna: University of Vienna, 2001); Peter Frank, “‘Es ist fast gar nichts da...’. Der deutschsprachige Verlagsbuchhandel in Österreich vom 18. zum 19. Jahrhundert. Versuch eines Panoramas,” in *Leipziger Jahrbuch zur Buchgeschichte*, 5, 1995, 201–32; Siegert, “Nachdruck und Reichsbuchhandel: Zu Zwei Stiefkindern der Buchhandelsgeschichte”; Reinhart Siegert, “Über Österreichs Aufklärung und Literatur. Zur ‘litterarischen Kleinheit’ Österreichs und des ‘Reichsbuchhandels’ zur Zeit Blumauers,” in *Aloys Blumauer und seine Zeit*, ed. Franz M. Eybl, Johannes Frimmel, and Wynfrid Kriegleder (Vienna: Winkler, 2007); Norbert Bachleitner, Franz M. Eybl, and Ernst Fischer, eds., *Geschichte des Buchhandels in Österreich* (Wiesbaden: Otto Harrassowitz Verlag, 2000); Johannes Frimmel and Michael Wögerbauer, eds., *Kommunikation und Information im 18. Jahrhundert: das Beispiel der Habsburgermonarchie* (Wiesbaden: Otto Harrassowitz Verlag, 2009); Johannes Frimmel, “Fast gar nichts da? Buchwissenschaft in

article, for example, Siegert argues that Austrian production of legitimate new publications was much larger than its piratical counterpart in the late eighteenth century. He claims that upon closer inspection, a meager 10 percent of Austria's total book production consisted of unauthorized copies, while the remaining 90 percent consisted of new works.⁷⁷

Siegert's numbers offer a much-needed challenge to the idea of a German cultural divide. However, it is unclear how he has managed to produce such figures for a period when the definition of unauthorized reprinting faced contestation. Still, the notion that south German states relied on unauthorized reprinting needs to be challenged. The same can be said about the argument that piracy declined in the early decades of the nineteenth century. Woodmansee does not explain why she thinks that piracy eventually subsided. In German book history, however, the argument is supported by logical reasoning rather than empirical evidence. According to this reasoning, south German states would never have agreed to pass the anti-piracy bill at the Congress of Vienna unless unauthorized reprinting had become irrelevant to them. Since states such as Austria, Württemberg, Bavaria and Baden *did* agree to a ban at the Congress of Vienna in 1815, it has been supposed that unauthorized reprinting must have declined by then. As Martin Vogel has argued, "[t]he joint effort to ban piracy in the German language area began in earnest when the age of piracy had come to an end."⁷⁸ Vogel's influential article "Deutsche Urheber- und Verlagsgeschichte zwischen 1450 und 1850" (1978) discusses this process:

Especially in the states of South Germany, where publishers pirated the books of their North German colleagues, having too few attractive original products of their own, piracy was not forbidden by law until its importance for the mercantile economy declined and local original production began to grow.⁷⁹

Österreich und ihre Institutionen," in *Buchwissenschaft in Deutschland: ein Handbuch*, ed. Ursula Rautenberg, vol. 2 (Berlin & New York: Walter de Gruyter, 2010), 929–47; Johannes Frimmel, "Johann Thomas Trattner: ein transnationaler Buchdrucker des 18. Jahrhunderts," in *Vernunft, Religionskritik, Volksglauben in der Aufklärung*, ed. Thomas Bremer (Halle-Wittenberg: Halle-Wittenberg Universitätsverlag, 2013), 205–18.

⁷⁷ Siegert, "Über Österreichs Aufklärung und Literatur. Zur 'litterarischen Kleinheit' Österreichs und des 'Reichsbuchhandels' zur Zeit Blumauers."

⁷⁸ Martin Vogel, "Deutsche Urheber- und Verlagsgeschichte zwischen 1450 und 1850: Sozial- und methodengeschichtliche Entwicklungsstufen der Rechte von Schriftstellern und Verlegern," in *Archiv für Geschichte des Buchwesens*, ed. Bertold Hack, Marietta Kleiss, and Reinhard Wittmann, vol. 19 (Frankfurt am Main: Buchhändler-Vereinigung GmbH, 1978), 159.

⁷⁹ *Ibid.*, 187. The quote is from Vogel's article summary in English.

Vogel approaches the history of German print piracy as if the difference between unauthorized reprints and original products had already been settled by historical actors. He conceptualizes pirated books and original products as two distinct categories of printed matter. According to Vogel's way of thinking, the growth of authorial output in south German states explains why unauthorized reprinting became increasingly irrelevant there. Offering the expanding Leipzig book fair catalog as proof, he argues that the production of new books in the south quadrupled between 1810 and 1840. With a lively literary culture of their own, southern states no longer needed to import books from abroad. When this happened, Vogel concludes, it also made sense to criminalize unauthorized reprinting. By then, states in the south and southwest had managed to cultivate publishing industries worth protecting.

Studies on Authorship

Was the German south a pirate-infested backwater? Did states there need to import books from the Protestant north? The previous section discussed competing descriptions of south German publishing around the turn of the nineteenth century. Woodmansee considers the German south as stagnating culturally and economically, and compares the region to the areas she defines as underdeveloped in the global economy today. Scholars such as Siegert deny that south German publishing lagged behind. He and other critics regard the portrayal of the German south as rife with piracy to be a cliché that misrepresents the true size of the respectable publishing culture that did thrive in cities such as Vienna. Despite this difference of opinion, the proponents and critics of the backwater theory of south German publishing share common ground on one crucial issue. Both seem to approach the topic of print piracy with the assumption that the number of pirate editions and original works can be accurately determined. In so doing, they also appear to believe that unauthorized reprinting can be defined in an unproblematic fashion.

Earlier in this introduction, I argued that the romantic reconceptualization of authorship makes this assumption dubious because it affected the range of publications that the historical actors considered to be legitimate publications or unauthorized reprints. In a more fundamental sense, these quarrels revolved around the question whether the south ought to be regarded as a piratical periphery in the German language area. This dissertation does not aim to settle questions of this kind. Instead, it sets out to study the answers provided by the historical actors. An understanding of these answers requires an analysis of efforts

to define authorship. In this section, I discuss in more detail my approach to the question of authorship, the second major field to which my research contributes.

What was an author in the early half of the nineteenth century? My approach to the history of authorship draws on the lecture “*Qu’est-ce qu’un auteur?*” (1969), which Michel Foucault gave at the College de France and later published as an article. In this much-cited work, Foucault addressed the subject at a time when the supposed death of the author was being discussed in France and elsewhere. He took part in these discussions from a distinctive angle. In the Kantian sense of the word, Foucault offered a critique of authorship. Instead of debating the question whether the author was a dead or living entity in the 1960s, Foucault posed questions about the function of authorship. “What is the name of an author,” he asked. “How does it function?”⁸⁰ To Foucault, the nature of authorship raised broader questions about human subjectivity.

We should ask: Under what conditions and through what forms can an entity like the subject appear in the order of discourse. What position does it occupy? What function does it exhibit? And what rules does it follow in each type of discourse?⁸¹

With these questions in mind, Foucault defined the author-function as a regulatory mechanism that constrained discourse while at the same time making it possible for writers to lay claim to authorship. The function of authorship, he argued, “is to characterize the existence, circulation, and operation of certain discourses within a society.”⁸² To Foucault, the mode in which the author-function organizes discourse did not appear timeless and static, but historically and culturally variable. “It does not operate in a uniform manner in all discourse, at all times and in any given culture,” he argued.⁸³

Foucault’s brief outline of the history of authorship broached the question “how the author became individualized in a culture like ours.”⁸⁴ Two historical junctures seemed especially significant to Foucault. According to his loose chronology, the first of these was in the early modern period, when legal authorities began to link the attribution of authorship to legal culpability. “Speeches and books were assigned to real authors, other than mythical or important religious figures, only when the author became subject to punishment and to the extent that his

⁸⁰ Foucault, “What Is an Author?,” 121.

⁸¹ *Ibid.*, 137.

⁸² *Ibid.*, 124.

⁸³ *Ibid.*, 130.

⁸⁴ *Ibid.*, 113.

discourse was considered transgressive.”⁸⁵ Foucault identified the second turning point in the years around 1800, which for him constituted a “privileged moment of individualization in the history of ideas, knowledge, literature, philosophy, and the sciences.”⁸⁶ Thanks to this broader process of individualization, these years marked the “moment when a system of ownership and strict copyright rules were established.”⁸⁷

Today, when the history of authorship has been extensively investigated, it might not seem surprising that modern ideas about authorship came into being at a particular time in history. When Foucault wrote this in the late 1960s, however, the historiography of authorship and copyright still took authorship to be a natural and timeless category. In this regard, Foucault helped open up a new field of historical inquiry.⁸⁸ Since then, his argument that our notion of proprietary authorship did not arrive until the turn of the nineteenth century has faced criticism.⁸⁹ Despite this, few deny that the years around 1800 mark an important watershed moment in the history of modern authorship. In large part, this is due to the efforts of Woodmansee, who conceived her study of German idealism, authorship and piracy as a continuation of Foucault’s 1969 article.⁹⁰ According to her, Fichte’s ideas grounded the notion that

⁸⁵ Ibid., 114.

⁸⁶ Ibid., 115.

⁸⁷ Ibid., 124–125.

⁸⁸ Though “What is an Author?” became the most influential study on the history and nature of authorship, it was not the only one to appear at the time. Two years before Foucault held his lecture, the legal scholar Benjamin Kaplan wrote a study on copyright that also took an historical perspective on the nature of authorship. See Benjamin Kaplan, *An Unhurried View of Copyright* (New York: Colombia University Press, 1967). Though her seminal work on the history of print appeared ten years after Foucault’s article, the historian Elizabeth Eisenstein should, in my view, also be placed alongside Foucault and Kaplan. Eisenstein’s historicization of the technology of print also took an historical perspective on authorship. She argues that modern notions of authorship came about in response to the communications revolution that resulted from the invention and spread of the printing press. “[I]t is useful to recall,” Eisenstein writes, “that both the eponymous inventor and personal authorship appeared at the same time and as a consequence of the same process [the european invention and spread of printing with moveable types]... Scribal culture worked against the concept of intellectual property rights. It did not lend itself to preserving traces of personal idiosyncracies, to the public airing of private thought, or to any of the forms of silent publicity that have shaped consciousness of self during the past four centuries.” Elizabeth L. Eisenstein, *The Printing Press as an Agent of Change*, 2nd ed., vol. 1 (Cambridge, New York & Melbourne: Cambridge University Press, 1980), 121.

⁸⁹ Roger Chartier, “Foucault’s Chiasmus: Authorship between Science and Literature in the Seventeenth and Eighteenth Centuries,” in *Scientific Authorship: Credit and Intellectual Property in Science*, ed. Mario Biagioli and Peter Galison (London & New York: Routledge, 2014).

⁹⁰ Woodmansee comments on her indebtedness to Foucault. “Although the notion [of an original author] have been put in question by structuralists and poststructuralists who regard it as no more than a socially convenient fiction for linguistic codes and conventions that make a text possible, its genesis has received relatively little attention. This neglect is the more

authors have a right to constrain the ways in which their works circulate in society.

I concur with Woodmansee's assertion that idealistic concepts of authorship laid the groundwork for the authorial rights reforms that swept the German language area in the early nineteenth century. However, I disagree with her characterization of romantic and idealistic writing practices. According to Woodmansee, the idealistic conception of authorship denigrated all writing and publication practices except those of genial and absolute originality. She argues that romantic and idealist philosophers conceived of authorship as

originary in the sense that it results not in a variation, an imitation, or an adaptation, and certainly not in a mere reproduction, but in a new, unique—in a word, “original”—work which, accordingly, may be said to be the property of its creator and to merit the law's protection as such.⁹¹

According to the orthodox view of the early nineteenth century, the invention of the kind of author that Woodmansee describes participated in a broader historical development that helped usher in the romantic age. The romantic age has been defined as an era in European history that promoted individualism at the expense of tradition and communal ways of being. “By the dawn of the Romantic era,” the historian Rebecca Moore Howards writes, “it was no longer acceptable to stand on the shoulders of predecessors.”⁹² In the realm of books, Woodmansee argues, the romantic adoration of possessive individualism constituted a revolutionary moment. In early modern times, the derivative use of other people's writing had been viewed as a legitimate way to produce books. Now, however, the invention of a romantic and idealist model of authorship redefined the publication of an unauthorized compilation, for example, as a piratical action. The spread of this conceptualization of authorship, Woodmansee contends, helped make “virtual outlaws of those who draw on such works [that is, productions that qualify as works of original authorship] for their raw material.”⁹³

In recent years, individualistic notions of authorship have come under attack from scholars influenced by the post-structuralist critique of authorship, for which thinkers such as Roland Barthes paved the way. The traditional view, critics contend, misrepresents the collaborative and collective nature of the compositional process. Writers always draw on

surprising in the light of Michel Foucault's [article].” Woodmansee, *The Author, Art, and the Market*, 36.

⁹¹ Woodmansee and Jaszi, “Introduction,” 3.

⁹² Rebecca Moore Howard, *Standing in the Shadow of Giants: Plagiarists, Authors, Collaborators* (Stamford: Ablex Publishing Group, 1999), 67.

⁹³ Woodmansee and Jaszi, “Introduction,” 11.

the writings of others.⁹⁴ Thanks to its towering influence, the individualistic notion of authorship has placed writing practices that overtly rely and draw on the writings of others on the margins of Western culture. To rescue these practices from obscurity, it has been argued, historians must attend to what the literary scholar Margaret Ezell has called “social authorship.”⁹⁵ This dissertation’s focus on south German publications contributes to the recovery of social and collective writing practices that have been overlooked in historical research on authorship until recently. In so doing, however, it does not redirect the searchlight away from the kind of authorship propounded by philosophers such as Immanuel Kant and Johann Gottlob Fichte around 1800. Instead, it seeks to recontextualize their ideas. In my view, thinkers such as these helped confer legitimacy to practices that relied on the borrowing, transformation and sharing of the existing stock of text. According to them, unauthorized adapters, compilers and revisers could lay claim to authorship.

The legal codification of this view led critics to argue that the German authorial rights reform served the interest of unauthorized reprinters. Their protestations incited the debate about the nature of unauthorized reprinting that helped stall the passing of the confederal ban. Though mine is the first historical study of these controversies on German soil, I am not the first to point out that Woodmansee misrepresents the mainstream view on authorship around the turn of the century 1800.⁹⁶ In “Johann Gottlob Fichte, and the Trap of Inhalt (Content) and Form” (2009), Friedemann Kawohl and Martin Kretschmer argue “pace Woodmansee, that modern copyright was born not out of the Romantic notion of genius, but despite it.”⁹⁷ Arguing that Fichte’s view of authorship “can in fact easily undermine the very notion of property it is deemed to have established,” Mario Biagioli makes a similar point in “Genius against Copyright: Revisiting Fichte’s Proof of the Illegality of Reprinting” (2011).⁹⁸ He contends that Fichte’s notion of authorship provided an innovative argument for the protection of intellectual

⁹⁴ Woodmansee makes this argument in “On the Author Effect I: Recovering Collectivity.”

⁹⁵ Margaret J. M. Ezell, *Social Authorship and the Advent of Print* (Baltimore: Johns Hopkins University Press, 2003).

⁹⁶ See for example, Andrew Franta, *Romanticism and the Rise of the Mass Public* (Cambridge: Cambridge University Press, 2007); Tilar J. Mazzeo, *Plagiarism and Literary Property in the Romantic Period* (University Park: University of Pennsylvania Press, 2013); Friedemann Kawohl and Martin Kretschmer, “Johann Gottlieb Fichte, and the Trap of Inhalt (content) and Form: An Information Perspective on Music Copyright,” in *Information, Communication & Society*, 12:2, 2009, 205–28; Mario Biagioli, “Genius against Copyright: Revisiting Fichte’s Proof of the Illegality of Reprinting,” in *Notre Dame Law Review*, vol. 86, 5, 2011, 1847.

⁹⁷ Kawohl and Kretschmer, “Johann Gottlieb Fichte, and the Trap of Inhalt (content) and Form: An Information Perspective on Music Copyright,” 14.

⁹⁸ Biagioli, “Genius against Copyright,” 1848.

property while at the same time defining “only verbatim reprinting as illegal.”⁹⁹ This constitutes “a paradox,” Biagioli argues.

Most of the works that modern copyright law would call derivative were instead original according to Fichte, originals that were produced by, and therefore belonged to, adapters and active borrowers.¹⁰⁰

The analysis of Fichte’s model of authorship that I offer in chapter two aligns with the one proposed by Biagioli, Kawohl and Kretschmer. However, our approaches differ in one crucial aspect. They use Fichte’s view of authorship and unauthorized reprinting as an opportunity to reflect on and criticize various aspects of today’s copyright laws. I instead contextualize Fichte’s ideas within a broader debate about the boundary between unauthorized reprinting and authorship. If Kawohl, Kretschmer and Biagioli’s insightful articles shed new light on Fichte’s tract on a philosophical level, the aims that drive Andrew Piper’s *Dreaming in Books: The Making of the Bibliographic Imagination in the Romantic Age* (2009) come closer to those I am pursuing. Piper examines German publishing in the years around 1800 to drive home the point that “we have overlooked how sharing has served as a crucial practice for literary and intellectual innovation both during and after the Romantic period.”¹⁰¹ Against the view that leading German romantics disdained derivative writing practices, Piper argues that “[r]epetition would become a constitutive feature of the modern literary market.”¹⁰² While Piper does not deal specifically with reprinting, he explores the publication and reception of unauthorized compilations and the “repackaging of already printed and remunerated works.”¹⁰³ In so doing, he shows that German proponents of a romantic view of authorship regarded the sharing and copying of text much more favorably than one might expect.

Though Piper has showed a different side of German book culture in the romantic era, much still remains to be done. He focuses exclusively on imaginative literature, and does not consider legal developments or the controversies that sprang up over concepts such as *Nachdruck*. Instead, he sets out to challenge the notion that copying as a cultural practice lost social standing around 1800. In contrast, I do not question the assertion that Germans grew more hostile to copying practices such as reprinting. Instead, my analysis of unauthorized reprinting examines efforts to define the nature of the reprinting process. To sum up, I argue that these efforts

⁹⁹ Ibid., 1866.

¹⁰⁰ Ibid., 1861.

¹⁰¹ Piper, *Dreaming in Books: The Making of the Bibliographic Imagination in the Romantic Age*, 126.

¹⁰² Ibid., 31.

¹⁰³ Ibid.

gave rise to a complex and multi-layered historical development. While German states grew more hostile towards unauthorized reprinting, contemporary observers complained that anti-piracy laws narrowed the range of publication practices that were considered to constitute unauthorized reprinting. To them, in other words, the authorial rights reform made the German language area more, not less, lenient towards unauthorized reprinting. This dissertation captures this overlooked moment of seeming contradiction in German cultural history.

2. Print Piracy in the Age of Mechanical Reproduction

In September 1814, the attention of German book merchants turned to Vienna. In the capital of the Danube Monarchy, the member states of the Sixth Coalition convened at a general peace congress with the aim of deciding Europe's political future after the defeat of Napoleon's army in Paris. Told that the Congress of Vienna would be a modest affair, the Austrian emperor Franz I reluctantly agreed to host the event in the capital of his domains.¹⁰⁴ The congressional proceedings proved to be neither modest nor easily dispatched. Stalled by court intrigue, scandals, political differences, Napoleon's flight from Elba, the battle at Waterloo, territorial disputes and a seemingly endless succession of lavish celebrations and balls, the so-called dancing conference did not end until the plenipotentiaries signed the Acte finale on June 9, 1815. By then, more than ten months had passed since the congress had opened. Since late September 1814, it had attracted more than sixty thousand visitors to Vienna, a city with around two hundred thousand residents. In addition to the politicians, kings, princes, princesses, diplomats and war heroes, scores of celebrators, fortune seekers, lobbyists, courtiers, merchants and spies flocked to the metropolitan heart of Mitteleuropa. There, they took part in the many festivities that made the Congress of Vienna infamous as one long and frivolous fête.¹⁰⁵

¹⁰⁴ The original aim of the congress was to regulate a mere formality in the Treaty of Paris. "All the powers engaged on either side in the present War, shall within the space of two months send plenipotentiaries to Vienna for the purposes of regulating, in General Congress, the arrangements which are to complete the present Treaty." This translation comes from Edward Baines, *History of the Wars of the French Revolution: From the Breaking Out of the War in 1792 to the Restoration of a General Peace in 1815; Comprehending the Civil History of Great Britain and France During That Period* (Philadelphia: Henry Light, 1824), 58.

¹⁰⁵ The literature on the Congress of Vienna is understandably vast. See for example, Mark Jarrett, *The Congress of Vienna and Its Legacy: War and Great Power Diplomacy After Napoleon* (London & New York: I.B. Tauris, 2013); Brian E. Vick, *The Congress of Vienna: Power and Politics after Napoleon* (Cambridge, Massachusetts: Harvard University Press, 2014); Adam Zamoyski, *Rites of Peace: The Fall of Napoleon and the Congress of Vienna* (London, New York, Toronto & Sydney: HarperCollins, 2012); Agnes Husslein-Arco and Sabine Grabner, *Europe in Vienna: The Congress of Vienna 1814/15* (Chicago & London: University of Chicago Press, 2015); Tim Chapman, *The Congress of Vienna 1814-1815: Origins, Processes and Results* (New York & London: Routledge, 2012); Heinz Duchhardt, *Der Wiener Kongress: Die Neugestaltung Europas 1814/15* (C.H. Beck, 2013); Hilde Spiel, *Der Wiener Kongress in Augenzeugenberichten* (München: Deutscher Taschenbuch-Verlag,

According to reports from Vienna's secret service, one of the hardest-working lobbyists at the congress was Karl Bertuch, a book merchant from Weimar in Thüringen.¹⁰⁶ Together with his colleague Friedrich Cotta, Bertuch visited Vienna as a representative of Vereinigung der deutschen Buchhändler. The organization came to Vienna with the overarching aim of persuading the politicians to adopt an "imperial ban" on unauthorized reprinting.¹⁰⁷ When news had broken in May about plans for a peace congress, it didn't take long for the members of the Vereinigungen to recognize the political significance of the event. Along with many others, they expected the question of Germany's national unification to be finally addressed after years of foreign rule under Napoleon. At the congress, Cotta and Bertuch hoped to be able to make an authorial rights law a part of the future constitution of the German nation.

Until the very end of the congress, the political leadership seemed either hostile or indifferent to a ban of the kind envisioned by the Vereinigungen's representatives in Vienna. At the eleventh hour, however, Wilhelm von Humboldt, secretary to the Prussian foreign minister Karl August von Hardenberg, managed to include a clause on unauthorized reprinting in the confederal acts.¹⁰⁸ In large part thanks to Humboldt's last-minute intervention, Article 18d of the Bundesacte promised that a future

confederal assembly will concern itself with the drafting of a uniform law on the freedom of the press and the protection of the rights of writers and publishers against unauthorized reprinting on its first meeting.¹⁰⁹

1978); Carl Bertuch, *Carl Bertuchs Tagebuch vom Wiener Kongress*, ed. Hermann Egloffstein (Berlin: Gebrüder Paetel, 1916).

¹⁰⁶ August Fournier, *Die Geheimpolizei auf dem Wiener Kongress. Eine Auswahl aus ihren Papieren von August Fournier* (Wien & Leipzig: F. Tempsky & G. Freytag, 1913), 44.

¹⁰⁷ Kotzebue, *Denkschrift über den Büchernachdruck, zugleich Bittschrift um Bewürkung eines deutschen Reichsgesetzes gegen denselben. Den bei dem Congress zu Wien versammelten Gesandten deutscher Staaten überreicht im Namen deutscher Buchhändler*.

¹⁰⁸ The history of this episode remains to be fully written. For more on Bertuch and Cotta's expedition to Vienna, see the chapter "German Liberation" in Daniel Moran, *Toward the Century of Words: Johann Cotta and the Politics of the Public Realm in Germany, 1795–1832* (Berkeley, Los Angeles & London: University of California Press, 1990); Siegfried Seifert, "Der Weimarer Verleger Carl Bertuch und der Wiener Kongreß. Mit einem Anhang bisher ungedruckter Dokumente aus dem Weimarer Goethe- und Schiller-Archiv," in *Beiträge zu Geschichte des buchwesens im frühen 19. Jahrhundert* (Wiesbaden: Harrassowitz Verlag, 1993), 25–51; Bertuch, *Carl Bertuchs Tagebuch vom Wiener Kongress*.

¹⁰⁹ "Die Bundesversammlung wird sich bey ihrer ersten Zusammenkunft mit Abfassung gleichförmiger Verfügungen über die Preßfreyheit und die Sicherstellung der Rechte der Schriftsteller und Verleger gegen den Nachdruck beschäftigen." *Deutsche Bundes-Acte: Authentischer Abdruck* (Frankfurt am Main: Heymann, 1816), 18d.

The excitement aroused by Article 18d did not last long. When the time came to implement the ban, problems arose almost immediately. How should an infringement on the rights of authors be defined? What was an author? What did it even mean to copy artifacts such as printed books? For how long should works enjoy the protection of the state? Should the law really be combined with provisions for the freedom of the press? Or ought it to be predicated on a check on free speech instead?

The political leadership managed to solve most of these issues over time, but one of them continued to cause problems. The confederal assembly failed to satisfactorily fix the meaning of the term *Nachdruck*, which continued to be debated long after the passage of the ban on unauthorized reprinting in 1837. The debates did eventually come to an end, but they did so in an unorthodox fashion. The political authorities abandoned the troublesome word, which ceased to be a legal concept around 1900. As a result of this process, the word lost much of the significance it had enjoyed in the first half of the nineteenth century.¹¹⁰

This chapter does not aim to analyze the fading significance of the term *Nachdruck* in the German language. Instead, I take a closer look at the history of the word and the controversies it engendered in the legal domain before and after the Congress of Vienna. How did historical actors use the term? Why did it cause so much trouble? Setting out to explore these questions, this chapter places the expression mechanical reproduction at the center of attention. In 1837, the confederal assembly deployed this concept to clarify the meaning of the word *Nachdruck*.¹¹¹ The proposition seemed far from satisfactory to many book merchants and other observers. The expression, it was pointed out, clarified the meaning of an unclear term with a phrase that seemed even more opaque.¹¹² Did the concept of mechanical reproduction refer to books

¹¹⁰ For more on this “farewell to the concept of unauthorized reprinting,” see Elmar Wadle, “Das preußische Urheberrechtsgesetz von 1837 im Spiegel seiner Vorgeschichte,” in *Woher kommt das Urheberrecht und wohin geht es?: Wurzeln, geschichtlicher Ursprung, geistesgeschichtlicher Hintergrund und Zukunft des Urheberrechts*, ed. Robert Dittrich (Vienna: Manz, 1988), 64.

¹¹¹ “mechanische Vervielfältigung” Friedrich Rendschmidt, ed., “Publikations=Patent über den, von der Deutschen Bundesversammlung unter dem 9. November dieses Jahres gefassten Beschluß wegen gleichförmiger Grundsätze zum Schutze des schriftstellerischen und künstlerischen Eigenthums gegen Nachdruck und unbefugte Nachbildung. Vom 29. November 1837,” in *Systematisches Repertorium der in der Gesetz-Sammlung für die k. Preußischen Staaten enthaltenen und noch geltenden Verordnungen, welche das Allgemeine Landrecht, die Allgemeine Gerichts-Ordnung, die Criminal-, Deposit- und Hypotheken-Ordnung abändern oder ergänzen* (Breslau: Georg Philipp Aderholz, 1855), 45–46.

¹¹² See for example Hugo Häpe, “Der Einfluß des Bundesbeschlusses vom 9. Nov. 1837 auf die Fortbildung des literarischen Rechts in Deutschland. Zweite Abhandlung: Was ist Vervielfältigung auf mechanischem Wege?,” in *Allgemeine Press-Zeitung: Annalen der Presse, der Literatur und des Buchhandels*, ed. Albert Berger, 100 (Leipzig: Friedrich Arnold Brockhaus, 1844), 397–99.

copied with the help of machines such as printing presses? Or did it target writers who reproduced the works of others in the manner of a mindless apparatus? If the latter, what were the defining characteristics of a mechanically reproduced book? Did it have to look exactly like the original edition? Would the law against unauthorized reprinting protect authors and publishers against unauthorized translations, compilations and revisions—that is, publications that did not physically resemble the original editions?

The debates that broke out after 1837 revolved around two different uses of the expression mechanical reproduction: one technical and the other figurative. Those who used the expression in the technical sense believed that a machine had to be involved in the process of mechanical reproduction. For them, the phrase had been put in the confederal ban to inform legal authorities that, to name but one example, hand-copied books would not be criminalized by the ban on unauthorized reprinting. The figurative use of the expression mechanical reproduction compared the reprinter to a mindless machine such as the printing press. These two uses of the expression described two different stages in the book-making process. If the technical use described the actual printing process, the metaphorical kind of mechanical reproduction happened before the printing process had commenced. A reprinter who, on a metaphorical level, reproduced books in a mechanical fashion would simply take a book from the shelf and send it to the print shop without processing it in some way. Without such processing, these mechanical reprinters did not leave any individuating marks of themselves in the books. They acted *as if* they were mindless machines.

In “Was ist Vervielfältigung auf mechanischem Wege?” (1844), an attempt to elucidate the meaning of the confederal ban, the legal scholar Hugo Häpe discussed the technical and the figurative uses of the expression mechanical reproduction.

Until recently it was a very widespread view that the peculiarity separating the unauthorized reprint or emulation from the original consists of this, that the same [the unauthorized reprint] has been reproduced in a mechanical fashion. We have often heard that the shamefulness of unauthorized reprinting is grounded in precisely this, that the unauthorized reprinter emulates another’s work without the strain of independent creation.... The term: “in a mechanical fashion” would then not be used to designate the technical production of the individual copy of the duplication but the lack of independent spiritual activity.¹¹³

¹¹³ “Es war ein bisher sehr verbreitete Ansicht, daß die Eigentümlichkeit, welche den Nachdruck oder die Nachbildung von dem Originale unterscheidet, darin bestehe, daß dieselben auf mechanischem Wege vervielfältigt seien. Gerade das begründe, haben wir often

Häpe found the figurative use of the expression mechanical reproduction troubling.¹¹⁴ It had spread and popularized the erroneous view that the concept of unauthorized reprinting only applied to those who reproduced the original edition word for word.¹¹⁵ Used in this figurative sense, the expression promoted the dangerous idea that one could get away with unauthorized reprinting as long as one changed the original edition in some way. Against this notion, Häpe argued that the phrase mechanical reproduction ought to be reserved for the technical use of machines. “Everything, which is to be produced in a mechanical fashion, must occur with the help of a stationary contraption,” he argued.¹¹⁶

Several years later, the legal scholar Rudolf Klostermann took stock of the discussions that Häpe had contributed to. If the meaning of the term *Nachdruck* appeared embattled before 1837, he observed, the use of the phrase mechanical reproduction had made it more so after the passing of the confederal ban. The expression had itself become “disputed on many occasions.”¹¹⁷ A large body of legal commentary and even an entire book on the theory of unauthorized reprinting appeared in response to the situation that arose from the confederal ban on unauthorized reprinting.¹¹⁸ In addition to this scholarly debate, the problem became a political issue of the highest order in the confederal assembly in Frankfurt. The lack of conceptual fixity threatened the core values of the confederacy, it was argued at the time. In 1861, a Saxon envoy addressed the matter before the assembly. He observed that “[i]ndividual confederation states have taken significantly different paths,” implementing the law on unauthorized reprinting in diverging and often conflicting ways. This development had resulted in a disadvantageous lack of legal conformity, the envoy from Saxony pointed out. “[E]ntirely different grounding principles [have] gained currency with regards to the term unauthorized reprinting.”¹¹⁹ This problem must be remedied at once, he demanded. Not

gehört, daß der Nachdrucker sich die Mühe der selbständigen Hervorbringung erspare.... Dabei wurde die Bezeichnung: "auf mechanischem Wege", nicht sowohl von der technischen Herstellung der einzelnen Exemplare der Vervielfältigung als vielmehr von den Mangel an selbständiger geistiger Tätigkeit gebraucht." Ibid.

¹¹⁴ Ibid., 398.

¹¹⁵ Häpe called this “wörtliches Abschreiben”. Ibid.

¹¹⁶ “Alles, was auf mechanischem Wege bewerkstelligt wird, muß mit Hülfe einer bleibenden Vorrichtung geschehen”. Ibid., 397.

¹¹⁷ “Ueber die Bedeutung des in den deutschen Gesetzgebungen übereinstimmend gebrauchten Ausdrucks: mechanische Vervielfältigung (Vervielfältigung auf mechnisem Wege) wird vielfach gestritten.” Rudolf Klostermann, *Das geistige Eigenthum an Schriften, Kunstwerken und Erfindungen: Nach preussischem und internationalen Rechte. Allgemeiner Theil, Verlagsrecht und Nachdruck*, vol. 1 (Berlin: Guttentag, 1867), 396-7.

¹¹⁸ Julius Jolly, *Die Lehre vom Nachdruck: Nach den Beschlüssen des deutschen Bundes dargestellt* (Heidelberg: Mohr, 1852).

¹¹⁹ “Es konnte daher nicht fehlen, daß die Entwicklung der Specialgesetzgebung und der Praxis in den einzelnen Bundesstaaten einen sehr verschiedenen Gang genommen hat,

only did the current situation work to “the greatest detriment of the trade in books.”¹²⁰ The literary and artistic activity of the German language area suffered greatly as well. Within the confederacy, the same case might be treated completely differently in different states.¹²¹

The Saxon envoy acted on reform proposals issued by the lobbying organization Der Börsenverein deutschen Buchhändler, a successor to the book merchants’ association that had travelled to the Congress of Vienna in 1814.¹²² As the name of the organization suggests, the Börsenverein strove to gain political acceptance as the mouthpiece of German book merchants. Its members hoped not only to get a confederal ban on unauthorized reprinting passed but also to influence the terms of the ban once the implementation of Article 18d had begun.¹²³ The group focused on the concept of mechanical reproduction. In keeping with Häpe’s view, they argued that this concept had not only failed to stop the circulation of piratical publications such as unauthorized compilations and revisions. It had also encouraged those who produced such works to regard themselves as legitimate book merchants.¹²⁴ The problem plagued the south German states in particular, critics argued.¹²⁵ There, the metaphorical use of the expression mechanical reproduction had spread the false idea that piratical publications no longer existed. Critics toiled to

dergestalt, daß, wie die königlich-Sächsische Regierung bezeugt, sogar über den Begriff Nachdruckes selbst und über den Umfang des unter den Schutz gegen Nachdruck fallenden Gebietes literarische und künstlicher Erzeugnisse, geschweige vieler anderer wichtiger Punkte ganz verschiedene Grundsätze Geltung gewonnen haben, so daß derselbe Fall in verschiedenen Bundesstaaten ganz abweichender Behandlung unterliegen kann.” “29. Sitz. v. 24. Juli 1862: Herbeiführung eines allgemeinen Gesetzes gegen den Nachdruck. Vortrag. Mit Beil. 1 u. 2.,” in *Protokolle der deutschen Bundes-Versammlung vom Jahrte 1862: Sitzung 1 bis 42* (Frankfurt am Main: Bundesdruckerei, 1862), 426.

¹²⁰ “Daß ein solcher Zustand vom größten Nachtheile für den Buch- und Kunsthandel und rückwirkend selbst auf die literarische und künstlerische Tätigkeit sein muß, ergibt sich von selbst.” Ibid.

¹²¹ Ibid.

¹²² Elmar Wadle, “Der Frankfurter Entwurf eines deutschen Urheberrechtsgesetzes von 1864—Eine Einführung zum Nachdruck,” in *Geistiges Eigentum: Bausteine zur Rechtsgeschichte*, vol. 1 (Wennheim, New York, Basel, Cambridge & Tokyo: VCH, 1996), 309–27.

¹²³ See for example Adalbert Wilhelm Volkmann, “Vorschläge zur Feststellung des literarischen Rechtzustandes in den Staaten des deutschen Bundes,” in *Zusammenstellung der gesetzlichen Bestimmungen über das urheber- und Verlagsrecht: aus den Bundesbeschlüssen, den deutschen Territorialgesetzgebungen und den Französischen und englischen Gesetzen im Auftrag des Börsenvereins der deutschen Buchhändler bearbeitet* (Leipzig: E. Polz, 1855).

¹²⁴ See for example Julius Eduard Hitzig and Albert Berger, “Vorwort,” in *Allgemeine Press-Zeitung: Annalen der Presse, der Literatur und des Buchhandels* (Leipzig: Friedrich Arnold Brockhaus, 1844); Julius Eduard Hitzig, “Prospectus,” in *Blätter für literarische Unterhaltung: Literarische Anzeiger*, vol. 5 (Friedrich Arnold Brockhaus, 1840).

¹²⁵ See for example Hartmann Schellwitz, *Kritik des Nachdruckgesetzes für Württemberg sammt Gesetz-Entwurf die Sicherstellung des literarisch-artistischen Eigenthums betreffend* (Leipzig: Weber, 1842); Wolfgang Menzel, *Die deutsche Literatur. Zweite vermehrte Auflage.*, vol. 1 (Stuttgart: Hallbergersche Verlagshandlung, 1836); Perthes, “Ueber den teutschen Buchhandel und die äussern Verhältnisse der teutschen Literatur.”

change the mind-set of those who held on to this belief, arguing that the superficial alteration of a respectable publication did not make the resulting piracy any less piratical. On the contrary, the fact that some unauthorized reprints did not resemble the original book only meant that their piratical nature had been carefully concealed from readers.

Critics of these books needed to convince the public and the authorities to do more than take a stand against piracy. They would have to persuade the legal and political establishment to use the concept of unauthorized reprinting in the right way. Only then would the public and those in power feel appropriately alarmed by the flood of pirated books and hasten to ban them. The legal scholars and Börsenverein members Julius Eduard Hitzig and Hartmann Schellwitz led the reform efforts that commenced after the passing of the confederal ban in 1837. With the help of *Allgemeine Press-Zeitung*, a journal dedicated to the reform of German press laws, the circle around Hitzig eventually proved successful.¹²⁶ The influence of the views propounded by Hitzig and other reformers helped lay the foundations of the legal framework that governs the way Europeans can author, copy, borrow, circulate, steal, pirate and share intellectual property today. A wide range of publications such as unsolicited translations, compilations and revisions faced criminalization partly as a result of their efforts.¹²⁷ In this regard, the success that reformers did enjoy in the late nineteenth century contributed to the broader and international process of copyright expansionism.¹²⁸

¹²⁶ According to contemporary observers, the views of Hitzig and Schellwitz shaped the legal development in the second half of the nineteenth century. In 1879, the historian Carl Berendt Lorck commented on the influence of the circle around Hitzig's *Press-Zeitung*. "... namentlich hat die Preßzeitung, unter der Leitung Ed. Jul. Hitzigs und Hartmann Schellwitz', auf die Klärung der Ansichten über das literarische Eigenthumsrecht und die betreffende Gesetzgebung einen wesentlichen Einfluß geübt." Carl Berendt Lorck, *Die Druckkunst und der Buchhandel in Leipzig durch Vier Jahrhunderte: Zur Erinnerung an die Einführung der Buchdruckerkunst in Leipzig 1479 und an die dortige Kunstgewerbe-Ausstellung* (Leipzig: J. J. Weber, 1879), 59.

¹²⁷ Martin Vogel, "Grundzüge der Geschichte des Urheberrechts in Deutschland vom letzten Drittel des 18. Jahrhunderts bis zum preußischen Urheberrechtsgesetz vom 11. Juni 1837," in *Woher kommt das Urheberrecht und wohin geht es?: Wurzeln, geschichtlicher Ursprung, geistesgeschichtlicher Hintergrund und Zukunft des Urheberrechts*, ed. Robert Dittrich (Vienna: Manz, 1988), 133.

¹²⁸ The copyright historian Peter Baldwin characterizes this expansion in a recent study. "[F]rom the eighteenth-century to the present," he observes, "rights holders—whether authors or disseminators—have won an ever-stronger stake in their works. In certain nations some claims remain with the author and his estate perpetually. But in all countries rights have been continually extended on their owner's behalf. The first British (1710) and American (1790) copyright laws gave authors rights over verbatim copies of their writing for fourteen years after publication. As of 1993 in the European Union and 1998 in the United States, that had expanded to seventy years after the author's death, not only for the primary work but also for all manner of other works derived from it." For more on the expansion of copyright, see the introduction to Baldwin's *The Copyright Wars: Three Centuries of Trans-Atlantic Battle* (Princeton & Oxford: Princeton University Press, 2014).

The following study does not aim to tell the story about the making of today's legal framework for the protection of intellectual property. Instead, it focuses on the period when the view of reformists had not yet begun to gain ground. If their view on authorship dominated today's legal framework, it seemed far less persuasive in earlier times.¹²⁹ In the early nineteenth century, the political establishment viewed anti-piracy organizations such as the Börsenverein and the Vereinigungen with suspicion. Outside Saxony, home to the headquarters of both organizations, the Börsenverein faced criticism as a special interest group from the north.

To understand the situation that agents of reform struggled against it is necessary to study the ideas about authorship, intellectual property and unauthorized reprinting that helped shape it. To do so, the next section historicizes the term mechanical reproduction and revisits the conceptualization of authorship that Immanuel Kant and Johann Gottlob Fichte elaborated in the late eighteenth century. Philosophers' views might seem peripheral to the political and legal developments explored in this chapter. When the authorial rights reform gained momentum, however, it drew heavily on the works of romantics and idealists such as Kant and Fichte. As Adrian Johns has pointed out in a study on German book piracy, the confederal ban "inherited the convictions of the Romantics."¹³⁰ As the next section shows, the figurative use of the term mechanical reproduction in German press laws presupposed the kind of authorship that Kant and Fichte elaborated in the late eighteenth century. They conceptualized the changes that a reprinter might inflict as authorial

¹²⁹ Unauthorized adaptations and other kinds of transformative uses of intellectual property is a criminal offense according to German law today. See "§ 23 UrhG Bearbeitungen und Umgestaltungen," [dejure.org](https://dejure.org/gesetze/UrhG/23.html), accessed March 2, 2016, <https://dejure.org/gesetze/UrhG/23.html>.

¹³⁰ Adrian Johns, "The Piratical Enlightenment," in *This Is Enlightenment*, ed. Clifford Siskin and William Warner (Chicago: University of Chicago Press, 2009), 319. Legal reformers, lobbyists and politicians not only made sense of authorship, intellectual property and piracy in the terms made available by Kant, Fichte and Hegel. They also mentioned the names of idealistic philosophers in legal discussions about these matters. For example, Bertuch and Cotta used Kant to persuade the political establishment to pass a ban on book piracy. In a lobbying pamphlet distributed for free at the Congress of Vienna, Bertuch and Cotta called upon Kant. "Among the philosophers, Kant should be mentioned first of all, who has used the grounding principles of natural law to declare unauthorized reprinting inadmissible ("Unter den Philosophen werde vorzüglich Kant erwähnt, der nach den Grundsätzen des Naturrechts den Nachdruck für unerlaubt erklärt.") Kotzebue, *Denkschrift über den Büchernachdruck, zugleich Bittschrift um Bewirkung eines deutschen Reichsgesetzes gegen denselben. Den bei dem Congress zu Wien versammelten Gesandten deutscher Staaten überreicht im Namen deutscher Buchhändler*, 35. In addition, Kant's name appears frequently in protocols from parliamentary debates about authorship and unauthorized reprinting. See for example *Die Debatten über den Bücher-Nachdruck, welche in der Württembergischen Kammer der Abgeordneten statt fanden (Aus der officiellen Actensammlung abgedruckt.)* (Stuttgart: J.B. Metzlerschen Buchhandlung, 1822), 1230, 1229, 1205, 1231, 1209.

transformations that marked the original edition with the subjectivity of the reprinter. A new work resulted from interventions of this kind, they argued.¹³¹ By the same token, Fichte also held that only an exact or nearly exact duplicate deserved to be called an unauthorized reprint of the original edition. In so doing, he helped establish the conceptual framework that informed the confederal ban and the figurative use of the expression mechanical reproduction.

By arguing that idealist views on authorship shaped the concept of mechanical reproduction, this section takes an unorthodox approach to idealism and romanticism. Scholars such as Arthur Lovejoy and Alfred North Whitehead have described machines and romantic views of the self as polar opposites.¹³² Here, however, I will argue that the distinction made between machines and humans in the romantic era presupposed a romantic worldview. The argument that the process of mechanical reproduction did not leave traces of spiritual activities assumed a view of the self that had begun to be developed by Kant and Fichte in the late eighteenth century. As I see it, their understanding of human subjectivity prepared the ground for the notion that a fundamental difference separates man from machine.¹³³ The second section of this chapter takes a closer look at efforts of reformists such as Hitzig to counteract the legal implementation of the romantic view of machines and mechanical reproduction. There, I show that stakeholders in discussions about the meaning of the term *Nachdruck* also disagreed over the question whether pirate editions had disappeared from German bookstores or not.

¹³¹ Kant expressed this view in Immanuel Kant, “Von der Unrechtmäßigkeit des Büchernachdrucks,” in *Berlinische Monatsschrift*, ed. Johann Erich Biester and Friedrich Gedicke, 5 (Berlin: Haude und Spener, 1785), 403–17; Fichte, “Beweis der Unrechtmäßigkeit des Büchernachdrucks. Ein Raisonement und eine Parabel.”

¹³² See the chapter “The Romantic Reaction” in Alfred North Whitehead, *Science and the Modern World*, 13th ed. (Cambridge, Massachusetts: Cambridge University Press, 2011). Also see the chapter “Romanticism and the Principle of Plenitude” in Arthur O. Lovejoy, *The Great Chain of Being: A Study of the History of an Idea*, 11th ed., The William James Lectures, 1933 (Cambridge, Massachusetts: Harvard Univ. Press, 1973).

¹³³ My approach to romanticism follows in the footsteps of John Tresch. In his recent book on romantic machines, Tresch questions the dichotomy between mechanism and romanticism. See the introduction to John Tresch, *The Romantic Machine: Utopian Science and Technology after Napoleon* (Chicago & London: University of Chicago Press, 2012). As the next section shows, I also owe a debt to Lorraine Daston and Peter Galison, whose work on mechanical objectivity have shaped my understanding of the concept of mechanical reproduction. See Lorraine Daston and Peter Galison, *Objectivity* (New York: Zone Books, 2010); Lorraine Daston and Peter Galison, “The Image of Objectivity,” in *Representations*, 40, 1992, 81–128.

Romantic Machinery

The Congress of Vienna marked the end of an era in European politics. It brought an extended period of nearly constant warfare to a close and established a congressional system of diplomacy that successfully prevented the outbreak of major conflicts until the second half of the nineteenth century, when the Austro-Prussian War shattered the German language area.¹³⁴ In addition to creating the congressional system, the final acts of the Congress of Vienna condemned slavery and slave trade, established the freedom of navigation on European rivers and determined the borders of the states whose territories had been redrawn over the course of the Napoleonic Wars.¹³⁵ The reorganization of Europe's political frontiers affected the German language area in significant ways. During the Congress of Vienna, a committee of German heads of state created the *Deutscher Bund*, a loose confederation of most states and free cities located within the bounds of the German language area.¹³⁶ Together with other reforms such as the Zollverein, the customs union formed in 1834 to manage tariffs and economic policies, the authorial rights law helped cement the bonds of the confederacy. With the confederal ban on unauthorized reprinting, a "change of paradigms" took place in not only German but also European history.¹³⁷ For the first time, sovereign states agreed to an authorial rights reform that protected publications produced outside their borders.

Successes such as the confederal ban tend to end up in the history books, while mishaps and stranded negotiations are usually forgotten. The fruitless debates over the meaning of the term unauthorized reprinting suffered this fate. While it is difficult to find a study of the history of German authorial rights that does not address the confederal ban, contributions to the field rarely mention the disagreements that continued to erupt over the term *Nachdruck* long after 1837. In contrast to other aspects of the confederal ban, these debates have never become a

¹³⁴ Jarrett, *The Congress of Vienna and Its Legacy*; Roy Bridge, "Allied Diplomacy in Peacetime: The Failure of the Congress 'System', 1815–23," in *Europe's Balance of Power 1815–1848*, ed. Alan Sked (London & Basingstoke: Macmillan, 1979), 34–53.

¹³⁵ Chapman, *The Congress of Vienna 1814–1815: Origins, Processes and Results*.

¹³⁶ For more on the history of the *Deutsche Bund*, see Wolf D. Gruner, *Der Deutsche Bund: 1815–1866* (München: C.H. Beck, 2012); Karl Otmar von Aretin, *Vom Deutschen Reich zum Deutschen Bund* (Göttingen: Vandenhoeck & Ruprecht, 1993); Jürgen Angelow, *Der Deutsche Bund* (Darmstadt: Wissenschaftliche Buchgesellschaft, 2003); Johannes Süßmann, *Vom Alten Reich zum Deutschen Bund: 1789–1815* (Paderborn: Schöningh, 2015); *Vom Deutschen Bund zum Deutschen Reich, 1815–1871* (Deutscher Taschenbuch Verlag, 1999).

¹³⁷ "Paradigmenwechsel" Friedemann Kawohl, *Urheberrecht der Musik in Preussen (1820–1840)* (Tutzing: Hans Schneider, 2002), 1.

topic of study.¹³⁸ This seeming lack of interest is unfortunate. For historians, botched negotiations can prove more instructive than successful ones. When things go wrong, the reasons call for explanations. Failures of this kind breed questions that can help historians reassess long-held assumptions, such as the belief that unauthorized reprinting had disappeared before 1837. If a shared definition of reprinting eluded the grasp of historical actors, can the size of the reprinting industry still be quantified?

This question calls for a survey of the cultural, technological and societal changes that shaped the conceptualization of the reprinting process in the nineteenth century. What did it mean to reprint a book in the mid-nineteenth century? When Hugo Häpe discussed contemporary uses of the expression mechanical reproduction, he did so against the backdrop of broader debates about machines, reproduction technologies and authorship in the mid-nineteenth century, the period when the German language area went through its version of the Industrial Revolution. The impact of new reproduction technologies such as the steam press and the camera changed nineteenth-century Europe so much that Walter Benjamin would later argue that an age of mechanical reproduction began in the period.¹³⁹ The historical actors referred to their era as a “machine age.”¹⁴⁰ The replacement of human work with that of

¹³⁸ Gieseke, *Die geschichtliche Entwicklung des deutschen Urheberrechts*; Gieseke, *Vom Privileg zum Urheberrecht*; Ludwig Gieseke, “Günther Heinrich von Berg und der Frankfurter Urheberrechtsentwurf von 1819,” in *Archiv für Geschichte des Buchwesens*, 58 (Leipzig, 2002); Elmar Wadle, “Der Bundesbeschluß vom 9. November 1837 gegen den Nachdruck: Das Ergebnis einer Kontroverse aus preußischer Sicht,” in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Germanistische Abteilung*, vol. 106, 1989; Elmar Wadle, “Der Weg zum gesetzlichen Schutz des geistigen und gewerblichen Schaffens. Die deutsche Entwicklung im 19. Jahrhundert,” in *Gewerblicher Rechtsschutz und Urheberrecht in Deutschland*, ed. Friedrich-Karl Beier, vol. 1 (Weinheim: VCH, 1991), 93–183; Wadle, “Der Frankfurter Entwurf eines deutschen Urheberrechtsgesetzes von 1864—Eine Einführung zum Nachdruck”; Elmar Wadle, “Photographie und Urheberrecht im 19. Jahrhundert. Die deutsche Entwicklung bis 1876,” in *Geistiges Eigentum: Bausteine zur Rechtsgeschichte*, vol. 1 (Weinheim, New York, Basel, Cambridge & Tokyo: VCH Verlagsgesellschaft, 1996), 343–71; Elmar Wadle, “Schutz gegen Nachdruck als Aufgabe einer bundesweiten „Organisation des deutschen Buchhandels“—Metternichs zweiter Plan einer „Bundeszunft“ und sein Scheitern,” in *Humaniora: Medizin—Recht—Geschichte*, ed. Bernd-Rüdiger Kern et al. (Berlin & Heidelberg: Springer, 2006), 431–57; Franz Laufke, “Der Deutsche Bund und die Zivilgesetzgebung,” in *Festschrift für Hermann Nottarp*, ed. Paul Mikat (Karlsruhe: Müller, 1961), 1–57; Barbara Dölemeyer, in *Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte: Das 19. Jahrhundert. Gesetzgebung zum allgemeinen Privatrecht und zum Verfahrensrecht*, ed. Helmut Coing, vol. 3 (München: Beck, 1986), 3955–4066; Richard Kohnen, *Pressepolitik des Deutschen Bundes: Methoden staatlicher Pressepolitik nach der Revolution von 1848* (Tübingen: Richard Kohnen-Vogell, 1995).

¹³⁹ Walter Benjamin, “Der Kunstwerk im Zeitalter seiner technischen Reproduzierbarkeit,” in *Gesammelte Schriften*, ed. Rolf Tiedemann and Hermann Schwepenhäuser, vol. I (Frankfurt am Main: Suhrkamp, 1980), 471–508.

¹⁴⁰ Michaela Vieser, *Das Zeitalter der Maschinen: Von der Industrialisierung des Lebens* (Berlin: GmbH, 2014).

machines seemed to be a defining characteristic of contemporary life in the machine age. “In our inventive age,” a newspaper proclaimed in 1849, “the new is on the agenda; in all directions, human ingenuity breaks through and seeks to replace human activity with machines and, in doing so, save time and human energy.”¹⁴¹

The coupling of the printing press and steam power proved to be the decisive turning point in the mechanization of the book trade. The Saxon engineers Friedrich König and Andreas Bauer began experimenting with steam and print in the 1810s, but they had to travel to England to find an investor willing to take the risk of financing the building of their machine.¹⁴² In London, the owner of *The Times* bought one of König and Bauer’s two-cylinder presses and installed the apparatus in the newspaper’s headquarters at Printing House Square. From there, König and Bauer’s machine delivered the first steam-printed publication on November 14, 1814. A report on the event in *The Times* characterized it as an epochal moment in the history of print.

Our journal of this day presents to the public the practical result of the greatest improvement connected with printing, since the discovery of the art itself. The reader of this paragraph now holds in his hand one of the many thousand impressions of the Times newspaper, which were taken off last night by a mechanical apparatus.¹⁴³

In 1817, when König returned to the continent from England, German publishers and printers proved more eager investors. After the first couple of machines had been installed in the print shops of publishers such as Friedrich Arnold Brockhaus and Johann Friedrich Cotta, the building of new steam presses picked up speed. A large number of German publishers and printers soon began to mechanize their print shops. Mechanization changed European print shops in significant ways. If printing had previously been conceived as an art requiring skilled hands, those who invested in steam presses hoped to make it less dependent on human work. By replacing skilled laborers with machines, investors in steam hoped not only to lower the cost of printing, but also to reproduce books more faithfully. Unlike erring humans, it was hoped, machines

¹⁴¹ “In unserer erfindungsreichen Zeit ist das Neue an der Tagesordnung; in allen Richtungen bricht sich der menschliche Erfindungsgeist Bahn und sucht durch Maschinen die menschliche Thätigkeit zu ersetzen und so Zeit und Menschenkraft in Ersparung zu bringen.” Adolf Henze, ed., “Gallaseck’s Schnell-, Setz-, Druck- und Ableg-Vorrichtung,” in *Journal für Kupfer- und Stahlstechkunst: Litho- und Zinkographie, Holzschnidekunst, Schrift- und Stempelschneiderei und Messing-Gravüre, sowie für Stein- und Kupferdruck, nebst allen Nebenzweigen*, 2:3 (Weimar: B. F. Voigt, 1849), 86.

¹⁴² The following account of the steam press is based on Theodor Goebel, *Friedrich Koenig und Die Erfindung Der Schnellpresse: Ein Biographisches Denkmal* (Stuttgart: Kraus, 1906).

¹⁴³ *The Times*, 29 November (London, 1814), 3.

never faltered. As König's critics pointed out, the notion that steam-driven presses never suffered from hiccups proved much too optimistic. Still, machines could in principle achieve this goal, even if they rarely did so in practice.¹⁴⁴

In an age when devices such as the Schnellpresse seemed to be appearing everywhere, the supposed powers of the machine made it into a potent metaphor. As the historians of science Lorraine Daston and Peter Galison observe in "The Image of Objectivity" (1992), the machine "became a powerful and polyvalent symbol" over the course of the nineteenth century.¹⁴⁵ Daston and Galison's study on objectivity and scientific atlases shows that nineteenth century machines came to symbolize the polar opposite to human subjectivity.¹⁴⁶ For example, makers of scientific atlases found it hard to leave images of natural phenomena undisturbed by interpretations, improvements, removals, additions, and re-organizations. In contrast, mechanical means of reproduction never disturbed the copying process with subjective interpretations and other disruptive interventions. The notion that human beings and machines behaved differently bespoke a particular conception of human subjectivity, which had emerged from the event that Samuel Coleridge called the German "revolution in philosophy."¹⁴⁷ As Daston and Galison show, the nineteenth-century conceptualization of the machine leaned on and presupposed romantic and idealistic notions of the self. It "presumes an individualized, unified self organized around the will."¹⁴⁸

The revolution that helped create this self began in the early 1780s, when Immanuel Kant published the first of his three critiques. In *Kritik der reinen Vernunft* (1783), Kant set out to revolutionize the way his contemporaries understood the relation between the human mind and the surrounding world. He did so by placing human consciousness at the center of the analysis. The structure of human thought shaped the experiences that humans had of the world. In the wake of Kant's Copernican turn, idealist philosophers such as Johann Gottlob Fichte and Friedrich Schelling took his critique one step further. According to

¹⁴⁴ For more on this problem, see Adrian Johns, "The Identity Engine: Science, Stereotyping, and Skill in Print," in *The Mindful Hand: Inquiry and Invention from the Late Renaissance to Early Industrialisation* (Amsterdam: Koninklijke Nederlandse Akademie van Wetenschappen, 2007).

¹⁴⁵ Daston and Galison, "The Image of Objectivity," 119.

¹⁴⁶ Daston and Galison, *Objectivity*; Daston and Galison, "The Image of Objectivity"; Peter Galison, "Objectivity Is Romantic," in *Humanities and the Sciences*, ed. Peter Galison, Susan Haack, and Jerome Friedman (American Council of Learned Societies, 2000), 15–43.

¹⁴⁷ Samuel Taylor Coleridge, *Biographia Literaria; Or, Biographical Sketches of My Literary Life and Opinions*, New edition (New York: Georg P. Putnam, 1848), 273.

¹⁴⁸ Galison, "Objectivity Is Romantic," 34.

Fichte, the free and willing I constituted the world to such a degree that the world became dependent on the human self.¹⁴⁹ Bound up with this view was the assumption of human freedom, which for philosophers such as Fichte and Kant defined the human condition. For this reason, human beings differed from animals and machines. In “Beantwortung der Frage: Was ist Aufklärung?” (1784), Kant addressed this issue.

Thus once the germ on which nature has lavished most care—man’s inclination and vocation to think freely—has developed within this hard shell, it gradually reacts upon the mentality of the people, who thus gradually become increasingly able to act freely. Eventually, it even influences the principles of governments, which find that they can themselves profit by treating man, *who is more than a machine* [Kant’s italics], in a manner appropriate to his dignity.¹⁵⁰

In their writings about human freedom and subjectivity, Kant and other idealist philosophers helped create the conceptual framework that shaped the view of machines informing the confederal ban. Machines and humans differ. While machines blindly follow rules, the capacity for freedom defines the human condition.

Kant on Unauthorized Reprinting

Kant wrote the article on the nature of the Enlightenment in between the first and second critique. A few months later, he penned his contribution to the debate about unauthorized reprinting. This section takes a closer look at this article. How did Kant’s views of the self affect his ideas about authorship and unauthorized reprinting?

¹⁴⁹ David E. Klemm and Günter Zöller, eds., *Figuring the Self: Subject, Absolute, and Others in Classical German Philosophy* (Albany: SUNY Press, 1997); Daniel Breazeale and Tom Rockmore, eds., *Fichte, German Idealism, and Early Romanticism* (Amsterdam & New York: Rodopi, 2010); Robert C. Solomon and Kathleen Marie Higgins, eds., *The Age of German Idealism* (London & New York: Routledge, 2003); Frederick C. Beiser, *German Idealism* (Cambridge, Massachusetts: Harvard University Press, 2009).

¹⁵⁰ “Wenn denn die Natur unter dieser harten Hülle den Keim, für den sie am zärtlichsten sorgt, nämlich den Hang und Beruf zum *freien Denken*, ausgewickelt hat: so wirkt dieser allmählich zurück auf die Sinnesart des Volk (wodurch dieses der *Freiheit zu handeln* nach und nach fähiger wird), und endlich auch sogar auf die Grundsätze der Regierung, die es ihr selbst zuträglich findet, den Menschen, der nun *mehr als Maschine* ist, seiner Würde gemäß zu behandeln.” Immanuel Kant, *Beantwortung der Frage: Was ist Aufklärung?*, ed. Johann Erich Biester and Friedrich Gedicke, *Berlinische Monatsschrift* 4 (Berlin: Haude und Spener, 1784), 494; This and the following translations of Kant are based on Mary J. Gregor’s work. See *Practical Philosophy*, ed. and trans. Mary J. Gregor (Cambridge: Cambridge University Press, 1999).

Kant addressed the topic of unauthorized reprinting for the first time in “Von der Unrechtmäßigkeit des Büchernachdrucks” (1785).¹⁵¹ In this article, he set out novel—and in his view, much-needed—arguments to defend authors and publishers against unauthorized reprinters. He began with the observation that recent attempts to combat unauthorized reprinting had failed miserably and would continue to do so unless anti-piracy advocates changed tactics.

Those who regard the publication of a book as a use of property in a copy ... and then want to still restrict the use of this right by the reservation of certain rights ... so that unauthorized reprinting of it would be not be permitted—[they] can never succeed.¹⁵²

Kant traced the problem to contemporary ideas about property. Anti-piracy advocates accused unauthorized reprinters of property theft, yet victims of unauthorized reprinting had not been deprived of property in the normal sense. The thoughts and ideas one came across while reading continued to be in the possession of their authors even after the unauthorized reprinter had republished them. Having taken nothing away from its victims, book piracy failed to qualify as property theft. By the same token, those who accused unauthorized reprinters of this crime had failed to make a convincing case, Kant concluded. Kant’s article attempted an urgently needed reconceptualization of the crime of unauthorized reprinting. “I can easily and clearly show the wrongfulness of unauthorized reprinting,” he argued.¹⁵³ In developing his argument, Kant made use of the philosopher’s weapon of choice. “My argument is contained in a syllogism that establishes the right of a publisher”.¹⁵⁴

Kant’s article contributed to one of the liveliest debates in the German public sphere that emerged towards the end of the eighteenth century. As the Bavarian Legationsrath Christian Siegmund Krause wrote in 1783,

¹⁵¹ Scholarly interest in Kant’s work on authorial rights is growing, though current research approaches the article on unauthorized reprinting mostly from a philosophical standpoint. The exception to this is Adrian Johns’s broad historical study on the piratical Enlightenment. See Kim Treiger-Bar-Am, “Kant on Copyright: Rights of Transformative Authorship,” in *Cardozo Arts & Entertainment Law Journal*, 25:3, 2008, 1060–1103; Johns, “The Piratical Enlightenment”; Anne Barron, “Kant, Copyright and Communicative Freedom,” in *Law and Philosophy*, 31:1, 2011, 1–48.

¹⁵² “Diejenigen, welche den Verlag eines Buchs als den Gebrauch des Eigenthums an einem Exemplare ... ansehen und alsdann doch durch den Vorbehalt gewisser Rechte ... den Gebrauch noch dahin einschränken wollen — können damit niemals zum Zwecke kommen.” Kant, “Von der Unrechtmäßigkeit des Büchernachdrucks,” 1.

¹⁵³ “Ich glaube aber Ursache zu haben, den Verlag nicht als das Verkehr mit einer Waare in seinem eigenen Namen, sondern als die Führung eines Geschäftes im Namen eines andern, nämlich des Verfassers, anzusehen und auf diese Weise die Unrechtmäßigkeit des Nachdruckens leicht und deutlich darstellen zu können.” Ibid.

¹⁵⁴ “Mein Argument ist in einem Vernunftschlusse enthalten, der das Recht des Verlegers beweiset”. Ibid.

“[s]ince a long time ago, the controversy over unauthorized reprinting has taken up a considerable place among the moral and literary fights in the learned world.”¹⁵⁵ In 1794, the legal scholar Ernst Martin Gräff set out to count the books that had been written on the topic in recent times, estimating that discussions about unauthorized reprinting had produced sixty stand-alone publications, a significant number.¹⁵⁶ In light of Kant’s reputation as a theorist, his decision to contribute to this exchange might come as a surprise. Over the course of his career, however, Kant contributed to a wide range of topics besides critical philosophy and transcendental idealism, the philosophical innovations that earned him a place in the canon of Western philosophy. In addition to unauthorized reprinting, Kant wrote about topics including fortification, anthropology, geography, dietetics and headaches.¹⁵⁷

Kant did not necessarily see these undertakings as side interests, but as a way to put theory to practice.¹⁵⁸ His article on unauthorized reprinting elaborated on themes that he had begun to develop in “Beantwortung der Frage: Was ist Aufklärung” (1784), the well-known article in which he set out to characterize the nature of the Enlightenment. The article’s famous first sentence conceptualized Enlightenment as a process of maturation. “Enlightenment,” Kant wrote, “is man’s emergence from his self-incurred immaturity.”¹⁵⁹ The picture that Kant painted of man’s exit

¹⁵⁵ “Unter den moralischen und litterarischen Streitigkeiten in der gelehrten Welt nahm schon lange die über den Büchernachdruck einen ansehnlichen Platz ein”. Christian Siegmund Krause, “Über den Büchernachdruck,” in *Deutsches Museum*, ed. Heinrich Christian Boie, 18:5 (Leipzig: Weygand, 1783), 400.

¹⁵⁶ Ernst Martin Gräff, *Versuch einer einleuchtenden Darstellung des Eigenthums und der Eigenthumsrechte des Schriftstellers und Verlegers und ihrer gegenseitigen Rechte und Verbindlichkeiten: mit vier Beylagen. Nebst einem kritischen Verzeichnisse aller deutschen besondern Schriften und in periodischen und andern Werken stehenden Aufsätze über das Bücherwesen überhaupt und den Büchernachdruck insbesondere. Mit vier Beylagen* (Leipzig: Gebrüder Gräff, 1794).

¹⁵⁷ The Kant scholarship has traditionally placed Kant’s ‘journalistic’ work on the margin of the Kant-corpus, as if they did had little to do with Kant’s main activities as a philosopher. The recent turn towards the anthropological side of Kant’s thinking has challenged this conception. It has brought to light that much of the work that Kant did outside the domain of theory and speculation played a much bigger role for Kant’s main concerns than historians of philosophy have hitherto been able to recognize. For works written in this vein, see for example John H. Zammito, *Kant, Herder, and the Birth of Anthropology* (Chicago & London: University of Chicago Press, 2002); Susan Meld Shell, *The Embodiment of Reason: Kant on Spirit, Generation, and Community* (Chicago & London: University of Chicago Press, 1996); Robert B. Loudon, “Tracking Kant’s Impure Ethics,” in *Kant’s Impure Ethics: From Rational Beings to Human Beings* (New York & Oxford: Oxford University Press, 2002).

¹⁵⁸ As one of his biographers has put it, Kant “aimed to connect the practical with the theoretical, a tendency which characterized his whole life afterwards, but which is largely ignored, because his eminence in speculation has obscured his practical efforts.” John Henry Wilbrandt Stuckenberg, *The Life of Immanuel Kant* (London: Macmillan, 1882), 68.

¹⁵⁹ “Aufklärung ist der Ausgang der Menschen aus seiner selbst verschuldeten Unmündigkeit.” Kant, *Beantwortung der Frage: Was ist Aufklärung?*, 481.

from immaturity portrayed the political situation in the late eighteenth century in bleak colors. His contemporaries lived in deep thralldom under the authority of others, he observed. But if men could only muster the strength to rise up, mature, speak with their own voices and make use of their own reason, Kant argued, they would begin the work of liberating themselves from self-incurred bondage.¹⁶⁰ Kant's fellow men had been too cowardly to make use of their own reason until now. Instead, they had let the church, the state and the military decide and think for them. To end their dependency on external authorities, Kant famously called upon his contemporaries to have the courage to "dare to know" (*sapere aude*).¹⁶¹

It might seem as if Kant conceptualized the process of Enlightenment as individualistic. Later in the article, however, he argued that individuals rarely achieved maturity on their own. Those who tried to do so most often failed and eventually grew timid and gave up.¹⁶² Where the individual faltered, the collective efforts of the entity that Kant called the public would prove more successful. Participants in public debates enlightened each other, he argued. In order for this to happen, only one precondition had to be met. Censorship had to be abolished. "[N]othing more is required," wrote Kant, "than freedom: and indeed the most harmless form of all the things that may be called freedom: namely, the freedom to make a public use of one's reason in all matters."¹⁶³

In the late eighteenth century, print had become the primary arena for discussions of the kind that Kant envisioned. Yet this arena did not always seem conducive to reasoned debate. Discussions of this kind required civility and ground rules, which seemed absent in the German public sphere. While censored, it lacked an overarching legal framework. In such a place, book pirates could rob authors of their voices, forcing them to speak against their will. By issuing books without the prior authorization of those who had written them, Kant wrote, unauthorized reprinters usurped the voice of authors. Kant's article on unauthorized reprinting set out to address this problem. "This right of the author," he wrote, "is ... an innate right in his own person, namely, to prevent another from having him speak to the public without his consent."¹⁶⁴

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

¹⁶² Ibid., 483.

¹⁶³ "Zu dieser Aufklärung aber wird nichts erfordert als Freiheit; und zwar die unschädliche unter allem, was nur Freiheit heißen mag, nämlich die: von seiner Vernunft in allen Stücken öffentlichen Gebrauch zu machen." Ibid., 484.

¹⁶⁴ "Dieses Recht des Verfassers ist ... ein angeborenes Recht, in seiner eignen Person, nämlich zu verhindern, daß ein anderer ihn nicht ohne seine Einwilligung zum Publikum reden lasse". Kant, "Von der Unrechtmäßigkeit des Büchernachdrucks," 416.

Kant's article on unauthorized reprinting complemented the other on the nature of Enlightenment. The latter gave a sanitized account of public debate, while the former took stock of the dangers that awaited authors once they dared to venture into the hazardous realm of print. To make the public sphere safe for authors, Kant put a question at the center of his contribution to the debate about piracy:

[w]hen a publisher alienates to the public the work of his author, does not ownership of a copy involve the consent of the publisher ... to [the owner's] making whatever use of it he pleases and so to his publishing it without authorization, however disagreeable this may be to the publisher?¹⁶⁵

Defenders of unauthorized reprinting had answered Kant's question in the affirmative. If one bought a book, one could also reprint it. A materialist understanding of the printed book informed this view. "A book is not an ideal object," one author wrote in defense of unauthorized reprinting. "It is a fabrication made of paper upon which symbols of thought are printed." According to this writer, books consisted of nothing but its material building blocks. "It does not contain thoughts; these must arise in the mind of the comprehending reader. It is a commodity."¹⁶⁶ Kant disagreed with this line of reasoning. The buyers of books gained the right to burn them, rip them to pieces or do whatever they wanted with them, he conceded. But under no circumstances did they gain the right to reprint and publish the contents of those books. Only the publisher with a "Mandatum" from the author enjoyed the right to relay the author's thoughts to the public.¹⁶⁷ Such a mandate empowered the contracted publisher to speak in the author's name.

Those who disagreed with this argument, Kant argued, confused the rights that book owners acquired by purchasing a thing and the rights that publishers acquired by signing contracts with authors. In the manner befitting of a philosopher, Kant expressed the problem in the form of a syllogism:

A positive right against another person can never be inferred solely from ownership of a thing.

¹⁶⁵ "Es bleibt noch die Frage zu beantworten übrig: ob nicht dadurch, daß der Verleger das Werk seines Autors im Publikum veräußert, mithin aus dem Eigenthum des Exemplars, die Bewilligung des Verlegers ... zu jedem Nachdrucke, von selbst fließe, so unangenehm solcher jenem auch sein möge?" Ibid., 409.

¹⁶⁶ "Das Buch ist kein geistiges.... Es ist ein Fabrikat aus Papier mit aufgedruckten Gedankenzeichen. Es enthält keine Gedanken, diese müssen erst in dem Kopf des verständigen Lesers entstehen. Es ist eine Handelsware". As quoted by Bosse, *Autorschaft Ist Werkherrschaft: Über die Entstehung des Urheberrechts aus dem Geist der Goethezeit*, 13.

¹⁶⁷ Immanuel Kant, *Die Metaphysik der Sitten*, 1 (Königsberg: Friedrich Nicolovius, 1803), 128.

But the right publish is a positive right against a person. Therefore, it can never be inferred solely from ownership of a thing (a copy).¹⁶⁸

Kant's syllogism raised issues about the nature of books. Twelve years later, in *Metaphysik der Sitten* (1797), he posed a question that would become key in the debates about authorship and book piracy: "What is a book?"¹⁶⁹ His answer hardly qualified as mainstream in 1797, though it would soon gain ground. He explained that books should be understood in a two-fold way. On the one hand, a book was a corporeal artifact, an "opus mechanicum" such as a painting or a chair. On the other hand, books also served as mere vessels for the authorial voice, the unique and original expression of a subjective personality. "A book is a tool for the transmission of a speech to the public, not just thoughts." Kant's definition must have surprised his contemporaries. With this definition in mind, Kant questioned the view of the book as a conventional thing. "[I]t is not a thing which is delivered [by a book]," he wrote, "but an opera, a speech, and indeed by letters."¹⁷⁰

Kant's discussion of things and actions (opera) helped lay the groundwork for the logical operation that proved the wrongfulness of unauthorized reprinting. Given that a book passed on an act of speech to readers, it followed that purchasers would have to acquire the author's consent before they could publish it. While the author and contracted publisher had no right to control what owners of a book did with any particular copy, they did enjoy the inviolable right to control how others handled the author's voice in public. Any and all transgressions of that right violated the innate rights that individuals had towards their own person. This train of thought landed Kant in the syllogism presented earlier: "The act of publication is speech to the public (through printing). ... A right to do it is therefore a right of the publisher against a person."¹⁷¹

What, then, constituted a transgression of the author's innate right to his own voice? Kant remained silent on this issue until the end of the

¹⁶⁸ "Ein persöhnliches bejahendes Recht auf einen andern kann aus dem eigenthum einer Sache allein niemals gefolgert werden. Nun ist das Recht zum Verlage ein persöhnliches bejahendes Recht. Folglich kann es aus dem Eigenthum einer Sache (des Exemplars) allein niemals gefolgert werden." Kant, "Von der Unrechtmäßigkeit des Büchernachdrucks," 410.

¹⁶⁹ "Was ist ein Buch?" Immanuel Kant, *Metaphysische Anfangsgründe der Rechtslehre*, *Metaphysik der Sitten* 1 (Königsberg: Friedrich Nicolovius, 1797), 127.

¹⁷⁰ "Ein Buch ist das Werkzeug der Ueberbringung einer Rede ans Publikum, nicht bloß der Gedanken. Daran liegt hier das Wesentlichste, daß es keine Sache ist, die dadurch überbracht wird; sondern eine opera, nämlich Rede." Kant, "Von der Unrechtmäßigkeit des Büchernachdrucks," 407.

¹⁷¹ "Der Verlag ist nun eine Rede ans Publikum (durch den Druck). ... Also ist das Recht dazu ein Recht des Verlegers an eine Person". Ibid., 411.

1785 article, where he turned to the genre of books that lies at the heart of this dissertation. A discussion of transformative reprinting concluded Kant's major contribution to the debate about intellectual property:

If someone so alters another's book (abridges it, adds to it, or revises it) that it would even be a wrong to pass it off any longer in the name of the original author, then the revision in the editor's own name is not unauthorized publication and therefore not impermissible. For here another author, through his publisher, carries on with the public a different affair from the first, and therefore does not interfere with him in his affair with the public; he does not represent the first author as speaking through him, but another. Again, translation into a foreign language cannot be taken as unauthorized publication; for it is not the same speech of the author, even though the thoughts might be precisely the same.¹⁷²

Kant's broad definition of authorship included those who, without the permission of the original author, abridged, translated, added new material to or in some way revised already published material. One might draw the conclusion that he detected traces of authorship in publications of this kind despite his opposition to unauthorized reprinting. Yet it was precisely his defense of authors' rights that led him to recognize as authorial, practices that modern copyright law would identify as piratical. Translations, abridgements, additions and revisions modulated the tenor of the original voice, imprinting the material with the personality and temper of the reviser. By changing the original, Kant explained, this kind of author established a new and independent relationship with the public. An unauthorized reviser, abridger, or translator carried on with the public a different affair from the first author.

Fichte and the Form of Authorship

Kant's article on unauthorized reprinting helped establish the conceptual framework that informed the figurative use of the expression mechanical reproduction. Not only did Kant argue that books contain the spiritual activities of their authors. He also defined authorship along the lines that

¹⁷² "Wenn man indessen das Buch eines andern so verändert (abkürzt oder vermehrt oder umarbeitet), daß man sogar Unrecht thun würde, wenn man es nunmehr auf den Namen des Autors des Originals ausgeben würde: so ist die Umarbeitung in dem eigenen Namen des Herausgebers kein Nachdruck und also nicht unerlaubt. Denn hier treibt ein anderer Autor durch seinen Verleger ein anderes Geschäft als der erstere und greift diesem also in sein Geschäfte mit dem Publicum nicht ein; er stellt nicht jenen Autor als durch ihn redend vor, sondern einen andern. Auch kann die Übersetzung in eine andere Sprache nicht für Nachdruck genommen werden; denn sie ist nicht dieselbe Rede des Verfassers, obgleich die Gedanken genau dieselben sein mögen" Ibid., 417.

Häpe found so disturbing. According to Kant, unauthorized reprinters who changed the original could lay claim to authorship and avoid being identified as reprinters. To follow the career of the conceptual framework that Kant established in 1785, this section analyses Johann Gottlieb Fichte's contribution to the discussion about authorship and unauthorized reprinting in the late eighteenth century. Fichte holds a special place in the scholarship on the history of German authorial rights. Though neither Kant nor Fichte contributed directly to the making of German authorial rights laws, it has been argued that Fichte had a profound and lasting impact on the legal reforms that were carried out around the turn of the nineteenth century and onwards.¹⁷³ This makes him an important figure for this chapter. How did he define the difference between authorship and unauthorized reprinting?

Though he once was one of Kant's protégés and popularizers in the 1790s, Fichte claimed to not have read Kant's article on authorial rights before he wrote his contribution to the discussions about unauthorized copying. When Fichte did get the chance to read it, he discovered that he and Kant shared the same views on unauthorized reprinting, authorship and the nature of the book. "It is encouraging to find myself on the same road as him," Fichte wrote, "without having previously known anything about the course he was taking."¹⁷⁴ Fichte's views on these matters were informed by the arguments about personhood, the nature of the book and authorship that Kant had elaborated in his 1785 article.¹⁷⁵ Fichte expressed these views in "Beweis der Unrechtmäßigkeit des Büchernachdrucks. Ein Räsonnement und eine Parabel. Gegen Herrn D. Reimarus" (1793), his first and only contribution to the debate about unauthorized reprinting.

Fichte wrote this piece in response to the Hamburg physician and natural philosopher Johann Albert Heinrich Reimarus. Reimarus portrayed himself as a man of the Enlightenment. His dedication to the advancement of useful knowledge and the public good led him to

¹⁷³ Thanks to this, Fichte's article on unauthorized reprinting has attracted more attention to any other contribution to the German piracy controversy. See for example Maurizio Borghi, "Owning Form, Sharing Content: Natural-Right Copyright and Digital Environment," in *New Directions in Copyright Law*, ed. Fiona Macmillan, vol. 5 (Cheltenham: Edward Elgar Publishing, 2007), 197–222; Woodmansee, "The Genius and the Copyright"; Kawohl and Kretschmer, "Johann Gottlieb Fichte, and the Trap of Inhalt (content) and Form: An Information Perspective on Music Copyright"; Biagioli, "Genius against Copyright." The following translations are based on Martha Woodmansee's.

¹⁷⁴ "Mit dem Manne sich auf Einem Wege finden, ohne von seinem Gange etwas gewußt zu haben, thut wohl." Fichte, "Beweis der Unrechtmäßigkeit des Büchernachdrucks. Ein Räsonnement und eine Parabel," 473. This and the following translations are based on Woodmansee's translations of Fichte's article on unauthorized reprinting. See http://www.case.edu/affil/sce/authorship/Fichte_Proof.doc.

¹⁷⁵ *Ibid.*, 482.

inoculate the citizens of Hamburg against smallpox and to introduce the lightning rod to the city. The same ethos that molded Reimarus's views on the Enlightenment also shaped his opinions on unauthorized reprinting. He argued that unauthorized reprinters helped spread science and useful knowledge to corners of the German language area where the light of civilization seldom reached. For this reason, critics of unauthorized reprinting ought to adopt the principle of "[l]ive and let live."¹⁷⁶ Reimarus championed the cause of unauthorized reprinting on two occasions. His first contribution, a self-published pamphlet, appeared in 1773.¹⁷⁷ The article "Der Bücherverlag in Betrachtung der Schriftsteller, der Buchhändler und des Publikum abermals erwogen" (1791) appeared eighteen years later in *Deutsches Magazin*.

The second of these contributions caught the attention of Fichte, who disagreed with Reimarus's utilitarian views. To argue his case, Fichte made use of a "Räsonnement" and a parable. The latter paraphrased a tale from the Middle East "in the time of the Caliph Harun Alraschid, famous for his wisdom in Thousand and one Nights." The parable revolved around four individuals—a medicine man, the caliph, a robber and a distributor of elixirs—and a cure against "every malady, and even against death itself." The medicine man had concocted this cure from "God knows what herbs and salts" and distributed it with the help of the contracted distributor.¹⁷⁸

The success of the nostrum made other merchants jealous. One of them decided to rob the contracted distributor and sell the stolen goods more cheaply. The distributor turned to the caliph for help. The caliph took immediate action against the pirate merchant, whom he captured and brought before justice. "Here," Fichte wrote, "the medicine merchant lodged his complaint against him, which followed much the same lines as the one lodged by our publishers against the unauthorized reprinters."¹⁷⁹ The pirate, he argued, had violated his property rights. When asked to defend himself, the pirate merchant excused his actions on utilitarian grounds: his business benefitted many others. Being cheaper, his nostrum also reached a greater number of people. The plea failed to convince

¹⁷⁶ Johann Albert Heinrich Reimarus, *Der Bücherverlag in Betrachtung der Schriftsteller, der Buchhändler und des Publikums erwogen* (Hamburg: Johann Albert Heinrich Reimarus, 1773), 32.

¹⁷⁷ "Leben und leben lassen." Reimarus, *Der Bücherverlag in Betrachtung der Schriftsteller, der Buchhändler und des Publikums erwogen*.

¹⁷⁸ "Zur Zeit des Khalifen Harun Alraschid, der wegen seiner Weisheit in der Tausend und Einen Nacht, und sonst berühmt ist, lebte, oder könnte gelebt haben, ein Mann, der wer weiß uus welchen Salzen und Kräutern einen Extrakt verfertigte, der gegen alle Krankheiten, ja gegen den Tod selbst helfen sollte." Fichte, "Beweis der Unrechtmäßigkeit des Büchernachdrucks. Ein Räsonnement und eine Parabel," 474.

¹⁷⁹ "Hier brachte der Arnzeyhändler seine Klage gegen jenen an, die mot der Klage unsrer Buchhändler gegen die Nachdrucker ziemlich gleichlautend war. Ibid., 475.

Harun al Raschid, a firm believer in the principle of rights. “The caliph had the useful man hanged.”¹⁸⁰

The hanging of the utilitarian pirate communicated an unequivocal message. If one’s actions violated the rights of others, it did not matter if they were to the benefit of the public. Those who disagreed with this view confused the legality and utility of unauthorized reprinting, Fichte argued. “When,” he asked, “will people ever develop a feeling for the noble concept of rights, without any regard to their utility?”¹⁸¹ Having established that he viewed unauthorized reprinting as a transgressive activity, Fichte went on to discuss why it violated the rights of authors. The philosophical part of Fichte’s article approached the question through a discussion of the nature of the book, a topic familiar from Kant’s 1785 article. Fichte dissected the nature of books in two steps. He began by distinguishing between the material artifact and its contents. Having established this rudimentary distinction, Fichte moved on to draw a line between the form and the matter of the intellectual contents.

This ideal aspect is in turn divisible into a material aspect, the content of the book, the idea it presents; and the form of these ideas, the way in which, the combination in which, the phrasing and wording in which they are presented.¹⁸²

The matter of a book consisted of the ideas it presented, while the form comprised its sensible expression. On the basis of this distinction, Fichte argued that books and the ideas they contained became the property of readers in two different ways. Purchasers of books gained property rights over their particular copies, while readers came into possession of the contents by internalizing and digesting them. Once readers had digested the ideas, they could do whatever they wanted with them, Fichte argued. After he had explained all this, Fichte turned to the form of expression. In the form of expression, Fichte believed that he had found something that readers could never appropriate. Once readers began to digest the form, they also changed it.

¹⁸⁰ “Er ließ den nützlichen Mann aufhängen.” Ibid., 483.

¹⁸¹ “Wann wird man doch ein Gefül für die erhabene Idee des Rechts, ohne ale Rücksicht auf Nutzen, bekommen?” Ibid., 460.

¹⁸² “Diese Geistige ist nehmlich wider einzutheilen: in das Materielle, den Inhalt des Buchs, die Gedanken die es vorträgt; und in die Form dieser Gedanken, die wie, die Verbindung in welcher, die Wendungen und die Worte, mit denen es sie vorträgt.” Ibid., 447.

All that we think we must think according to the analogy of our other habits of thought; and solely through reworking new thoughts after the analogy of our habitual thought processes do we make them our own.¹⁸³

The impossibility of assimilating the thoughts of others without also changing them led Fichte to the conclusion that the form of expression continued to be the author's exclusive property even after his book had been bought and read by others:

Each writer must give his thoughts a certain form, and he can give them no other form than his own because he has no other. But neither can he be willing to hand over this form in making his thoughts public, for no one can appropriate his thoughts without thereby altering their form. This latter thus remains forever his exclusive property.¹⁸⁴

On this basis, Fichte argued that the unauthorized reprinting of books violated the rights of authors. The fact that the form of expression remained the author's exclusive property furnished him with an inalienable right "to prevent anyone from infringing upon his exclusive ownership of this form and taking possession of it."¹⁸⁵ In keeping with the main currents of romanticism and idealism, Fichte's proof of the illegality of unauthorized reprinting constructed a highly individualized self. "Each individual," Fichte wrote, "has his own train of thought, his own way of forming concepts and connecting them."¹⁸⁶ To Fichte, individuals were so unique and different from each other that it seemed

more improbable than the greatest improbability that two people should ever think about any subject in exactly the same way, in the same sequence of thoughts and the same images, when they know nothing of one another.¹⁸⁷

¹⁸³ "Alles was wir uns denken sollen, müssen wir uns nach der Analogie unsrer übrigen Denkart denken; und bloß durch dieses Verarbeiten fremder Gedanken, nach der Analogie unsrer Denkart, werden sie die unsrigen." Ibid., 450.

¹⁸⁴ "[S]o muß freilich jeder Schriftsteller seinen Gedanken eine gewisse Form geben, und kann ihnen keine andere geben als die seinige, weil er keine andere hat; aber er kann durch die Bekanntmachung seiner Gedanken gar nicht Willens sein, auch diese Form gemein zu machen: denn Niemand kann seine Gedanken sich zu eignen, ohne dadurch daß er ihre Form verändere. Die letztere also bleibt ausf immer sein ausschließendes Eigenthum" Ibid., 451.

¹⁸⁵ "Hieraus fließen zwei Rechte der Schriftsteller: nemlich nicht bloß, wie Herr R. will, das Recht zu verhindern, daß Niemand ihm überhaupt das Eigenthum dieser Form abspreche (zu fordern, daß Jeder ihn für den Verf. des Buch anerkenne): sondern auch das Recht, zu verhindern, daß Niemand in sein ausschließendes Eigenthum dieser Form Eingriffe Thun, und sich des Besitzes derselben bemächtige." Ibid., 451—452.

¹⁸⁶ "Jeder hat seinen eignen Ideengang, seine besondere Art sich Begriffe zu machen, und sie unter einander zu verbinden" Ibid., 450.

¹⁸⁷ "Es ist unwahrscheinlicher als das Unwahrscheinlichste, daß zwei Menschen über einen Gegenstand völlig das Gleiche in eben der Ideenreihe, und unter eben den Bildern, denken sollen, wenn sie nichts von einander wissen". Ibid., 451.

How did his views on individuality affect his definition of authorship and unauthorized reprinting? Who was an unauthorized reprinter, according to Fichte? Like Kant, Fichte did not explicitly define these terms. However, his definition of authorship suggests that Fichte took unauthorized reprinting to be the illicit production of a largely *unchanged* edition of the original publication. According to Fichte, those who altered the works of others also became the creators of new works. So far, it might seem as if Fichte and Kant used different concepts and terms to say roughly the same thing. However, an instructive difference set Kant's article apart from Fichte's. When Kant argued that revisers of already published material qualified as authors too, he felt a need to address the issue explicitly. Fichte, in contrast, seems to have taken it for granted that his contemporaries understood the term *Nachdruck* to exclude revisions and other adaptations. He used this assumption to demonstrate the truth of his argument. Why is it, Fichte asked, that we do not think lowly of those who adapt the work of others, while it has "generally always been considered contemptible to copy word for word?"¹⁸⁸

In 1813, the state of Bavaria incorporated the terms introduced by Fichte into its revised penal code, the influential *Strafgesetzbuch*. As Martha Woodmansee has observed, the Bavarian *Strafgesetzbuch* "define[d] the object of the author's proprietary rights in the very terms that had been made available by Fichte."¹⁸⁹ The Bavarian penal code did not mention Fichte by name, however. Instead, the Bavarian king Maximilian Joseph declared the new penal code to be the result of his and his government's efforts to harmonize the laws of Bavaria with the changing spirit of the times. "Since the beginning of our Government," he wrote, "we have regarded the purposive alignment between the law of this Kingdom, the progress of the Nation and the changed historical circumstances as one of the most important cares of the government."¹⁹⁰ Written by the Kantian and legal scholar Johann Paul Anselm Feuerbach, Article 397 of Bavaria's new penal code addressed the question of unauthorized reprinting and adopted a Fichtean approach to the topic.

Anyone who publicizes a work of science or art without the permission of its creator, his heirs, or others who have obtained the rights of the creator, by

¹⁸⁸ Ibid., 453.

¹⁸⁹ Woodmansee, *The Author, Art, and the Market*, 53.

¹⁹⁰ "Wir haben es seit dem Antritt Unserer Regierung für eine Unserer höchsten Regierungssorgen gehalten, die Gesetzgebung des Reichs mit den Fortschritten der Nation und den veränderten Zeitverhältnisse in zweckmässige Übereinstimmung zu bringen". Paul Johann Anselm Feuerbach, *Strafgesetzbuch für das Königreich Baiern* (München: Redaktion des allgemeinen Regierungsblatts, 1813), 2.

reproducing it in print or in some other way without having reworked it into an original form [eigenthümlicher Form] will be ... punished.¹⁹¹

Bavaria's penal code drew on the concept of original form in an interesting way: *to limit the range of books* whose publication qualified as a punishable offense. If an unauthorized reprinter reworked the original edition into an original form, the resulting book did not fit the concept of unauthorized reprint as defined in Bavarian law. Bavaria's penal code did not give reasons for excluding books of this kind from the category of Nachdruck. By 1813, thanks to the influence of individuals such as Kant and Fichte, it could be assumed that the creation of an original form of expression defined the nature of authorship and brought new books into the world.

The Confederal Ban

The two previous sections analyzed Kant's and Fichte's contributions to the discussion about unauthorized reprinting. There, I showed that Kant defined an unauthorized reprinting narrowly, excluding publications that altered the original edition. Fichte shared this view, as did the individuals responsible for Bavaria's authorial rights law from 1813. When, several years later, the confederal assembly tried to bring this and other German authorial rights laws into a shared legal framework, it allowed states within the confederacy to retain local definitions of the term Nachdruck. The next section studies the impact of the idealistic notion of authorship on the confederal ban. Here, I analyze efforts to get this ban passed in the first place.

The confederal of 1837 belonged to a broader family of regulations that strove to determine the legal relationship between sovereign states in the nineteenth century, a period of internationalization in the history of copyright and authorial rights.¹⁹² Its recognition of the intellectual property rights of authors outside their home states cleared the path for agreements such as the Berne Convention of 1886 and even present-day reform efforts such as the controversial Anti-Counterfeiting Trade Agreement (ACTA). It might seem odd to describe a German law as a precursor to international agreements such as the Berne Convention.

¹⁹¹ "Wer ein Werk der Wissenschaft oder Kunst ohne Einwilligung seines Urhebers, dessen Erben oder anderer, welche die Rechte des Urhebers erlangt haben, durch Vervielfältigung mittelst Druckes, oder auf andere Weise in dem Publikum bekannt macht, ohne dasselbe zu eigenthümlicher Form verarbeitet zu haben, wird ... bestraft" Ibid., 153.

¹⁹² See Catherine Seville, *The Internationalisation of Copyright Law: Books, Buccaneers and the Black Flag in the Nineteenth Century* (Cambridge & New York: Cambridge University Press, 2009).

However, “Germany” did not exist until 1871, when Otto von Bismarck crowned Wilhelm I the emperor of the German Empire in the Galerie des Glaces at Versailles. Unlike states such as Sweden and France, Germany had to be constituted from a patchwork of sovereign states, free cities and republics. In the early years of the nineteenth century, efforts to create a German nation and a concomitant national book trade did not come from the political establishment. On the contrary, members of the German political elite did everything in their power to quash the nationalization of the German language area and of the book trade that existed there. To them, nationalism reeked of the revolutionary fervor that had thrown France into a cauldron of anarchy and bloodshed in the preceding years. “Nationalism”, the Austrian foreign minister Klemenz Metternich said, “is a dangerous idea.”¹⁹³

Radical student fraternities, the Burschenschaften, spearheaded early efforts to unify the German language area in the nineteenth century. Taking their inspiration from idealists and romantics such as Fichte and Friedrich Schelling, they gathered at rallies such as the festival at Wartburg. There, the fraternities demonstrated for a nation-state and a liberal constitution, and against the reactionary path that the political elite had begun to follow after the Congress of Vienna. Lobbyists for the creation of an overarching legal framework for the book market joined this movement as well, although they eschewed the militancy that made the fraternities of particular interest to the authorities during the Vormärz. To these lobbyists, a German ban on book piracy seemed necessary for economic reasons, but it was also ideologically motivated. Friedrich Perthes became one of the movement’s leading ideologues. In his lobbying pamphlet, Perthes argued that book merchants had a special calling (Beruf).¹⁹⁴ “The true calling of the German book trade ... is: to obtain and promote the unity of German literature and eliminate everything that can disturb and threaten it.”¹⁹⁵ Through the unification of German literature, Germans would cease to conceive of themselves as Prussians, Bavarians and Austrians and instead begin to constitute a united people.¹⁹⁶

On a more practical level, the kind of “imagined community” that Perthes hoped to build on the foundation of a unified German literature

¹⁹³ Quoted from Peter Alter, *The German Question and Europe: A History* (London, Oxford, New York, New Delhi & Sydney: Bloomsbury Academic, 2000).

¹⁹⁴ Friedrich Christoph Perthes, *Der deutsche Buchhandel als Bedingung des Daseyns einer deutschen Literatur* (Gotha: Perthes, 1816), 10.

¹⁹⁵ “Der eigentliche Beruf des deutschen Buchhandels aber ist: Einheit der deutschen Literature zu erhalten und zu befördern, und Alles zu beseitigen, was diese stören und gefährden könnte.” Ibid.

¹⁹⁶ See Herbert G. Göpfert, “Der deutsche Buchhandel als Bedingung des Daseins einer deutschen Literatur”: zum Literaturbegriff von Friedrich Christoph Perthes,” in *Leipziger Jahrbuch zur Buchgeschichte*, vol. 1, 1992, 13–22.

also required a national ban on unauthorized reprinting.¹⁹⁷ With this ban, Perthes and others hoped to address a problem that Balász Bodó has aptly called “situational piracy.”¹⁹⁸ A book or any other commodity might be deemed piratical in one place but not in others.¹⁹⁹ The legal and political heterogeneity of the German language area made the problem particularly pressing there. Without a shared legal framework, a given state in the region would not view unauthorized reprinting as a legal offense if the original edition had first appeared in a different German state. An Austrian edict from 1783 illustrates the problem: it protected domestic book merchants against unauthorized reprinting, but not foreign ones. “The unauthorized reprinting of approved foreign-published books,” it said, “is to be granted freely to every book printer as a commercial operation.”²⁰⁰ The limits of authorial rights laws such as Bavaria’s reflected a different side of the same problem. Most German states treated authors from elsewhere in the region as if they came from a foreign land such as England or France. A Bavarian author enjoyed no rights in Prussia, while Prussian authors could not hope to be protected against reprinters in Austria or Hessen, whose authors also had no reason to expect help from governments other than their own.

¹⁹⁷ Benedict Anderson coined the expression “imagined community” in his influential book *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (1983). In this book, Anderson took a social constructivist approach to nationalism. See Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, 4th ed. (London & New York: Verso, 2006).

¹⁹⁸ Balász Bodó, “Coda: A Short History of Book Piracy,” in *Media Piracy in Emerging Economies*, ed. Joe Karaganis (SSRC, 2011), 408.

¹⁹⁹ Johns develops a similar point, though he does not use the term situational piracy. Johns uses the German situation as his example. “The flourishing piracy industries that grew up in eighteenth century Ireland, Switzerland and Austria – and that provided for that extensive distribution on which the enlightenment depended – were entirely overboard. As soon as it was reimported, however, the same book became a piracy. That is, piracy was a property not of objects alone, but of objects in space. A given book might well be authentic in one place, piratical in another.” Robert Darnton, “What Is the History of Books? Revisited,” in *Modern Intellectual History*, 4 (Cambridge & New York: Cambridge university press, 2007), 500; Johns, *Piracy*, 13.

²⁰⁰ “In Rücksicht des den inländischen Buchdrucker zu erlaubenden Büchernachdruckes wird verordnet, daß es bei der unterm 17. Hornun 1775. festgesetzte höchsten Verordnug — vermög welcher der den Wissenschaft, den Buchdruckern und dem Handel so schädliche Nachdruck der inländischen, und einem ieden rechtmäßigen Verleger zugehörigen Auflagen bei schwerer Strafe verboten worden ist — sein gänzliches Verbleiben haben soll, dergestalt, daß nach dessen Sinne ein ieder inländischer Verfasser eines Buches, oder der mit diesem wegen des Abdruckes des von ihm gemachten Werkes kontrahirende inländische Verleger wider den Nachdruck auf das kräftigste geschützt, hingegen der Nachdruck fremder und erlaubter ausländischer Bücher einem ieden Buchdrucker als ein Negoz frei gestattet werden soll, wenn gleich eben dieses Werk von einem oder mehreren inländischen Buchdruckern schon aufgelegt worden wäre.” Joseph Kropatschek, ed., “Gesetz über das Zensur= und Druckereifach. Nachdruck. N. IV.,” in *Handbuch aller unter der Regierung des Kaisers Joseph des II. Für die K. K. Erbländer ergangenen Verordnungen und Gesetze: In einer Systematischen Verbindung. Enthält die Verordnungen und Gesetze vom Jahre 1780 bis 1784*, vol. 1 (Wien: Johann Georg Moesle, 1785), 542–3.

Situational piracy could be counteracted with a privilege, a monopoly right granted by the sovereign. A privilege cost a hefty sum, however, and publishers fearful of unauthorized reprinting needed more than one.²⁰¹ After 1816, the German language area consisted of nearly forty sovereign entities. Under these circumstances, a book without a privilege from each and every one might just as well have none at all, contemporaries observed. Perthes lamented the problem in 1816:

If a publisher should get lucky and acquire thirty-five privileges, but do not have one from the thirty-sixth German monarchy or republic, unauthorized reprinting will occur here and these thirty-five [privileges] will not be able to stop it.²⁰²

When the Holy Roman Empire had still existed, book merchants could apply for an imperial privilege that protected beneficiaries within the bounds of the empire as a whole. This imperial privilege disappeared after the Battle of Three Emperors at Austerlitz in 1806. Napoleon's decisive victory over Austrian and Russian troops forced emperor Franz II to abdicate, an act that dissolved the Holy Roman Empire shortly afterwards. The imperial privilege vanished along with the geopolitical order that had held most of the German language area together since late medieval times.

The situation of the German book trade around the turn of the nineteenth century prompted lobbyists such as Perthes to band together in book merchants' organizations.²⁰³ With the help of anti-piratical oaths, these organizations hoped to establish and spread civility in the book trade. The struggle to put in place a German ban on book piracy formed part of this civilizing project. Phillip Erasmus Reich's Buchhandlungsgesellschaft had already begun to press for this reform in 1765. In 1804, the Vereinigungen der deutschen Buchhändler picked up the torch dropped by Reich in the late eighteenth century. In the postwar period, the Börsenverein der Deutschen Buchhändler zu Leipzig became the dominant book merchants' organization in the region.²⁰⁴ The reform efforts of the lobbying front that Reich had founded in the mid-1760s began to gain recognition at Leopold II's Wahlkapitulation in 1790,

²⁰¹ Gieseke, *Vom Privileg zum Urheberrecht*.

²⁰² "Wäre ein Verleger so glücklich und erwürbe sich 35 Privilegien, hätte aber keines von der 36ten deutschen Monarchie oder Republik, so würde hier nachgedruckt und jene 35 könnten nichts helfen." Perthes, *Der deutsche Buchhandel als Bedingung des Daseyns einer deutschen Literatur*, 35.

²⁰³ "Börsenordnung Vom 30. April 1825," in *Archiv Für Geschichte Des Deutschen Buchhandels*, 8 (Leipzig: Börsenverein der deutschen Buchhändler, 1883), 164–285.

²⁰⁴ Stephan Füssel et al., eds., *Der Börsenverein des Deutschen Buchhandels 1825–2000: Ein geschichtlicher Aufriss*. (Frankfurt am Main: Buchhändler-Verein, 2000).

though nothing concrete materialized from the event.²⁰⁵ After that, the Napoleonic Wars made discussions about a German ban on print piracy a low priority until the Congress of Vienna in 1814. When the time came to forge a new political order for the German-speaking parts of Europe, a ban on book piracy was back on the agenda again.

Though a clause on unauthorized reprinting ended up in the confederal acts, this outcome had begun to seem increasingly unlikely in 1815. By then, Bertuch and Cotta's mission to Vienna had begun to falter considerably. Metternich had once helped them at the congress, but he withdrew his backing after the Austrian emperor Franz I decided to not support a ban on unauthorized reprinting.²⁰⁶ The Prussian delegation continued to back Bertuch and Cotta after Metternich had changed his mind, but others viewed the two lobbyists with growing suspicion. In the Austrian government, the efforts of Bertuch and Cotta had created a rift between Metternich, Anton von Baldacci, the president of the Emperor's general accounting office, and Friedrich Gentz, the congress secretary and Metternich's right-hand man. Though Metternich rose quickly in the ranks of the Austrian government during the Vormärz, his machinations faced considerable opposition during the Congress. Baldacci and several other ministers intrigued against Metternich, whom they took to be an ambitious upstart from outside Austria. In a letter informing the English ambassador Robert Stewart Castlereagh about the political situation that awaited him at the congress, Castlereagh's agent on location in Vienna observed that "some of the Ministers have been actively employed to hurt his [Metternich's] credit with the Emperor."²⁰⁷

The rift over unauthorized reprinting also turned into a favored topic of heated conversation in Vienna's so-called *Damenwelt*, the numerous salons that stood host to most of the political events that transpired during the congress. At the salon of Fanny von Arnstein and her sister Caecilie von Eskeles, visitors gained an unabashedly Prussian view of the matter. The Palais Arnstein had become the home away from home for the Prussian delegation and Arnstein and Eskeles did everything in their power to promote its efforts, including its attempt to gain support for a ban on unauthorized reprinting.²⁰⁸ "In short, these two ladies," one of the

²⁰⁵ For more on the debate about unauthorized reprinting and the *Wahlkapitulation*, see Steffen-Werner Meyer, *Bemühungen um ein Reichsgesetz gegen den Büchernachdruck: Anlässlich der Wahlkapitulation Leopolds II. aus dem Jahre 1790* (Bern: Lang, 2004).

²⁰⁶ Bertuch, *Carl Bertuchs Tagebuch vom Wiener Kongress*, 47.

²⁰⁷ Robert Stewart Castlereagh, *Correspondence, Dispatches, and Other Papers of Viscount Castlereagh, Second Marquess of Londonderry*, ed. Charles William Vane, vol. 2 (London: John Murray, 1853), 53.

²⁰⁸ For more on Arnstein, see Hilde Spiel, *Fanny von Arnstein: A Daughter of the Enlightenment, 1758-1818* (Berg, 1991); Alison Rose, "The Jewish Salons of Vienna," in *Gender and Modernity in Central Europe: The Austro-Hungarian Monarchy and Its Legacy*, ed. Agata Schwartz (Ottawa: University of Ottawa Press, 2010), 119–33.

Emperor's spies reported, "are scandalously Prussian."²⁰⁹ Other salonnières took a much less favorable view of the Prussians; at the salon of the Countess Pergen-Groschlag, a member of Austria's old aristocratic elite, Bertuch and Cotta also enjoyed little support.

She [the Countess Pergen-Groschlag] speaks really a lot about the feud between the gentlemen Bertuch and Cotta and the unauthorized reprinters. She says: Metternich is with Bertuch and Cotta, H. v. Baldacci sides with the book reprinters. The majority of the public sides with H. v. Baldacci against H. Cotta.²¹⁰

In addition to Metternich's feud with Baldacci, a peculiar event probably prompted the countess's interest in the question of unauthorized reprinting. In early 1815, Gentz orchestrated a mischievous plot to undermine the authority to which Bertuch and Cotta laid claim. Gentz's plot concerned a lobbying pamphlet that Cotta and Bertuch had brought with them to Vienna. Distributed to a small group of politicians, the titlepage to this pamphlet claimed that Bertuch and Cotta represented the collective will of all fair-minded book merchants.²¹¹ (Fig. 1) With Gentz's help, the Viennese book merchant Bernhard Bauer and the schoolteacher Martin Span put out an unauthorized and revised edition of the same pamphlet. According to the titlepage to this version, Bertuch and Cotta spoke for the special interests of Leipzig book merchants.²¹² (Fig. 2) In addition to this "correction," Bauer and Span's edition of the *Denkschrift* also contained numerous footnotes that amended errors in the main body of the original text.

²⁰⁹ "kurz diese zwei Damen sind skandalös preußisch." Fournier, *Die Geheimpolizei auf dem Wiener Kongress. Eine Auswahl aus ihren Papieren von August Fournier*, 306.

²¹⁰ "Sie sprechen sehr viel von der Fehde der Herren Bertuch und Cotta gegen die Buchnachdrucker. Sie sagen: F. Metternich hält es mit Bertuch und Cotta, H. v. Baldacci mit den Nachdruckern. Die Mehrheit des Publicums ist mit H.v. Baldacci gegen H. Cotta einverstanden..." Fournier, August *Die Geheimpolizei auf dem Wiener Kongress: eine Auswahl aus ihren Papieren*.

²¹¹ In this regard, this title-page functioned as a paratext. As Gerard Genette observes in the influential study *Paratexts: Thresholds of Interpretation* (1997), a paratext is "more than a boundary or a sealed border, the paratext is, rather, a threshold."²¹¹ According to Genette, paratexts such as title-pages constitutes "a zone between text and off-text, a zone not only of transition but also of transaction: a privileged place of pragmatics and a strategy, of an influence on the public, an influence that ... is at the service of a better reception for the text and a more pertinent reading of it." Gerard Genette, *Paratexts: Thresholds of Interpretation*, trans. Jane E. Lewin (Cambridge, New York & Melbourne: Cambridge University Press, 1997), 2.

²¹² Martin Span, *Denkschrift gegen den Büchernachdruck: Den am Wiener Congresse versammelten Gesandten von einer Deputation der Leipziger Buchhändler überreicht, mit Berichtigungen der darin aufgestellten irrigen Ansichten, von einem Oesterreicher* (Vienna: Bruno Bauer, 1815).

Bauer and Span's revisions exemplify the kind of alteration that Kant must have had in mind when he wrote his article on unauthorized reprinting. They imposed significant changes on the original edition. Unsurprisingly, the publication of the edited *Denkschrift* caused a stir in Vienna. Was it a counterfeit edition of the original? Was it a new, satirical work? Where did the line go between authorship and piracy? Bauer's publication seems to have dealt a serious blow to Bertuch and Cotta's plans, and they felt the need to file an official complaint against the opinions expressed in it. In the complaint that Bertuch delivered to the Hofburg, he and Cotta refuted the view that they represented a small special interest group of publishers from Leipzig. "The undersigned deputies," the protest claimed, "came to Vienna not only as the representatives of Leipzig book merchants, but as the representatives of the most well-respected book firms in all German states, including the Austrian monarchy."²¹³ Cotta's and Bertuch's official protest did little extinguish the controversy that had broken out over their presence at the Congress. In the early months of 1815, it had become a scandal.²¹⁴

"A Picture of Disunity"

The forces conspiring against Bertuch and Cotta at the congress hinted at the troubles that lay ahead. The year 1816 came and went without a confederal ban on unauthorized reprinting. As time passed and no change seemed imminent, observers grew increasingly impatient, frustrated and finally even angry at the lack of progress. When, in 1829, Perthes took stock of the troubled situation, fourteen years had passed since the peace congress. Still, the parliament seemed to be nowhere close to resolving the thorny issues that hindered the talks from moving forward.

Once-hopeful observers began to fear the worst. After fourteen years of seemingly fruitless talks, it began to seem likely that a law against unauthorized reprinting might never be passed at all. In his report on the situation, Perthes expected news about the stalled developments to leave a "dispiriting impression" on the minds of readers.

²¹³ "Die unterzeichneten Deputirten kamen nicht bloß als Abgeordnete der Leipziger Buchhändler nach Wien, sondern als Abgeordnete der angesehensten Buchhandlungen aller deutschen Staaten, die österreichische Monarchie mit einbegriffen." Carl Bertuch and Johann Friedrich Cotta, "Eingabe der Bevollmächtigten der deutschen Buchhändler Cotta und Bertuch," in *AT-OeStA/HHStA StK Kongressakten 8-26-2, Österreichische Staatsarchiv, Pressefreiheit und Büchernachdruck*.

²¹⁴ For contemporary reactions to this event, see for example "Rechtswissenschaft (Beschluss)," in *Wiener allgemeine Litteratur-Zeitung*, 3:21 (Wien: Camesina Buchhandlung, 1815), 327–36.

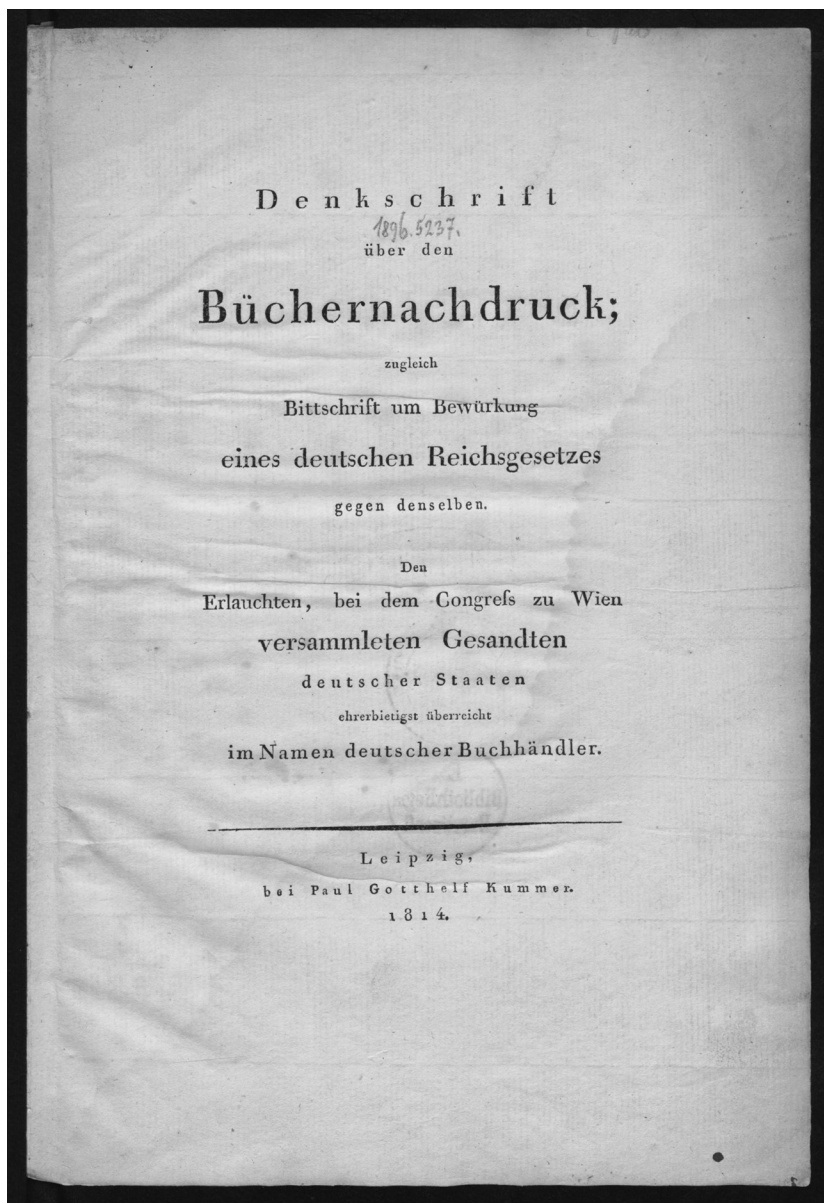


Figure 1. The titlepage to the original *Denkschrift*. Reproduced with the permission of Staatsbibliothek zur Berlin.

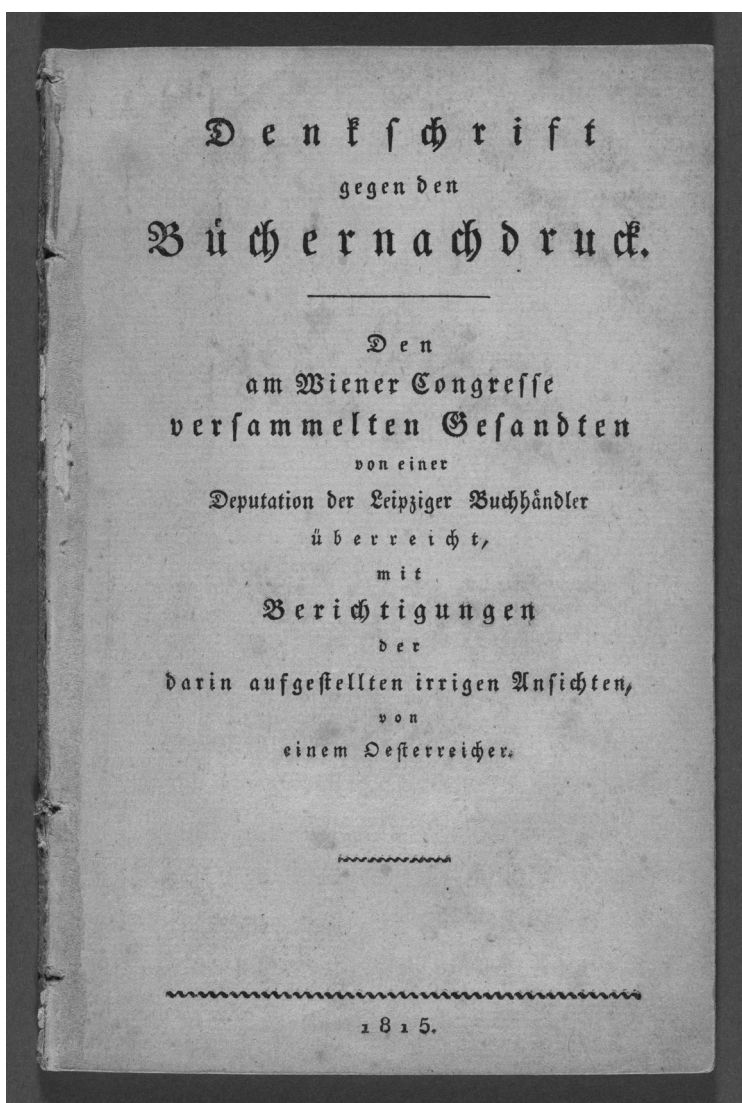


Figure 2. The titlepage to the Viennese edition of the *Denkschrift*. Reproduced with the permission of Houghton Library, Harvard University.

He tried his best to lift the spirits of readers disillusioned by the situation that continued to fester in the Palais Thurn und Taxis.²¹⁵ But not even he, an optimist, could “deny the problems,” Perthes conceded.²¹⁶ The debate that had arisen over the distinction between unauthorized reprints and legitimate publications took center stage in Perthes’s report on the problems that blocked meaningful progress in the confederal talks. His apprehensions about this issue proved justified. Nine years after Perthes reported on these discussions, the debate about the proper use of the term *Nachdruck* continued to be blocked. The legal situation, however, had undergone a momentous change. After two false starts in the early 1830s, in 1837 the assembly in Frankfurt announced that it stood ready to pass a law against unauthorized reprinting, not only of books, but also of works of art. This section takes a closer look at the debates that broke out over the confederal ban.

The directive of 1837 aimed to “establish uniform principles for the protection of authors and also publishers against unauthorized reprinting and unauthorized reprinting of their works across the whole territory of the confederation.”²¹⁷ Despite this aim, however, the confederal ban did little to fix these uniform principles in a clear manner. For example, the first article of the directive used the terms “reprint” and “mechanical reproduction”, but it contained no definition of them. Instead, it ordered states within the confederation to report back to assembly in Frankfurt on the special regulations and ordinances adopted locally in the implementation of the ban.²¹⁸ Advocates for reform greeted the news from the Palais Thurn und Taxis with mixed reactions. While the confederal ban represented a victory, it did not mark the end of the struggles of those who had lobbied for its introduction before 1837. Now, they had to make sure that work on the uniform principles was properly conducted. The debates that broke out over these principles after 1837 centered on the same problem that had left Perthes dispirited in 1829. In the article “Der Einfluß des Bundesbeschlusses vom 9. Nov. 1837 auf die Fortbildung des literarischen Rechts in Deutschland” (1844), the Leipzig lawyer Hugo

²¹⁵ “niederschlagende Eindrücke.” Ibid., 29; Perthes had an article by Karl Heinrich Ludwig Pölit in mind. This article was Pölit’s “Kurze Uebersicht des Ganges und Resultates der zeitherigen Verhandlungen am Bundestage zu Frankfurt am Main über den Schutz des literarischen Eigenthums gegen den Büchernachdruck; mit einigen Bemerkungen darüber,” in *Jahrbücher der Geschichte und Staatskunst*, vol. 3 (Leipzig: J. C. Heinrichs, 1828), 1–20.

²¹⁶ “Bedenklichkeiten nicht verhehlen.” Perthes, “Ueber den teutschen Buchhandel und die äussern Verhältnisse der teutschen Literatur,” 37.

²¹⁷ Rendschmidt, “Publikations=Patent über den, von der Deutschen Bundesversammlung unter dem 9. November dieses Jahres gefassten Beschluß wegen gleichförmiger Grundsätze zum Schutze des schriftstellerischen und künstlerischen Eigenthums gegen Nachdruck und unbefugte Nachbildung. Vom 29. November 1837, 1.”

²¹⁸ Rendschmidt, 3.”

Häpe addressed the issue. “What,” he asked, “is unauthorized reprinting?”²¹⁹

Häpe posed this question seven years after the assembly in Frankfurt had announced its ban on unauthorized reprinting. Even so, he still found the legal use of the term *Nachdruck* unclear. Only three pages long, the ban itself provided no detailed guidance on the meaning of the term. Even the phrase mechanical reproduction posed a hermeneutical challenge of the first order, Häpe argued. Though this expression had been included in the document to clarify the meaning of *Nachdruck*, Häpe found it unsatisfactory. “[A] clarification about this, what unauthorized reprinting is, cannot be found in [the legal document], at least not directly.”²²⁰ The lack of conceptual clarity raised questions about the implementation of the law. The confederal assembly did not have executive powers, but regional authorities actually had to enforce the ban. The enforcement of the law against unauthorized reprinting required a working definition of unauthorized reprinting. Without such a definition, it would prove difficult to confiscate piratical books and fine those who produced them.

The lack of conceptual clarity could have resulted in inactivity, but regional authorities had been far from idle since 1837. In lieu of a confederal definition of piracy, they had deployed local ones. As a result, states within the confederacy had implemented the confederal ban in wildly different ways. In a report on the matter, the legal scholar Oskar Wächter wrote that anyone who attempted to take stock of the situation in the 1850s had to “fight against wholly peculiar difficulties.” To Wächter, his account of the legal situation in the confederation could only be “a picture of disunity.”²²¹ The heterogeneity that Wächter uncovered in his report underscored the interpretative difficulties that troubled the piracy controversy before and after the late 1830s. According to Wächter, it also brought to the fore a more serious problem with the political situation in the German language area. Despite efforts at unification, the German-speaking parts of Europe continued to be a divided region. In the article “*Deutsches Nationalrecht*” in his popular encyclopedia, Friedrich Steger

²¹⁹ “Was ist Nachdruck?” Hugo Häpe, “Der Einfluß des Bundesbeschlusses vom 9. Nov. 1837 auf die Fortbildung des literarischen Rechts in Deutschland. Erster Abhandlung: Was ist Nachdruck?,” in *Allgemeine Press-Zeitung: Annalen der Presse, der Literatur und des Buchhandels*, ed. Albert Berger, 99 (Leipzig: Friedrich Arnold Brockhaus, 1844), 393–95.

²²⁰ “allein eine Angabe Dessen, was Nachdruck sei, findet sich in demselben nicht, wenigstens nicht unmittelbar.” *Ibid.*, 393.

²²¹ “mit ganz besonderen Schwierigkeiten zu kämpfen”; “Bild der Zerrissenheit”. Oskar Wächter, *Das Verlagsrecht: Mit Einschluss der Lehren von dem Verlagsvertrag und Nachdruck nach den geltenden deutschen und internationalen Rechten: mit besonderer Rücksicht auf die Gesetzgebungen von Oesterreich, Preussen, Bayern und Sachsen*, vol. 2 (Stuttgart: Cotta, 1858), VI.

discussed this “dark side” of German politics in the late 1840s:²²² Individual states, Steger observed, had disturbed legal uniformity “through small and unmotivated deviations [in their laws]”. Steger used laws against unauthorized reprinting to illustrate the problem. “This has especially been shown with the law protecting authorial property. The current decision, which was passed in the Bundestag, sounds slightly different in every state”.²²³

Steger came dangerously close to accusing the political establishment of hypocrisy. While plenipotentiaries in Frankfurt spoke the language of unity and harmonization, the ministers of regional governments seemed to promote policies undermining the political course that they had been ordered to pursue. For the politicians in Frankfurt, this course of action offered a solution to a political problem that had vexed confederal debates about the ban since at least 1819. While they had managed to agree in general on the wrongfulness of unauthorized reprinting, they had failed to agree on nearly everything else. The impasse put what seemed to be an insurmountable hurdle in front of the Bundesversammlung. They could either continue to discuss how unauthorized reprinting should be defined, or they could lower their ambitions, pass the law and resolve the points of contention later. They chose the latter option.

This change of political course left subtle yet significant traces in the legal documents. In the Bundesacte of 1815, the German Committee had promised to deliver “uniform regulations” for the confederate states.²²⁴ In the announcement from 1837, a more modest formulation replaced the original one. Now, the Bundesversammlung no longer obligated regional authorities to adopt uniform regulations. Instead, regulations were to be based on “uniform principles”.²²⁵ This admittedly subtle shift of emphasis might not appear to make much of a difference. With this change, however, the politicians created room for regional autonomy, enabling them to sidestep problems that had proved intractable during the talks. Even if the states implemented the same law differently, identical principles could still be said to have guided the legislators.

²²² “eine Schattenseite” Friedrich Steger, ed., “Deutsches Nationalrecht,” in *Ergänzungs-Conversationslexikon*, vol. 2 (Leipzig: Nomberg’s Verlagsbuchhandlung, 1847), 345.

²²³ “Es hat sich nämlich hin und wieder ein Bestreben der einzelnen Statten offenbart, die Autonomie dadurch zu wahren, daß man die im Ganzen herrschenden Gleichförmigkeit durch kleine, unmotivirte Abweichungen unterbrach. Am auffallendsten hat sich dies in den Gesetzen zum Schutz des literarische Eigenthums gezeigt. Die desfallsigen Bestimmungen, die nach Beschluss des Bundestags getroffen wurden, lautet in allen Staaten etwas verschieden.” Ibid.

²²⁴ *Deutsche Bundes-Acte: Authentischer Abdruck* (Frankfurt am Main: Heymann, 1816), 22.

²²⁵ Rendschmidt, “Publikations=Patent über den, von der Deutschen Bundesversammlung unter dem 9. November dieses Jahres gefassten Beschluß wegen gleichförmiger Grundsätze zum Schutze des schriftstellerischen und künstlerischen Eigenthums gegen Nachdruck und unbefugte Nachbildung. Vom 29. November 1837.”

The Berlin legal scholar Julius Eduard Hitzig, a member of the Börsenverein, took the lead in the effort to address this problem.²²⁶ He believed that the work he had done in the Prussian state bureaucracy made him suitable for the job. Since 1838, Hitzig had served as the president of the Literarischer Sachverständiger-Vereine, an organization that the Prussian king Friedrich Wilhelm had established to pass judgment on controversial and uncertain cases of unauthorized reprinting.²²⁷ This experience made Hitzig familiar with the disagreements that surrounded the concept of Nachdruck. To put the issue on the public agenda, he joined forces with the Saxon scholar Hartmann Schellwitz. Together, they launched *Allgemeine Press-Zeitung*, the journal that published Häpe's articles on the concepts of piracy and mechanical reproduction.

With *Allgemeine Preßzeitung*, Hitzig hoped to create an arena for scholarly discussion, but also for activism. He and Schellwitz aimed to inspire a revision of the law. Plenty of changes needed to be made, Hitzig reckoned, and he listed the problems that troubled him in a "Prospectus" published in advance of *Allgemeine Preß-Zeitung*.²²⁸ The list put Häpe's question about the nature of piracy at the top. Now that unauthorized reprinting had been banned, the term Nachdruck needed to be properly fixed, Hitzig insisted.²²⁹ Hitzig and Schellwitz attributed great importance to settling the meaning of this term. Not only did they put the question at the very top of their list of issues that needed to be addressed. Elsewhere in the prospectus, Hitzig also explained that "to contribute to this is the main goal of the Presszeitung."²³⁰

To Hitzig, fixing the concept of Nachdruck ought also to widen the range of books that were considered to be unauthorized reprints within the confederacy. In addition to the "unquestionable reprints" that looked like the original editions, there were also pirate editions that did not.²³¹ Hitzig's line of reasoning led him to discuss the kind of publications that

²²⁶ Hitzig deserves much more scholarly attention than he has been afforded so far. Nikolaus Dorsch biographical study has thrown much needed light on Hitzig and his career. See his *Julius Eduard Hitzig: literarisches Patriarchat und bürgerliche Karriere: eine dokumentarische Biographie zwischen Literatur, Buchhandel und Gericht der Jahre 1780-1815* (P. Lang, 1994).

²²⁷ "Instruktion zur Bildung der, in den §§. 17 und 31. des Gesetzes zm Schutze des Eigenthums von Werken der Wissenschaft und Kunst gegen Nachdruck und Nachbildung vom 11. Juni 1837, erwähnten Vereine von Sachverständigen. D. d. den 15. Mai 1838," in *Gesetz-Sammlung für die Königlichen Preußischen Staaten*, 19 vols. (Berlin: Gesetz-Sammlungs-Debits und Zeitungs-Komtoir, n.d.), 277-79; On the history of the Prussian society of literary experts, see Rainer Nomine, *Der Königlich Preußische Literarische Sachverständigen-Verein in den Jahren 1838 bis 1870* (Berlin: Duncker & Humblot, 2001).

²²⁸ Hitzig, "Prospectus," 1.

²²⁹ Ibid.

²³⁰ "Und hierzu beizutragen, wird das Hauptaugenmerk der Presszeitung sein". Ibid., 5.

²³¹ Ibid., 1.

Kant and Fichte had defended in the late eighteenth century. Since the law in most states did not consider these books to be piratical, widespread reform seemed necessary. Publications such as the “coarse plagiary,” “rude compilation” and other forms of manipulations needed to be criminalized. “Only then”, Hitzig wrote, “will the law have an improving and regulating influence on the state of the literature.”²³²

According to Hitzig and the circle around *Allgemeine Preß-Zeitung*, the press laws in the southern states made this region especially problematic. In *Kritik des Nachdruckgesetzes für Württemberg sammt Gesetz-Entwurf die Sicherstellung des literarisch-artistischen Eigenthums betreffend* (1842), Schellwitz used the example of collected editions to compare these states to north German ones. In the north, the publication of an unauthorized anthology qualified as an act of piracy, whereas the kingdom of Württemberg considered the same genre of books to be wholly legitimate. “All these collected editions, which in Saxony and partly also in Prussia are considered to be unauthorized reprints, are considered legal according to Württemberg’s law.”²³³ In his report on the heterogeneity of German authorial rights laws, Otto Wächter reached the same conclusion. He argued that Württemberg was not an isolated case. In Austria, Wächter pointed out, a considerable addition or a change of the contents sufficed to transform an unauthorized reprint into a legitimate publication.²³⁴ Bavarian law used Fichte’s concept of original form to achieve roughly the same result. Thanks to this concept, Wächter argued in his critique of Bavarian law, unauthorized reprinters could use insignificant modifications of others’ creations to conceal the piratical nature of their books.²³⁵ Wächter found this use of the concept of authorship worrying, he wrote.²³⁶

As the first president of Prussia’s literary Sachverständige-Vereine, Hitzig had been involved in the shaping of Prussian authorial rights law.

²³² “Erst dann, wenn das grobe Plagiat, die freche Compilation, das Umschmelzen ein und desselben Stoffes in die eben im Schwange gehenden Formen der literarischen Fabrikation, Manipulationen, denen gerade die mühsamsten Werke wissenschaftlicher Forschung am meisten ausgesetzt sind, zur Entscheidung des Richters gebracht werden; erst dann wird das Gesetz fördernd und regulirend auf den Zustand der Literatur einwirken.” Ibid.

²³³ “Alle diese Sammlungen, die in Sachsen und zum Theil in Preussen als Nachdrucke verurtheilt worden sind, werden nach dem württembergischen Gesetzentwurfe als erlaubt angesehen werden müssen.” Schellwitz, *Kritik des Nachdruckgesetzes für Württemberg sammt Gesetz-Entwurf die Sicherstellung des literarisch-artistischen Eigenthums betreffend*, 25.

²³⁴ “eine überwiegende Vermehrung oder Veränderung des Inhalts” Oskar Wächter, *Das Verlagsrecht: Mit Einschluss der Lehren von dem Verlagsvertrag und Nachdruck nach den geltenden deutschen und internationalen Rechten: mit besonderer Rücksicht auf die Gesetzgebungen von Oesterreich, Preussen, Bayern und Sachsen*, vol. 1 (Stuttgart: Cotta, 1857), 24.

²³⁵ Ibid., 1:25.

²³⁶ Ibid., 1:24.

Outside Prussia, however, his sphere of influence did not reach far. With the launch of *Allgemeine Preßzeitung*, he hoped to change this. The journal's editorial voice represented the press, Hitzig argued. Hitzig marketed his journal as an "organ for its [the press's] own interests".²³⁷ In so doing, Hitzig wanted impress readers with the image of a self-abnegating individual who transcended personal interest and spoke with the voice of reason.²³⁸ Doing so, he made it clear that those responsible for the journal did not have any pecuniary interest in mind.²³⁹ A motive of a nobler kind animated Hitzig's editorial board. He called it a "duty towards honor."²⁴⁰ Hitzig's line of reasoning might seem odd. Instead of relying on the strength of his arguments, he drew the readers' attention to his character, assuring them that he did not have ulterior motives.

In so doing, Hitzig raised the suspicion that readers *might* have cause to doubt his motives. He did so for a reason. While Hitzig enjoyed an untarnished reputation as a reliable servant of the Prussian state, he belonged to an organization that did not. Like the Vereinigungen der deutschen Buchhändler, the Börsenverein had been repeatedly accused of being a special interest group. The organization first encountered such accusations when it tried to persuade the confederal assembly to accept Adalbert Wilhelm Volkmann's "Vorschläge zur Feststellung des literarischen Rechtzustandes in den Staaten den deutschen Bundes" (1834).²⁴¹ In this proposal, the Börsenverein presented itself as an entity empowered to speak on behalf of a large constituency. Though they mostly came from the north, members of the Börsenverein fashioned the organization as a representative body for German book merchants. The proposal, its author explained, expressed their voice.

Empowered to speak on behalf of German book merchants, its members argued, the organization ought to be given a prominent role in the German book market after the confederal assembly passed the anti-piracy law. The Börsenverein wanted to be appointed by the assembly in Frankfurt to judge in controversies. Its members had reason to be optimistic. Thanks to their connections with the Saxon government, the envoy Edwin von Manteuffel promised to take the Vorschläge with him to Frankfurt. There, he vowed, he would read it before the commission tasked to draft the document that later became the confederal ban.²⁴²

²³⁷ Hitzig and Berger, "Vorwort," 1.

²³⁸ Hitzig, "Prospectus," 1.

²³⁹ Hitzig and Berger, "Vorwort," 1.

²⁴⁰ Ehrepflicht. Ibid.

²⁴¹ Volkmann, "Vorschläge zur Feststellung des literarischen Rechtzustandes in den Staaten des deutschen Bundes."

²⁴² Clemens Theodor Perthes, *Friedrich Perthes' Leben: nach dessen schriftlichen und mündlichen Mittheilungen aufgezeichnet*, 5th ed., vol. 2 (Gotha: Friedrich Andreas Perthes, 1861), 540–541.

Despite this apparently positive development, members of the Börsenverein were ultimately disappointed. They had wanted to be consulted as representatives of *German* book merchants, but the commission received the Vorschläge as a proposal written by representatives of the Saxon book trade.

The Börsenverein protested their demotion to a provincial lobbying front from Saxony, but they failed to convince the Frankfurt politicians.²⁴³ A German organization, they were told, had to be much larger and include members from many more states. Without a broad base of this kind, the Börsenverein did seem to be special interest group that had overreached itself, falsely claiming to represent the interests of all book merchants. Had the organization truly been able to do so, it was argued, the confederal assembly would have felt compelled to consult it on matters related to the book trade. “Only when it has cast its net over the entirety of Germany will it be able to compel and make demands.” Otherwise, the Börsenverein’s voice mattered little: “Now, this association speaks merely in the form of pleas.”²⁴⁴ With this verdict, wrote Perthes’s son Clemens,

hope was destroyed that the Bundesversammlung would recognize and consult already at the beginning of the negotiations the German book trade as a united German institution represented by the Börsenvorstand in Leipzig.²⁴⁵

The humbling experience suffered by the members of the Börsenverein impinged on their power to not only control the definition of unauthorized reprinting. It also affected their power to determine the size of the reprinting industry. In keeping with their efforts to broaden the definition of unauthorized reprinting, Hitzig and other reformists argued that unauthorized reprinting flooded the market. To name just one example, one of the Börsenverein’s co-founders, Perthes, disputed the notion that piracy had been eradicated in the late 1820s. If the confederal assembly played their cards right, he argued, piratical goods *might*

²⁴³ Wadle, “Schutz gegen Nachdruck als Aufgabe einer bundesweiten „Organisation des deutschen Buchhandels“—Metternichs zweiter Plan einer „Bundeszunft“ und sein Scheitern”; Johann Adolf Goldfriedrich, *Geschichte des deutschen Buchhandels: Vom Beginn der Fremdherrschaft bis zur Reform des Börsenvereins im neuen Deutschen Reiche (1805-1889)* (Leipzig: Börsenverein der Deutschen Buchhändler, 1913), 179; Perthes, *Friedrich Perthes’ Leben: nach dessen schriftlichen und mündlichen Mittheilungen aufgezeichnet*, 2:540–541.

²⁴⁴ Clemens Theodor Perthes, *Friedrich Perthes Leben nach dessen schriftlichen und mündlichen Mittheilungen aufgezeichnet*, 4th ed., vol. 3 (Gotha: Friedrich Andreas Perthes, 1857), 489–90.

²⁴⁵ “Die Hoffnung also daß die Bundesversammlung den deutschen Buchhandel schon bei dem Beginne der Verhandlungen als eine gemeinsames deutsche, durch den Börsenvorstand in Leipzig vertretene Institution anerkennen und gutachlich hören werden, war zerstört...”Ibid.

disappear from the market in a few years.²⁴⁶ Perthes's optimism for the future sheds revealing light on the German book trade in the late 1820s: piratical books had not yet been eliminated in 1829.²⁴⁷ On the contrary, they continued to flood the market with undiminished force.

The situation did not seem to have improved much by the mid-1830s. In the second edition of his *Die deutsche Litteratur* (1836), the Stuttgart author Wolfgang Menzel expressed the same hope that animated Perthes. "However," he wrote, "unauthorized reprints will soon disappear from German stores."²⁴⁸ Menzel's optimistic stance on the matter of book piracy also reveals the state of the book market shortly before 1837. To Menzel, the future disappearance of pirate editions would mark a pivotal moment in the history of the German book trade. Nothing seemed more shameful to Menzel than the fact that reprinting continued to flourish in the German language area.

The greatest shame of the German book trade is the continuing reprinting, the practice of which is conducted on a massive scale primarily in Austria. Also in Württemberg, where I live, privileged thieves of this kind abound.²⁴⁹

The delayed implementation of Article 18d might seem to be the obvious reason why pirate editions had not yet disappeared from bookstores in the mid-1830s. Prior to 1837, most publishers of unauthorized reprint did not risk legal repercussions; they had little incentive to give up the business before it had been criminalized on the confederal level. In keeping with this line of reasoning, Perthes and Menzel looked forward to the day when a confederal ban would be put in place. However, they also feared that a ban on unauthorized reprinting might exacerbate the problem. According to Perthes, this had happened in Württemberg. There, the laws against unauthorized reprinting had been so distorted that the unauthorized reprinting of books had become a legitimate publication practice.²⁵⁰ "According to the decree from February 15 1815," Perthes wrote, "unauthorized reprinting will be legally allowed in Württemberg."²⁵¹

²⁴⁶ "der Nachdruck werde nach einigen Jahren aufgehoben". Perthes, "Ueber den teutschen Buchhandel und die äussern Verhältnisse der teutschen Literatur," 36.

²⁴⁷ Ibid.

²⁴⁸ "Der Nachdruck wird jedoch bald vom deutschen Boden verschwinden". Menzel, *Die deutsche Literatur. Zweite vermehrte Auflage.*, 1:91.

²⁴⁹ "Die größten Schmach für den deutschen Buchhandel ist der noch immer fortbestehende Nachdruck, der seine Geschäft vorzüglich in Oesterreich ins Große trieb. Auch in Württemberg, wo ich lebe, wimmelt es von solchen privilegierten Dieben, die mit einer bewundernswürdigen Schamlosigkeit in öffentlichen Blättern ihre Waren anpreisen" Ibid., 1:90.

²⁵⁰ Perthes, *Der deutsche Buchhandel als Bedingung des Daseyns einer deutschen Literatur.*

²⁵¹ "In Württemberg wurde der Nachdruck, laut Decret vom 15ten Februar 1815, gesetzlich erlaubt". Ibid., 15.

With the help of a law against piracy, he argued, Württemberg “continues to care for and protect unauthorized reprinting.”²⁵² Thanks to this protection, print piracy in Württemberg “draws money out of all the German lands and floods them with products from pamphlet and translation factories.”²⁵³ Menzel concurred with Perthes’s analysis. For him, the laws against book piracy in Württemberg, his home state, had created a culture that encouraged unauthorized reprinters to conduct their vile trade without shame. Thanks to flawed legislation, pirate editions were no longer bought from dubious characters in back alleys. Instead, those whom Menzel took to be book pirates marketed their wares in respectable newspapers. They “extol their merchandise in public papers with an remarkable shamelessness,” he observed.²⁵⁴

For individuals such as Perthes and Menzel, the fear that a confederal ban might worsen the situation proved justified. In 1867, an anonymous observer in *Deutsche Blätter* argued that the confederal ban had allowed book merchants engaged in mass piracy to go unpunished.²⁵⁵ In some states, the legal authorities did nothing against book merchants whose editions differed from the originals enough to be unrecognizable as unauthorized reprints. Countless book merchants used “dishonorable means” such as these to enrich themselves without risking legal repercussions.²⁵⁶ This author knew of “countless examples where the title and even the introduction to an article ... have been changed to make the unauthorized reprint undetectable.”²⁵⁷ Though this kind of villainy seemed common to this author, he did not expect others to be familiar with the practice and its prevalence in the 1860s.²⁵⁸ The author described the realization that piracy still existed on a massive scale as a very peculiar discovery that required a certain kind of attentive gaze.²⁵⁹ Those who viewed the book market with the appropriate attention knew that unauthorized reprinting still flourished in the whole of the German language area, but especially in states located south of the Mainlinien.²⁶⁰ In south German states, the “press laws have not regulated [unauthorized

²⁵² “hegt und schützt beharrlich den Nachdruck bis zu dieser Stunde” Perthes, “Ueber den deutschen Buchhandel und die äussern Verhältnisse der deutschen Literatur,” 36.

²⁵³ “aus allen deutschen Ländern Gelder ziehen und sie mit Producten aus Broschüren- und Uebersetzungsfabriken überschwemmen.” Ibid.

²⁵⁴ See the quote in footnote 243.

²⁵⁵ “Nachdruckliches,” in *Deutsche Blaetter: literarisch-politisches Sonntagsblatt*, 31 (Berlin: Brockhaus, 1867), 122.

²⁵⁶ Ibid.

²⁵⁷ “Wir wissen zahlreiche Beispiele aufzuwählen, in denen man den Titel und wohl auch den Eingang eines Aufsatzes verändert...um den Nachdruck unkenlich zu machen” Ibid.

²⁵⁸ Ibid.

²⁵⁹ “ganz eigenthümlichen”; “aufmerksamen Blicken” Ibid.

²⁶⁰ “ganz Deutschland”; “jenseit der Mainlinie” Ibid.

reprinting] in a sufficient manner,” which made north German authors defenceless against south German and Austrian pirates.²⁶¹

If the market seemed overrun with dubious books to those who viewed it with the right form of attention, piratical merchandise did not seem at all prevalent to others. In, for example, the article on the German book market in Friedrich Steger’s popular encyclopedia, readers learned that piracy used to be a defining characteristic of the German book trade. In the early 1850s, however, print pirates no longer carried on their trade in the region. This article did discuss the kind of publication practices that worried the author in *Deutsche Blätter* ten years later. But for Steger, the resulting books did not constitute real piracy.²⁶² Real pirates had fled the German language area and taken up residency in safe places outside its borders. “Although real unauthorized reprinting has disappeared from Germany,” he wrote, “unauthorized reprints of German works still sometimes appear in foreign countries.”²⁶³

The notion that unauthorized reprints had disappeared from the German book market was not new. When, for example, Carl Bertuch asked the politician Baron Freyherr vom Stein if Bertuch’s organization could count on his support during the Congress of Vienna, the baron questioned Bertuch’s assertion that unauthorized reprints flooded the market. To the baron, this did not seem to be the case. “Unauthorized reprinting is not significant in Germany at all,” he told Bertuch.²⁶⁴ Replying to the baron’s snub, Bertuch meekly suggested the opposite.²⁶⁵ The baron, interrupting brusquely, ended the meeting and showed Bertuch the door.

²⁶¹ “völlig rechtlos” Ibid.

²⁶² Franz Steger, ed., “Der deutsche Buchhandel (Geschichtlich und statistisch),” in *Ergänzungs-Conversationslexikon. Jeder Band in zweiundfunzig Nummern der Ergänzungsblätter zu allen Conversationslexiken*, vol. 6, 296 (Leipzig & Meissen: Ergänzungsblätter-Verlag, 1851), 582.

²⁶³ “Obgleich der eigentliche Nachdruck in Deutschland selbst verschwunden ist, so kommen doch Nachdrucke deutscher Werke im Ausland noch zuweilen vor.” Ibid.

²⁶⁴ “[D]er Nachdruck sey in Deutschland gar nicht bedeutend”. Bertuch, *Carl Bertuchs Tagebuch vom Wiener Kongress*, 240–241.

²⁶⁵ Ibid., 241.

Concluding Remarks

Forty years after Hitzig launched *Allgemeine Press-Zeitung*, Eduard Brockhaus, a politician and prominent member of the Börsenverein, spoke before the imperial parliament in Berlin. During his address, Brockhaus defended himself against the insinuation that it might not be suitable for a member of a lobbying organization to hold a parliamentary seat. "I have produced this proposal [on the reform of German press law] in full awareness of my dual role," Brockhaus said defensively during a parliamentary session on March 23, 1874.²⁶⁶ In response to his accusers, Brockhaus responded, his hands-on experience with the book trade made him an invaluable asset in the efforts to reform German press law that had begun shortly after the founding of the German Empire in 1871. On such matters, Brockhaus conceived of himself as an expert with the best interests of the public in mind. In a similar vein, Brockhaus argued that the parliament ought to consult the Börsenverein as experts on matters relating to the book trade.²⁶⁷

Brockhaus's reassurance echoed a line of defense that his forebears in the Börsenverein had taken before. In the first half of the nineteenth century, members of the organization had difficulty convincing their contemporaries that they did not represent a special interest. Brockhaus's efforts to argue that he worked for the general interest show that members of the Börsenverein continued to struggle for political acceptance after 1871.²⁶⁸ Brockhaus proved more successful than his forebears. Thanks in large part to his connections with Otto von Bismarck, Brockhaus and the Börsenverein managed to gain influence over the authorial rights reforms that the German parliament passed after the formation of the empire in 1871.²⁶⁹ Since then, the Börsenverein has established itself as an expert organization, consulted by the German

²⁶⁶ "ich habe im vollen Bewußtsein meiner Doppelstellung ... diesen Antrag gestellt." "Deutscher Reichstag. 22. Sitzung am 23. März 1874," in *Stenographische Berichte über die Verhandlungen des Deutschen Reichstages. 2. Legislatur=Periode. - 1. Session 1874. Von der Eröffnungs=Sitzung am 5 Februar bis Sechszwanzigsten Sitzung am 28. März 1874*, 1 (Berlin: Verlag der Buchdruckerei der "Norddeutschen Allgemeinen Zeitung" (Pindter), 1874), 506.

²⁶⁷ "Deutscher Reichstag. 32. Sitzung am 10. Mai 1871," in *Stenographische Berichte über die Verhandlungen des Deutschen Reichstages. 2. Legislatur=Periode. - 1. Session 1871. Von der Eröffnungs=Sitzung am 21. März und der Ersten bis zur Dreiunddreißigsten Sitzung am 12. Mai 1871*, 1 (Berlin: Verlag der Buchdruckerei der "Norddeutschen Allgemeinen Zeitung" (Pindter), 1874), 633.

²⁶⁸ *Ibid.*, 632.

²⁶⁹ Elmar Wadle, "Die Abrundung des deutschen Urheberrechts im Jahre 1876," in *Geistiges Eigentum: Bausteine zur Rechtsgeschichte*, vol. 1 (Weinheim, New York, Basel, Cambridge & Tokyo: VCH Verlagsgesellschaft, 1996), 327–43; Wadle, "Photographie und Urheberrecht im 19. Jahrhundert. Die deutsche Entwicklung bis 1876".

Bundestag on matters concerning intellectual property, authorial rights and piracy. The legal framework that governs authors' rights in present-day Germany came into being partly as a result of this development. In Germany today, "adapted versions and other modifications can only be made public with the authorization of the author of the work that has been processed or modified."²⁷⁰

The reason why the imperial parliament reformed authorial rights laws along these lines will not be explored in these short concluding remarks. Here, I wish instead to briefly characterize the definitions of authorship that fell out of favor around the end of the nineteenth century. In the second half of the nineteenth century, historical actors described the criminalization of publications such as unauthorized translations, compilations and adaptations as a departure from the standpoint adopted by Kant and Fichte. "In this regard," the legal scholar Otto Dambach wrote in 1872, "the new laws and international treatises have not adopted the view of Kant, for they regard also translations as unauthorized reprints."²⁷¹ In a similar vein, the Prussian politician Julius Hermann von Kirchmann observed that "Kant has made the difficult question if the translation or the reworking of a text is to be considered an unauthorized reprinting or not very easy. He denies both, even if the contrary view can be derived from his principle."²⁷²

Kirchmann's characterization underscores the argument advanced in this chapter. Here, I have argued that the writings of Kant and Fichte legitimated the notion that one could become an author by adapting the works of others. According to them, changing the original edition also imprinted the unauthorized reprint with the individualizing marks of authorship. Thanks to these changes, Kant and Fichte argued, unauthorized reprinters could lay claim to authorship. The expression mechanical reproduction has been central to my thesis. One of the reasons this expression became controversial was that it seemed to legitimate publication practices that critics such as Hitzig, Schellwitz and others took to be piratical. It suggested that an unauthorized reprint had to resemble the original edition to qualify as a pirate edition.

²⁷⁰ "Bearbeitungen oder andere Umgestaltungen des Werkes dürfen nur mit Einwilligung des Urhebers des bearbeiteten oder umgestalteten Werkes veröffentlicht." § 23 UrhG Bearbeitungen und Umgestaltungen," *Dejure.org*, accessed March 2, 2016, <https://dejure.org/gesetze/UrhG/23.html>.

²⁷¹ Otto Wilhelm Rudolf Dambach, *Wider den Nachdruck!: Aussprüche berühmter deutscher Gelehrter, Schriftsteller, Dichter etc. älterer und neuerer Zeit über Nachdruck und Nachbildung* (Berlin & Heidelberg: Springer-Verlag, 1872), 10.

²⁷² Julius Hermann von Kirchmann, "Von der Unrechtmässigkeit des Büchernachdrucks," in *Immanuel Kants kleinere Schriften zur Ethik und Religionsphilosophie: Herausgegeben und erläutert von J. H. von Kirchmann* (Berlin: L. Heimann, 1870), 11–13.

3. Weights and Counterweights: North German Editions and Their South German Counterparts

Critics such as Perthes, Hitzig, and Schellwitz complained that German authorial rights laws made it possible for unauthorized reprinters to lay claim to authorship. Drawing on the conceptual framework elaborated by Kant and Fichte, German authorial rights laws defined unauthorized revisers, abridgers, anthologizers and translators as legitimate producers of new works, works that stamped the original editions with the mark of a new authorial voice and style. The adoption of this view in the legal domain fostered discussions not only about the proper definition of authorship and unauthorized reprinting, but also about the size of the German piracy industry. According to writers such as Perthes and Menzel, unauthorized reprints from the south and southwest continued to flood the book market shortly before the passing of the confederal ban in 1837. They argued in particular that Württemberg's law against unauthorized reprinting helped piratical publishers whitewash their merchandise. For this reason, it was argued, German authorial rights laws did not remedy the problem of piracy. They exacerbated it.

The previous chapter analyzed discussions about the concepts of authorship, unauthorized reprinting and mechanical reproduction. Here, I take a ground-level view of early nineteenth-century debates about the proper application of these terms. How did such debates affect the historical actors' perceptions of, and responses to, specific publications? How did they influence the actions taken by legal institutions? To answer these questions, this chapter offers an "object study"—a case study that focuses on the publication and reception history of an individual book. For book historians, as Roger Chartier proposes in *The Culture of Print* (1989), "[t]here are several arguments for favouring case studies and object studies. The first lies in the mistrust of generalizations, which often mask the complexity of materials or practices, when they do not simply miss their mark."²⁷³ To illustrate the point, Chartier discusses "the oversimplified contrasts and murky concepts that claim to distinguish

²⁷³ Roger Chartier, "General Introduction: Print Culture," in *The Culture of Print: Power and the Uses of Print in Early Modern Europe*, ed. Roger Chartier, trans. Lydia G. Cochrane (Cambridge & Oxford: Polity Press, 1989), 3–4.

popular printed matter from what was not popular” in early modern Europe.²⁷⁴ Chartier advances the argument that the historians’ categories impose orderliness on situations that might have been far messier to the historical actors. As conceived by Chartier, object studies can help historians understand the conflicting ways in which readers classified and made sense of books in the past:

The minute we go beyond classification, counts and description in an investigation of the uses and the appropriations of typographical materials, we necessarily hold reading to be an inventive and creative practice that seizes commonly shared objects in differing ways and endows them with meanings that cannot be reduced to the authors’ and the publishers’ attentions alone.²⁷⁵

Chartier’s approach to popular books also informs my understanding of unauthorized reprints in the early nineteenth century. While the scholarship has, in general, taken this to be an unproblematic genre, books that seemed to be unauthorized reprints to some early nineteenth-century readers appeared wholly legitimate to others. Disagreement about the meaning of the term unauthorized reprinting drove these debates, as the historical actors also detected evidence of piracy and authorship in competing ways.

To illustrate the point, I analyze the publication and reception of Carl Erhard’s *Conversationslexicon*. Erhard, a Stuttgart book merchant, produced this popular encyclopedia in the mid-1810s by changing and revising the encyclopedia of the same title that Friedrich Arnold Brockhaus had published since 1808. The Saxon book merchant Brockhaus took offence at Erhard’s publication practices and accused him of piracy. Having subjected Brockhaus’s edition to extensive revisions, Erhard challenged Brockhaus’s portrayal of him as a lowly pirate.²⁷⁶ Erhard and many others whom Brockhaus accused of piracy proved largely successful in dismissing his claims. In general, German authorial rights laws did not permit action against those who used Brockhaus’s publication to produce new encyclopedias. In 1846, Friedrich Steger’s encyclopedia commented on this fact: “Present-day

²⁷⁴ Ibid., 4.

²⁷⁵ Ibid., 8.

²⁷⁶ See for example Friedrich Arnold Brockhaus, “Anzeige gegen den Buchdrucker A. F. Macklot in Stuttgart, in Betreff seines Nachdrucks des Conversations-Lexicons,” in *Intelligenzblatt der Jenaischen Allgemeinen Literatur-Zeitung*, 41 (Jena & Leipzig, 1816), 325–26; Brockhaus, *Darf Macklot in Stuttgart mir, dem rechtmäßigen Verleger, und dem Privilegium seines eigenen Königs zum Hohn, das Conversations-Lexicon zum zweiten Mal nachdrucken?*; Friedrich Arnold Brockhaus, “Anzeige den Stuttgarter Nachdrucker Carl Erhard, genannt Macklot betreffend,” in *Intelligenzblatt der Zeitung für die elegante Welt*, ed. Karl Spazier, 18:13, 1818, 1275–76.

Germany abounds with conversational encyclopedias that are merely legally allowed reprints, that is, remolded editions of Brockhaus's [encyclopedia]."²⁷⁷

Publications such as Erhard's encyclopedia constitute a significant but largely unexplored category in German book history. If studied at all, south German publications that revised, added to and reorganized north German original editions have mostly been approached as corrupt versions of the original.²⁷⁸ Outside the field of German book history, unauthorized adaptations such as Erhard's have been at the forefront of research at the intersection of book history and history of science. In *The Nature of the Book*, Adrian Johns uses publications such as unauthorized epitomes, abridgements and revisions to question the assertion that the technology of print standardized books and, in so doing, facilitated the kind of scholarly communication that made the Scientific Revolution possible. Johns directs his criticism towards Elizabeth Eisenstein's influential study on the printing press as an agent of change. With the advent of print, Eisenstein argued, members of Europe's learned community could leave behind the notoriously unreliable manuscript culture, in which texts had circulated in non-standardized and truncated form. They began to fashion a print culture that provided them with standardized texts imbued with "typographical fixity."²⁷⁹ The stabilization of texts made the emergence of a modern kind of scientific discourse possible, Eisenstein argues.

As Johns has noted in his critique of Eisenstein's notion of print culture, she idealizes both the domain of print and the state of the sciences in early modern Europe. Johns points out that people in the early modern period feared that print would *undermine* the progress of knowledge and wreak havoc in the scientific community. A wide range of individuals and institutions had to work hard to make print the trusted

²⁷⁷ "es wimmelt in Deutschland gegenwärtig von K[onversations]L[exikon], von denen mehre bloß ein gesetzlich erlaubter Nachdruck, d.h. eine Umschmelzung des Brockhaus'schen sind" Einem Verein von Gelehrten, Künstlern und Fachmännern unter der Redaktion von Dr. Friedrich Steger, ed., "Brockhaus, Familie," in *Ergänzungs-Conversationslexikon. Erster Band in zweiundfunzig Nummern der Ergänzungsblätter zu allen Conversationslexiken*, vol. 1 (Leipzig: Romberg's Verlag, 1846), 447.

²⁷⁸ This publication practice has been studied in more detail in two more articles: Frimmel, "Johann Thomas Trattner: ein transnationaler Buchdrucker des 18. Jahrhunderts"; Bernd Breitenbruch, "Der Karlsruher Buchhändler Christian Gottlieb Schmieder und der Nachdruck in Südwestdeutschland im letzten Viertel des 18. Jahrhunderts," in *Archiv für Geschichte des Buchwesens*, 9, 1969, 643–732; Woodmansee, "Publishers, Privateers, Pirates: Eighteenth-Century German Book Piracy Revisited," 2011, 191; Johann Goldfriedrich, *Geschichte des deutschen Buchhandels: Vom Beginn der klassischen Literaturperiode bis zum Beginn der Fremdherrschaft (1740–1804)*, vol. 3 (Leipzig: Börsenverein der Deutschen Buchhändler, 1909), 84.

²⁷⁹ Elizabeth L. Eisenstein, *The Printing Revolution in Early Modern Europe*, 2nd ed. (Cambridge & New York: Cambridge University Press, 2005), 87.

medium it is today. “Authors, readers, governments and institutions all had to engage practically and intensively with the crafts of the press in order to ensure that it lived up to its potential.”²⁸⁰ Johns turns to print piracy in early modern England to illustrate the dangers that the printing press introduced into the domain of science. While the press could help to advance the sciences, it could also be put to piratical uses. Print pirates might reproduce books without changing them, but they could just as well republish the original editions in garbled and truncated form. In a milieu suffused with such books, readers faced difficult questions. “Could a printed book be trusted to be what it claimed?”²⁸¹ Much hung in the balance, Johns argues. “Piracy,” he observes, “challenged the creditability of such knowledge [of the natural world], casting the integrity of all printed authors into doubt.”²⁸² According to Johns, the modern concept of authorship began to take shape in response to the threat of piracy. It provided writers with the means to assert authority and control over their publications.

Johns’s study of early modern printing questions the technological determinism assumed by the view that the invention and spread of the printing press constituted a revolutionary moment in European history. I share Johns’s view that technology alone cannot explain the momentous changes that Europe underwent in the early modern period. However, the German situation differs significantly from the one that Johns described in the *Nature of the Book*. If, in early modern England, authorship was invented to eradicate unauthorized alterations such as abridgments and revisions, the dominant German conceptualization of authorship in the early nineteenth century protected this genre of books *against the charge of piracy*. As the previous chapter showed, the main architects behind the idealist conception of authorship aimed to combat unauthorized reprinting but they also limited the range of publication practices that qualified as such. Thanks to their efforts, many who transformed the works of others enjoyed the reputation of respectable publishers of new works.

As a rule, the legal authorities in German states individuated similar books and treated them as separate works if their differences were significant enough to cause confusion. In keeping with the notion of mechanical reproduction, a reprint of a book was defined as identical to, or only insignificantly different from, the original edition. The Austrian state, for example, argued along these lines in its implementation of the confederal ban from 1837.

²⁸⁰ Johns, “The Identity Engine: Science, Stereotyping, and Skill in Print,” 404.

²⁸¹ Johns, *The Nature of the Book*, 1998, 30.

²⁸² *Ibid.*, 460.

Of two works with the same or different titles, which treat the same subject in the same order and with the same divisions, the one appearing later will be considered a forbidden reprint, if the additions to or other changes of the contents are not so great and predominant that it must be viewed as an independent work of the spirit.²⁸³

The Austrian ban on unauthorized reprinting underscores the difference between the situation in the German language area and the one that Johns describes. While unauthorized changes seemed to cause confusion and chaos to men of letters in early modern England, the Austrian implementation of the confederal ban defined this publication practice as a means to produce new works.

The next section analyzes in more detail the process of individuation described in the Austrian law against unauthorized reprinting. There, I show that the authorial rights reform prompted discussions about contemporary perceptions of the German book market and the prevalence of piratical publication practices in scientific publishing. According to one contemporary observer, Georg Wilhelm Friedrich Hegel, it had promoted the view that piracy, plagiarism and other dubious publication practices had vanished from the scholarly world.²⁸⁴ To make this proposition more concrete, the third section turns to Brockhaus's feud with Erhard. In the past, this struggle has been viewed as fight between "a robber and his victim."²⁸⁵ I will instead show that Brockhaus had to struggle to persuade his contemporaries to view Erhard as an unauthorized reprinter. Brockhaus's efforts earned him the reputation of a man suffering from a medical condition, one that Brockhaus's grandson called a "sanguine-choleric temperament."²⁸⁶

Brockhaus waged war on those he took to be unauthorized reprinters in a wide variety of ways. However, his most important weapon was the Fehdebriefe that he published and distributed to bookshops and

²⁸³ "Von Zwei unter dem nämlichen oder auch unter verschiedenen Titel vorkommenden Werken, welche denselben Gegenstand in nämlicher Ordnung und Einteilung behandeln, ist das später erschienene dann als verbotener Nachdruck zu betrachten, wenn nicht die darin wahrgenommene Vermehrung oder sonstige Veränderung des Inhaltes für so wesentlich und überwiegend erkannt wird, dass es als ein neue selbständiges Geistesproduct erachtet werden muss." Ch F. M. Eisenlohr, *Sammlung der Gesetze und internationalen Verträge zum Schutze des literarisch-artistischen Eigenthums in Deutschland, Frankreich und England* (Heidelberg: Bangel und Schmitt, 1856), 42.

²⁸⁴ Georg Wilhelm F. Hegel, *Grundlinien der Philosophie des Rechts* (Berlin: Nicolaischen Buchhandlung, 1821), 73–74.

²⁸⁵ Heinrich Eduard Brockhaus, *Friedrich Arnold Brockhaus, sein Leben und Wirken nach Briefen und andern Aufzeichnungen*, vol. 1 (Leipzig: Leipzig, F.A. Brockhaus, 1872), 101.

²⁸⁶ *Ibid.*, 1:103.

politicians both in Frankfurt and elsewhere in the confederacy.²⁸⁷ Since the Middle Ages, the announcement of a Fehdebriefe (letter of feud) had been used to challenge an enemy to a duel to be held within three days.²⁸⁸ Though Brockhaus and Erhard swore an oath similar to the Urfehde that marked the end of a feud, Brockhaus used the concept of Fehdebriefe in figurative sense.²⁸⁹ Brockhaus and Erhard did not duel. Brockhaus's Fehdebriefe consisted of warnings to the public as well as rancorous articles on the deluge of pirate editions that seemed to flood the market from the south.

The publications that Brockhaus addressed to Erhard adopted a harsh tone. Of all the colorful descriptions that anti-piracy advocates invented while slinging mud at unauthorized reprinters, Brockhaus easily penned the most creative ones. By the end of his feud with Erhard, Brockhaus had compared him to a boa constrictor, a parasitic plant, a demon, a fly, a polyp, an incubus, an evil wizard and, finally, a vampire. In 1818, Brockhaus suggested that Erhard and the rest of the southern and southwestern print pirates sucked the blood from respectable publishers "in the manner of giant blood-sucking bats, vampires, for both creatures dwell in twilight."²⁹⁰ Though Erhard was far from the only book merchant who drew Brockhaus's ire, Brockhaus had a particular reason for concentrating his attacks on Erhard. He had successfully applied for a Württemberg privilege against Erhard's alleged predations. Despite this privilege, the authorities in Württemberg not only failed to take action against Erhard. They also granted Erhard a special dispensation to continue to publish his encyclopedia.²⁹¹ The situation seemed absurd to Brockhaus. Both his privileged edition of the *Conversationslexicon* and Erhard's edition bore title pages graced with the stamp of approval from the kingdom of Württemberg (**Figures 1 & 2**). Since Württemberg

²⁸⁷ The coinage Fehdebriefe belongs to Eduard Brockhaus. Eduard's *Friedrich Arnold Brockhaus, sein Leben und Wirken nach Briefen und andern Aufzeichnungen*, vol. 3 (Leipzig: Leipzig, F.A. Brockhaus, 1881), 83.

²⁸⁸ In the early modern period, the instigating duelist oftentimes announced the commencement of a feud by posting the Fehdebriefe on the door of a public building. See Daniel Jütte (Jutte), *The Strait Gate: Thresholds and Power in Western History* (New Haven & London: Yale University Press, 2015).

²⁸⁹ For more on the Urfehde, see Andreas Blauert, *Das Urfehdewesen im deutschen Südwesten im Spätmittelalter und in der Frühen Neuzeit* (Tübingen: Bibliotheca Academica, 2000).

²⁹⁰ Friedrich Arnold Brockhaus, *Darf Macklot in Stuttgart mir, dem rechtmäßigen Verleger, und dem Privilegium seines eigenen Königs zum Hohn, das Conversations-Lexicon zum zweiten Mal nachdrucken? eine Warnung - für das Publicum, und eine Rechtsfrage an den königlich Württembergischen Geheimenrath und an den königl. Bairischen Regierungsrath Krause in Baireuth* (Brockhaus, 1818), 2.

²⁹¹ "Akten des ehemaligen Zensurkollegiums: Erlaubnis für Buchdrucker Macklot in Stuttgart zum Abdruck des bei Brockhaus in Altenburg und Leipzig erscheinenden Konversationslexikons nach Vorlage bei der Zensur," in *Hauptstaatsarchiv Stuttgart: E 146 Ministerium des Innern III / 1806-1906*.

protected individuals such as Erhard, it has been argued that its press law deviated from the norms that governed the German legal domain in the first half of the nineteenth century.²⁹² Whether it did so or not requires a more detailed examination of the authorial rights law in other German states. A comparison of this sort will not be conducted here. Here, I will merely argue that Württemberg's press law adopted the idealist view on authorship and unauthorized reprinting that Kant and Fichte constructed in the late eighteenth century. The final section of this chapter addresses this issue in more detail.

Piracy and Scientific Authorship

Before looking in more detail at the feud that broke out between Erhard and Brockhaus, it is necessary to discuss the genre of books under consideration in this chapter. Brockhaus's feud with Erhard raises questions about publication practices in a domain where the issue of unauthorized reprinting might seem irrelevant. Do not facts belong to the public domain, the Gemeingut? Can one be an author of an encyclopedia, and if so, how?

In "What is an author?" Michel Foucault discussed the history of scientific authorship as a part of a broader attempt to conceptualize the way in which the author-function brings order to discourse. According to Foucault, the construction of scientific authorship underwent "a chiasmus" in the seventeenth and eighteenth century, when "a totally new conception" of scientific discourse took shape.²⁹³ After that point, "scientific texts were accepted on their own merits and positioned within an anonymous and coherent conceptual system of established truths and methods of verification."²⁹⁴ As a result of this reconceptualization, "the role of the author disappeared as an index of truthfulness."²⁹⁵ If authorial names became irrelevant in the scientific discourse of early modern Europe, they had been at the forefront of natural philosophy in the Middle Ages, Foucault contended. "Texts that we call scientific ... were only considered truthful in the Middle Ages if the name of the author was indicated."²⁹⁶ Foucault's argument underlines the broader claim that the

²⁹² For example, the legal scholar Thomas Gergen argues that Württemberg constituted an anomaly in the German language area. See Thomas Gergen, *Die Nachdruckprivilegienpraxis Württembergs im 19. Jahrhundert und ihre Bedeutung für das Urheberrecht im Deutschen Bund* (Berlin: Duncker & Humblot, 2007).

²⁹³ Foucault, "What Is an Author?," 126.

²⁹⁴ Ibid.

²⁹⁵ Ibid.

²⁹⁶ Ibid., 125–126.

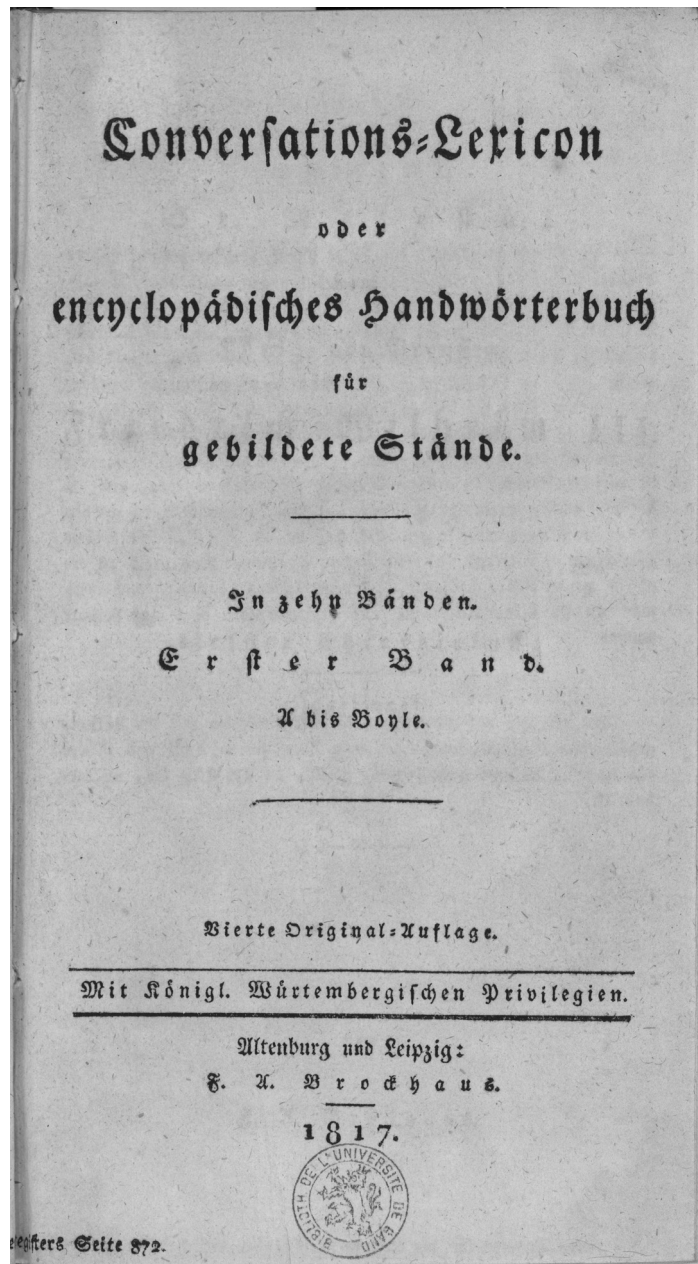


Figure 3. The titlepage to Brockhaus's *Conversationslexikon*.
Reproduced with the permission of Ghent University.

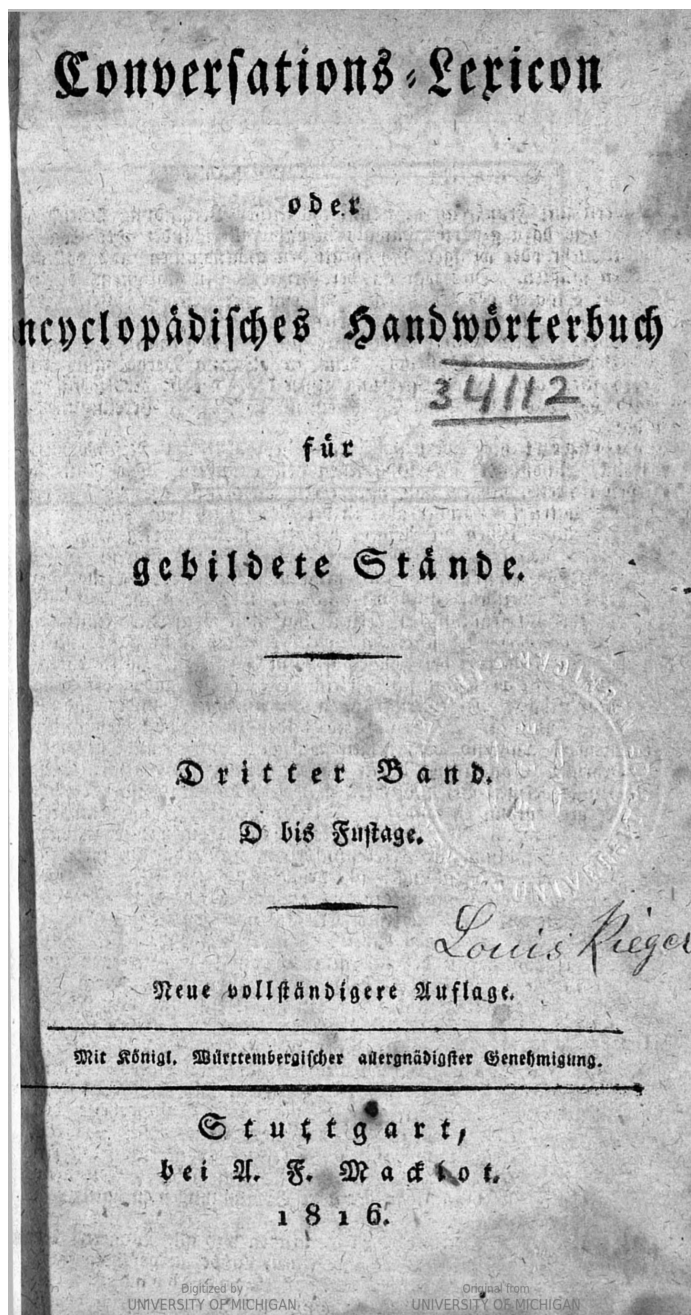


Figure 4. The titlepage to Erhard's edition of the *Conversationslexikon*. Reproduced with the permission of University of Michigan.

author-function “is not universal or constant in all discourse.”²⁹⁷ The multifarious ways in which texts have or have not been assigned authorial names have changed over time.

In recent studies on scientific authorship, historians have taken Foucault’s broader claim to heart but criticized the argument that authorial names ceased to matter in the sciences of the seventeenth and eighteenth centuries.²⁹⁸ It has been argued that, on the contrary, scientific authorship grew in importance over the course of the early modern period. This is true of the German language area as well. Scientific authorship underwent profound changes in the early nineteenth century. While the publication of books and articles had not been considered the main activity of scholars until then, publishing became increasingly important to men of science and learning. As scholars such as William Clark and Peter Josephson have shown, a university career even required prospective scholars to publish as much as possible. A new view of the scientific enterprise underwrote this shift. It became increasingly important for scholars to produce new and original research. In this new system, Clark writes, university students “would prove themselves not so much in written exams, but rather more by the originality of their research papers.”²⁹⁹

How was originality in research defined? Clark argues that the German university world found the source of scientific originality in the scientific author. “The doctor of philosophy, as authorial persona, exhibited the qualities of the Romantic artist, originality and personality, aesthetically differentiating itself.”³⁰⁰ In my view, Clark’s analysis is slightly misleading. He suggests that scientific authorship depended on aesthetics and artistry. For Fichte and other leading theorists of authorship, however, the exhibition of authorial originality did not require more than the capacity to think. Fichte construed human reasoning, not artistic creativity, as the source of authorial self-expression. Human beings, Fichte argued in 1793, expressed their personality through their unique and peculiar style of thinking. For him, each individual automatically molded and processed facts and ideas in unique, personal ways. It is “absolutely impossible,” he argued, “that someone to whom ideas must first be imparted by another should ever

²⁹⁷ Ibid., 125.

²⁹⁸ Chartier, “Foucault’s Chiasmus: Authorship between Science and Literature in the Seventeenth and Eighteenth Centuries.”

²⁹⁹ William Clark, *Academic Charisma and the Origins of the Research University* (Chicago & London: University of Chicago Press, 2008), 130.

³⁰⁰ Ibid., 211.

assimilate them into his own system of thought in exactly the form in which they were given.”³⁰¹

In a culture where Fichte’s view of authorship dominated, it made sense to say that encyclopedias could be the result of authorship. Publications such as an encyclopedia required its maker to select facts, organize them and present them in a particular way. These operations required encyclopedists to make decisions that marked the publication with their unique and original subjectivity. To the chagrin of publishers such as Brockhaus, this conception of authorship also included those who revised, re-organized and expanded already existing publications. Brockhaus’s encyclopedia addressed the issue in its 1824 article on unauthorized reprinting. The article on *Nachdruck* informed readers that an unauthorized reprint “is an essentially unchanged reprint of a book, produced by someone who has not acquired the right, flowing from the author, to print it himself.”³⁰² Brockhaus resented this minimal definition of print piracy. Consequently, the article ended with a cautionary warning. With this definition, the true nature of piratical books could easily be concealed through the insertion of insignificant changes.³⁰³ This “*mischief*,” Brockhaus continued, enabled the pirate to “avert the damning charge of unauthorized reprinting.” Unsavory practitioners of this vile craft deserved nothing but the most severe reprimand, Brockhaus maintained. This publication practice “always need to be duly reprimanded by the learned tribunal, and noted with stern disapproval.”³⁰⁴

Brockhaus’s appeal to a learned tribunal suggests that state authorities did not necessarily share the view that the concept of unauthorized reprinting ought to cover a wider range of books than exact duplicates. During the lecture course he held on the philosophy of right in the 1820s, Georg Wilhelm Friedrich Hegel commented on this problem. He informed his students that “laws against unauthorized reprinting achieve

³⁰¹ “daß aber der Eine, welchem die Gedanken erst durch einen Andern gegeben werden müssen, sie in eben der Form in sein Gedankensystem aufnehme, ist absolut unmöglich.” Fichte, “Beweis der Unrechtmäßigkeit des Büchernachdrucks. Ein Raisonement und eine Parabel,” 451.

³⁰² “Büchernachdruck ist der im Wesentlichen unveränderte Wiederabdruck eines Buchs, veranstaltet von Jemanden, der das vom Verfasser ausgehende Recht, dasselbe zu drucken, nicht erworben hat” Friedrich Arnold Brockhaus, ed., “Nachdruck,” in *Allgemeine deutsche Realencyclopädie für den gebildeten Stände: Supplementband für die Besitzer der fünften und frühern Auflagen: Enthaltend die neuen und umgearbeiteten Artikel der sechsten Auflage* (Leipzig: Friedrich Arnold Brockhaus, 1824), 100.

³⁰³ “durch unwesentliche Veränderungen” Ibid.

³⁰⁴ “Der Unfug indeß, welcher durch unwesentliche Veränderungen mit Schriften vorgenommen wird, um von ihrem Wiederabdruck die brandmarkende Benennung des Nachdrucks, die auch noch nie ein Nachdrucker schamlos genug gewesen ist, seiner Auflage vorzusetzen, abzuwenden, ferner auch die wesentlichere Veränderung eines in dem Buchhandel noch nicht vergriffenen Werks, sollen von den gelehrten Tribunalen stets gebührend gerügt, und mit strenger Missbilligung bemerkt werden.” Ibid., 101.

their purpose to protect the rights of authors and publishers in a definitive but very limited way.”³⁰⁵ Hegel discussed the limitations of German bans on unauthorized reprinting against the backdrop of a remarkable fact: that “one does not hear the word plagiarism or literary thievery any longer.” The fact that no one seemed concerned with transgressions of this kind could be understood in three different ways, Hegel proposed to his students. He first suggested that a growing respect for the intellectual property of others had at long last purged the German language area of literary thieves. Hegel’s contemporaries had grown so saintly that they had finally “repressed” crimes of writing in the region.³⁰⁶ Hegel’s second explanation took a more cynical approach: Germans had stopped caring about plagiarism and literary thievery. “The revulsion against it has disappeared,” he proposed. If Hegel’s first and second explanations asked whether the standards of honorability had become more or less lenient, the third focused on the boundary *between* honorable and dishonorable ways of producing text. Hegel suggested that this boundary had undergone a significant change in recent times. Now, he remarked, “an insignificant new idea and a change in outward form are rated so highly as originality and as the product of independent thought that it never occurs to anyone to suspect plagiarism.”³⁰⁷

Hegel did not say which of the three explanations seemed more plausible to him. However, he focused on the third one and did not say more about the other two. Thanks to this shifted boundary, Hegel informed his students, his contemporaries detected signs of authorship in plagiaristic books that did not really deserve to be called new.

The ease with which one can intentionally alter the form or insert an insignificant modification to a large work on science or a comprehensive theory which is the work of another ... introduces ... the endless variety of changes which stamp upon the foreign article the more or less superficial impression of something which is one’s own; the hundreds upon hundreds of compendiums, abridgments,

³⁰⁵ “Getze gegen den Nachdruck erfüllen daher ihren Zweck, das Eigentum der Schriftsteller und der Verleger rechtlich zu sichern, zwar in dem bestimmten, aber sehr beschränkten Umfange” Hegel, *Grundlinien der Philosophie des Rechts*, 73. This and the following translations of Hegel’s philosophy of right are based on *Hegel: Elements of the Philosophy of Right*, ed. Allen W. Wood, trans. H. B. Nisbet (Cambridge, New York, Melbourne, Madrid, Capetown: Cambridge University Press, 1991).

³⁰⁶ “verdrängen” Hegel, *Grundlinien der Philosophie des Rechts*, 74.

³⁰⁷ “Was aber die Wirkung der Ehre gegen das Plagiat betrifft, so ist dabei dieß auffallend, daß der Ausdruck Plagiat oder gar gelehrter Diebstahl nicht mehr gehört wird — es sey, entweder daß die Ehre ihre Wirkung gethan, das Plagiat zu verdrängen, oder daß es aufgehört hat, gegen die Ehre zu seyn und das Gefühl hierüber verschunden ist, oder daß ein Einfällchen und Veränderung eine äußern Form sich als Originalität und selbstdenkendes Produciren so hoch anschlägt, um den Gedanken an ein Plagiat gar nicht in sich aufkommen zu lassen.” Hegel, *Grundlinien der Philosophie des Rechts*, 74.

compilations, calculation books, geometries, devotional texts, show how every new idea of a critical journal, an almanac, or a conversational lexicon, can be repeated with the same or an altered title, yet put forward as something original.³⁰⁸

“Hundreds upon hundreds” of these books circulated on the market, Hegel suggested, and they did so thanks in large part to the authorial rights reforms.

“The Advantages of an Unauthorized Reprint!!”

Hegel’s discussion raises pertinent questions about historical change and causality. Had his contemporaries stopped talking about plagiarism and literary thievery because the growing respect for intellectual property had made the activity so shameful that no one dared to poach from the works of others? Or had this silence resulted from a change in the way the historical actors defined the difference between authorship, plagiarism and unauthorized reprinting?

In his study *Geschichte deutschen Buchhandels* (1993), the historian Reinhard Wittmann adopts the first of these two explanations. By the early nineteenth century, Wittmann argues, an unprecedented respect for the intellectual property of others had taken hold in the German book trade. He links this change to the widespread supposition that south German states had ceased to pirate north German books by that time. In the first decades of the nineteenth century, “the bibliopolar unity between the north and the south was for all practical purposes restored [and] ... intellectual property was at least accepted even if it was not yet everywhere respected.”³⁰⁹ Hegel’s discussion of authorship sheds a different light on the reason why Germans ceased to be concerned with plagiarism and unauthorized reprinting in the early nineteenth century. Hegel suggested that transgressions such as plagiarism seemed to have

³⁰⁸ “Die Leichtigkeit, absichtlich an der Form etwas zu ändern oder ein Modificationschen an einer großen Wissenschaft, an einer umfassenden Theorie, welche das Werk eines Andern ist, zu erfinden...führen für sich außer den besondern Zwecken...die unendliche Vielfachheit von Veränderungen herbey, die dem fremden Eigenthum den mehr oder weniger oberflächlichen Stempel des Seinigen ausdrücken; wie die hundert und aber hundert Compendien, Auszüge, Sammlungen u. f. f. Rechenbücher, Geometrien, Erbauungsschriften u. f. f. zeigen, wie jeder Einfall einer kritischen Zeitschrift, Musenalmanachs, Conversationslexicons u. f. f. sogleich ebenfalls unter demselben oder einem veränderten Titel wiederholt, aber als etwas Eigenthümliches behauptet werden kann.” Ibid., 73–74.

³⁰⁹ “Die bibliopolische Einheit zwischen Nord und Süd war im wesentlichem wiederhergestellt...das geistliche Eigenthum war zumindest akzeptiert, wenngleich noch nicht überall respektiert.” Reinhard Wittmann, *Geschichte des deutschen Buchhandels*, 3rd ed. (München: C.H.Beck, 2011), 218.

stopped because the unauthorized alteration of an existing publication now counted as an authorial practice.

Hegel seems to suggest that this redefinition of authorship had occurred without friction. It did not. As we shall now see, it gave rise to fierce protestations and quarrels. To gain an understanding of these quarrels, this section turns to Carl Erhard's feud with Friedrich Arnold Brockhaus. Brockhaus acquired the *Conversationslexicon* from its previous Leipzig publisher, Karl Friedrich Leupold, in 1808. In 1795, the Saxon scholar Renatus Gotthelf Löbel had begun work on this publication with the aim of emulating the success of Johann Hübners's conversational lexicon of 1704. Löbel managed to produce four volumes before he died unexpectedly in 1799. Thanks to Löbel's friends two more volumes appeared after 1800, but the publication seemed doomed. Brockhaus saw potential in the discarded encyclopedia and purchased the Saxon privilege from Leupold a few years later. In Brockhaus's care, the project begun by Löbel grew in scope and size. He commissioned articles from around one hundred university professors and other members of the learned community.³¹⁰ As the commissioner of these articles, Brockhaus assumed authorial responsibility for the contents of the encyclopedia. However, the writers hired by Brockhaus were not "invisible technicians."³¹¹ In an appendix to the fifth volume, he listed the names of those who had contributed material.³¹² The *Conversationslexicon* became one of the great success stories of nineteenth-century publishing. It proved popular not only in the German language area but in other parts of Europe as well. "No work of reference has been more useful and successful, or more frequently copied, imitated and translated, than that known as the *Conversations-Lexikon* of Brockhaus," one could read in the eleventh edition of the *Encyclopaedia Britannica* in 1910.³¹³

Brockhaus's principal adversary, Carl Erhard, enters the story of the *Conversationslexicon* in the mid-1810s. In 1816, Erhard's firm, Macklotsche Buchhandlung in Stuttgart, announced that it intended to publish an improved version of the second edition of Brockhaus's encyclopedia at around half the price. Erhard ran a much smaller operation than Brockhaus. The so-called improvements had been done by Erhard himself and a small group of his friends in and around Stuttgart. The announcement of Erhard's publication prompted a quick reaction

³¹⁰ Anja Zum Hingst, *Die Geschichte des Grossen Brockhaus: vom Conversationslexikon zur Enzyklopädie* (Wiesbaden: Otto Harrassowitz Verlag, 1995), 11–13.

³¹¹ Steven Shapin, "The Invisible Technician," in *American Scientist*, 77:6, 1989, 554–63.

³¹² Hingst, *Die Geschichte des Grossen Brockhaus*, 12.

³¹³ Hugh Chisholm, ed., "Encyclopaedia," in *The Encyclopædia Britannica: A Dictionary of Arts, Sciences, Literature and General Information: Edwardes to Evangelical Association*, 11th ed., vol. 9 (Cambridge: Cambridge University Press, 1910), 381.

from Brockhaus, who questioned the assertion that an unauthorized reprint could have an advantage over the original edition. “The benefits of an unauthorized reprint!!” he exclaimed with feigned astonishment.³¹⁴ In contrast to Erhard, Brockhaus offered an edition of the *Conversationslexicon* that promised to be true to the original author’s words. Brockhaus made much of this, even branding the title page an epigram—“what the author has written, not what the pirate has printed”—by the sixteenth-century Spanish playwright Pedro Calderón de la Barca.

Brockhaus hoped to secure his publication by embellishing the title page in this way. Calderón’s lines portrayed unauthorized reprinting as shameful, and the pirates, Brockhaus assumed, would never reproduce a title page that condemned their activity. The presence of the epigram on the title pages of his *Conversationslexicon* would simplify the identification of legitimate and pirate editions. Legitimate editions would include the lines from Calderón; spurious ones would not. Brockhaus explained his thinking in an advertisement published in 1818. If the unauthorized reprint diverged from the original, “the original edition can then be easily recognized.”³¹⁵

Brockhaus’s precaution assumed that piratical competitors would want to market their wares as unauthorized reprints of his encyclopedia, a highly successful publication. Erhard did not reprint this epigram, but Brockhaus’s reasoning still turned out to be flawed. In 1830, the Reutlingen publisher Fleischhauer & Spohn marketed a rival encyclopedia as an unchanged edition of Brockhaus’s publication, and their edition bore the Calderón poem on the title page.³¹⁶ Had Fleischhauer & Spohn published this unchanged edition in Saxony, where Brockhaus could expect the assistance of the legal authorities, Brockhaus would have been able to stop it. In Württemberg, however, his privilege for the *Conversationslexicon* had lapsed, and his firm stood defenceless

³¹⁴ “Vorzüge eines Nachdrucks!!” Brockhaus, “Anzeige gegen den Buchdrucker A. F. Macklot in Stuttgart, in Betreff seines Nachdrucks des Conversations-Lexicons,” 310.

³¹⁵ “Diese neue 5. Auflage erhält übrigens den Haupttitel: Allgemeine deutsche Real-Encyclopädie, und zur nähern Bezeichnung aus Calderons Eifersucht u. s. w. nach der Griesschen Übersetzung die Worte zum Motto...welche die Herren Nachdrucker vielleicht nicht mit nachdrucken werden, ob sie es gleich in der Unverschämtheit weit genug gebracht haben, und woran sich dann die Original-Ausgabe leicht wird erkennen lassen“. Friedrich Arnold Brockhaus, “Anzeige, des Fertigseyn des 10. und letzten Bandes vom Conversations-Lexicon und die Erscheinung einer fünften Auflage dieses Werks betreffend.,” in *Literarisches Wochenblatt: Intelligenz-Blatt*, ed. August von Kotzebue, vol. 2, 4 (Weimar: Friedrich Arnold Brockhaus, 1818), 2.

³¹⁶ “wörtlich...abgedruckte Auflage” *Allgemeine deutsche Real-Encyclopädie für die gebildeten Stände (Conversations-Lexikon)*. Neue, wörtlich nach dem zweiten durchgesehenen Abdruck der Leipziger siebenten Original-Ausgabe abgedruckte Auflage, vol. 10 (Reutlingen: Fleischhauer und Spohn, 1831).

even against an unchanged edition. If Fleischhauer & Spohn hoped to capitalize on the identity of their book with Brockhaus's, Erhard predicted that readers would prefer his edition because of its dissimilarity to the original. For Erhard, it did not seem at all obvious why accurate reproduction of the original edition should matter to readers of encyclopedias. Encyclopedias sold well if they imparted correct information to readers. If the original author had been wrong, would not a corrected edition of the same book be preferable? Erhard's marketing strategy shrewdly appealed to readers' desire for reliable information. Not only had Erhard improved and corrected the existing articles in Brockhaus's *Conversationslexicon*.³¹⁷ By adding articles from a wide range of fields, he had also updated the original with new entries. With these additions and corrections in mind, Erhard marketed the Macklot edition as the more exhaustive and correct storehouse of information.

The time that had elapsed between the publication of Brockhaus's third edition and Erhard's first edition of the *Conversationslexicon* made Erhard's marketing strategy particularly effective. In the years between 1814 and 1816, the army of the Sixth Coalition had captured Napoleon, imprisoned him on Elba, and defeated him again after his escape from the island off the coast of the Italian peninsula. A confederation of German states had replaced the Holy Roman Empire, and the Congress of Vienna had come and gone. These and a host of other events had changed the face of Europe in profound ways. Brockhaus's edition contained no mention of them at all. Erhard gleefully called readers' attention to the obvious reason why: in 1814, none of them had happened. Erhard took advantage of this fact in 1816, updating the original edition with descriptions of events that had lain in the future when Brockhaus's publication had appeared. In so doing, Erhard put a powerful reference work in the hands of readers. "The reader finds here all in one place," he wrote, "everything that might interest him about the history of the last fateful years."³¹⁸

Through significant improvements, the present, new edition differs from the third, the publication of which began in 1814 and could therefore remark on the great events that have changed the face of Europe since the Russian campaign either not at all or without a description of their consequences. In

³¹⁷ Carl Erhard, "Vorrede," in *Supplementband zum Conversations-Lexicon für Besitzer der Stuttgarter Ausgabe* (Stuttgart: F.A. Macklot, 1818).

³¹⁸ "Der Leser hier alles beisammen findet, was ihn in Hinsicht auf die Geschichte der letzten verhängnißvollen Jahre ... interessiren kann" Carl Erhard, "Vorrede," in *Conversations-Lexicon oder Encyclopädisches Handwörterbuch für gebildete Stände: A bis Boyle* (Stuttgart: Macklot, 1816), II.

the edition appearing here, on the contrary, the most recent history of said epoch has been wholly appended.³¹⁹

The marketing of Erhard's *Conversationslexicon* was typical of the early nineteenth century. While previous generations of encyclopedias had been written by and for members of Europe's learned community, Brockhaus, Erhard and their competitors aimed to popularize the genre and draw in the growing numbers of bourgeois readers. The new breed of encyclopedias offered such readers the chance to expand their intellectual horizons and improve their grasp of past and current events in the worlds of science, politics and learning.³²⁰

Contemporary makers of such reference works reckoned that the political situation on the continent had created a great need for tools of this sort. The long period of military conflicts that had begun with the Napoleonic Wars had uprooted soldiers especially, and forced them to navigate the unfamiliar terrain of new social milieus. Bewildered by the rapid change of context, these men needed to learn to interact with people from backgrounds other than their own. Brockhaus's and Erhard's reference works helped them master a necessary skill: engaging in polite conversations on matters of general interest. Both Brockhaus and Erhard marketed their publications as tools that helped the socially mobile hone their proficiency in this bourgeois pastime.

The popular appeal of both the Saxon and Württemberg editions of the *Conversationslexicon* did not mean that Erhard and Brockhaus neglected the learned audience, the traditional readers of encyclopedias. On the contrary, the scientific perspective that Erhard had adopted made his *Conversationslexicon* "a formidable aid" to members of the learned community.³²¹ For both Brockhaus and Erhard, however, learned readers did not constitute a target audience. The *Conversationslexicon* primarily appealed to a much broader group of knowledge consumers.³²² Besides the soldiers and everyone who wanted to expand their intellectual horizons, Erhard said in the preface to the first volume, his reference work catered especially to "the man of the world and business, maturing

³¹⁹ "Die gegenwärtige neue Ausgabe unterscheidet sich durch wesentliche Verbesserungen von der dritten, deren Erscheinung im J. 1814 begann, und in der also die großen Ereignisse, die seit dem russischen Feldzuge die Gestalt von Europa verändert haben, entweder gar nicht oder nur ohne Bezeichnung ihrer Folgen, bemerkt werden konnten. In der hier erscheinenden Auflage dagegen ist die neueste Geschichte von der besagten Epoche an vollständig nachgetragen". Ibid., I.

³²⁰ For more on this development, see Ulrike Spree, *Das Streben nach Wissen: Eine vergleichende Gattungsgeschichte der populären Enzyklopädie in Deutschland und Großbritannien im 19. Jahrhundert* (Tübingen: Walter de Gruyter, 2000).

³²¹ "treffliches Hülf- und Erleichterungsmittel" Erhard, "Vorrede," 1816, I.

³²² Ibid.

youngsters, and educated women.”³²³ The Macklot edition offered an enticing proposition to these readers. Amassing information from a wide range of sources, Erhard contended, it “makes a whole library superfluous.”³²⁴ Brockhaus offered the same benefit, and Erhard commended him for assembling and popularizing such a useful reference tool. But in comparison to his encyclopedia, Erhard maintained, Brockhaus’s proved deficient. Not only did the Macklot edition cost much less. It also contained much more. Why buy the Saxon edition, Erhard asked prospective customers, when one could own a version with entries on “Alexander I, Arcis sur Aube, August Friedrich (king of Saxony), Bar sur Aube, Bavaria, la belle Alliance, Berthier, Blücher, Bonaparte (Lucian) and many others”?³²⁵

Erhard reckoned that his additions made the Macklot edition the better and more competitive reference work. But did Erhard and Brockhaus really offer the same *Conversationslexicon*? Erhard thought so when he first began to produce the book. In 1816, he marketed his edition as an improved version of Brockhaus’s encyclopedia, rather than a different work. Later, he even wanted Brockhaus to sanction his edition as the Stuttgart version of the original *Conversationslexicon*.³²⁶ Unsurprisingly, Brockhaus wished to have the southern and southwestern markets for himself, and he refused to acknowledge Erhard’s edition as anything but spurious and illegitimate. This dynamic changed over the course of their feud, as Erhard began to portray himself as the maker of a new encyclopedia. While he never tried to conceal the derivative nature of his *Conversationslexicon*, in 1818 Erhard denied that the concept of Nachdruck applied to his improved and revised publications. Against Brockhaus’s many attacks, Erhard responded by saying that “it does not lie in the concept of unauthorized reprinting to give the reprinted work an elevated character.”³²⁷

Erhard argued that his own publication did not qualify as piracy, but that Brockhaus’s book did meet the criteria for unauthorized copying. To him, Brockhaus seemed to have copied articles not only from his publication, but also from others. If readers took the time to really scrutinize his book, they would find themselves forced to reassess their

³²³ “der Welt- und Geschäftsmann, der heranziehende Jüngling, das gebildete Frauenzimmer” Ibid.

³²⁴ “[M]an kann bei dem Reichtum seines Inhalts in strengem Sinne von demselben sagen, daß es eine ganze Bibliothek entbehrlich mache.” Ibid.

³²⁵ “Alexander I, Arcis sur Aube, August Friedrich (König von Sachsen), Bar sur Aube, Bayern, La belle Alliance, Berthier, Blücher, Bonaparte (Lucian) und viele andere.” Ibid., II.

³²⁶ I return to discuss this issue later in this chapter.

³²⁷ “[D]er Unterzeichnete kann sich mit der Bemerkung begnügen ... daß es in dem Begriff des Nachdrucks zunächst nicht liege, dem nachgedruckten Werke einen höhend Character zu geben...”. Erhard, “Vorrede,” 1818, VII.

view of Brockhaus as a legitimate publisher. Suggestions such as this incensed Brockhaus. “It can be called a sign of our times that he, in his advertisement, has on top of everything the audacity to call himself the publisher and my edition ‘the Leipzig duplicate.’”³²⁸

Brockhaus probably considered it to be beneath his dignity, or simply absurd, to respond in more detail to the charge that he had reprinted a reprint edition of his own publication. He did, however, question the assertion that Erhard’s encyclopedia was not a result of piracy. Reasonable men knew the difference between an unauthorized reprint and a legitimate publication on a gut level. Brockhaus championed a culture of detection based not on abstract principles, but on intuition. “Every reasonable man intuitively knows what it means to publish a new work, which differs from a similar [and] earlier publication both with regards to the content and the form,” Brockhaus maintained.³²⁹ Though intuitive, the nature of a new work could still be defined relative to other kinds of publications. Unsolicited improvers of the *Conversationslexicon* had failed to achieve this, Brockhaus argued. “By expanding it through the insertion of new articles, or by correcting it and improving individual articles, nothing is in a way easier than to improve a work such as the *Conversationslexicon*.”³³⁰ However, Brockhaus interjected, the fact that his publication could be improved did not mean that book merchants such as Erhard should have the right to do so. “[T]his is our acquired property,” Brockhaus wrote, “and those who feel the lust to produce a better and more complete work, they create it according to their own fashion but do not reprint ours.”³³¹

Brockhaus had acquired a royal privilege to protect himself from men of Erhard’s ilk, so he naturally expected officials from the kingdom of Württemberg to share his views on the unauthorized use of already published material. Württemberg’s college of censors disappointed him. They concluded that Erhard had published a book with better typography

³²⁸ “[E]s kann wohl auch ein Zeichen unserer Zeit genannt werde, daß derselbe obendrein die Unverschämtheit hat und haben darf, sich in seinen Anzeigen ‘den Verleger’ und meine Original-Ausgabe ‘den Leipziger’ Abdruck zu nennen”. Friedrich Arnold Brockhaus, “Anzeige,” in *Intelligenzblatt der Jenaische allgemeine Literatur-Zeitung. Siebenzehnter Jahrgang. Erster Band. Januar, Februar, März.*, vol. 17, 7 (Leipzig & Jena: Jenaische allgemeine Literatur-Zeitung, 1820), 52.

³²⁹ “Was es aber heiße ein neues Werk, das durch Inhalt und Form von einem ähnlichen früheren sich unterscheidet, herausgeben, ... das fühlt jeder Verständige selbst”. Brockhaus, *Darf Macklot in Stuttgart mir, dem rechtmäßigen Verleger, und dem Privilegium seines eigenen Königs zum Hohn, das Conversations-Lexicon zum zweiten Mal nachdrucken?*, 3.

³³⁰ “Es ist gewissermaßen sogar nichts leichter, als einem Werke wie das Conversations-Lexikon, bey einem neuen Drucke Vermehrungen durch die Einschaltung neuer Artikel zu geben, auch sogar es zu berichtigen und in einzelnen Artikeln zu verbessern.” Ibid., 12.

³³¹ “dies ist *unser wohl erworbenes Eigenthum*, und wer Lust hat, ein besseres und vollständigeres Werk dieser Art zu schaffen, der schaffe es auf *seine* Art, aber er drucke uns das unsrige nicht nach.” Ibid.

and paper quality. In addition, the changes that Erhard had introduced truly appeared to be important improvements and additions. “This book,” the censors said, “consists of improvements and additions that do not exist in the original.”³³² Though their report still referred to it as the “Macklot Nachdruck” and even conceded that it was perhaps not new, the Württemberg censors decided in the end not to treat Erhard’s encyclopedia as a reprint of the original. At the end of the process, the kingdom of Württemberg not only pardoned Macklotsche Buchhandlung, but also allowed Erhard to put the seal of “royal authorization” (königliche Autorisation) on the title page of his *Conversationslexicon*.³³³

The verdict spurred Brockhaus to action.³³⁴ Shortly afterwards, he filed a complaint with the ministry for domestic affairs, urging the college of censors to reconsider their stance on Erhard’s encyclopedia.³³⁵ The appeal came to nothing. Baffled, Brockhaus found it difficult to fathom why officials in Württemberg wanted to protect villainy of the heinous kind perpetrated by Erhard. It seemed even harder to stomach the reasoning behind the decision. Brockhaus had interviewed a member of Württemberg’s chamber of deputies who told him that individuals such as Erhard brought the light of civilization to the area.

He considers [Karl] Schmieder, Fleischhauer, Mäcken and Macklot to be Württemberg’s greatest benefactors, for Württemberg has these brave men and their efforts to thank for the place that Württemberg (according to his opinion) holds on the ladder of high culture.³³⁶

³³² “Akten des ehemaligen Zensurkollegiums: Erlaubnis für Buchdrucker Macklot in Stuttgart zum Abdruck des bei Brockhaus in Altenburg und Leipzig erscheinenden Konversationslexikons nach Vorlage bei der Zensur,” E 146 Bü 5147, 1, *Hauptstaatsarchiv Stuttgart: Ministerium des Innern III / 1806-1906*.

³³³ “Königliche Autorisation” Brockhaus, *Darf Macklot in Stuttgart mir, dem rechtmäßigen Verleger, und dem Privilegium seines eigenen Königs zum Hohn, das Conversations-Lexicon zum zweiten Mal nachdrucken?*, 14.

³³⁴ “Ansuchen einzelner Autoren und Verleger um Privilegien gegen Büchernachdruck sowie Klagen gegen Büchernachdrucker,” E 31 Bü 574, *Hauptstaatsarchiv Stuttgart: E 31 Geheimer Rat I / 1816 - 1884, Vorakten ab 1587*.

³³⁵ See “Maßnahmen gegen den Nachdruck von Büchern zur Sicherstellung der Rechte der Schriftsteller und Verleger (Allgemeines und einige Einzelfälle); “Ansuchen einzelner Autoren und Verleger um Privilegien gegen Büchernachdruck sowie Klagen gegen Büchernachdrucker,” in *Hauptstaatsarchiv Stuttgart: E 31 Geheimer Rat I / 1816 - 1884, Vorakten ab 1587*. In addition to Brockhaus’ complaint, the latter includes complaints filed by the Zürich book merchant Heinrich Gessner, who argued that Macklot had pirated his *M. Tullius Cicero’s Sämtliche Briefe übersetzt und erläutert von C.M. Wieland* (1808); Johann Esaias Seidel against Johann Jakob Fleischhauer in Reutlingen; Johann Georg Cotta against J. J. Mack also from Reutlingen.

³³⁶ “[E]r halte Schmieder, Fleischhauer, Mäcken u. Macklot für die größten Wohlthäter Württembergs, weil Württemberg diesen braven Männern und ihren Bestrebungen die Stufe der hohen Cultur verdanke, auf welcher es (seiner Meinung nach) stehe!!” Brockhaus, *Darf*

Brockhaus found this reasoning laughable. He mockingly wondered how the north German states had managed to thrive without knowledge entrepreneurs such as Erhard. “Poor Saxony and Prussia and you, the whole of north Germany, which have to do without such men of the Enlightenment ... what kind of night must rule there!”³³⁷

A Sacred Pact

With the support of the authorities in Württemberg, Erhard’s publication seemed set for an illustrious career. This was not to be. Instead, Brockhaus’s *Conversationslexicon* became one of the most successful publications of its time. Despite his book’s stellar career, the extent of the troubles that Brockhaus had to confront before he could defeat Erhard makes it difficult to say that he won the feud. No legal authority took Brockhaus’s side in the dispute. Instead, Brockhaus wore Erhard down. In the end, Erhard simply gave up. This and the following section examine this process in more detail.

Brockhaus began to plan his next move as soon as he had filed the complaint against Erhard with the ministry for domestic affairs in Stuttgart. The route he decided to take sidestepped the legal authorities altogether. A deal, or *Privatvertrag*, with Erhard now seemed to be the best way forward. Only by discussing matters in person, Brockhaus reckoned, could he and Erhard begin to understand each other. One of Brockhaus’s liaisons in Stuttgart, Heinrich Erhard, nephew of Carl Erhard, helped him arrange the meeting. Thanks to the intervention of Erhard’s nephew, Brockhaus, Erhard and two witnesses agreed to meet in Stuttgart on January 16, 1817.³³⁸ It might seem odd that Erhard agreed to meet Brockhaus. After all, the kingdom of Württemberg had ruled in his favor, not Brockhaus’s. However, Erhard had grown increasingly tired of being called a polyp in Brockhaus’s unending barrages. After having had this and other “Schimpfnamen” thrown at him for several years, Erhard desired peace and quiet.³³⁹

The deal that they managed to broker did not prove long-lived. At the time, however, it seemed to offer everything that Brockhaus had hoped

Macklot in Stuttgart mir, dem rechtmäßigen Verleger, und dem Privilegium seines eigenen Königs zum Hohn, das Conversations-Lexicon zum zweiten Mal nachdrucken?, 15.

³³⁷ “Armes Sachsen und Preußen und du ganzes Nord-Deutschland, wo man solcher Aufklärungs-Männer entbehrt...welche Nacht muß da herrschen!” Ibid.

³³⁸ Carl Erhard, “Nothgedrungene Erklärung zur Sicherung Rechts und Gerechtigkeit,” in *Conversations-Lexicon oder Encyclopädisches Handwörterbuch für gebildete Stände: M und N*, vol. 6 (Stuttgart: A.F. Macklot, 1817).

³³⁹ Ibid., IV.

for, and he returned to Saxony fairly pleased. While the deal allowed Erhard to sell the remaining stock of his *Conversationslexicon*, it forbade Macklotsche Buchhandlung from publishing a second edition. Erhard agreed, on the condition that Brockhaus never again discredit his name in the public press. This meant that Brockhaus could not speak ill of Erhard, his edition of the *Conversationslexicon*, or even the alterations that had led Württemberg's college of censors to reject Brockhaus's complaint. According to Erhard, Brockhaus promised to "take no additional steps to discredit the edition of Hrn. Macklot or demean him in any way in the eyes of the public."³⁴⁰ Brockhaus vowed to grant Erhard peace and quiet, but he also threatened that if Erhard broke his part of the deal, he would resume the inflammatory campaign that he had waged against him since 1816.

The deal fell apart shortly after Brockhaus's return from Stuttgart. Erhard blamed an advertisement for a new edition of Brockhaus's *Conversationslexicon*. In this *Bericht*, Brockhaus continued the war on piracy he had been waging.³⁴¹ The first half of the text mounted a general attack on south German print pirates. The rest consisted of a comparison between his and Erhard's editions of the *Conversationslexicon*. Brockhaus's comparison portrayed Erhard's edition in unflattering terms. It was littered with printers' errors and corrupt information. Erhard's alterations were too insignificant to save his publication from being a vastly inferior reprint edition of Brockhaus's own.

Moreover, a closer examination of the unauthorized reprint very soon shows that nearly nothing has happened with regards to the inner completion of the work. In the end, all the so-called additions and improvements turn out to be of no more than half a dozen articles in each volume and are insignificant in relation to the mass of the whole. The print errors of the original are not only mostly repeated, but also increased by countless new ones.³⁴²

³⁴⁰ "Brockhaus, als ursprünglicher rechtmäßiger Verleger, wird keinen einzigen Schritt weiter Thun, diese Ausgabe des Hrn. Macklot zu diskreditieren, oder sie in den Augen des Publikums aus irgend einem Gesichtspunkte herabzuwürdigen..." Ibid.

³⁴¹ Brockhaus published this *Bericht* in many of his publications. I have consulted "Bericht über die vierte Original-Auflage des Conversations-Lexicons mit Königl. Württembergischen Privilegien," in *Zeitgenossen: Biographien und Charakteristiken*, vol. 2, VI vols. (Leipzig & Altenburg: F.A. Brockhaus, 1818), 202–5. This report appeared a year after the original.

³⁴² "Eine nähere Untersuchung des Nachdrucks selbsts zeigte übrigens sehr bald, daß darin für die innere Vervollkommenung des Werks so viel wie nichts geschehen war. Alle sogenannten Vermehrungen und Verbesserungen beschränkten sich am End auf ein halbes Duzten Artikel in jedem Bande, und waren gegen die Masse des Ganzen für nichts zu rechnen. Die in das Original eingeschlichenen Druckfehler waren nicht nur größtentheils wiederholt, sonder auch noch mit unzähligen neuen vermehrt worden." Ibid., 203.

Erhard responded promptly, conceding the limited nature of his editorial efforts but maintaining that they still altered the original in significant ways. “Even if they only cover half a dozen articles in each volume, small improvements must still always be considered improvements,” he retorted.³⁴³ The mild wording that Erhard used falsely suggests that his response was a timid one. To him, Brockhaus’s derogatory remarks seemed tantamount to a breach of contract, raising the question of whether the *Privatvertrag* still prevented Erhard from producing a second edition of the *Conversationslexicon*. “Since Hr. Brockhaus has broken his word once again: can Macklot be held to the promise given to the same?”³⁴⁴

Writing about himself in the third person, Erhard answered that Brockhaus’s insult broke the pact, characterizing his *Bericht* as a gross violation of a holy code of honor. “[C]ontracts must be held sacred,” he asserted.³⁴⁵ The publication of the *Bericht* meant that Erhard no longer felt bound to honor his side of the bargain. He commenced the production of a second edition of his *Conversationslexicon* shortly afterwards. The appearance of this new edition prompted a reply from Brockhaus: a pamphlet entitled *Darf Macklot in Stuttgart mir, dem rechtmäßigen Verleger, und dem Privilegium seines eigenen Königs zum Hohn, das Conversations-Lexicon zum zweiten Mal nachdrucken?* (Must Macklot in Stuttgart, in contempt of me the legitimate publisher and the privilege granted by his own king, reprint the *Conversations-Lexicon* a second time?) Brockhaus’s pamphlet cast doubt on Erhard’s justification for publishing a second edition of his encyclopedia, arguing that he had planned to do so all along. It portrayed the *Bericht* as a moral self-defense against Erhard’s foul play.

In a mob-like diatribe in the sixth volume of his unauthorized reprint, Macklot construed this my moral self defense as a gross violation, and he of course wholly kept secret that it was he himself who had provoked me, and already here he made it clear that his intention was to break the contract and produce a second unauthorized reprint of my work.³⁴⁶

³⁴³ “[...]selbst eine kleine Verbesserung, sollte sie auch nur ein halbes Duzten Artikel in jedem Bande umfassen, dennoch immer als Verbesserung angesehen werden dürfe”. Erhard, “Nothgedrungene Erklärung zur Sicherung Rechts und Gerechtigkeit,” VI.

³⁴⁴ “Weil Hr. Brockhaus nun einmal wortbrüchig geworden ist: kann Macklot an seine demselben gegebene Zusage gebunden seyn?” Ibid., VII.

³⁴⁵ “Verträge heilig gehalten werden müssen” Ibid., III.

³⁴⁶ “Diese meine moralische Nothwehr machte Macklot mir bereits in einer pöbelsinnigen Diatribe zu der Ausgabe des 6ten Bandes seines ersten Nachdrucks zum großen Verbrechen, indem er natürlich verschweig, daß er selbst mich dazu provocirt habe, und schon hier gab er zu verstehen, daß es seine es seine Absicht sey, den Contract selbst zu brechen und einen zweiten Nachdruck meines Werks zu veranstalten”. Brockhaus, *Darf Macklot in Stuttgart mir,*

Brockhaus suggested that Erhard had devised a cunning plan to confuse legal institutions and the public.³⁴⁷ He had tricked Brockhaus into insulting him and thereby breaking the pact, so that he could publish a second edition of the *Conversationslexicon* and still be seen as morally superior to Brockhaus. According to Brockhaus, this provocation consisted of Erhard's misrepresentation of their meeting on January 16. At the meeting, Brockhaus wrote, he had agreed to tolerate Erhard's publication if Erhard promised never to produce another one. Erhard, on the other hand, now not only claimed that Brockhaus had agreed to sanction his publication. He even suggested that their Privatvertrag made him and Brockhaus business partners. In keeping with this line of reasoning, Erhard also portrayed the first edition of his encyclopedia as a joint undertaking between him and Brockhaus—infuriating the Saxon publisher with the suggestion that the two men were of the same social standing.

Erhard's characterization of their relationship "has compromised me in front of the entire public and angered past purchasers of the legitimate edition."³⁴⁸ Erhard was a lowly pirate, while Brockhaus was a respectable book merchant. In addition to the *Bericht*, Brockhaus took other drastic steps to reassert the boundary that Erhard had set out to undermine. From now on, Brockhaus refused to respond to or in any way interact with Erhard.

There can be no personal [or] public communication between him and me, for he practices a business that appalls public taste. I, on the other hand, [run] an honest and honorable [business].³⁴⁹

By refusing to address his antagonist, Brockhaus hoped to establish the boundary between a respectable book merchant and a disreputable one.

Trust Issues

Were Brockhaus and Erhard book merchants of the same social standing? Or was Brockhaus a respectable publisher who had fallen prey to a vile criminal? Were both men pillagers of other people's work? Or had, in

dem rechtmäßigen Verleger, und dem Privilegium seines eigenen Königs zum Hohn, das Conversations-Lexicon zum zweiten Mal nachdrucken?, 19.

³⁴⁷ Ibid., 18.

³⁴⁸ "...auf diese Weise beim ganzen Publico compromittirte und namentlich alle frühere Käufer der Original-Auflage gegen mich aufregte"... Ibid., 19.

³⁴⁹ "...zwischen ihm und mir kann keine persönliche öffentliche Verhandlung Statt finden, da er – ein Gewerbe treibt, auf welchem...die öffentliche Schmach ruht, ich aber ein ehrliches und ehrenvolles." Brockhaus, "Zeitung für die elegante Welt Berlin," 1.

fact, Brockhaus reprinted Erhard's publication and not the other way around? The exchange that broke out between Brockhaus and Erhard underlines the difficulties that confronted contemporary observers of their feud. The boundary between individuals such as Brockhaus and Erhard could be drawn in more than one way, and it was not obvious that one line of demarcation between unauthorized reprinting and legitimate publishing ought to be favored over another. In this regard, the feud between Brockhaus and Erhard became a representational problem, a fight over the proper way to characterize their relationship. Arguments about the definition of unauthorized reprinting became bound up with the issue of credibility raised by Brockhaus and Erhard's meeting. What had really happened on January 16? Whose account of the meeting should readers trust? This section takes a look at the trust issues raised by Brockhaus and Erhard's public fight.

The nature of encyclopedias made questions of trustworthiness particularly important. As we have already seen, Brockhaus and Erhard encouraged readers of the *Conversationslexicon* to dispense with other books and instead to trust this portable library as their main source of information about the tumultuous changes that had transformed Europe in the first half of the nineteenth century. To make this proposition attractive, Brockhaus and Erhard needed to attain the status of credible information brokers. The success of their business ventures hinged on their believability as publishers committed to an accurate and impartial telling of the truth. Much hung in the balance. If it turned out that Brockhaus and Erhard had misled the public about the agreement between them, their encyclopedias also ran the risk of losing much of their value in readers' eyes. If Brockhaus or Erhard had distorted the truth about the meeting on January 16, could their publications be expected to supply anything but distorted and partial information?

Erhard's deceitful account of the meeting made him undeserving of readers' trust, Brockhaus alleged. Contrary to Erhard's account, Brockhaus claimed that he and his adversary had met face to face in the same way that a victim confronts assailants. At the end of the meeting, Brockhaus had agreed to meet Erhard halfway if Erhard acknowledged and took full responsibility for his crimes.³⁵⁰ A remorseful Erhard, Brockhaus wrote, had agreed to not commit any further sins. Unsurprisingly, Erhard urged readers to treat Brockhaus's words with a great deal of caution. "When he gives the appearance that he is speaking with my own words, he makes himself guilty of the most wretched of

³⁵⁰ Carl Erhard, "Rechtfertigung," in *Allgemeine Zeitung München: Beilage zur Allgemeinen Zeitung*, ed. Johann Friedrich von Cotta, 83 (München: Johann Friedrich Cotta, 1818), 332.

deceptive tricks.”³⁵¹ According to Brockhaus, Erhard had in private conceded that he had committed a crime against Brockhaus. It seemed obvious to Erhard why Brockhaus wanted to deceive the public in this fashion. He wanted to portray Erhard, an innocent man, as a repenting criminal.

Erhard’s allegation aimed to hit Brockhaus where it hurt the most. He accused Brockhaus of being an unreliable Betruger, a lying con man. The Weißenfels playwright and satirist Amandus Adolph Müllner aided Erhard’s efforts to undermine Brockhaus’s credit with readers. The help came unexpectedly, since Erhard and Müllner did not know each other beforehand.³⁵² However, Müllner had been the target of a disparaging article in Brockhaus’s *Conversationslexicon*. Since then, a feud had broken out, with Müllner on one side and Brockhaus, along with one of his employees, on the other. Now, Müller wrote, Brockhaus “hounds my name with libelous publications.”³⁵³ He did not normally find such attacks painful, Müllner argued. However, this was an exception.³⁵⁴ Brockhaus’s vast distribution network meant that false biographical notices about Müllner reached readers in faraway places such as “Batavia and Rio Janeiro [*sic*].”³⁵⁵ The international scope of Brockhaus’s business alarmed Müllner. In the hands of disreputable man such as Brockhaus, the *Conversationslexicon* wielded “terrible power.”³⁵⁶ Few other publications could match the influence it commanded in the sphere of publicity. While he could withstand libelous attacks, even from such a powerful adversary, Müllner feared that less resilient individuals would suffer greatly from Brockhaus’s ill-tempered aggressions. To protect those without the benefit of Müllner’s thick skin, the dominion of the Saxon *Conversationslexicon* needed to be broken.

Müllner proceeded to pen an inflammatory pamphlet, *Die Macht des Converstions-Lexikons und ihr Gegengewicht* (1820), discussing strategies to undermine the disproportionate power that Brockhaus

³⁵¹ “der armseligsten aller Trugkünsten aber mach sich Hr. Brockhaus schuldig, indem er unter dem Scheine, als führe er meine eigenen Worte an”. Ibid.

³⁵² The feud began with a review of Müllner’s plays *König Yngurd* (1817) and *Die Albaneserin* (1820) that Wilhelm Traugott Krug wrote for Brockhaus’ journal *Hermes*. The quarrel spawned a significant number of articles. Brockhaus published all of them in Friedrich Arnold Brockhaus, ed., *Müllneriana: Verhandlungen über eine Rezension der Yngurd im dritten Stück des Hermes zwischen Herrn Hofrath Müllner in Weißenfels, als Verfasser des Yngurd, Herrn Professor Krug, als Redacteur und Herrn Brockhaus, als Unternehmer des Hermes* (Leipzig: Brockhaus, 1820).

³⁵³ “meinen Namen mit Schmähchriften verfolgt”. Amandus Gottfried Adolph Müllner, *Die Macht des Converstions-Lexikons und ihr Gegengewicht. Von Müllner. Aus dem Tübingschen Literatureblatte (Beilage des Morgenblatts) besonders abgedruckt. Preis 6 Pfennige.*, 1820, 1.

³⁵⁴ Müllner, “Die Macht des Conversations-Lexikons und ihr Gegengewicht,” 2.

³⁵⁵ Ibid.

³⁵⁶ “gefährliche Macht” Ibid., 3.

wielded in the public sphere. Müllner's approach aligned with Erhard's. He linked the libelous entry on him to the reliability of the encyclopedia as a whole. Individual articles said something about the character of the publisher and principal editor of the Saxon *Conversationslexikon*. "The individual stroke paints the entire figure of this man," Müllner argued, and Brockhaus's character made him highly unsuitable as the publisher of an encyclopedia.³⁵⁷ The information in an encyclopedia ought to be undistorted by the editor's subjective inclinations. This cardinal principle had been flagrantly violated during the production of Brockhaus's *Conversationslexikon*. To Müllner, Brockhaus seemed capable of "reshaping biographical articles in accordance to his own passions."³⁵⁸

To expose the interestedness with which Brockhaus had produced the Saxon *Conversationslexikon*, Müllner hatched a cunning plan that involved collaboration with Erhard. Together, the two would produce a counterweight publication in accordance with a different editorial principle.³⁵⁹ This counterweight would tell the undistorted truth about Müllner and a wide range of other topics that Brockhaus had lied about in his own edition. Müllner's inflammatory pamphlet described his production process, explaining that he would correct a large number of Brockhaus's articles and give the material to Erhard, who would publish the corrected version:

I would place the *Conversationslexikon* before me, spend one or two months correcting errors in five hundred articles, or adding what was missing in them; would then develop one hundred (or just fifty) wholly new articles (among them perhaps one on Brockhaus); and would finally give all these manuscripts as a gift to the Stuttgart unauthorized reprinter of the *Conversationslexikon*, on the condition that he does not reprint the original dishonoring article about me or at least not without my comments.³⁶⁰

This strategy came with a risk, the Weißenfels playwright realized. By giving the manuscripts to Erhard, would Müllner not be aiding a notorious pirate? Yes, Müllner acknowledged, "but in the best way in the world."³⁶¹ Erhard's edition might be an unauthorized reprint now, Müllner conceded. But the inclusion of his own corrections and additions would change the publication "in the eyes of the public and even before the court of strict law." Müllner's reasoning assumed that readers would not conflate unauthorized reprinting with an adapted edition of the *Conversationslexikon*. Through the inclusion of new and altered articles,

³⁵⁷ "Der einzige Zug zeichnet die ganze Figur dieses Mannes" Ibid., 2.

³⁵⁸ "die biographischen Artikeln nach seinen eignen Leidenschaften umzugestalten". Ibid., 3.

³⁵⁹ Ibid.

³⁶⁰ Ibid., 126.

³⁶¹ "Auf die möglich-beste Art von der Welt". Ibid., 4.

“the unauthorized reprint ceases to be an unauthorized reprint.” In addition, Müllner expected that, thanks to his work, the authority and renown of the Stuttgart encyclopedia “will surpass that of the original.” If Erhard was smart, he could even use the growing authority of his encyclopedia to lure Brockhaus into a trap, forcing him to choose between two equally ruinous alternatives. If Brockhaus failed to update his encyclopedia, its market value would sink like a stone. If he did revise it, however, his new editions would gradually take on the appearance of merely copying the already updated Stuttgart edition. In the end, the unauthorized reprint and the original would switch places. In order to keep pace with Erhard and Müllner’s improved counterweight version, “the original must reprint the reprint edition.”³⁶²

Erhard’s slightly confusing use of the term unauthorized reprint bespeaks the complexity of German piracy debates in the early nineteenth century. A book might be an unauthorized reprint at one point and a legitimate publication at a later one. Erhard’s assertion that Brockhaus’s legitimate publication might become an unauthorized reprint in the future compounded this conceptual confusion. Though Erhard tried to get the public to view Brockhaus as a piratical offender, this view does not seem to have gained much traction. Still, Müllner and Erhard’s assault on his reliability as an information broker clearly distressed Brockhaus. Fearing that this feud could harm his standing with readers, Brockhaus travelled to Stuttgart again, in an attempt to restore the public’s faith in him. This time, he did not meet with Erhard, but with the Stuttgart lawyer Christian Friedrich Albert Schott, a vocal anti-piracy advocate in Württemberg’s chamber of deputies. In Schott, Brockhaus found a companion whose hatred of piracy matched his own. With his help, Brockhaus drafted a lawsuit against Erhard that would determine once and for all who had acted in accordance with the contract and who had violated it. Schott and Brockhaus delivered the lawsuit to the royal Justizkollegium in Ludwigsburg on March 23, 1818. When the Ludwigsburg jurors delivered their opinion on September 14, it did not please Brockhaus. They concluded that he had in fact discredited Erhard without due reason. Brockhaus’s unfair characterization of Erhard’s editorial changes had broken the deal struck between them on January 16.

³⁶² “so hört in den Augen des Publikums und selbst vor dem Dingstuhle des strengen Rechtes der Nachdruck auf, Nachdruck zu sein; das Original muß dem Nachdrucker nachdrucken, um mit dem Nachdrucke notdürftig Schrift zu halten: und da der Nachdrucker alle seine Artikel umsonst bekommt, indem er die neuen des Originals, wie die alten, nachdruckte, seine eignen neuen aber geschenkt bekommt; so ist, wenn der Nachdrucker Kopf hat, mit Gewissheit voraus zu sehen, daß die Publizität des Nachdruckes die des Originals überflügeln werde.” Müllner, “Die Macht des Conversations-Lexikons und ihr Gegengewicht.”

This disappointing news spurred Brockhaus to appeal the Ludwigsburg ruling, but without success. He came back empty-handed this time as well. The Appellationsgerichtshof in Esslingen sided with Erhard, as did the Stadtgerichte in Stuttgart and finally also Württemberg's Oberkollegium.³⁶³ Brockhaus refused to give up despite these considerable setbacks. He remained steadfastly determined to find a legal institution that would recognize Erhard's breach of contract. This seemed impossible in Württemberg, Brockhaus now concluded, but experts elsewhere would probably be less biased towards Erhard. The opinions that Brockhaus managed to gather from legal institutions outside Württemberg did not support him either.³⁶⁴ Scholars in the departments of law at the University of Göttingen and the University of Halle underwrote the legal probity of the initial Ludwigsburg verdict, concluding that Brockhaus did not have a solid case. As a result, Brockhaus tried to downplay the significance of his legal battles with Erhard. The tribunal in Ludwigsburg had not passed judgment on the matter itself, he argued³⁶⁵

Württemberg's Rescript: An Idealist Ban on Piracy

Legal institutions in Göttingen, Halle, Stuttgart, Ludwigsburg and Esslingen vindicated Erhard's honor to little avail. By now, the Stuttgart book merchant had grown even wearier of the animosity that seemed to accompany life in the bellicose book trade. Erhard not only discontinued production of the *Conversationslexicon* after the dust had settled in the early 1820s. He also stepped down from his position as director of Macklotsche Buchhandlung, leaving the public eye for good. Erhard's retirement left Brockhaus the last man standing in their war of attrition. Still, this victory does not easily lend itself to a triumphalist narrative. As

³⁶³ Schott, ed., *Aktenmäßige Verhandlungen in dem Rechtsstreit des Buchhändlers F. A. Brockhaus in Leipzig ... gegen den Nachdrucker Carl Erhard, genannt A. F. Macklot in Stuttgart, dessen unbefugten zweiten Nachdruck des Conversations-Lexicons betreffend: Nro. I.* (Leipzig: F.A. Brockhaus, 1819); Brockhaus, *Friedrich Arnold Brockhaus, sein Leben und Wirken nach Briefen und andern Aufzeichnungen*, 1881, 3:33.

³⁶⁴ Though well known, not much has been written about the legal feud between Brockhaus and Erhard. The most exhaustive account is Eduard Brockhaus fairly short and highly biased account of the affair in *Friedrich Arnold Brockhaus, sein Leben und Wirken nach Briefen und andern Aufzeichnungen*, 3 (Leipzig: Leipzig, F.A. Brockhaus, 1872). One year after the legal battle between Brockhaus and Erhard had ended, Brockhaus's lawyer, Schott, published an account of the affair along with all the documents. Schott, ed., *Aktenmäßige Verhandlungen in dem Rechtsstreit des Buchhändlers F. A. Brockhaus in Leipzig ... gegen den Nachdrucker Carl Erhard, genannt A. F. Macklot in Stuttgart, dessen unbefugten zweiten Nachdruck des Conversations-Lexicons betreffend: Nro. I.* (Leipzig: F.A. Brockhaus, 1819).

³⁶⁵ Brockhaus, "Zeitung für die elegante Welt Berlin," 4.

contemporaries saw it, Erhard ought instead to have emerged victorious. Brockhaus had failed to enlist the backing of the legal and political establishment. Müllner gleefully observed that Brockhaus had taken Erhard to court in vain. “According to a pamphlet published in 1819 by Brockhaus himself, he has filed a complaint against this unauthorized reprinter and lost the process in an opinion from September 1818.”³⁶⁶ Having explored the difficulties faced by Brockhaus over the course of his quarrel with Erhard, I now turn to a discussion of the legal framework that shaped its outcome.

What kind of legal system did Brockhaus have to contend with in Württemberg? In a recent study, the legal scholar Thomas Gergen characterizes Württemberg as a special case in the early days of the German confederation. By the 1820s, he contends, German states had begun to criminalize unauthorized reprinting, while Württemberg chose instead to continue to protect its local piracy industry with the help of a press law designed to do so. Thanks to this reform, piracy continued to flourish in the region.³⁶⁷ Gergen’s analysis builds on a long tradition in German book history. In his study of the book market in Tübingen, for example, the historian Hans Widmann argues that Württemberg offered authors and publishers no protection against unauthorized reprinter in the first decades of the nineteenth century.³⁶⁸ In a similar vein, Ludwig Gieseke contends that Württemberg failed to protect authors and publishers from piracy.³⁶⁹

Gergen, Widmann and Gieseke overlook the troubles the historical actors went through to establish a credible boundary between respectable and disreputable publication practices. As I have shown in this and the previous chapter, such boundaries had to be forged through hard work. For Brockhaus, this effort entailed a great deal of lobbying, yet he still failed to mount a convincing case against Erhard. The nature of his quarrel with Erhard suggests that the legal situation in Württemberg should be viewed in a different light. Those who took a sympathetic stance towards book merchants such as Erhard did not necessarily do so to shield pirate printers from the reach of the law. Württemberg’s college of censors failed to take action against Erhard for a different reason: the Stuttgart book merchant did not meet their definition of a pirate printer. To them, Erhard seemed instead to be a legitimate publisher wrongly

³⁶⁶ “Nach einer bey Brockhaus selbst 1819 erschienenen Flugschrift hat er gegen diesen Nachdrucker geklagt, und in einem Urtheil [sic] vom Sept. 1818 den Proceß verloren.” Müllner, “Die Macht des Conversations-Lexikons und ihr Gegengewicht,” 3.

³⁶⁷ Gergen, *Die Nachdruckprivilegienpraxis Württembergs im 19. Jahrhundert und ihre Bedeutung für das Urheberrecht im Deutschen Bund*, 179.

³⁶⁸ Hans Widmann, *Tübingen als Verlagsstadt* (Franz Steiner Verlag, 1971), 150.

³⁶⁹ Gieseke, *Vom Privileg zum Urheberrecht*, 186.

accused of piracy by a foreign competitor. The suggestion that Erhard did not qualify as an unauthorized reprinter prompted Brockhaus to respond with a different definition of reprinting. By doing so, he was not primarily trying to convince Württemberg to begin taking a stand against book piracy. He wanted state officials there to adopt a broader definition of unauthorized reprinting.

The limited protection that Württemberg provided against unauthorized reprinting might have made the press law in Württemberg special in the early nineteenth century. Still, the decision to protect book merchants such as Erhard did not deviate from the definition of authorship propounded by the philosophical architects behind the authorial rights reform. The previous chapter showed that philosophers such as Kant and Fichte championed a definition of authorship that included publication practices such as Erhard's. As we shall now see, the press law in Württemberg incorporated similar views as well. The legal document that shaped the quarrel between Brockhaus and Erhard was passed on February 25, 1815, when Württemberg's king Friedrich I announced *Königliches Rescript, Privilegien gegen den Bücher-Nachdruck betreffend, vom 25. Februar. 1815*. The rescript's opening paragraph discussed the motivations behind the reform:

To unite the interest of the author, who has published a text either on his own or through another, and the interest of our subjects in the aim of promoting spiritual education, ... we have found ourselves moved ... to make the following publicly known.³⁷⁰

In the paragraph following this statement of intent, it was declared that both domestic and foreign writers could apply for a privilege. This privilege protected beneficiaries against unauthorized reprinting for six years.³⁷¹ During this period, the privileged book "will be reprinted by no one in the kingdom without the permission of the one who has obtained the privilege."³⁷² Württemberg's rescript adhered to an absolutist political

³⁷⁰ "Um das Interesse der Schriftsteller, welche eine von ihnen verfaßte Schrift entweder selbst oder durch einen Andern herausgeben, mit dem Interesse Unserer Unterthanen in Absicht auf die Beförderung der Geistesbildung ... zu vereinigen, haben Wir Uns bewogen gefunden, Folgendes ... zur allgemeinen Kenntniß zu bringen". "Königliches Rescript, Privilegien gegen den Bücher-Nachdruck betreffend, vom 25. Februar. 1815," in *Königlich-Württembergisches Staats- und Regierungs-Blatt*, 9 (Stuttgart, 1815), 74.

³⁷¹ After six years, the recipient of a privilege had to file for a new one. Those who disrespected the privilege during the six-year period would have their entire stock of pirate editions confiscated. For each pirate edition that had already been sold, the privilege holder would be reimbursed the price of the original edition. The money came out of the pirate publisher's own pockets.

³⁷² "Es werden auf besonderes Ansuchen der inn- und ausländischen Schriftsteller, oder derjenigen, welche an ihrer Stelle als Verleger ein Buch herausgeben, Privilegien auf eine bestimmte Zeit von sechs, und Nach Beschaffenheit des Werks, und der in den Gesuchen um

order with its glory days in the past.³⁷³ Authors and publishers needed to apply for a privilege, a gift from the sovereign, to gain the state's protection against unauthorized reprinting. The rescript also introduced much that seemed entirely new. It acknowledged the rights of both domestic and foreign writers and book merchants to apply for privileges. In practice, this meant recognizing the legal existence of German rights holders, a category that had not existed in Württemberg before. In addition, a new and romantic kind of author appeared to gain legal recognition. Authors, the rescript argued, take a special interest in the fate of their work. The edict's opening paragraph explained that the kingdom of Württemberg aimed to promote authors' interest, and aligned this goal with the interest of the state. Encouragement of authorial productivity promoted the spiritual education of the kingdom as a whole, the rescript proposed.

Württemberg's rescript of 1815 responded to and participated in contemporary debates about "the German question," that is, whether German states in the postbellum period ought to be joined in a nation, a federation, a looser confederation or not at all.³⁷⁴ The downfall of Napoleon's continental system in 1814 made questions about the future organization of the German language area both urgent and controversial. Friedrich I announced his plans to reform the book market after disagreements on the German question nearly reached breaking point at the Congress of Vienna in late 1814. On Christmas Day, frustration at these discussions induced the king of Württemberg to storm out of a meeting at Metternich's Foreign Chancellery and leave Vienna in a hurry.³⁷⁵

One of Napoleon's former vassals, the king of Württemberg had much to think about on the way back to Stuttgart. Unlike Saxony, Württemberg had left Napoleon's Rheinbund a year before the army of the Sixth Coalition entered Paris and forced Napoleon to yield. Its timely shift of alliance enabled Württemberg to avoid the fate of Saxony, whose steadfast loyalty to France precluded king Friedrich August from taking an active part in the peace congress. Still, Württemberg owed much to Napoleon, who granted sovereign powers and opportunities for territorial expansion to his German allies in exchange for military support and

solche Privilegien anzuführenden und zu bescheinigenden Umstände auf mehrere Jahre dahin erteilt werden, daß ein solches Buch binnen dieser Zeit, ohne Erlaubniß dessen, der das Privilegium erhalten hat, von Niemand im Königreiche nachgedruckt". "Königliches Rescript, Privilegien gegen den Bücher-Nachdruck betreffend, vom 25. Februar. 1815," 74.

³⁷³ For more on the history of German privileges, see Gieseke, *Vom Privileg zum Urheberrecht*, 39 ff.

³⁷⁴ Alter, *The German Question and Europe*.

³⁷⁵ For a contemporary account of this event, see Bertuch, *Carl Bertuchs Tagebuch vom Wiener Kongress*, 81–82.

unwavering obedience. Württemberg's dependency on France put it at risk in the negotiations that commenced after the war had ended. Their debt to France raised the question of whether vassal states such as Württemberg ought to retain sovereignty now that Napoleon faced incarceration on the island of Elba.³⁷⁶

The uncertainty of their fate in the postwar period overshadowed most other issues for the French satellites that did take active part in the congress. Of these, Württemberg had special reasons to fear retribution from victors unsullied by the French connection. Württemberg's significant contribution to Napoleon's war machine had not only enlarged its territory. It had also made Friedrich I the ruler of over two hundred thousand new subjects. Napoleon had transformed Württemberg from a small duchy into a middle-sized kingdom. He joined together the numerous ecclesiastical benefices, free cities and imperial lordships that dotted the Swabian Circle of the Holy Roman Empire and united the heterogeneous region into a kingdom whose sovereign was in France's debt. The Württemberg delegation therefore arrived at the Congress of Vienna with the aim of subverting attempts to reverse the changes that had redrawn borders in the German language area since France's initial incursion. In Vienna, Friedrich I balked at the idea of his kingdom's subsumption under a German nation. Even the notion of a loose confederation of states seemed risky to the delegation from Württemberg.³⁷⁷

The form of the future confederation of German states had not yet been decided when Friedrich I left Vienna in December 1814. Still, he rightly sensed that Austria and Prussia would try to create a "double-headed protectorate."³⁷⁸ In an assembly under a combined Prussian and Austrian presidency, middle-tier states such as Württemberg would find it hard to influence the proceedings in substantial ways. The growing significance of the book trade made debates about a piracy ban one of the arenas where discussions about the political organization of the German language area took place. A confederal ban on book piracy passed during the Congress of Vienna would threaten to place political power in Frankfurt and greatly diminish Stuttgart's ability to regulate an important branch of its trade. Friedrich I continued to protect his country's independence even after acquiescing under pressure from Metternich, who promised to legitimize his authority in exchange for his signature on the confederal act. Württemberg did, however, become a member state of

³⁷⁶ Karl Weller, *Württembergische Geschichte*, 10th ed. (Stuttgart & Aalen: Theiss, 1957), 166 ff.

³⁷⁷ Vick, *The Congress of Vienna*, 253.

³⁷⁸ Matthew Bernard Levinger, *Enlightened Nationalism: The Transformation of Prussian Political Culture, 1806-1848* (Oxford & New York: Oxford University Press, 2002), 133.

the confederation shortly after the Congress of Vienna. Württemberg's membership helped legitimate the confederation in 1815 but also prepared the ground for the problems that seemed to riddle it a few decades later. In the mid-nineteenth century, the zeal with which states such as Württemberg continued to protect their independence helped make the German confederation a failed political construct, according to disappointed nationalists.³⁷⁹

Though the signs of future troubles were already visible in 1815, nationalists could overlook the political establishment's lack of interest in, and even outright hostility to, the idea of German unification. After 1815, nationalists such as Brockhaus still felt justified in portraying the confederation as a stepping-stone towards the future unification of greater Germany. In the years to come, the king of Württemberg, along with several other heads of state, did their best to disappoint these hopes. To temper the process of unification that seemed to be underway, they passed constitutions of their own. Friedrich I announced that Württemberg stood ready to do so shortly after he took his leave from the festivities, negotiations and intrigues of the Conference of Vienna.³⁸⁰

The estates vetoed Friedrich's constitutional bid, but they retained the provision on reprinting that accompanied it.³⁸¹ This news surprised contemporary observers. Not only was it unexpected that a neo-absolutist hardliner such as Friedrich I wanted to bolster the local book trade with a seemingly liberal reform.³⁸² But also, Brockhaus considered Austria and Württemberg to be safe havens for pirates. The rescript raised alarm over the real motives behind the reform. Why, commentators asked, had the king seemingly changed his mind? Brockhaus greeted this reform with a great deal of suspicion. His reading of the legal document suggested that he and other book merchants had ample reason to worry. Through a closer examination of the Württemberg rescript, Brockhaus wrote, "I soon realized that the acquired royal privilege did not provide security in my present case."³⁸³ A paragraph at the end of the rescript introduced a loophole applicable to the kinds of publication practices that Kant and Fichte had discussed towards the end of the eighteenth century. Privileges

³⁷⁹ Weller, *Württembergische Geschichte*, 171 ff.

³⁸⁰ For more on the monarchical constitutionalism of this period, see Markus J. Prutsch, *Making Sense of Constitutional Monarchism in Post-Napoleonic France and Germany* (Basingstoke & New York: Palgrave Macmillan, 2012).

³⁸¹ Weller, *Württembergische Geschichte*.

³⁸² Vick, *The Congress of Vienna*, 255.

³⁸³ "Denn bey genauerer Untersuchung der Würtembergischen...Gesetzgebung über die Nachdrucker-Befugnisse, sah ich bald ein, daß das erhaltene Königl. Privilegium mich in meinem gegenwärtigen Falle nicht sichere." Brockhaus, *Darf Macklot in Stuttgart mir, dem rechtmäßigen Verleger, und dem Privilegium seines eigenen Königs zum Hohn, das Conversations-Lexicon zum zweiten Mal nachdrucken?*, 16.

granted by Württemberg did not protect beneficiaries against “the publication of a translation or a reworking of the privileged text, or an excerpt of said text.”³⁸⁴

The paragraph seemed to be a perverse joke to Brockhaus. A privilege, he argued, ought to protect legitimate books against this heinous brand of unauthorized reprinting in particular. Since a privilege from Württemberg would not do so, Brockhaus questioned the true intentions behind the reform. To him, there seemed to be a gap between the wording of the rescript and the practices it promoted. Württemberg had sworn allegiance to “the most liberal principles at least with words.”³⁸⁵ If the rescript sounded like a liberal reform, its implementation appeared to encourage illiberal publication practices. Its definition of unauthorized reprinting

paralyzed the entire privilege. ... He [the unauthorized reprinter] is allowed to use the privileged original by excerpting and reworking it. ... With these [paragraphs on unauthorized reprinting] the unauthorized reprinter has only to refrain from reprinting the original word for word.³⁸⁶

To Brockhaus, Erhard’s dubious practices exemplified this problem. “Macklot’s new unauthorized reprint,” he observed, “contains all new articles from the privileged edition, but slightly paraphrased or differently contrived.”³⁸⁷ Unsurprisingly, the limited power of his privilege dissatisfied Brockhaus. “[C]ompletely illusory,” he called it.³⁸⁸ If the privilege did not provide protection against unauthorized reprinters such as Erhard’s, it seemed useless to Brockhaus. What then, he asked, “does a privilege provide protection against?!”³⁸⁹

Although Brockhaus struggled to gain political and legal acceptance for his views on book piracy, he was not the only contemporary critic of Württemberg’s reform of its book market. The

³⁸⁴ “die Herausgabe eine Uebersetzung oder einer Umarbeitung der privilegierten Schrift, oder Auszugs aus derselben”. “Königliches Rescript, Privilegien gegen den Bücher-Nachdruck betreffend, vom 25. Februar. 1815,” 75.

³⁸⁵ “wenigstens durch Worte zu den liberalsten Grundsätzen bekannt hat”. Brockhaus, *Darf Macklot in Stuttgart mir, dem rechtmäßigen Verleger, und dem Privilegium seines eigenen Königs zum Hohn, das Conversations-Lexicon zum zweiten Mal nachdrucken?*, 13.

³⁸⁶ “das Privilegium ganz paralysieren.... Es ist ihm zugleich erlaubt, die privilegierte Schrift auszugsweise und durch Umarbeitung zu benutzen. Bei jenen hingegen hat sich der Nachdrucker bloß zu hüten, die privilegierte Schrift buchstäblich nachzudrucken”. As quoted by Eduard Brockhaus *Friedrich Arnold Brockhaus, sein Leben und Wirken nach Briefen und andern Aufzeichnungen*, 1881, 3:8.

³⁸⁷ “der neue Nachdruck Macklots enthält alle neuen Artikel der privilegierten Auflage, ... nur etwas paraphrasirt oder anders gestellt.” Brockhaus, *Darf Macklot in Stuttgart mir, dem rechtmäßigen Verleger, und dem Privilegium seines eigenen Königs zum Hohn, das Conversations-Lexicon zum zweiten Mal nachdrucken?*, 17.

³⁸⁸ “völlig illusorisch” Ibid.

³⁸⁹ “Wovor schützt denn also das Privilegium?!” Ibid.

liberal nationalist historian Heinrich Luden wrote about the rescript in a scathing commentary in his journal *Nemesis*, arguing that it granted Württemberg's print pirates permission to "carry on without impediments."³⁹⁰ Luden felt dismayed by the fact that Württemberg had passed this shameful reform during the Congress of Vienna. "This happened during a time when plenipotentiaries from German states convened at the Congress of Vienna with the aim of drafting a German constitution."³⁹¹ Writing in *Hermes*, one of Brockhaus's journals, Wilhelm Traugott Krug expressed a similar view. He pointed out that the sizeable loophole in the rescript made it possible for unauthorized reprinters to evade the entire privilege.³⁹² According to Krug, the kingdom of Württemberg had put in place a "glorious, self-destructing law!"³⁹³

For these and other critics, Württemberg's rescript typified the rigged legal frameworks with which piratical states concealed the true nature of their intentions. In practice, Württemberg's so-called liberal reform trampled on the rights of authors and publishers. This blatant disregard troubled Brockhaus for two reasons. Besides the localized threat it posed to his business venture, it also set a dangerous precedent for the rest of the confederation. "The security of everyone's property would be annihilated if these principles gained ground outside the region."³⁹⁴ Worrying signs suggested that they had already begun to do so. In fact, Brockhaus argued, developments in Württemberg exemplified a growing problem in the German language area as a whole. He expected disaster to follow should the trend continue unchecked. "If the principle that reigns in Württemberg becomes general ... there will be neither a book trade nor a literature."³⁹⁵ Brockhaus's bleak prognostication took for granted

³⁹⁰ "Indem man nämlich zu Anfang des Jahres 1815 Württembergische Bücherprivilegien gegen den Nachdruck ausbot, und eine Ordnung über deren Verleihung aufstellte: erklärte man den Württembergischen Nachdruck für rechtmäßig, und sprach aus: - daß er ungestört fortdauern solle." Heinrich Luden, "Fragmente, veranlaßt durch die königlich-Württembergischen Gesetze über den Nachdruck," in *Nemesis: Zeitschrift für Politik und Geschichte*, ed. Heinrich Luden, 12:2 (Weimar: Landes-Industrie Comptoir, 1818), 251.

³⁹¹ "Dieß geschah in einem Zeitpunkte, in welchem die Abgesandten der Deutschen Staaten auf dem Wiener-Congreß versammelt, und mit der Entwerfung eines Bundesvertrags beschäftigt waren." Luden, "Fragmente, veranlaßt durch die königlich-Württembergischen Gesetze über den Nachdruck."

³⁹² "Wilhelm Traugott Krug, "Krause u. Brockhaus über Büchernachdruck," in *Hermes, oder, kritisches Jahrbuch der Literatur*, ed. Friedrich Arnold Brockhaus and Wilhelm Traugott Krug, vol. 1 (Leipzig: F.A. Brockhaus, 1819), 350.

³⁹³ "Eine herrliche, sich selbst zerstörende Gesetzgebung!" Ibid.

³⁹⁴ "die Sicherheit jedes Eigenthums überhaupt vernichtet seyn würde". Brockhaus, *Darf Macklot in Stuttgart mir, dem rechtmäßigen Verleger, und dem Privilegium seines eigenen Königs zum Hohn, das Conversations-Lexicon zum zweiten Mal nachdrucken?*, 18.

³⁹⁵ "wäre das Princip, das in Württemberg gilt, in Deutschland allgemein, es sowohl durchaus keinen Buchhandel und folglich keine Literatur geben könnte". Brockhaus, *Darf Macklot in*

that the welfare of the book trade depended on the sanctity of property rights. Publishers would not dare to invest in new publications if governments failed to protect them against theft. Without fresh investment, Brockhaus reasoned, the production and publication of new works would grind to a complete halt. The desolation of Württemberg's undernourished book trade clearly showed this to be the case.

Brockhaus's commentary raises questions about Württemberg's place in the confederation. Did its legal regulation of the book trade make the kingdom a special case? Or was its handling of the rights of authors and publishers part of a development that transcended its borders? The relationship between Württemberg and other confederation states sparked discussions both within and outside its borders. In the 1820s, for example, Württemberg's chamber of deputies debated the question of the kingdom's supposed singularity in relation to the confederal ban on unauthorized reprinting. On the chamber floor, Brockhaus's lawyer Schott questioned whether every state within the confederation struggled with the plight of unauthorized reprinting. He maintained that unauthorized reprinters could still be found in Württemberg alone, and blamed the counterproductive reform that Friedrich I had passed in 1815. According to Schott, the reform had made print piracy legally protected in the kingdom. "Württemberg is the only German state that protects, legally protects, unauthorized reprinting."³⁹⁶

Though Brockhaus concurred with Schott's analysis on this particular matter, he vacillated on the question of whether Württemberg stood apart from the community of German states. The exceptions mentioned in the rescript certainly made Württemberg extreme, Brockhaus conceded. However, its unwillingness to take action against unauthorized revisions and translations hardly made it unique. According to Brockhaus, Württemberg's protection of book merchants such as Erhard and Erhard's authorial posturing seemed to be a "sign of the times."³⁹⁷ Brockhaus,

Stuttgart mir, dem rechtmäßigen Verleger, und dem Privilegium seines eigenen Königs zum Hohn, das Conversations-Lexicon zum zweiten Mal nachdrucken?, 17–18.

³⁹⁶ "Württemberg sey der einzige deutsche Staat der diesen [Nachdruck] schütze, gesetzlich schütze" J.F. Schmid, ed., "Protokoll CLXXV. v5. Juni 1821," in *Verhandlungen in der Kammer der Abgeordneten des Königreichs Württemberg im Jahre 1820-21: Abtheilung 14* (Stuttgart: J.B. Metzler'schen Buchhandlung, 1821), 1247. It should be remembered that Schott also aimed to reform Württemberg's press law. The depiction of Württemberg as an anomaly thus served a political end. It put pressure on the political establishment to reform the legal system in Württemberg.

³⁹⁷ "Auch diese Supplemente sind, ungeachtet die Auflage, nach der sie gebildet worden, mit König. Württembergischen Privilegien gegen den Nachdruck versehen sind, von dem Nachdrucker Erhard, genannt Macklot, in Stuttgart nachgedruckt worden, und es kann wohl auch ein Zeichen unserer Zeit genannt werde, daß derselbe obendrein die Unverschämtheit hat und haben darf, sich in seinen Anzeigen den Verleger und meine Original-Ausgabe den Leipziger Abdruck zu nennen, und sogar schon den Tag der Erscheinung von den

writing elsewhere, even linked the legal situation in the south and southwest to a piratical zeitgeist. “Obviously,” he wrote, the legal situation in Württemberg “is wholly attuned to the tendency to promote unauthorized reprinting as much as possible.”³⁹⁸ Despite the protestations of Brockhaus, Württemberg did not adopt a broader definition of unauthorized reprinting. As the previous chapter showed, in 1837 Württemberg even deployed its minimal definition of unauthorized reprinting as an implementation of the confederal ban and the expression mechanical reproduction. To the chagrin of critics such as Friedrich Perthes, Hartmann Schellwitz and Wolfgang Menzel, Württemberg continued to protect publishers such as Erhard long after unauthorized reprinting had been banned on the confederal level.

Concluding Remarks

Brockhaus’s portrayal of Württemberg challenges the established historical narrative of Württemberg’s deviation from the norm in the early decades of the nineteenth century. According to him, Württemberg’s protection of Erhard did not constitute an isolated case. Brockhaus was not alone. In the 1820s, Georg Hegel would go on to inform his students at the university in Berlin that the boundary between new publications and unauthorized reprints had changed so much that piracy, plagiarism and literary thievery seemed to have disappeared from the German language area. Activities of this kind had become legitimate publication practices.

This chapter has explored this process of rebranding with the help of an object study focusing on the publication and reception history of the *Conversationslexicon*. The history of this book challenges the traditional account of the changes that transformed the book trade in the early nineteenth century. Previous narratives have argued that Germans grew more respectful of intellectual property over the course of the nineteenth century. By directing attention to the issue of boundaries and boundary work, I have not discounted the view that Germans began to respect the institution of authorship in the early decades of the nineteenth century. Instead, I have conceptualized the disappearance of pirate editions as a result of change in the way Hegel’s contemporaries detected cases of unauthorized reprinting and plagiarism.

Abteilungen seines Nachdrucks zu versprechen, die selbst im Original noch nicht erschienen!!!” Brockhaus, “Anzeige,” 52.

³⁹⁸ “Offenbar ist das König. Rescript vom 25. Februar 1815 mit der Tendenz entworfen, den Nachdruck auf das Möglicste zu begünstigen”. Quoted from Brockhaus, *Friedrich Arnold Brockhaus, sein Leben und Wirken nach Briefen und andern Aufzeichnungen*, 1881, vol. 3, 8.

4. Bibliopolitics and the Measurement of Culture

“[I]f the balance between imports and exports of literary products does not wholly speak in Austria’s favor now it is certain to do so in just a few years.”³⁹⁹ Friedrich Christoph Perthes assessed the recent growth of Austrian publishing in *Der deutsche Buchhandel als Bedingung des Daseyns einer deutschen Literatur* (1816). The Hamburg publisher penned this lobbying pamphlet shortly before he and his son Matthias embarked on a tour of the German south in 1816. On the road between Hamburg and Vienna, Perthes used his pamphlet to persuade men of influence to support the confederal ban on unauthorized reprinting.⁴⁰⁰ A ban seemed nearly within reach when Perthes and his son departed for the capital of the Danube Monarchy in the early summer of 1816. The Bundesacte obligated the assembly in Frankfurt to deal with the issue of unauthorized reprinting and freedom of the press on its first meeting on November 5, 1816. The enthusiastic but wary Perthes did not foresee the full scope of the troubles that conspired to delay the bill for an additional twenty years. He did, however, worry that enemies of the reform might sabotage the proceedings. Fearful of obstructions, Perthes undertook the trip to Vienna with the intention of holding the politicians to their word.

Their past support of unauthorized reprinters placed Austrian politicians and men of letters at the receiving end of Perthes’s lobbying efforts. Along with other states located south of the Mainlinien, Austria seemed most likely to oppose the ban. Perthes blamed Austria’s propensity to shelter book pirates on the tiny number of legitimate publishing businesses in Austria. Until recently, Perthes argued elsewhere, Austria did not exist on the German literary map.⁴⁰¹ Without a thriving book culture of their own, Austria and other south German states

³⁹⁹ “wenn die Bilanz der Ein- und Ausfuhr literarischer Producte nicht schon jetzt ganz zu Gunsten Oesterreichs ist, so wird sie es doch gewiß in wenig Jahre seyn” Perthes, *Der deutsche Buchhandel als Bedingung des Daseyns einer deutschen Literatur*, 16.

⁴⁰⁰ For more about this trip and the motives behind it, see Perthes, *Friedrich Perthes’ Leben: nach dessen schriftlichen und mündlichen Mittheilungen aufgezeichnet*, 2:71–141.

⁴⁰¹ Als ich vor 40 Jahre zum Buchhandel kam, existierte Oesterreich für denselben noch nichts; Nürnberg im südlichen, Frankfurt im westlichen Deutschland, waren (mit ausnahme von Tübingen und Zürich) die letzten Grenzzorte, die mit dem Verein am Stapelplatz Leipzig in Verbindung standen.” See “Reliquien von F. Perthes,” in *Archiv für Geschichte des deutschen Buchhandels* (Leipzig: Verlag des Börsenvereins der Deutschen Buchhändler, 1878), 205.

needed to import science, philosophy and literature from abroad. A ban on unauthorized reprinting risked criminalizing book merchants who supplied Austrian readers with literature. In the eighteenth century, the imbalance between imports and exports of books had made the Danube Monarchy unwilling to go along with efforts to protect the rights of authors and publishers in the empire. To prevent Vienna from undermining the present reform effort, Perthes constructed arguments he hoped would persuade an Austrian audience to support a ban on book piracy. According to his son, Perthes's presentation had been "especially calculated by its tone to win over Austria."⁴⁰² The notion that Austrian publishing was currently undergoing a process of rejuvenation might render Austrian politicians more amenable to supporting anti-piratical measures, he reckoned. Perthes admitted that Austrian publishing continued to trail behind north German levels. However, the gap between the north and the south had grown much smaller in the last decade, he observed. "Since a decade ago," Perthes argued, "this relationship has completely changed."⁴⁰³

Why did the production of new books gain momentum in an area that depended on the importation of books from abroad? How did the historical actors quantify the production of new works? Which sources did they use to measure authorial output? How did these sources define the characteristics of a new book? The previous chapters throw interesting light on the questions raised by Perthes's tour of the south. In the second and third chapters of this dissertation, I showed that the construction and implementation of the idealist conception of authorship helped (for example) unauthorized revisers, compilers and translators market their works as new and respectable publications. In this chapter, I examine how this dynamic impinged on the size of authorial output. How did discussions about the nature of authorship and unauthorized reprinting affect contemporary attempts to measure authorial output?

This chapter analyzes the growth of German authorial output against the backdrop of the disputes that broke out over the definition of unauthorized reprinting. The source material that I call upon to do so is the Leipzig book fair catalog. Contemporary debates about the size of the total production of new books in the German language area revolved around this publication, a list of the books on sale during the Easter and Michaelmas fairs in the Saxon city near the Pleiße. Through the study of

⁴⁰² Hermann Friedrich Perthes, *Life and Times of Frederic Perthes* (Th. Constable and Company, 1859), 220.

⁴⁰³ "Seit einem Jahrzehen ... haben diese Verhältnisse sich gänzlich geändert, und wenn die Bilanz der Ein- und Ausfuhr literarischer Producte nicht schon jetzt ganz zu Gunsten Oesterreichs ist, so wird sie es doch gewiß in wenig Jahre seyn." Perthes, *Der deutsche Buchhandel als Bedingung des Daseyns einer deutschen Literatur*, 16.

the fair catalog, it was argued, one could quantify the volume of the German book trade and the number of new books that had appeared in the region between the fair holidays.

The central location of the Leipzig book fair explains why readers of the catalog felt that they could use the fair catalog as a measuring stick. Unlike other fairs in the region, the one in Leipzig transcended borders and attracted book merchants and visitors from the entire German language area. The German book trade, Perthes pointed out, emanates from the staple town Leipzig. From this central node, books reached the far corners of the German language area, Perthes argued.⁴⁰⁴ Without the book fair and “literary aids” such as the fair catalog, Perthes wrote, the book trade in the German-speaking parts of Europe would consist of nothing but a scattering of regionally isolated book markets that happened to lie within the same language area.⁴⁰⁵ Bringing together book merchants from different confederal states, the fair in Leipzig made the *German* book trade possible.

The assertion that it consisted of new books made the fair catalog controversial. At a time when the difference between unauthorized reprints and new works faced contestation, a catalog that claimed to list new works became part of broader discussions set in motion by the authorial rights reforms that swept the German language area in the first decades of the nineteenth century. In these discussions, the question of whether the fair catalog could be used to measure the production of new books became controversial as well. Exploring contemporary debates about the trustworthiness of the fair catalog, this chapter studies a largely overlooked problem in German book history. While the fair catalog is known to be a problematic source, it continues to be used in the same way that the historical actors used it in the early nineteenth century.⁴⁰⁶ As

⁴⁰⁴ “Die Möglichkeit, daß Werke des Geistes erscheinen, bewirkt allein der deutsche Buchhandel, der, von dem Stapel-Ort Leipzig ausgehend, nach den verstecktesten Winkeln hin reicht und von da aus, auf jenen einen Punct rückwirkend, das Gesamt-Publikum zu Erlangung literarischer Zwecke in Anspruch nimmt.” Ibid., 7.

⁴⁰⁵ Ibid., 11.

⁴⁰⁶ Though catalogs have continued to serve as a pan-optical surveying instrument, historians have had a troubled relation to the catalog, which have caused historians much frustration. For discussions about the fair catalog and the methodological questions it raises, see for example Georg Schneider, *Handbuch der Bibliographie*, 5th ed. (Stuttgart: Hierseemann, 1969), 48, 170; Reinhard Wittmann, *Geschichte des deutschen Buchhandels*, 3rd ed. (München: C.H.Beck, 2011), 121; Bernhard Fabian, “Die Meßkataloge des achtzehnten Jahrhunderts,” in *Buch und Buchhandel in Europa im achtzehnten Jahrhundert: The Book and the Book Trade in Eighteenth-Century Europe: Proceedings of the Fifth Wolfenbütteler Symposium, November 1-3, 1977*, ed. Giles Barber and Bernhard Fabian (Hamburg: Hauswedell, 1981), 321–322.

Oliver Duntze has observed, historians have used the fair catalog as if it provided a mirror image of the German book market.⁴⁰⁷

While the fair catalog continues to be a heavily used source in book history, the publication itself has not been subjected to a great deal of historical study. In her dissertation on book advertisements, the historian Marie-Kristin Hauke remarks that “[p]enetrating studies on the Frankfurt and Leipzig fair catalogs have until now appeared sparingly and deal almost exclusively with bibliographical aspects.”⁴⁰⁸ Though Hauke wrote this seventeen years ago, the situation has not changed much.⁴⁰⁹ The next section of this chapter discusses the approach that informs this study of the fair catalog. Drawing on the work of historians who consider statistical quantification to be a historical problem, I will argue that the catalog needs to be approached in the manner discussed by the bibliographer Luigi Balsamo. In *Bibliography* (1990), Balsamo urges book historians and bibliographers to broaden the range of questions they ask about bibliographies.⁴¹⁰ According to Balsamo, bibliographies constitute a “part of our complex system of social communication.” This view, he argues, “opens broader vistas and places it [bibliography] in its proper context of time.”⁴¹¹ Perthes’s attempt to estimate the volume of south German publishing exemplifies the kind of historical use of the catalog that will be foregrounded here. With the fair catalog on hand, the

⁴⁰⁷ Oliver Duntze, “Die Frankfurter und Leipziger Meßkataloge als buchgeschichtliche Quellen,” in *Buchhandelsgeschichte*, vol. 1, 2002, B12.

⁴⁰⁸ Eingehende Untersuchungen zu den Frankfurter und Leipziger Meßkatalogen sind bisher nur spärlich erschienen und befaßten sich fast ausschließlich mit bibliographischen Aspekten” Marie-Kristin Hauke, “In allen guten Buchhandlungen ist zu haben”. *Buchwerbung in Deutschland im 17. und 18. Jahrhundert* (Erlangen & Nürnberg: Friedrich-Alexander-Universität, 1999), 73.

⁴⁰⁹ Duntze, “Die Frankfurter und Leipziger Meßkataloge als buchgeschichtliche Quellen”; Fabian Bernhard, “Die Meßkataloge und der Import englischer Bücher nach Deutschland im 18. Jahrhundert,” in *Buchhandel und Literatur. Festschrift für Herbert G. Göpfert*, ed. Reinhard Wittmann and Bertold Hack (Wiesbaden: Otto Harrassowitz Verlag, 1982), 154–68; Reinhard Wittmann, “Die Meßkataloge des 18. Jahrhunderts als Quellen der buchhandelsgeschichte,” in *Buchhandelsgeschichte*, vol. 1, 1982, B1–6; Fabian, “Die Meßkataloge des achtzehnten Jahrhunderts,” 1981; Martin Fontius, “Zur Literaturhistorischen Bedeutung der Messekataloge im 18. Jahrhundert,” in *Weimarer Beiträge*, 7, 1961, 607–17.

⁴¹⁰ As David Greetham have pointed out, the term bibliography have evolved into something “slippery”. In this study, the term stands for what scholars in the field of bibliography call enumerative bibliography, that is, the compilation of book lists such as fair catalogs. David Greetham, *Textual Scholarship: An Introduction* (New York & London: Routledge, 2013), 13; Fredson Bowers, “Bibliography, Pure Bibliography, and Literary Studies,” in *Essays in Bibliography, Text and Editing* (Charlottesville: University Press of Virginia, 1975); D. F. McKenzie, “The Book as an Expressive Form,” in *Bibliography and the Sociology of Texts* (Cambridge: Cambridge University Press, 1999); Luigi Balsamo, *Bibliography: History of a Tradition*, trans. William A Pettas (Berkeley, California: B.M. Rosenthal, Inc., 1990); Rudolf Blum, “Bibliographia. Eine wort- und begriffs-geschichtliche Untersuchung,” in *Archiv für Geschichte des Buchwesens*, vol. 10 (Frankfurt am Main: Buchhändler-Vereinigung, 1969), 1010–1246.

⁴¹¹ Balsamo, *Bibliography*, 1.

historical actors drew conclusions about the relative cultural standing of regions and the changes that transformed them over time. Much seemed to be at stake. Statistical information on publishing provided a way to take stock of the cultural and scientific well-being of a state, compare its level of advancement with those of other states, draw conclusions about the past and make prognostications for the future.

The third part of this chapter discusses the assumptions that informed the notion that the book trade ought to be quantified in this fashion. I argue that Perthes partook in a broader historical development that led to the formation of bibliopolitics. The term *bibliopolitics* plays with the concept of *biopolitics*. Michel Foucault used the term biopolitics to conceptualize the emergence of a new form of governmentality in the second half of the eighteenth century. This new form of governance arose in reaction to the so-called discovery of the population.⁴¹² Towards the second half of the eighteenth century, “Population comes to appear above all else as the ultimate end of government. ... [G]overnment has as its purpose not the act of government itself, but the welfare of the population, the improvement of its condition.”⁴¹³ In Foucault’s usage, the term biopolitics describes the techniques that states used to manage the governance of their populations. I define bibliopolitics as a subcategory of biopolitical techniques. With the help of political interventions such as a federal ban on piracy, it was believed, states could affect the book market and nourish the cultural development of the populace by doing so. This required a reliable index. Given the debates that sprang up about the fair catalog, did it provide a suitable source? The final section examines in more detail the objections that were raised against the fair catalog and its trustworthiness.

“The Passage to Modernity”

To Perthes’s mind, the idea that Austrian publishing had begun to catch up with north German standards suggested that anti-piracy reform would serve the interests of the Austrian state. With a self-sustaining book culture now in place, would it not make sense for Austria to withdraw its protection of unauthorized reprints? Austria stood to gain much from a change of tactics, Perthes argued. An anti-piratical stand from the state

⁴¹² For more on this, see the introduction to Justus Nipperdey, *Die Erfindung der Bevölkerungspolitik: Staat, politische Theorie und Population in der Frühen Neuzeit* (Göttingen: Vandenhoeck & Ruprecht, 2012).

⁴¹³ Michel Foucault, “Governmentality,” in *The Foucault Effect: Studies in Governmentality*, ed. Graham Burchell, Colin Gordon, and Peter Miller, trans. Rosa Braidotti (Chicago & London: University of Chicago Press, 1991), 100.

would encourage authorial productivity and grow the publishing industry, which, in turn, would boost the economy and encourage the spiritual development of the populace. Perthes placed special emphasis on the link between the size of the publishing industry and the spiritual elevation of the people. The national liberal Perthes defined German literature as “the collective expression of the spiritual life of the German people.”⁴¹⁴

The controversies that stalled the confederal ban on unauthorized reprinting until 1837 disappointed Perthes. Austria’s foreign minister, Klemenz Metternich, did, however, support anti-piracy reform a few years after Perthes’s tour of the south. In 1819, Metternich endorsed a proposal by Perthes’s friend and colleague Friedrich Arnold Brockhaus. At a ministerial conference in Verona, Metternich introduced Brockhaus’s reform plan with a comment on the lack of progress made by the confederal assembly on the matter of unauthorized reprinting: “On this matter [a confederal ban on unauthorized reprinting], thorough preparatory work has already been delivered to the confederal assembly, but [it has] so far not led to a consultation.”⁴¹⁵ Brockhaus’s proposal differed from the one that was actually passed, once the confederal “consultations” began to bear fruit in the early 1830s. In addition to a ban on unauthorized reprinting, Brockhaus and Metternich’s reform measure also contained plans for the creation of a central bureau. One of the tasks appointed to this bureau concerned the application of a protocol, as Brockhaus explained, for listing the new books published in the confederation since the appearance of the previous list.⁴¹⁶

⁴¹⁴ “Von der Zeit [the end of Napoleon’s reign] an betrachtet man unsere Literatur als den Gesamt-Ausdruck den Gesamt-Ausdruck des geistigen Lebens deutscher Völker.” Perthes, *Der deutsche Buchhandel als Bedingung des Daseyns einer deutschen Literatur*, 4.

⁴¹⁵ “Es sind über diesen Gegenstand bei der Bundes-Versammlung bereits gründliche Vorarbeiten geliefert worden, die biß jetzt aber noch zu keiner Verathung geführt haben.” Klemenz von Metternich, “Beilage Litt. B. zum Protocoll der 32. Sitzung. Vortrag des Herrn Fürsten von Metternich, den Entwurf eines Bundes-Beschlusses gegen den Bücher-Nachdruck betreffend,” in *Die Schluss-Acte der Wiener Ministerial Conferenzen zur Ausbildung und Befestigung des deutschen Bundes: Urkunden, Geschichte und Commentar. Erste Abtheilung. Die Urkunden. Lieferung 1. Acten u. Protocolle der W. M.-Conf. bis zu Beil. B. z. Prot. b. 20sten Conf.*, ed. Ludwig Karl James Aegidi (Berlin: G. Reimer, 1860), 365.

⁴¹⁶ Heinrich Eduard Brockhaus, “Metternich’s Plan einer staatlichen Organization des deutschen Buchhandels,” in *Archiv für Geschichte des Deutschen Buchhandels*, vol. I (Leipzig: Verlag des Börsenvereins der Deutschen Buchhändler, n.d.), 91–119; Metternich, “Beilage Litt. B. zum Protocoll der 32. Sitzung. Vortrag des Herrn Fürsten von Metternich, den Entwurf eines Bundes-Beschlusses gegen den Bücher-Nachdruck betreffend.”; Klemenz von Metternich, “Beilage Litt. C. zum Protocoll der 32. Sitzung. Denkschrift über die in Betreff des Büchernachdrucks, der Sicherstellung des literarischen Privat-Eigenthums, und der Organisation des deutschen Buchhandels zu ergreifenden Maßregeln,” in *Die Schluss-Acte der Wiener Ministerial Conferenzen zur Ausbildung und Befestigung des deutschen Bundes: Urkunden, Geschichte und Commentar. Erste Abtheilung. Die Urkunden. Lieferung 1. Acten u. Protocolle der W. M.-Conf. bis zu Beil. B. z. Prot. b. 20sten Conf.*, ed. Ludwig Karl James Aegidi (Berlin: G. Reimer, 1860), 366–79; Wadle, “Schutz gegen Nachdruck als Aufgabe

Brockhaus hoped to solve a pressing problem with the creation of this confederal protocol. He and other book merchants, he argued, did not have a reliable way to gain an overview of the production of new works in the German language area. Catalogs, lists and indexes that claimed to provide an overview of this kind did exist, but none could be trusted to give an undistorted view of the book trade. The Leipzig book fair catalog, in particular, troubled Brockhaus. In the first decades of the nineteenth century, Brockhaus and other critics of the Leipzig book fair argued that the fair catalog had been so diluted with piratical and plagiaristic books that it could no longer be trusted as a reliable indicator of the size of the legitimate book trade. The catalog grew remarkably thick over the course of the period, falsely suggesting that the production of new books had gained tremendous momentum. By the 1830s, the fair catalog listed around five thousand books. Thirty years earlier, it had advertised three thousand books. Not even a thousand books had appeared in the catalog in the last decade of the eighteenth century.⁴¹⁷

In part, critics of the fair catalog attributed the growth of the book trade in Leipzig to a phenomenon they called *Vielschreiberey*, a difficult concept to translate accurately.⁴¹⁸ Contemporaries used the concept of *Vielschreiberey*, or prolific writing, as shorthand for the method of producing a great quantity of books in a short time period. The revision, compilation, translation and epitomization of the existing stock of books was not the only way to achieve this, but these practices had helped make the *Vielschreiber* a questionable character on the book market. Though influential philosophers such as Immanuel Kant and Johann Gottlieb Fichte had argued that the transformative use of already published books deserved recognition as a form of authorship, *Vielschreiberey* seemed a

einer bundesweiten „Organisation des deutschen Buchhandels“–Metternichs zweiter Plan einer „Bundeszunft“ und sein Scheitern.”

⁴¹⁷ Tatlock, “Introduction: The Book Trade and ‘Reading Nation’ in the Long Nineteenth Century.”

⁴¹⁸ Philipp Anton Sigmund von Bibra, ed., “Schreiben an einen Freund über die Ursachen der jetzigen *Vielschreiberey* in Deutschland,” in *Journal von und für Deutschland*, 6:2 (Fulda: Hermann, 1789), 139–43; Philipp Anton Sigmund von Bibra and Leopold Friedrich Günther von Goeckingk, eds., “Bemerkungen über die Ursachen der jetzigen *Vielschreiberey* in Deutschland,” in *Journal von und für Deutschland*, 7:6 (Fulda: Hermann, 1790), 498–502; Philipp Anton Sigmund von Bibra, ed., “Einige Bemerkungen über das Schreiben an einen Freund über die Ursachen der jetzigen *Vielschreiberey* in Deutschland,” in *Journal von und für Deutschland*, 6:7 (Fulda: Hermann, 1790), 49–51; Leopold Friedrich Günther von Bibra, ed., “Ueber die Ursachen der jetzigen *Vielschreiberey* in Deutschland,” in *Journal von und für Deutschland*, 6:7 (Fulda: Hermann, 1790), 324–26; Philipp Anton Sigmund von Bibra, ed., “Von den Ursachen der überhandnehmenden *Vielschreiberey* in Deutschland,” in *Journal von und für Deutschland*, 7:8 (Fulda: Hermann, 1791), 701–4; Johann Georg Schlosser, “Etwas zur Apologie des Meß-Catalogus gegen den Aufsatz N. VIII. im 2ten Stück des Vten Jahrgangs des *Journal von und für Deutschland*,” in *Journal von und für Deutschland*, 6:2 (Fulda: Hermann, 1789), 197–203.

dubious writing practice to many. In his scathing review of the legal situation in Württemberg, the Börsenverein's legal consultant Hartmann Schellwitz observed that practitioners of Vielschreiberey "plunder others and, out of twenty books, create a new one."⁴¹⁹ According to Schellwitz, the belief that this writing practice produced new books explained why the fair catalog had grown fat in recent years. As a result, Schellwitz argued, Leipzig found itself on the verge of becoming the new capital of the shadowy netherworld of the piratical book trade. "It suffices to throw a glance at the fair catalog," wrote Schellwitz, "to confirm the degree to which the number of anthologies and collections of all possible uses has increased in recent years."⁴²⁰ The bulging fair catalog testified to the "insolence with which the piratical bees of literature go to work."⁴²¹

The authorial rights reform that culminated with the confederal ban in 1837 helped establish the respectability of these books. When the Berlin scholars Ludwig Eduard Heydemann and Otto Dambach looked back on the concept of authorship that had gained ground with the confederal ban twenty-seven years earlier, they observed that

[a]n activity of this kind [that is, original authorship] can completely and independently manifest itself in subordinate spheres, and it does not have to consist of the production of new contents. It can just as easily be expressed in the mere giving of form, in the compilation, selection, organization and presentation or in the pedagogical method.⁴²²

If the belief that the fair catalog brimmed with piratical goods motivated Brockhaus and other reformers to replace it, Metternich hoped to improve the confederal censorship system with the creation of the protocol for listing new books. He aimed to use the list to monitor and suppress seditious literature from the liberal nationalist movement. With the help of the book list, "German literature will be nationalized in the

⁴¹⁹ "Andere zu plündern und aus zwanzig Büchern ein neues zu machen". Schellwitz, *Kritik des Nachdruckgesetzes für Württemberg sammt Gesetz-Entwurf die Sicherstellung des literarisch-artistischen Eigenthums betreffend*, 24.

⁴²⁰ "Man darf nur ein Blick in die Messkataloge werfen, um sich zu überzeugen, in welchem Grade seit einigen Jahr-zehnten die Zahl der Anthologien und der Sammlungen zu allen möglichen Gebräuchen zugenommen hat" Ibid., 25.

⁴²¹ "mit welcher Unverschämtheit diese Raub-bienen der Literatur zu Werke gehen" Ibid.

⁴²² "Eine solche Tätigkeit kann sich auch in untergeordneten Sphären auf eine vollkommen selbständige Weise äußern, und sie braucht auch nicht wesentlich in der Production eines neuen Stoffes zu bestehen, sondern kann sich ebensowohl in der bloßen Formgebung, in der Compilation, Auswahl, Anordnung, Darstellung oder in der Lehrmethode äußern." Ludwig Eduard Heydemann and Otto Dambach, "Das Object des Rechtsschutzes," in *Die preußische Nachdruckgesetzgebung erläutert durch die Praxis des königl. Litterarischen Sachverständigen Vereins von L. E. Heydemann und O. Dambach* (Berlin: Theodore Christian Friedrich Enslin, 1863), XVI.

more noble sense of the word.”⁴²³ The liberal-minded Brockhaus sensed that his proposal was caught up in a dangerous political game. If successful, it threatened to put one liberal principle at odds with another. In the hands of a conservative such as Metternich, Brockhaus’s reform plan could easily be used to promote protection from unauthorized copying at the expense of freedom from censorship and repression. Brockhaus did not expect German politicians to put the index to repressive uses, but he did acknowledge that a central bureau could be abused in this fashion. “I have wholly felt that the institution of a central bureau can become disadvantageous and lead to despotism,” Brockhaus wrote to Perthes on February 12, 1820.⁴²⁴

The political course taken by the confederal assembly in the years leading up to the March Revolution of 1848 justified Brockhaus’s fears. Not only did the confederal assembly fail to deliver a law guaranteeing the freedom of the press within the confederation. Under the stewardship of Metternich, Frankfurt politicians also implemented draconian regulations with the aim of reducing the freedom of the press.⁴²⁵ The situation took a sharp turn for the worse when the assembly in Frankfurt ratified the infamous Karlsbader Beschlüsse in 1819. The confederal censorship regime put into place after 1819 led Karl Marx to comment that Germans had experienced a conservative backlash, but not the revolution that should have preceded it. “With our shepherds at the front lines, we have only once kept company with freedom, on the day of its

⁴²³ “die deutsche Literatur wird im edlern Sinne des Worts nationalisirt.” Klemenz von Metternich, “Beilage Litt. C. zum Protocoll der 32. Sitzung. Denkschrift über die in Betreff des Büchernahedrucks, der Sicherstellung des literarischen Privat-Eigenthums, und der Organisation des deutschen Buchhandels zu ergreifenden Maßregeln,” in *Die Schluss-Acte der Wiener Ministerial Conferenzen zur Ausbildung und Befestigung des deutschen Bundes: Urkunden, Geschichte und Commentar. Erste Abtheilung. Die Urkunden. Lieferung 1. Acten u. Protocolle der W. M.-Conf. bis zu Beil. B. z. Prot. b. 20sten Conf.*, ed. Ludwig Karl James Aegidi (Berlin: G. Reimer, 1860), 377.

⁴²⁴ “Ich habe vollkommen gefühlt, daß die Institution einer Centralbehörde nachtheilig werden und zum Despotismus führen könne.” Brockhaus, “Metternich’s Plan einer staatlichen Organization des deutschen Buchhandels,” 117f.

⁴²⁵ For more on the political developments during the Vormärz, see Alexa Geisthövel, *Restauration und Vormärz 1815-1847* (Paderborn: Schöningh, 2008); Wolfgang Hardtwig, *Vormärz: der monarchische Staat und das Bürgertum* (München: Deutschen Taschenbuch-Verlag, 1985); Manfred Brümmer, *Staat kontra Universität: die Universität Halle-Wittenberg und die Karlsbader Beschlüsse, 1819-1848* (Weimar: Böhlau, 1991); Eberhard Büssel, *Die Karlsbader Beschlüsse von 1819: die endgültige Stabilisierung der restaurativen Politik im Deutschen Bund nach dem Wiener Kongress von 1814/15* (Hildesheim: Gerstenberg, 1974); Sebastian Schermaul, *Die Umsetzung der Karlsbader Beschlüsse an der Universität Leipzig 1819-1848* (Berlin & Boston: Walter de Gruyter, 2013); Wolfram Siemann, *Deutschlands Ruhe, Sicherheit und Ordnung: Die Anfänge der politischen Polizei 1806 - 1866* (Berlin & Boston: Walter de Gruyter, 1985); Robert Justin Goldstein, *The War for the Public Mind: Political Censorship in Nineteenth-Century Europe* (Westport, London: Praeger, 2000); Martyn Lyons, *Post-Revolutionary Europe: 1815-1856* (Basingstoke & New York: Palgrave Macmillan, 2006); Geisthövel, *Restauration und Vormärz 1815-1847*.

burial.”⁴²⁶ If representatives of the ancien régime buried freedom at Karlsbad, Metternich hoped to ensure liberalism stayed buried, with the help of Brockhaus’s proposal. He failed. While Austria still remained the confederation’s dominant political force in the 1810s and 1820s, its hold on power had begun to slip. The eclipse of Austria’s political power eventually paved the way for Prussian ascendancy and reduced Austria’s already fading ability to orchestrate confederal politics. It also made Metternich vulnerable. The ministers who disapproved of Brockhaus’s reform plan objected that Metternich went too far.⁴²⁷ Lack of support for the reform meant that Brockhaus’s proposal for a confederal book index never came to fruition.

Perthes’s tour of the south probably did little to influence the stance that Austria and Metternich took on the issue of unauthorized reprinting after 1816. His portrayal of Austrian publishing did, however, prove successful in a way that he could hardly have foreseen. The argument that Austrian publishing had gradually caught up with the authorial output of the north German states has influenced the way the history of the Austrian book trade has been written since the late nineteenth century. To cite just one example, Martha Woodmansee argues that

[t]he German speaking states remained as politically fragmented at the end of the [eighteenth-] century as they had been in the 1760s, but the *cultural* gap between the two regions [the Protestant north and the Catholic south] had closed. As demand for books grew in the south, indigenous writers emerged, and an indigenous publishing industry developed. Piracy subsided. It had ceased to be lucrative. With indigenous book trades to protect, states in the south began entering into bilateral accords.⁴²⁸

Woodmansee’s analysis of the decline of piracy makes indirect use of the fair catalog. She supports her claim by citing “Deutsche Urheber- und Verlagsgeschichte zwischen 1450 und 1850” (1979), an article by the legal scholar Martin Vogel. In his turn, Vogel cites August Schürmann’s study of fair catalogs to argue that the south German states expanded

⁴²⁶ “Wir, unsere Hirten and der Spitze, befanden uns immer nur einmal in der Gesellschaft der Freiheit, am *Tag ihrer Beerdigung*” Karl Marx, “Zur Kritik der Hegel’schen Rechts-Philosophie,” in *Deutsch-Französische Jahrbücher*, ed. Arnold Ruge and Karl Marx, vol. 1 (Paris: Bureau der Jahrbücher/Bureau des annales, 1844), 72–73.

⁴²⁷ Rudolf Blum, “Nationalbibliographie und Nationalbibliothek. Die Verzeichnung und Sammlung der nationalen Buchproduktion, besonders der deutschen, von den Anfängen bis zum Zweiten Weltkrieg,” in *Archiv für Geschichte des Buchwesens*, ed. Monika Estermann, 35 (Frankfurt am Main: Walter de Gruyter, 1991).

⁴²⁸ Woodmansee, “Publishers, Privateers, Pirates: Eighteenth-Century German Book Piracy Revisited,” 2011, 192.

literary production between 1810 and 1830.⁴²⁹ A member of the Börsenverein's historical commission, Schürmann helped lay the foundations of German book history research shortly after the creation of the German Empire in 1871.⁴³⁰ In *Die Rechtsverhältnisse der Autoren und Verleger, sachlich-historisch* (1889), Schürmann set out to study the history of the German book trade with the help of statistics. Using Gustav Schwetschke's collection of fair catalogs, he aimed to "elucidate with numbers" the process that led to the modernization of the German book trade.⁴³¹ According to Schürmann, the German book trade entered the modern era when south German publishing caught up with north German standards in the 1830s. This process culminated with the passing of the confederal ban on piracy in 1837, he argued, when the German age of piracy came to a "formal closure."⁴³² The fair catalog illustrated this change for Schürmann. "A quick glance at Schwetschke's *Codex nundinarius*" corroborated his story about the modernization of the German book trade:⁴³³

1810 Leipzig 695, Berlin 271; Stuttgart 43, Frankfurt 118, Vienna 102

1820 Leipzig 864, Berlin 331; Stuttgart 44, Frankfurt 125, Vienna 189

1830 Leipzig 1098, Berlin 632; Stuttgart 215, Frankfurt 251, Vienna 396⁴³⁴

In 1810, 695 books from Leipzig appeared in the fair catalog, while 102 came from Vienna. Ten years later, the number from Leipzig had risen to 864, and Viennese book merchants had almost doubled their presence in the catalog. The numbers rose a bit more slowly for southwesterners, but

⁴²⁹ Vogel, "Deutsche Urheber- und Verlagsgeschichte zwischen 1450 und 1850: Sozial- und methodengeschichtliche Entwicklungsstufen der Rechte von Schriftstellern und Verlegern, 159."

⁴³⁰ Julia Kreusch, "August Schürmann: Buchhändler und Verleger," in *Mitteldeutsches Jahrbuch für Kultur und Geschichte*, 12, 2005, 231–33; Brauer Adalbert, "Kursbiographien der Mitglieder der alten Historischen Kommission (1876-1934)," in *Hundert Jahre Historische Kommission des Börsenvereins: 1876-1976* (Frankfurt am Main: Börsenverein des Deutschen Buchhandels, 1976); Adalbert Brauer, "Die Historische Kommission des Börsenvereins 1876-1934," in *Hundert Jahre Historische Kommission des Börsenvereins: 1876-1976* (Frankfurt am Main: Börsenverein des Deutschen Buchhandels, 1976); Monica Estermann, "Die Historische Kommission des Börsenvereins des Deutschen Buchhandels," in *Histoires du livre: Nouvelles orientations: Actes du colloque du 6 et 7 septembre 1990, Göttingen*, ed. Hans Erich Bödeker (Paris: IMEC Editions, 1995), 81–101.

⁴³¹ The book appeared in 1889 under the title *Die Rechtsverhältnisse der Autoren und Verleger, sachlich-historisch* (Halle: Verlag der Buchhandlung des Waisenhauses, 1889). Julia Kreusch, "August Schürmann: Buchhändler und Verleger," in *Mitteldeutsches Jahrbuch für Kultur und Geschichte*, 12, 2005, 231–33.

⁴³² "Damit fand das Nachdruckerzeitalter auch seinen formalen Abschluß" Schürmann, *Die Rechtsverhältnisse der Autoren und Verleger, sachlich-historisch*, 176.

⁴³³ "ein blick in Schwetschkes *Codex nundinarius*" Schürmann, "Übergang zur Neuzeit," 176.

⁴³⁴ Ibid.

the pattern appeared to be repeating itself in Stuttgart and Frankfurt as well. By the 1830s, the number of books from Stuttgart had quadrupled.⁴³⁵ The growth of Saxon and Prussian publishing did not surprise Schürmann, who expected states in the Protestant north to be the dominant force in the German book trade. The rise of the numbers for the south and southwest did, however, seemed remarkable to Schürmann. The rising numbers for Stuttgart, Vienna and Frankfurt suggested to him that “original works produced in the south and in Austria gained a higher reputation” between 1810 and 1840.⁴³⁶ “It is interesting to follow the centers of reprinting,” he wrote, and to study their “growing share of original works in relation to Leipzig and Berlin.”⁴³⁷

Woodmansee suggests that a growing readership in the south German states explains why authorial activity escalated in the region. Making it feasible for more writers to sustain professional careers as authors, increasing demand for reading material facilitated the rise of Austrian publishing. The controversies that broke out over the reliability of the fair catalog do not necessarily undermine this and other explanations for the growth of Austrian publishing in the first decades of the nineteenth century. However, they do suggest that the rapid expansion of the fair catalog also resulted from contemporary debates about the boundaries between unauthorized reprinting and authorship. My approach to understanding the rise of authorial output in the German language area draws inspiration from Christine Macleod’s *Inventing the Industrial Revolution: The English Patent System, 1660–1800* (2002), a study on the growth of patenting in England during the Industrial Revolution.

In her study, Macleod takes issue with the assumption that the dramatic rise of patenting in late eighteenth-century England reflected “an upsurge in inventive activity or of new found technical talent.”⁴³⁸ In so doing, she questions “the positivist explanation” of the English Industrial Revolution.⁴³⁹ Macleod argues that English inventors began using the term *invention* in a more generous way than before. Combined with a mounting propensity to file for patents, the expansion of the range

⁴³⁵ Vogel, “Deutsche Urheber- und Verlagsgeschichte zwischen 1450 und 1850: Sozial- und methodengeschichtliche Entwicklungsstufen der Rechte von Schriftstellern und Verlegern,” 159.

⁴³⁶ “Ähnlich gewann im übrigen Süden und in Österreich die Originalproduktion an Ansehen” Schürmann, *Die Rechtsverhältnisse der Autoren und Verleger, sachlich-historisch*, 175.

⁴³⁷ “Intressant ist es, den wachsenden Anteil der Nachdruckercentren an der Originalproduktion im Vergleich zu Leipzig und Berlin zu verfolgen” Schürmann, “Übergang zur Neuzeit,” 176.

⁴³⁸ Christine MacLeod, *Inventing the Industrial Revolution: The English Patent System, 1660–1800* (Cambridge, New York, New Rochelle, Melbourne & Sydney: Cambridge University Press, 2002), 144.

⁴³⁹ Ibid.

of activities believed to be inventive in character accounts for the rise of patenting, according to Macleod.

The outcome, perhaps, was not only a greater readiness to experiment and develop new processes and products but also a heightened self-consciousness and conceptualization of one's activities as 'invention'. On a personal level, people were more likely than before to categorize their activity as inventing. And ... they were readier to patent its results.⁴⁴⁰

As the two previous chapters have shown, the kind of historical process that Macleod describes also shaped the German book market around the turn of the nineteenth century. When the authorial rights reform began to sweep the German language area, the new concept of authorship encompassed publication practices that had been previously viewed as reprinting practices according to contemporary observers such as Hegel. The criticisms leveled at the fair catalog suggest that it participated in this development as well, by helping to legitimate controversial books suspected of being unauthorized reprints and plagiarisms.

The fair catalog mattered greatly to south German publishers who faced charges of piracy. Despite excluding publications by Carl Erhard, who was identified as a book pirate by the fair organizers, the catalog did advertise controversial books such as Carl Gerold's *Wienerische Sekretär* and Philipp Schalbacher's atlases, two Viennese publications that faced piracy accusations.⁴⁴¹ They used the fair catalog as a resource in the struggle against those who wished to see their publications criminalized as piracies. Faced with the charge of piracy, they urged their critics to study the fair catalog more carefully. The Viennese printer Joseph Vinzenz Degen tried to silence his critics in this fashion. Faced with the charge that he belonged to the "thieving rabble" from Vienna, Degen

⁴⁴⁰ Ibid., 145.

⁴⁴¹ Karl Heinrich Ludwig Pölitz wrote the catalog announcement on Erhard. See his "Rüge eines Nachdrucks," in *Allgemeines Verzeichnis der Bücher, welche in der Frankfurter und Leipziger Ostermesse des 1820 Jahres entweder ganz neu gedruckt oder sonst verbessert wieder aufgelegt worden sind, auch inskünftige noch herauskommen sollen* (Leipzig: Weidmannische Buchhandlung, 1820), 352–54. Gerold's publication was listed in *Allgemeines Verzeichnis der Bücher, welche in der Frankfurter und Leipziger Ostermesse des 1794 Jahres entweder ganz neu gedruckt oder sonst verbessert wieder aufgelegt worden sind, auch inskünftige noch herauskommen sollen* (Leipzig: Weidmannische Buchhandlung, 1794), 115; Schalbacher's atlases were announced in *Allgemeines Verzeichnis der Bücher, welche in der Frankfurter und Leipziger Michaelismesse des 1800 Jahres entweder ganz neu gedruckt oder sonst verbessert wieder aufgelegt worden sind, auch inskünftige noch herauskommen sollen* (Leipzig: Weidmannische Buchhandlung, 1800), 339; For more on these two publications, see Johann Goldfriedrich, *Geschichte des deutschen Buchhandels: Vom Beginn der klassischen Litteraturperiode bis zum Beginn der Fremdherrschaft (1740–1804)*, vol. 3 (Leipzig: Börsenverein der Deutschen Buchhändler, 1909) 84.

countered the accusation with a simple but effective instruction.⁴⁴² He urged his accusers to “look at the Leipzig fair catalog, in which, as is well known, unauthorized reprints are not announced.”⁴⁴³ Given that the fair catalog did not advertise piratical books, he argued, his publications could not possibly be unauthorized reprints. Degen listed his wares in the catalog with the consent of Weidmannische Buchhandlung, the owner of the fair catalog.⁴⁴⁴

Bibliopolitics

As the previous section showed, Schürmann believed that the quantitative study of fair catalogs yielded insights into the far-reaching changes that seemed to have transformed the book trade before 1850. With the help of catalogs, the process of modernization could be visualized and studied on an empirical level. Schürmann’s statistics on German authorial output participated in a culture of quantification that began to take shape around the turn of the nineteenth century. This section discusses the assumptions that underpinned early efforts to quantify the German book trade in the first half of the nineteenth century. Why did Perthes’s contemporaries want to measure the authorial output of the German language area? What did they hope to achieve through the quantification of the book trade?

Today, it might seem obvious why one would want this information. Around the turn of the nineteenth century however, statistics had not yet attained the kind of authority that it currently holds in the West. It gained this authority over the course of the nineteenth century. Perthes departed for Vienna during a formative moment in the history of statistical quantification. The period that Harald Westergaard famously called the “era of enthusiasm for statistics” reached its apex in the decades after

⁴⁴² “Raubergesindel” Christian August Vulpius, “Vulpius an Johann Wolfgang von Goethe, 19 September 1803,” in *Eine Korrespondenz Zur Kulturgeschichte der Goethezeit: Band 1: Brieftexte Band 2: Kommentar*, ed. Andreas Meier (Berlin: Walter De Gruyter, 2003), 88.

⁴⁴³ “einige Blicke in den Leipziger Meß-katalog, in welchen bekanntlich Nachdrücke nicht angezeigt werden”. Joseph Vinzenz Degen, “Berichtigungen,” in *Intelligenzblatt der Annalen der Literatur und Kunst in den Österreichischen Staaten*, 1 (Wien: Anton Doll, 1804), 6; For more on Degen's publications, see Matt Erlin, “How to Think about Luxury Editions in Late Eighteenth- and Early Nineteenth-Century Germany,” in *Publishing Culture and the “Reading Nation”: German Book History in the Long Nineteenth Century*, ed. Lynne Tatlock (Rochester & New York: Camden House, 2010), 25–55.

⁴⁴⁴ *Allgemeines Verzeichnis der Bücher, welche in der Frankfurter und Leipziger Ostermesse des 1803 Jahres entweder ganz neu gedruckt oder sonst verbessert wieder aufgelegt worden sind, auch inskünftige noch herauskommen sollen* (Leipzig: Weidmannische Buchhandlung, 1803), 233.

1820.⁴⁴⁵ Over the course of this period, states established statistical bureaus, universities began to teach statistics as a separate field and a statistical movement created scientific societies and congresses, preaching the importance of statistics across Europe.⁴⁴⁶ As scholars such as Westergaard, Ian Hacking and Roy Porter have shown, the production of statistics escalated rapidly as a result of these developments. In his account of the period, Hacking observes that these activities produced “an avalanche of printed numbers.”⁴⁴⁷

Hacking and other historians turn to Michel Foucault’s study of governmentality to explain the rise of statistics in the first half of the nineteenth century. In a lecture series held at the Collège de France, Foucault used the term biopolitics to discuss a new mode of governance. This novel form of governance, Foucault argued, had reshaped the role of the state towards the end of the eighteenth century. He argued that “biopolitics introduced a new vector, a new technology of power ... [that] exists at a different level, on a different scale, and has a different bearing area, and makes use of very different instruments.”⁴⁴⁸ Biopolitics differed from older forms of governmentality in that it did not concern the disciplining of discrete individuals. “Biopolitics deals with the population, with the population as political problem, as a problem that is at once scientific and political, as a biological problem and as power’s problem.”⁴⁴⁹

Foucault took care to point out that biopolitics did not replace older governmentalities. It introduced a new way for representatives of the state to conceptualize the relation between governments and those living within their purview. If the older kind of governmentality revolved

⁴⁴⁵ Westergaard discusses the period in *Contributions to the History of Statistics* (King & Son, 1932), 136–171.

⁴⁴⁶ Jason D. Hansen, *Mapping the Germans: Statistical Science, Cartography, and the Visualization of the German Nation, 1848-1914* (Oxford: Oxford University Press, 2015); Silvana Patriarca, *Numbers and Nationhood: Writing Statistics in Nineteenth-Century Italy* (Cambridge & New York: Cambridge University Press, 2003); Theodore M. Porter, *The Rise of Statistical Thinking, 1820-1900* (Princeton, New Jersey: Princeton University Press, 1986); Jean-Guy Prévost, *Statistics, Public Debate and the State, 1800-1945: A Social, Political and Intellectual History of Numbers* (New York: Routledge, 2015); Andrea A. Rusnock, *Vital Accounts: Quantifying Health and Population in Eighteenth-Century England and France* (Cambridge & New York: Cambridge University Press, 2002); Libby Schweber, *Disciplining Statistics: Demography and Vital Statistics in France and England, 1830-1885* (Durham & London: Duke University Press, 2006); Ian Hacking, “Biopower and the Avalanche of Printed Numbers,” in *Humanities in Society*, 5, 1982, 279–95; Ian Hacking, *The Taming of Chance* (Cambridge, New York, Melbourne, Madrid: Cambridge University Press, 1990).

⁴⁴⁷ Hacking, “Biopower and the Avalanche of Printed Numbers”; Hacking, *The Taming of Chance*, 2–3.

⁴⁴⁸ Michel Foucault, *Society Must Be Defended: Lectures at the Collège de France, 1975-76*, ed. Mauro Bertani and Alessandro Fontana, trans. David Macey (New York: Picador, 2003), 239.

⁴⁴⁹ Foucault, *Society Must Be Defended*, 245.

around the sovereign's discipline of and control over the individuated bodies of his subjects, biopolitical governance strove instead to enhance, optimize and regularize the performativity of populations. "Where discipline is the technology deployed to make individuals behave, to be efficient and productive workers, biopolitics is deployed to manage populations; for example, to ensure a healthy workforce."⁴⁵⁰ This form of management required that states also be able to study the life of populations, to observe them on an empirical level. Statistics on birth rates, crime, poverty and pauperism, for example, visualized the life and well-being of populations.

Statistics on book production both participated in and differed from the historical development discussed by Foucault. The kinds of biopolitical interventions that Foucault dealt with concerned the management and optimization of populations on the level of their biology. In contrast, agents of bibliopolitical reasoning employed quantitative means to monitor, optimize and regularize "spiritual culture," or *geistige Kultur*. The Austrian statistician Johann Springer discussed this term in his two volume work *Statistik der österreichischen Kaiserstaat* (1840).⁴⁵¹ In Springer's usage, the term *geistige Kultur* covered a broad range of human activities. It encompassed the arts and letters, but also science and learning. In his statistical study on spiritual culture, Springer set out to question myths about Austria and the irregular distribution of cultural progress in the German language area. The enormous Danube Monarchy dwarfed neighboring states, but its cultural reputation failed to match its territorial reach, Springer observed. Instead, Austria had gained the dubious standing of a "threshold state." It lay on the doorstep between the European civilization and "the still culturally challenged Orient."⁴⁵²

Springer acknowledged that Austria's proximity to the stagnating Orient had unfortunate cultural effects. However, he believed that the deprecating view of Austrian culture also exaggerated the region's lack of achievements. Springer's view of Austria's cultural standing confronted him with a methodological challenge. How does one study the cultural elevation of a populace? Quantitative information about the production of cultural goods such as books and artworks provided suitable source material, according to Springer. "The products of literature and the fine arts offer knowledge about the level of spiritual

⁴⁵⁰ Ibid., 239.

⁴⁵¹ Johann Springer, *Statistik des österreichischen Kaiserstaates*, vol. 2 (Vienna: Beck's Universitäts-Buchhandlung, 1840), 286.

⁴⁵² "Nicht ganz ohne Grund wird Österreich als ein Uebergangstaats zwischen dem in Kultur noch zurückstehenden Orient und der anderseitigen, europäisch gebildeten Nachbarschaft angesehen". Ibid., 2:324-5.

elevation attained,” he observed.⁴⁵³ If one could find a way to quantify cultural production, the measurement of culture would become possible as well.

Springer’s interest in Austrian publishing led him to the offices of the Bücher-Revisions-Amt in Vienna. There, he collected the titles of every book that had passed through the hands of Austrian censors in the last five years. Springer’s computations using the lists provided by the censorial office in Vienna suggested that the Danube Monarchy had produced nearly two thousand new works in 1835. The number and wide range of books produced by Austrian writers impressed Springer. “According to these numbers,” he wrote, “literary activity with us is on the whole not insignificant, and covers most fields of science.”⁴⁵⁴ Springer used this information to challenge the creditability of the fair catalog. According to Springer, the fair catalog misrepresented the size and vitality of Austrian publishing by advertising just one hundred eighty of the two thousand books that Austrian authors had written in 1835. This number seemed shockingly low to Springer; it represented a mere tenth of Austria’s total book production. In contrast, the fair catalog listed every publication that had appeared in the other German states. The imbalance put Austria at a considerable disadvantage. “While Prussia, Bavaria, Saxony and the other confederal states find all products of their writing registered [in the fair catalog], only a tenth of Austria’s is listed there.”⁴⁵⁵

Springer urged readers of his statistics to draw a seemingly irresistible conclusion from his observation. The Saxon catalog “cannot be used to pass judgment on and compare Austria’s literary activities with those of other German confederal states.”⁴⁵⁶ Springer’s dissatisfaction with the fair catalog echoed a widely held conviction in Austria’s scholarly circles, and his undertaking drew on previous attempts to establish an Austrian national bibliography.⁴⁵⁷ With the creation of a *bibliographica austriaca*, it

⁴⁵³ “Der Grad der erreichten geistigen Ausbildung gibt sich insbesondere auch durch die Producte in schönen Künsten und durch die Literatur kund”. Johann Springer, *Statistik des österreichischen Kaiserstaates*, vol. 1 (Vienna: Beck’s Universitäts-Buchhandlung, 1840), 326.

⁴⁵⁴ “Diese Zahlen zufolge ist also die literarische Betriebsamkeit bei uns im Ganzen nicht unbedeutend, und erstreckt sich auf die meisten wissenschaftlichen Fächer”. Springer, *Statistik des österreichischen Kaiserstaates*, 1840, 2:340.

⁴⁵⁵ “Während Preußen, Baiern, Sachsen und die anderen Bundesstaaten all Erzeugnisse ihrer Schriftstellerei darin aufgezeichnet finden, kommt von den österreichischen kaum der zehnte Theil darin vor”. Springer, *Statistik des österreichischen Kaiserstaates*, 1840, 1:340.

⁴⁵⁶ “Daraus ergibt sich von selbst, wie unhaltbar es sei, nach jenem Kataloge Oesterreich in Betreff der literarischen Thätigkeit mit anderen deutschen Staaten in Vergleich zu stellen and zu beurtheilen.” Springer, *Statistik des österreichischen Kaiserstaates*, 1840, 2:339.

⁴⁵⁷ Blum, “Nationalbibliographie und Nationalbibliothek. Die Verzeichnung und Sammlung der nationalen Buchproduktion, besonders der deutschen, von den Anfängen bis zum Zweiten Weltkrieg.”

was hoped, Austrian writers could dispense with Leipzig catalog. Until an Austrian bibliography had been established, Adolph Schmidl wrote in the 1840s, “Austrian writers are in most cases forced to buy this Leipzig index to easily gain an overview of what is published in Austria.”⁴⁵⁸ If attempts to create an Austrian bibliography had managed to challenge the standing of the Saxon catalog, the historiography of the German book market might have looked different. From Springer’s point of view, it made little sense to say that Austrian publishers needed to import foreign books in order to compensate for the lack of domestic ones. On the contrary, Springer’s calculation suggested that Austria’s literary culture was almost ten times bigger than that in any of the north German states. Springer’s arguments failed. While some of his contemporaries heeded the clarion call to revise perceptions of Austria’s literary vitality, an Austrian national index did not appear at regular intervals until much later, and Springer’s study on Austrian book production did not leave much of a mark.⁴⁵⁹

The Leipzig Book Fair Catalog

Springer’s efforts to find an alternative source of data testify to the towering importance of the Leipzig catalog. Even those who set out to find alternative sources felt obliged to deal with it. Its significance to historical actors makes the fair catalog the obvious starting point for a study of the bibliopolitical regime that began to take shape around the turn of the nineteenth century. In contrast, for example, to Springer’s list, the Saxon fair catalog continued to be the principal source that most historical actors *did* consult. This section discusses the fair catalog and the uses to which historical actors put it.

While the Leipzig fair catalog dominated the book trade around the turn of the nineteenth century, it had not always done so. After its initial appearance in 1594, the Saxon index stood in the shadow of the Frankfurt fair catalog, the first of its kind to appear in Europe, for nearly two hundred years. The Augsburg book merchant Georg Willers published *Novorum librorum, quos nundinae autumnales, Francoforti 1564* with

⁴⁵⁸ “Die österreichischen Literaten waren eben so in den meisten Fällen gezwungen, diese Leipziger Verzeichnis zu kaufen, um einen leichtern Überblick dessen zu erhalten, was in Österreich erschienen ist.” Adolph Schmidl, “Die freigebung der literarischen und artistischen Anzeigen,” in *Oesterreichische Blätter für Literatur, Kunst, Geschichte, Geografie, Statistik und Naturkunde*, ed. Adolph Schmidl, 4:302 (Vienna: A. Adolf Schmidl, 1847), 1197–98.

⁴⁵⁹ Blum, “Nationalbibliographie und Nationalbibliothek. Die Verzeichnung und Sammlung der nationalen Buchproduktion, besonders der deutschen, von den Anfängen bis zum Zweiten Weltkrieg,” 1197.

the intention of informing book buyers in Augsburg about the merchandise on sale at the fair in Frankfurt. Thirty years later, the Saxon book dealer Henning Groß took the format established by Willers and used it to catalog the books on sale at the fair in Leipzig. Frankfurt's dominance in the book trade lasted until the second half of the eighteenth century. By 1750, the significance of the Frankfurt fair had waned and the Saxon fair rose to take its place.⁴⁶⁰ The ascendancy of the Leipzig fair established the Saxon city as the main hub for the book trade not only in the German language area, but also in Europe as a whole. As the book historian Jeffrey Freedman aptly puts it, "all the roads led to Leipzig" in the European book trade of the late eighteenth century.⁴⁶¹

The fair catalog changed owners shortly after the rise of Leipzig in the late eighteenth century. In 1756, Groß's heirs sold the catalog's Saxon privilege to Philipp Erasmus Reich, the owner of Weidmannische Buchhandlung. The catalog appeared in print under the auspices of Weidmannische Buchhandlung until 1851, when the Leipzig firm passed the torch to Georg Wigand. Four years later, the catalog changed hands a third time. It then became *Bibliographisches Jahrbuch für den deutschen Buch-, Kunst- und Landkarten-Handel*, a bibliography published until 1860 by the firm of Avenarius und Mendelssohn. After 1860, the catalog was discontinued. By then, other publications had taken over the function once served by fair catalogs, while the building of railroads, a growing network of roads and an improved postal service made the need for book fairs less pressing. New and improved transportation and communications systems made it possible for book merchants to ship merchandise directly to customers in a much safer and cheaper fashion than before. The traditional book fairs attracted a dwindling number of visitors as a result of broader historical changes that transformed European societies around the middle of the nineteenth century.⁴⁶²

⁴⁶⁰ Peter Weidhaas, "The End of an Era," in *A History of the Frankfurt Book Fair*, trans. Carolyn Gossage and W.A. Wright (Toronto, Lancaster & Tonawanda: Dundurn, 2007), 114–15; Wittmann, "Die Meßkataloge des 18. Jahrhunderts als Quellen der buchhandelsgeschichte"; Fabian, "Die Meßkataloge des achtzehnten Jahrhunderts," 1981; Duntze, "Die Frankfurter und Leipziger Meßkataloge als buchgeschichtliche Quellen."

⁴⁶¹ Jeffrey Freedman, *Books Without Borders in Enlightenment Europe: French Cosmopolitanism and German Literary Markets* (Philadelphia: University of Pennsylvania Press, 2012), 8.

⁴⁶² For more on this development, see Karlheinz Blaschke, "Der Übergang von der Warenmesse zur Mustermesse im 19. Jahrhundert," in *Brücke zwischen der Völkern — Zur Geschichte der Frankfurter Messe*, ed. Rainer Koch, 3 vols., 1 (Frankfurt am Main: Historisches Museum, 1991); Karl Heinrich Kaufhold, "Messen und Wirtschaftsausstellungen von 1650 bis 1914," in *Europäische Messen und Märktesysteme im Mittelalter und Neuzeit*, ed. Peter Johanek and Heinz Stoob (Cologne, Weimar & Vienna: Böhlau Verlag, 1996), 239–95.

Weidmannische Buchhandlung changed the catalog in several ways. Reich abandoned the Latin, gave the catalog a new title, alphabetized the contents and forbade the advertisement of “pieces that shy away from the light.”⁴⁶³ This last change, banning piratical books from the fair catalog, proved to be the most significant of Reich’s reforms. Unauthorized reprints did not deserve to be marketed alongside “proper books,” Reich argued.⁴⁶⁴ With the ban on piratical publications, he hoped to make the Leipzig fair the central place of business for respectable merchants. In a catalog from 1767, Reich vowed that “the learned and the book merchants search only for novelties here.”⁴⁶⁵ Reich’s attempt to make Leipzig a safe haven for legitimate book merchants helped establish the city as the hub of the German book trade.⁴⁶⁶ In keeping with this ambition, Reich also set out to undermine the competing fair in Frankfurt. In 1776, he called upon his colleagues from the northern states to participate in a boycott that dealt a deadly blow to the Frankfurt fair. “During the latest fair, I and several other friends bade farewell to this city and buried, so to speak, the book merchants’ fair there.”⁴⁶⁷ One year

⁴⁶³ “Piecen, die das Licht scheuen”. Philip Erasmus Reich, “Nachrichten,” in *Allgemeines Verzeichniss der Bücher, welche in der Frankfurter und Leipziger Ostermesse des 1776 Jahres entweder ganz neu gedruckt, oder sonst verbessert wieder ausgelegt worden sind, auch inskünftige noch herauskommen sollen* (Leipzig: Weidmanns Erben und Reich, 1776), 124. For a good overview of these changes, see Fabian, “Die Meßkataloge des achtzehnten Jahrhunderts,” 1981; Duntze, “Die Frankfurter und Leipziger Meßkataloge als buchgeschichtliche Quellen”; Philip Erasmus Reich, “Nachrichten,” in *Allgemeines Verzeichniss der Bücher, welche in der Frankfurter und Leipziger Ostermesse des 1776 Jahres entweder ganz neu gedruckt, oder sonst verbessert wieder ausgelegt worden sind, auch inskünftige noch herauskommen sollen* (Leipzig: Weidmanns Erben und Reich, 1776), 124.

⁴⁶⁴ “Wirkliche Bücher”. Reich, “Nachrichten,” 124.

⁴⁶⁵ “Die Herren Gelehrten und Buchhändler suchen bloß die Neuigkeiten in diese Blätter”. Philipp Erasmus Reich, “Zur Nachricht,” in *Allgemeines Verzeichnis der Bücher, welche in der Frankfurter und Leipziger Ostermesse des 1767 Jahres entweder ganz neu gedruckt, oder sonst verbessert, wieder aufgelegt worden sind, auch ins künftige noch herauskommen sollen*, ed. Philipp Erasmus Reich (Leipzig: Weidmannische Buchhandlung, 1767), 870.

⁴⁶⁶ For more on Reich’s importance to German book trade in the late eighteenth century, see Mark Lehmstedt, “‘Ein Stroh, der alles überschwemmet’: Dokumente zum Verhältnis von Philipp Erasmus Reich und Johann Thomas von Trattner. Ein Beitrag zur Geschichte des Nachdrucks in Deutschland im 18. Jahrhundert,” in *Bibliothek und Wissenschaft*, vol. 25, 1991, 176–267; Mark Lehmstedt, *Philipp Erasmus Reich (1717–1787). Verleger der Aufklärung und Reform der deutschen Buchhandels*. (Leipzig: Karl-Marx-Universität Leipzig, 1989); Hazel Rosenstrauch, “Buchhandelsmanufaktur und Aufklärung. Die Reformen des Buchhändlers und Verlegers Ph. E. Reich (1717–1787). Sozialgeschichtliche Studie zur Entwicklung des literarischen Marktes,” in *Archiv für Geschichte des Buchwesens* 26 (Frankfurt am Main: Börsenverein der Deutschen Buchhändler, 1986), 1–129.

⁴⁶⁷ “In der letzten Meße habe ich und verschiedene andere Freunde von dieser Stadt Abschied genommen, und die Buchhändler Meßen, so zu sagen, daselbst begraben”. Quoted from Lehmstedt, “‘Ein Stroh, der alles überschwemmet’: Dokumente zum Verhältnis von Philipp Erasmus Reich und Johann Thomas von Trattner. Ein Beitrag zur Geschichte des Nachdrucks in Deutschland im 18. Jahrhundert,” 77.

later, the fair in Frankfurt attracted seventeen visitors. It ceased to exist the year after this humiliating experience.

The rise of Leipzig as a major center of learning motivated the boycott of the Frankfurt fair, according to Reich. “Learnedness now blossoms in Saxony more than in other places, and our factories, the print shops ... are in a far better condition than in any other place in the Empire.”⁴⁶⁸ If the book trade blossomed in Saxony, the situation looked much less optimistic south of the river Main. To Reich, the merchandise brought to the fairs by south German book merchants seemed to be of low intellectual worth. To make matters worse, south German book merchants refused to give up the barter trade, which the Leipzig fair would abandon in favor of a cash-based business model. In addition to these issues, the fair organizers had allowed unauthorized reprinters to overrun the Frankfurt fair, which had become a “pirates’ fair,” according to Reich. As Mark Lehmstedt has shown, Reich feared that he and other respectable book merchants could do little to combat the piratical infestation of the Frankfurt fair. According to Reich, unauthorized reprinters attended the fair with the tacit approval of the imperial authorities.⁴⁶⁹

Reich traced the root of the piratical problem to Vienna. From his *Typographischer Pallast* outside inner-city Vienna, the book merchant Thomas von Trattner operated one of continental Europe’s more prosperous and far-reaching book businesses. Though Trattner’s books reached faraway cities such as London and Uppsala, Trattner primarily aimed to spread knowledge and learning to the corners of the Danube Monarchy where the light of civilization seldom reached. He aimed to do so “through the cheap delivery of books in all fields of science.”⁴⁷⁰ The scope of this undertaking earned Trattner fame as continental Europe’s undisputed prince of piracy.⁴⁷¹ Most of the books that Trattner published at home and abroad were pirated editions of north German originals, critics argued. In the eyes of his enemies, unauthorized reprints from Trattner’s print shop in Vienna seemed to flood the market. “Supported by money from the court, he [Trattner] floods the whole of Germany,” Reich complained in a letter to the secretary of the Saxon king Friedrich August.⁴⁷²

⁴⁶⁸ Ibid.

⁴⁶⁹ Ibid.

⁴⁷⁰ Edelen Thomas von Trattner, “Planes zur allgemeinen Verbreitung der Lektüre in den k. k. Staaten, durch wohlfeile Lieferung der Bücher all Fächer der Wissenschaft,” vol. 1, *Provincialnachrichten* (Wien: Edelen Thomas von Trattner, 1785), 136–41.

⁴⁷¹ Woodmansee, “Publishers, Privateers, Pirates: Eighteenth-Century German Book Piracy Revisited,” 2011.

⁴⁷² “Von den Geldern des Hofes unterstützt, überschwemmet er ganz Deutschland.” Quoted from Lehmstedt, 195.

The size of Trattner's undertaking made him the chief target of anti-piracy advocates in the late eighteenth century. Trattner's enemies could do little to hurt him, though. His importance to the Austrian book trade induced Empress Maria Theresa to ennoble Trattner and appoint him court printer in 1752. Along with the promotion, the empress shielded Trattner against attacks from foreign book merchants such as Reich. "No privilege protects any longer against ... Trattner," Reich complained.⁴⁷³ The favor of Maria Theresa made Trattner invulnerable to Reich's many attempts to get him convicted of unauthorized reprinting.

Bibliographical Thickness: A Sign of Progress or Degeneration?

Along with the boycott of the Frankfurt fair, the reform of the Leipzig catalog enabled Reich to take decisive steps in the struggle against Trattner and those whom Reich took to be unauthorized reprinters. Reich took additional measures shortly after the boycott. In 1765, Reich founded the Deutschen Buchhandlungsgesellschaft, a publishers' cartel that required members to swear an anti-piratical oath.⁴⁷⁴ Eight years later, he managed to gain influence over a special mandate issued by the Saxon king. With the Churfürstlich-Sächsisches Mandat den Buchhandel betreffend, Friedrich August aimed to prohibit piratical publishers from attending Leipzig during the two fair holidays.⁴⁷⁵ Combined with the ban on unauthorized reprints, Reich's promise to list only new books in the fair catalog made the Saxon index unique in the eyes of many contemporaries. In his influential article "Vom freien Geistesverkehr" (1814), the liberal nationalist historian Heinrich Luden discussed Leipzig's special standing in the world of books:

⁴⁷³ "Gegen den nun von kaiserl. Man. Baronisirten Buchhändler Trattner schützt [sic] kein Privilegium mehr!" Quoted from Lehmsted, 195.

⁴⁷⁴ Philipp Erasmus Reich, "Erstes Grundgesetz der neuerrichteten Buchhandlungsgesellschaft in Deutschland," in *Der Buchmarkt der Goethezeit*, ed. Ernst Fischer, vol. 1 (Hildesheim: Gerstenberg, 1986), 411–35.

⁴⁷⁵ Friedrich August, "Churfürstlich-Sächsisches Mandat den Buchhandel betreffend, de dato Dreßden, den 18. Dec. 1773.," in *Ephemeriden der Menschheit, oder Bibliothek der Sittenlehre, der Politik und der Gesetzgebung*, vol. 2 (Leipzig: Georg Joachim Göschen, 1785), 641–45.

Nowhere else is there a booksellers' fair [like that of Leipzig]; nowhere else is there such a center of literature as Leipzig; nowhere else are there such complete catalogues of all books which have ever been printed.⁴⁷⁶

Luden's assertion overstated the ambitions of Weidmannische Buchhandlung. Still, the idea that the fair catalog offered the most complete list of the total production of new books gained ground around the turn of the nineteenth century. The catalog, it was argued, put tremendous power in the hands of readers, helping them gain access to a total view of the German book trade. Readers put this panoptical viewing device to a variety of uses. For example, the Göttingen historian Johann Christoph Gatterer collected and compared editions of the catalog to survey the state of the sciences and the changes that had transformed them over time. Gatterer believed that the study of fair catalogs could help him answer the question: "What kind of relation does historical knowledge now have with regards to the other sciences that Germans pursue?"⁴⁷⁷ In conjunction with supplementary sources, Gatterer argued, the catalogs could be used to paint a rough picture of the changes that the sciences had gone through over the years.⁴⁷⁸

Gatterer employed the catalog in an ambitious but still fairly narrow way. Others made bolder use of the catalog. In an article in the *Journal des Luxus und Moden*, the Weimar publisher Carl August Böttinger argued that the catalog put readers in a position "to draw the most fertile conclusions about the taste and spirit [*Geist*] of the age." Upscale readers such as Böttinger savored "this most wonderful ... book index" in the manner of gourmets. Literary connoisseurs awaited the arrival of a new edition "with the same great famished hunger with which the voluptuary gourmet awaits the latest delivery of Hamburg clams and boxes of caviar from Riga."⁴⁷⁹ Assessments of the sort that interested Böttinger did not

⁴⁷⁶ "Nirgends ist eine Buchhändler-Messe; nirgends ist ein solcher Mittelpunkt für die Literatur, wie Leipzig, nirgends sind so vollständige Verzeichnisse von allen Büchern, die je gedruckt sind." Heinrich Luden, "Vom freien Geistes=Verkehr. Buchhandel und Nachdruck III," in *Nemesis: Zeitschrift für Politik und Geschichte*, ed. Heinrich Luden, vol. 2 (Weimar: Landes-Industrie-Comptoirs, 1814), 334.

⁴⁷⁷ "In was für einem Verhältnis steht jetzt die Geschichtskund in Teutschland gegen andere Wissenschaften, welche die teutschen trieben? Johann Christoph Gatterer, "J. G. Gatterers Raisonement über die jetzige Verfassung der Geschichtskunde in Teutschland," in *Historisches Journal von Mitgliedern des Königlichen Historischen Instituts zu Göttingen*, ed. Johann Christoph Gatterer, vol. 1 (Göttingen: Verlag der Witwe Vandenhoeck, 1772), 258.

⁴⁷⁸ Ibid.

⁴⁷⁹ "Kenner dieser nur allein in Deutschland möglichen, den Ausländern, die sich davon unterrichten lassen, höchst wunderbar scheinenden Bücherverzeichnisse, wissen aus der Lektüre derselben die fruchtbarsten Schlüsse auf Geschmack und Geist des Zeitalters zu machen, und erwarten oft seine Ankunft mit eben so großem Heißhunger, als der Gaumenlüstling den frühesten Transport Hamburger Austermuscheln oder des Rigaischen Caviarfäßchens." Carl August Böttinger, "Der Leipziger Meßkatalog oder Aussichten zur

require much of readers. To get a sense of the zeitgeist, it sufficed to simply feel the weight and thickness of the catalog in one's hands. In the article "Der neue Meßkatalog" (1811), an anonymous author discussed this approach. "Not unjustly, the greater or narrower girth of the fair catalog has been used as a yardstick of good or bad times."⁴⁸⁰ This contemporary observer linked bibliographical corpulence to positive values. "A period of time when there is much literary activity", he observed, "must be a happy and peaceful one."⁴⁸¹

Gatterer and Böttinger reported on their use of the fair catalog before the avalanche of statistics had begun to beset the German language area in earnest. Once statistical publications did begin to steamroll German readers, the fair catalog quickly became one of the main reservoirs of raw data to which statisticians turned. To name just one example, Johann Christian Gädicke used fair catalogs to produce *Zur Statistik der Deutschen Literatur und des Deutschen Buchhandels* (1834), a statistical overview commissioned by the confederal assembly in Frankfurt.⁴⁸² Works such as Gädicke's required a degree of effort. While the most recent catalogs could be easily found, unbroken series of older ones proved more difficult to track down. Until the 1850s, there was no comprehensive collection of Leipzig fair catalogs. In response to this problem, the Halle publisher Gustav Schwetschke collected the catalogs and published them in *Codex nundinarius Germaniae literatae bisecularis* (1850–77).⁴⁸³ In a historical statistical account of the German book trade, the scholar Friedrich Steger commented on the significance of Schwetschke's effort.⁴⁸⁴ "Previously, these catalogs were very scattered in public and private libraries," he observed. "Now, these reports are united in: *Codex nundinarius Germaniae literatur*

modischen Winterlectüre," in *Journal des Luxus und der Moden*, vol. 9 (Weimar: Friedrich Justin Bertuch, 1794), 528.

⁴⁸⁰ "Nicht mit Unrecht hat man den Leipzig Meßkatalog, nach seinem grössern oder geringern Umfang, zum Maaßstabe der guten oder schlimmen Zeiten gemacht". Kuhn, "Der neue Meßkatalog," 270.

⁴⁸¹ "Ein Zeitraum, in welche große literarische Thätigkeit herrscht, muß ein sehr glücklicher und friedlicher sein." Ibid.

⁴⁸² Johann Christian Gädicke, *Zur Statistik der Deutschen Literatur und des Deutschen Buchhandels. Vergleichende Zusammenstellung aus den Jahren 1818, 1832 und 1833, größtentheils in merkantilischer Hinsicht, interessant und Lehrreich für Staatsmänner, Gelehrte, Bibliothekare und Buchhändler* (Berlin: Trautwein, 1834), 3.

⁴⁸³ See Schwetschke's introduction to *Codex nundinarius Germaniae literatae bisecularis: Meß-Jahrbücher des deutschen Buchhandels von dem Erscheinen des ersten Meß-Kataloges im Jahre 1564 bis zu der Gründung des ersten Buchhändler-Vereins im Jahre 1765. Mit einer Einleitung von Gustav Schwetschke* (Halle: Schwetschke's Verlagshandlung und Buchdruckerei, 1850).

⁴⁸⁴ Steger, "Der deutsche Buchhandel (Geschichtlich und statistisch)."

bisecularis.”⁴⁸⁵ With the help of Schwetschke’s collection, Steger expected to achieve much.

The German fair catalog does not only give us an account of the material movements of the book trade; it is also very valuable, yes even indispensable, for the general assessment of the cultural standing of our people in a defined time period.⁴⁸⁶

Steger shared the belief that large numbers of publications bore witness to intellectual advancement. However, fat fair catalogs also caused alarm. To some, their growing girth suggested that German culture had begun to suffer from Vielschreiberey, a dubious overproduction of books. This development could seem catastrophic. If the catalog kept expanding at this rate, it was argued, no one would be able to safely navigate the German information terrain in the future:

I find it wholly natural, dearest friend, that you feel frightened by the latest Leipzig Book Fair Catalog from Michaelmas in 1788. I feel the same and I recall a time when the Easter Fair Catalog ... had little of the corpulence it has today. For example the Michaelmas Catalog from 1770 was merely five and a half quires thick, while the Michaelmas catalog from 1788 was seventeen quires strong, which means that book writing is, eighteen years afterwards, three times greater than in 1770. If the present development continues for the next eighteen years, where will we end up[?] ⁴⁸⁷

Alarm over the growing fatness of the fair catalog echoed old fears about information overload. Europe’s learned community had complained about the overabundance of written material since the invention and spread of the printing press in the fifteenth century.⁴⁸⁸ If it seemed certain

⁴⁸⁵ “Bisher waren diese Kataloge sehr verstreut in öffentlichen und Privatbibliotheken...Jetzt sind diese Berichte vereinigt in: *Codex nundinarius Germaniae literatae bisecularis*.” Ibid., 570.

⁴⁸⁶ „Die deutschen Meßkataloge geben uns nicht allein Rechenschaft von der materiellen Bewegung des Buchhandels, sie sind auch sehr schätzbar, ja fast unentbehrlich für die allgemeine Würdigung des Kulturzustandes unseres Volkes in einem bestimmten Zeitabschnitte“ Ibid.

⁴⁸⁷ “Ich finde es sehr natürlich, theuerster Freund, daß sie über den letztern Leipziger Meßkatalog von der Michaelismesse 1788 erschrocken sind. Es ging mir auch nicht besser, und ich erinnere mich der Zeit noch sehr wohl, in welcher ein Ostermesse-katalogus...bey weitem nicht die Corpulenz eines jetzigen M. M. Katalogus hatte. So ist z. B. der M. M. Katalogus von 1770. nur 5 1/2 Bogen stark, der M. M. Katalogus von 1788. hingegen 17 1/2 bogen stark, so daß die Bücherschreiberey also jetzt, nach 18 Jahren, mehr als drey-mahl stärker ist, als im Jahre 1770. Wohin wird es kommen, wenn sie sich hinnen der nächsten 18 Jahre in dem nämlichen Verhältniß vermehrt.“ Bibra, “Schreiben an einen Freund über die Ursachen der jetzigen Vielschreiberey in Deutschland,” 139.

⁴⁸⁸ Ann Blair, *Too Much to Know: Managing Scholarly Information Before the Modern Age* (New Haven & London: Yale University Press, 2011); Chad Wellmon, “From Bibliography to Ethics,” in *Organizing Enlightenment: Information Overload and the Invention of the Modern Research University* (Baltimore: Johns Hopkins University Press, 2015), 108–22;

that German book culture would soon collapse, overburdened by its own weight, the causes of this flood of books seemed less evident.

Why had the fair catalog grown so much fatter in recent years? To those who feared the rampant growth of the catalog, a confluence of historical forces seemed to be at play. The rapid expansion of the German readership had made it possible for more people to earn a living as writers. The abandonment of Latin in learned publishing had made professional writing a viable career for new groups such as women. The temporary easing of censorship laws in the south German states had lifted a dead hand from the authorial output of the region.⁴⁸⁹ In addition to these changes, contemporary observers also attributed the growth of the fair catalog to the problem that Schellwitz discussed earlier in this chapter. It had become easier to become an author. One alarmed contributor to the debate about Vielschreiberey observed that “it takes a couple of days to become an author [*Auctor*]” in the 1790s.⁴⁹⁰ In earlier times, the same author observed, “one needed several months, yes often several years before one accomplished a book.”⁴⁹¹ Contributors to contemporary discussions about Vielschreiberey linked the short time needed to compose a book to a change in scientific publication standards.⁴⁹² To advance their careers at German universities, aspiring members of the learned caste now needed to “parade in the bibliographical indexes as the authors of many publications.”⁴⁹³

Mark Algee-Hewitt, “Acts of Aesthetics: Publishing as Recursive Agency in the Long Eighteenth Century,” in *Romanticism and Victorianism on the Net*, 58, 2010.

⁴⁸⁹ For a contemporary run-down, see “Bemerkungen über die Ursachen der jetzigen Vielschreiberey in Deutschland,” in *Journal von und für Deutschland*, ed. Philipp Anton Sigmund von Bibra and Leopold Friedrich Günther von Goeckingk, 6 (Hermann, 1790), 498–502.

⁴⁹⁰ “ein Paar Tagen ein Auctor zu werden” Ibid., 500.

⁴⁹¹ “Vormals brauchte man mehrere Monate, ja oft viele Jahre dazu bis man ein Buch zu Stande brachte.” Ibid., 499.

⁴⁹² For more on this change and the consequences it had for German universities, see Peter Josephson, “The Publication Mill: The Beginnings of Publication History as an Academic Merit in German Universities, 1750–1810,” in *The Humboldtian Tradition Origins and Legacies*, ed. Peter Josephson, Thomas Karlsohn, and Johan Östling (Leiden, Boston, Tokyo: Brill Academic Publishers, 2014); Ian F. McNeely, *The Emancipation of Writing: German Civil Society in the Making, 1790s-1820s* (Berkeley, Los Angeles & London: University of California Press, 2003).

⁴⁹³ “in den Bücherverzeichnißen als Verfasser vieler Schriften zu paradiren” Bibra and Goeckingk, “Bemerkungen über die Ursachen der jetzigen Vielschreiberey in Deutschland,” 500.

“No More Fair Catalog!”

Since it seemed to advertise books that hardly qualified as new in the eyes of critics, the fair catalog roused discussions about better and more reliable ways to inform the public about the appearance of literary novelties. Should the catalog be reformed? Or had it already been too abused—ought it to be replaced by a new and more reliable index? This section takes stock of contemporary debates about the fair catalog and its reliability.

According to the author of “Auch ein Wort über den Meßkatalog” (1820), public concern over the trustworthiness of the Leipzig book fair catalog made it an “interesting topic of conversation” in 1820.⁴⁹⁴ Published in Friedrich Arnold Brockhaus’s *Literarisches Conversationsblatt*, this article contributed to one of the debates that broke out over the fair catalog.⁴⁹⁵ The author of “Auch ein Wort über den Meßkatalog” criticized previous contributions to the discussion in Brockhaus’s journal for treating the fair catalog and its publisher Weidmannische Buchhandlung with misguided respect. The book merchant Reimer did not deserve “friendly words.” Instead, the owner of the fair catalog “must prove through deeds ... that he is worthy of [a good] standing with the public.”⁴⁹⁶ So far, the current owner of Weidmannische Buchhandlung had not done so. In Reimer’s care, the quality of the fair catalog had sunk so low that small-scale reforms seemed hopelessly inadequate. “A mere reform” of the catalog, wrote this critic, “does not satisfy me; I demand a comprehensive overhaul of this aged institution.” If rebuilt from the ground up, the fair catalog might finally begin to “accomplish what it ought to accomplish.”⁴⁹⁷ Now, however, a wide gap existed between the ideal and the real publication.

⁴⁹⁴ “Der ‘Meßkatalog’ ist also gewiß ein interessanter Gegenstand der Conversation...” “Auch ein Wort über den Meßkatalog,” in *Blätter für literarische Unterhaltung*, 178 (Leipzig: Friedrich Arnold Brockhaus, 1822), 709.

⁴⁹⁵ Friedrich Arnold Brockhaus, “Nachschrift der Redaction,” in *Literarisches Conversations-Blatt*, ed. Friedrich Arnold Brockhaus, 2:157 (Leipzig: Friedrich Arnold Brockhaus, 1822), 627–28; Friedrich Arnold Brockhaus, ed., “Freundliches Wort an die Reimer’sche Buchhandlung,” in *Literarisches Conversations-Blatt*, 2:157 (Leipzig: Friedrich Arnold Brockhaus, 1822), 625–27; “Auch ein Wort über den Meßkatalog”; Friedrich Arnold Brockhaus, “Zusatz,” in *Literarisches Conversations-Blatt*, ed. Friedrich Arnold Brockhaus, 2:178 (Leipzig: Friedrich Arnold Brockhaus, 1822), 711–12; Friedrich Arnold Brockhaus, ed., “Zum Michaelis-Meßkatalog von 1822,” in *Literarisches Conversations-Blatt*, 2:260 (Leipzig: Friedrich Arnold Brockhaus, 1822), 1037–38.

⁴⁹⁶ “Die freundlichen Worte des Verlegers gelten mir nicht; er muß durch die That bewähren daß er seiner Stellung zum Publikum würdig ist” “Auch ein Wort über den Meßkatalog,” 709.

⁴⁹⁷ “Die bloße Reform genügt mir nicht, ich verlange eine durchgreifende Umgestaltung dieses verjährten Instituts, das schon seinem Titel gar nicht mehr entspricht, noch weniger aber, in Hinsicht aller andern Erfordernisse, leistet, was es leisten soll.” Ibid.

This critic felt misled by the assertion that the fair catalog provided readers with an overview of new publications in the German language area.

I want to gain knowledge about what is new, and I mean truly new, the latest of the merchandise that the book merchants have to offer in the very moment when it is truly new. This is the task; and now I ask, how does the fair catalog measure up?⁴⁹⁸

Not very well, answered the author. First of all, an index of new publications could not appear just twice a year, but should be issued, the author demanded, at least once a week. In addition, contemporary critics of the catalog linked its unreliability to poor cataloging routines. A great number of the books included in the catalog never appeared from the press, one critic pointed out, while many real publications were never listed. As a result, readers of the catalog gained a distorted view of the book trade. One contributor to the debate in Brockhaus's journal even lamented the catalog's "deceitfulness."⁴⁹⁹ Piracy, plagiarism and Vielschreiberei compounded the problem. The owners of Weidmannische Buchhandlung had sworn to ban pirated books from the fair catalog, but a suspicious lack of resolve had instead allowed "the cancer of unauthorized reprints" to flourish there. "There are ways to defeat this evil; but they are frightened by the difficulties and remain inactive."⁵⁰⁰ In light of these and other shortcomings, the catalog had outstayed its welcome. After so much excessive abuse, one critic argued, it now seemed beyond repair. "No more fair catalog!" the writer exclaimed.⁵⁰¹

Criticism of fair catalogs sparked discussions about alternative means to announce the publication of new works in the German language area. Dissatisfied readers in search of inspiration turned to foreign outlets such as the English newspaper the *Morning Chronicle* and the French magazine *Journal de la librairie*. Critics of the Leipzig catalog looked especially to the Parisian journal with much envy and admiration. To Brockhaus, the editor of the debate in *Literarische Conversationsblatt*, a German index of new publications ought to emulate the French example as much as possible. "The search for an ideal to emulate will not take long," Brockhaus wrote, "for all the requirements are met in the weekly

⁴⁹⁸ "Diese festgestellte, so erkläre ich mein Verlangen ... daß ich wirklich das Neue, aber das wahrhaft Neue, das Allerneueste von dem, was die Buchhändler uns darbieten, im Augenblick, da es neu ist, kennen lernen will. Dies ist die Aufgabe; und nun frage ich, wie entspricht derselben der 'Meßkatalog'?" Ibid., 710.

⁴⁹⁹ "lügenhaftigkeit" Brockhaus, "Zum Michaelis-Meßkatalog von 1822," 1037.

⁵⁰⁰ "Es gibt Mittel, dieses Uebel zu bekämpfen; man erschrickt aber von den Schwierigkeiten, und bleibt unthätig." "Auch ein Wort über den Meßkatalog," 711.

⁵⁰¹ "Kein 'Meßkatalog' mehr!" Ibid., 709.

Journal de la librairie.⁵⁰² Two characteristics made the Parisian journal worthy of imitation in Brockhaus's eyes. It appeared once a week and French readers could trust the Parisian journal to never list piratical books. The French state held the publication under its control. The authority of the French book index emanates from the state, Brockhaus pointed out.⁵⁰³ The state's stamp of approval lent the publication an "official character" and vouchsafed its creditability.⁵⁰⁴

Its connection to the French state made the Parisian journal different from the Saxon catalog. The latter remained in the hands of private interests from beginning to end. To Brockhaus's mind, the lack of a state connection rendered the Leipzig catalog vulnerable to attacks on its reputation. To prevent this vulnerability from afflicting future indexes, the German book trade needed a catalog linked to the authority of a state. The political situation in the German language area made the *Journal de la librairie* difficult to emulate there. Unlike France, the German-speaking parts of Europe did not have one government, but several. "[M]ore than thirty great and small dictators" ruled the region, one critic of the fair catalog pointed out.⁵⁰⁵ The political situation made the creation of a state-controlled index seem unlikely. Brockhaus commented on the problem in one of his articles on the fair catalog: "The emulation of this commendable institution [the Parisian journal] will, however, be very difficult in Germany."⁵⁰⁶ The Saxon publisher spoke from experience. Three years earlier, Brockhaus had written a proposal discussing the creation of a book index similar to the one published in France. His publication would draw on the authority of the confederal assembly, rather than that of a single state, to gain the credibility that the Saxon fair catalog lacked.

In the vision outlined in Brockhaus's proposal, a "central bureau" would manage the German book index.⁵⁰⁷ This bureau would collect information about new publications from its offices in Leipzig, though the confederal assembly in Frankfurt would control and staff the organization. "Each book published within the German confederal states must be reported to this bureau," Brockhaus's proposal suggested, "and a

⁵⁰² "Was nun die Bildung eines andern und neuen Hülfmittels zur Bekanntmachung der deutschen literarischen Neuigkeiten betrifft, so ist nach einem Muster dazu allerdings nicht lange zu suchen, indem das in Paris wöchentlich erscheinende *Journal de la librairie* alle Bedingungen dazu erfüllt." Brockhaus, "Zusatz," 712.

⁵⁰³ "vom Staat ausgeht" Ibid.

⁵⁰⁴ "officiellen Charakter" Ibid.

⁵⁰⁵ "mehr als dreißig große und kleine Dictatoren" Brockhaus, "Zum Michaelis-Meßkatalog von 1822," 1037.

⁵⁰⁶ "Die Nachahmung dieses trefflichen Instituts dürfte aber in Deutschland sehr schwer seyn" Brockhaus, "Zusatz," 712.

⁵⁰⁷ "Zentralbehörde" Brockhaus, "Metternich's Plan einer staatlichen Organization des deutschen Buchhandels," 121.

copy sent to it for free.”⁵⁰⁸ At the end of each week, the bureau would compile the information and publish the resulting list in a special journal. Brockhaus designed the proposal to incentivize book merchants to submit their merchandise to the bureau as soon as possible. Books that did not appear in the bureau’s lists enjoyed no protection at all against unauthorized reprinting. A different aspect of Brockhaus’s proposal appealed to the politicians. The creation of a central bureau would provide the Frankfurt assembly with a preeminent system of press surveillance. The maintenance of the weekly index would help the bureau surveil the book market. “[The central bureau] keeps a watchful eye on all matters concerning the legal regulation of the literary situation within the German confederal states.”⁵⁰⁹ At the end of each year, the bureau would send a special report on its activities to the confederal assembly in Frankfurt.

One of Brockhaus’s articles in *Literarische Conversationsblatt* discussed the reason why confederal politicians ought to find this arrangement conducive to state interests. In France, the book index provided the government with “the most complete oversight.” Thanks to its panoptical view of the book trade, the French state controlled a powerful weapon against the publication and dissemination of illicit works. “State representatives have, through his journal, the most complete oversight over the entirety of the latest literature and it is very easy for them to take legal action against illicit publications.”⁵¹⁰ On May 29, 1819, Brockhaus handed the proposal to one of his liaisons in the Saxon government. Through him, it reached the hands of Adam Müller, the Austrian ambassador in Saxony. Müller then informed Metternich about Brockhaus’s suggestions.

Metternich reckoned that he could use Brockhaus’s proposal to improve the censorship system in the confederacy.⁵¹¹ It put the censorial office in touch with the organization tasked to deal with the ban on unauthorized reprinting. The fourth paragraph in Metternich’s draft underlined the importance of this connection. “[I]t is desirable that ... the deciding institution against unauthorized reprinting and the adopted confederal decision against the misuse of the press are put into the closest

⁵⁰⁸ “Jedes innerhalb der deutschen Staaten erscheinende Buch müßte dieser Behörde angezeigt und ihr ein Exemplar desselben frei eingesendet werden”. Ibid.

⁵⁰⁹ “Sie [the Zentralbehörde] hätte ein wachsames Auge auf Alles, was die gesetzlichen Bestimmungen der literarischen Verhältnisse innerhalb der deutschen Bundesstaaten beträfe”. Ibid.

⁵¹⁰ “Die Staatsbehörde hat folglich durch dies Journal die vollständigste Uebersicht der gesamten neuesten Literatur, und es wird ihr dadurch sehr leicht, gegen gesetzwidrige Schriften das Gesetz in Anspruch zu nehmen.” Brockhaus, “Zusatz,” 712.

⁵¹¹ For a description of this process, see Brockhaus, “Metternich’s Plan einer staatlichen Organization des deutschen Buchhandels.”

reciprocal relationship possible.”⁵¹² By forging a link between censorship and anti-piracy measures, Metternich hoped to simplify the detection of seditious literature within the confederacy. With Brockhaus’s system in place, authorities would not have to coerce publishers to submit their work to the censors. The design of the list would instead make it desirable for book merchants to send new works to the bureau in Leipzig. Metternich’s argument echoed the one put forward by Brockhaus: “From the day of its appearance in the protocol the work ... is secured against unauthorized reprinting in the whole of Germany.”⁵¹³

Metternich introduced his version of Brockhaus’s proposal at a ministerial conference in Vienna on May 20, 1820. He told the attending ministers that he had found a way to combine a “new, unforced guarantee” against book piracy with “the only system of press surveillance that is compatible with peace and order in Germany.” Metternich’s presentation stressed the link between press surveillance and confederal protection against unauthorized reprinting.

This proposal has the peculiarity that it combines suitable measures against unauthorized reprinting with a very carefully considered plan for the legal regulation of the German book trade.⁵¹⁴

The rise of the “middle social classes” fed Metternich’s fears of an imminent threat to the establishment.⁵¹⁵ The middle class lay behind the

⁵¹² “Nächst dem wäre noch erwünscht, daß ... die zu beschließenden Anordnungen gegen den Nachdruck mit den gegen die Mißbräuche der Pressfreiheit erlassenen Bundesbeschlüssen in möglichst genauen wechselseitigen Zusammenhang gesetzt.” Metternich, “Beilage Litt. C. zum Protocoll der 32. Sitzung. Denkschrift über die in Betreff des Büchernachdrucks, der Sicherstellung des literarischen Privat-Eigenthums, und der Organisation des deutschen Buchhandels zu ergreifenden Maßregeln,” 389.

⁵¹³ “Von dem Tage der Aufnahme in das Protokoll an gerechnet, ist das Werk auf den durch §. 6 bestimmten Zeitraum unter den Schutz der Bundes-Versammlung und gegen den Nachdruck durch ganz Deutschland sicher gestellt.” Adam Müller, “Anlage der Beilage Litt. C. zum Protocoll der 32. Sitzung. Denkschrift über die in Betreff des Büchernachdrucks, der Sicherstellung des literarischen Privat-Eigenthums, und der Organisation des deutschen Buchhandels zu ergreifenden Maßregeln,” in *Die Schluss-Acte der Wiener Ministerial-Conferenzen zur Ausbildung und Befestigung des deutschen Bundes: Urkunden, Geschichte und Commentar. Erste Abtheilung. Die Urkunden. Lieferung I. Acten u. Protocolle der W. M.-Conf. bis zu Beil. B. z. Prot. b. 20sten Conf.*, ed. Ludwig Karl James Aegidi (Berlin: G. Reimer, 1860), 404.

⁵¹⁴ “Dieser Vorschlag hat das Eigenthümliche, daß er zweckmäßige Maßregeln gegen den Nachdruck mit einem sehr durchdachten Plane zur gesetzlichen Organisation des deutschen Buchhandels überhaupt verbindet und zugleich dem einzigen mit Ruhe und Ordnung in Deutschland vereinbarlichen System der Aufsicht über die Presse eine neue, ungezwungene, dem Vortheil der Schriftsteller und Buchhändler durchaus angemessene Garantie darbietet.” Metternich, “Beilage Litt. B. zum Protocoll der 32. Sitzung. Vortrag des Herrn Fürsten von Metternich, den Entwurf eines Bundes-Beschlusses gegen den Bücher-Nachdruck betreffend.”

nationalist movement, which threatened to turn the tables on the old order and redistribute political power. To quench its thirst for power, this class applies itself

to persuading kings that their rights are limited to sitting on a throne, while the right to govern and to attack the centuries-old heritage of all that is sacred and positive with regard to man, in sum, to deny the values of the past and to declare themselves master of creation of the future, is reserved to their class.⁵¹⁶

In 1819, the growing influence of nationalistic and liberal currents in German politics led the political elite to implement a series of repressive reforms. Efforts to disarm the national-liberal threat to the status quo reached their apex in August 1819, when Metternich hosted the ministerial conference in Karlsbad. In the Bohemian spa town, Metternich moderated a discussion about the best way to defeat the twin evils of liberalism and nationalism.⁵¹⁷

The assassination of the conservative playwright August von Kotzebue by the radical student Karl Sand in 1819 provided the pretext for Metternich's ministerial rally. In conservative circles, the murder confirmed the erosive effect of nationalism and liberalism on the societal pillars of stability, tradition and orderliness. The article on the Karlsbad conference in Brockhaus's *Conversationslexicon* (1822) commented on the conservative reaction to Kotzebue's murder, observing that "[t]he enthusiasm for the unity of Germany will gradually dissipate and with it the fear of the restless spirit of the times."⁵¹⁸ Others felt less sure. Kotzebue's murder suggested that an already bad situation was poised to disintegrate further if the authorities did not take drastic measures to keep nationalistic troublemakers in line. Mounting fears of societal chaos

⁵¹⁵ "die mittleren Gesellschaftsklassen" Clemens Wenzel Lothar Metternich, "Clemens Fürst von Metternichs politischem Glaubensbekenntnis," in *Aus Metternich's nachgelassenen Papieren*, ed. Richard Metternich-Winneburg, vol. 3 (Vienna: Wilhelm Braumüller, 1881), 1.

⁵¹⁶ "die Könige davon zu überzeugen, daß deren Rechte sich darauf beschränken, auf einem Thron zu sitzen, ebenso wie es das Recht dieser Kaste sei, zu regieren und all das anzugreifen, was über Jahrhunderte an Heiligem und Gutem auf die Menschheit gekommen ist; und den Wert der Vergangenheit zu verneinen und sich selbst zum Schöpfer der Zukunft zu ernennen" Metternich, "Clemens Fürst von Metternichs politischem Glaubensbekenntnis."

⁵¹⁷ The literature on the Karlsbader Beschlüsse is vast. See for example, Ernst Rudolf Huber, *Deutsche Verfassungsgeschichte seit 1789: Reform und Restauration 1789 bis 1830* (W. Kohlhammer, 1957); Siemann, »Deutschlands Ruhe, Sicherheit und Ordnung«; Büssem, *Die Karlsbader Beschlüsse von 1819*; Schermaul, *Die Umsetzung der Karlsbader Beschlüsse an der Universität Leipzig 1819–1848*; Brümmer, *Staat kontra Universität*.

⁵¹⁸ "Die Begeisterung für Deutschlands Einheit wird nach und nach erlöschen, und mit ihr dir Furcht vor einem unruhigen Geiste der Zeit". Friedrich Arnold Brockhaus, ed., "Carlsbader Beschlüsse," in *Conversations-Lexicon. Neue folge. In Zwei Bänden. Erste Abtheilung des ersten Bandes oder des Hauptwerks Elften Bandes erste Hälfte. A - Cz* (Leipzig: Brockhaus, 1822), 578.

prepared the ground for the Karlsbader Beschlüsse, the three decrees adopted by the confederal ministers at Metternich's conference in Karlsbad. The first and second decrees regulated the universities and the freedom of the press. The third established an investigating committee with the mandate to arrest individuals suspected of having taken part in "revolutionary machinations and demagogic connections."⁵¹⁹

Metternich attributed the greatest weight to the press regulations. To him, a free press posed the most significant challenge to peace and orderliness. "The greatest, and therefore the most urgent, malady today is the press," he wrote to his secretary and political operative Friedrich Gentz.⁵²⁰ "All German governments," Metternich continued,

have come to the conclusion that the press today serves a party that undermines all existing governments. The spirit of nationalism that has spread all across Germany means that it does not rest within the power of individual states to protect their borders from the malady.⁵²¹

Much hung in the balance, Metternich argued. If monarchs failed to work together against the transnational spread of the fervor for nationalism, chaos and anarchy would engulf their kingdoms. "Union between monarchs," Metternich wrote to his secretary Gentz, "is the fundamental basis of the policy to follow in order to save today's society from total ruin."⁵²²

The Karlsbad decrees conferred on the confederal assembly in Frankfurt the mandate to suppress publications that threatened "the dignity of the Confederation, the security of individual Confederal states or the maintenance of peace and quiet in Germany."⁵²³ To those in the

⁵¹⁹ "revolutionären Umtriebe und demagogischen Verbindungen." "Vier und zwanzigste Sitzung. Geschehen, Frankfurt den 16. August 1824. In Gegenwart aller in der drei und zwanzigsten Sitzung Anwesenden. §. 131. Provisorische Maaßregeln zur nöthigen Aufrechthaltung der innern Sicherheit und öffentliceh Ordnung im Bunde. (35. Sitz. §. 220 v. J. 1819.)," in *Protokolle der Deutschen Bundesversammlung*, 60:1 (Frankfurt am Main: Andreäische Buchhandlung, 1824), 254.

⁵²⁰ "Das größte und demnach das dringendste Uebel ist heute die Presse". Clemens Wenzel Lothar Metternich, "Clemens Fürst von Metternich an Friedrich Gentz in Perugia (17. Juni 1819); Metternichs Antwort auf einen Brief von Gentz (3. Juni 1819)," in *Aus Metternich's nachgelassenen Papieren*, ed. Richard Metternich-Winneburg, vol. 3 (Vienna: Wilhelm Braumüller, 1881), 252.

⁵²¹ "Die sämtlichen deutschen Regierungen haben die Ueberzeugung geschöpft, daß die Presse heute einer, alle bestehenden Regierungen untergrabenden Partei dient. Die über ganz Deutschland verbreitete Nationalität macht, daß es nicht in der Gewalt der einzelnen Staaten steht, ihre Grenzen vor dem Uebel zu bewahren" Ibid.

⁵²² "L'union entre les Monarques est la base fondamentale de la politique à suivre pour sauver aujourd'hui la société de sa ruine totale"; Metternich, "Clemens Fürst von Metternichs politischem Glaubensbekenntnis," 416.

⁵²³ "Die Bundesversammlung soll außerdem befugt seyn, die zu ihrer Kenntniß gelangenden, unter der Hauptbestimmung des § 1 begriffenen Schriften, in welchem deutschen Staate sie auch erscheinen mögen, wenn solche, nach dem Gutachten einer von ihr ernannten

crosshairs of the Karlsbad decrees, Metternich's draconian press regulations seemed to be out of step with the course of history. According to Karl Marx, for example, similar ideas about press supervision had been the norm before the French Revolution changed the European political landscape in 1789.⁵²⁴ The revolution ought to have displaced absolutist systems of press censorship. Instead, the ancien régime appeared to grow stronger and stronger by the day. Four years before European nationalists, revolutionaries and liberals joined forces to expedite the downfall of Metternich's system in March of 1848, Marx had commented on the political developments that had been set in motion by Metternich's reactionary call to arms in Karlsbad. "[T]he present German regime," Marx argued in 1844, was "an anachronism, a flagrant contradiction of universally accepted axioms, the futility of the ancien régime displayed for all the world to see."⁵²⁵

Marx's characterization underlined the special circumstance that shaped the German situation in the post-Napoleonic era. Metternich's efforts to tighten the old regime's grip on power, out of fear for future revolutions, made the political situation in the German language area unique on the world-historical stage, Marx observed.

Yes, German history prides itself on having traveled a road which no other nation in the whole of history has ever travelled before, or ever will again. We have shared the restorations of modern nations without ever having shared their revolutions.⁵²⁶

Unlike British, French and American contemporaries, Germans had experienced the conservative backlash that followed in the wake of the French Revolution without living through a revolution of their own.

Commission, der Würde des Bundes, der Sicherheit einzelner Bundesstaaten oder der Erhaltung des Friedens und der Ruhe in Deutschland zuwiderlaufen, ohne vorhergegangene Aufforderung, aus eigener Autorität, durch den Ausspruch, von welchem keine Appellation stattfindet, zu unterdrücken, und die betreffenden Regierungen sind verpflichtet, diesen Ausspruch zu vollziehen." "§. 220. Ausbildung und Befestigung des Bundes, und provisorisch Maasregeln zur nöthigen Aufrechthaltung der innern Sicherheit und öffentlichen Ordnung im Bunde.," in *Protokolle der Deutschen Bundesversammlung. Mit hoher Bewilligung.*, vol. VII (Frankfurt am Main: Andreäische Buchhandlung, 1819), 668.

⁵²⁴ Karl Marx, "Zur Kritik der Hegel'schen Rechts-Philosophie," in *Deutsch-Französische Jahrbücher*, ed. Arnold Ruge and Karl Marx, vol. 1 (Paris: Bureau der Jahrbücher/Bureau des annales, 1844), 71–85.

⁵²⁵ "Das jetzige deutschen Regime dagegen, ein Anachronismus, ein flagranter Widerspruch gegen allgemein anerkannte Axiome, die zur Weltanschauung ausgestellt die Nichtigkeit des ancien régime, bildet sich nur mehr ein, an sich selbst zu glauben und verlangt von der Welt dieselbe Einbildung." Marx, "Zur Kritik der Hegel'schen Rechts-Philosophie," 1844, 75.

⁵²⁶ "Ja, die deutsche Geschichte schmeichelt sich einer Bewegung, welche ihr kein Volk am historischen Himmel weder vorgemacht hat, noch nachahmen wird. Wir haben nämlich die Restaurationen der modernen Völker geteilt, ohne ihre Revolutionen zu teilen." Marx, "Zur Kritik der Hegel'schen Rechts-Philosophie," 1844, 72–73.

“A Merciless Fumigation”

Metternich's failure to convince the ministerial assembly spared him the effort of answering the question that lies at the heart of this dissertation. Without a centralized book index, the confederal authorities did not need to decide which definition of unauthorized reprinting the central bureau should abide by. If Metternich had made a more compelling case for Brockhaus's proposal, how would the central bureau have drawn the line between an unauthorized reprint and a new publication? Though Brockhaus and Metternich's plans for a centralized protocol never materialized, confederal authorities did weigh in on the nature, categorization and detection of piracy. Several years after Brockhaus's reform effort, the assembly in Frankfurt passed the ban on unauthorized reprinting. This section discusses the ban from 1837 and its impact on debates about the reliability of the fair catalog in the early 1840s.

In 1837, the confederal assembly in Frankfurt frustrated those who expected the authorities to take a stand against the unauthorized reprints that seemed to bloat the fair catalog. As chapter two showed, the adoption of the term mechanical reproduction by the confederal assembly in Frankfurt seemed to suggest that unauthorized reprinters who changed the contents of the original edition deserved legal recognition as legitimate and respectable publishers. The confederal authorities' apparent promotion of print piracy prompted a change of tactics by those worried about the growing fatness of the fair catalog. If Brockhaus had aimed to connect his list to the authority of the confederal assembly in Frankfurt, his successors strove instead to change the way the legal and political establishment defined unauthorized reprinting. By reforming the law, they hoped to force a reform of the book fair.

The circle around Julius Eduard Hitzig and Hartmann Schellwitz's *Allgemeine Preßzeitung* took the lead in these efforts as well. Hitzig and Schellwitz considered their attempts to reform the confederal ban on unauthorized reprinting to be intimately linked to the struggle to change the fair catalog. To them, the catalog seemed plagued by the same issue that made the authorial rights reform not only ineffective, but also counterproductive. It promoted plagiarists, a term that Hitzig and Schellwitz also used to describe unauthorized reprinters who changed an original edition and marketed the altered version as a new publication. Plagiaristic books of this kind, one article in *Allgemeine Preßzeitung* claimed, are “judged too mildly by positive law and, moreover, the courts of law do not seldomly take them into their protective care.”⁵²⁷

⁵²⁷ “von den positiven Gesetzen zu mild beurtheilt und noch überdieß von den Gerichtshöfen nicht selten in vorsorgenden Schutz genommen werden.” Julius Eduard Hitzig, ed., “Die

The presence of unauthorized reprints on the German book market made the quantification of new publications particularly problematic in the first decades of the nineteenth century, this writer argued. A plagiaristic book could easily be mistaken for a new publication. It did not have to resemble the original edition. Nor did their makers advertise them as unauthorized reprints, plagiarisms or piracies. To make matters worse, some of the books had also been given new titles. For this reason, the identification of the true nature of an unauthorized reprint often required detective skills. The critic in *Allgemeine Preßzeitung* argued that suspect books had to be examined page by page.⁵²⁸ The absence of overt signs of thievery had misled the reading public into thinking that unauthorized reprints no longer flooded the market. Hitzig's circle objected to the idea that pirates no longer trafficked at the Saxon fair. On the surface, it might seem that way. In reality though, the book trade continued to be overrun with dubious books.

Well, let it not be denied that there exist many plagiaries which cannot be detected as such because the maker—for such a literary henchman does not deserve the name of author—has subjected the original to the kind of alterations that protect him against the suspicion of the law.⁵²⁹

Though the carefully concealed nature of these books made them hard to detect, the critic in *Allgemeine Preßzeitung* still estimated that plagiaries and unauthorized reprints made up a substantial proportion of the books that appeared in the fair catalog. He argued that the inclusion of unauthorized copies explained the rapid growth of the catalog in the first decades of the nineteenth century.

[It is] not the original works, not the texts which demand attention through the spirit and knowledge that has been bestowed on them, but these compilations, these repetitions of what has been already said one hundred times, these obvious cases of literary privateering that bloat the fair catalog.⁵³⁰

Plage der Plagiate," in *Allgemeine Press-Zeitung: Annalen der Presse, der Literatur und des Buchhandels*, vol. 2, 12 (Leipzig: J. J. Weber, 1841), 93.

⁵²⁸ Ibid., 94.

⁵²⁹ "Wohl läßt sich nicht in Abrede stellen, daß es viele Plagiate giebt, die als solche nicht nachgewiesen werden können, weil der Verfertiger — denn den Namen autor verdient ein solcher literarischer Handlanger nicht — an dem Originale solche Veränderungen vorgenommen hat, welche ihn gegen die Ahndung der Gesetze sicher stellen" Ibid., 93.

⁵³⁰ "Nicht die Originalwerke, nicht Schriften, die durch Geist und Kenntnisse, welche in denselben niedergelegt sind, Ansprüche auf Beachtung haben, sondern diese Compilationen, diese Wiederholungen des Hundertmalgesagten, diese offenbaren literarischen Freibeutereien sind es, welche die Meßkataloge anschwellen" Ibid., 94.

This critic appears to have believed that the dubious publication would disappear from the fair if its organizers enforced better detection standards. The true nature of a book, he assumed, would reveal itself through the careful scrutiny of the material object. Others conceptualized the problem of unauthorized reprinting as an interpretative issue. Schellwitz did so in a proposal that he wrote in 1840 with the intention of reforming both the confederal ban on unauthorized reprinting and the Saxon book fair.⁵³¹ With the help of the proposal, Schellwitz hoped to be able to submit the fair to a purge, “a merciless fumigation” of the unauthorized reprinters who peddled their wares in Leipzig during the fair holidays.⁵³² Schellwitz hoped to achieve this by convincing confederal authorities to adopt a wider definition of unauthorized reprinting. His reform proposal listed three kinds of books that ought to disappear from future fairs.

Consequently, all excerpts, edited works, collected editions of authorial works ... will be unconditionally and without consideration banned regardless of the means with which the reproduction has been carried out.⁵³³

Schellwitz suspected that the categorization of these books might cause alarm at the fairs. “Perhaps §. 39 [the paragraph dealing with the books that Schellwitz’s reform proposal defined as unauthorized reprints] incites horror in the horde of literary henchmen who make a living on excerpts, revisions and collected work.”⁵³⁴ While this group of publishers

⁵³¹ Schellwitz discussed its ramifications in a book as well as a series of articles in his and Hitzig’s journal Hartmann Schellwitz, “Gesetzentwurf, die Sicherstellung des literarisch-artistischen Eigenthums betreffend (Fortsetzung aus Nr. 11),” in *Allgemeine Press-Zeitung. Annalen der Presse, der Literatur und des Buchhandels*, ed. Julius Eduard Hitzig, vol. 3, 12 (Weber, 1842), 130–34; Schellwitz, *Kritik des Nachdruckgesetzes für Württemberg sammt Gesetz-Entwurf die Sicherstellung des literarisch-artistischen Eigenthums betreffend*; Hartmann Schellwitz, “Motive zu dem Gesetzentwurfe, die Sicherstellung des literarisch-artistisch Eigenthums betreffend,” in *Allgemeine Press-Zeitung. Annalen der Presse, der Literatur und des Buchhandels*, ed. Julius Eduard Hitzig, vol. 3, 14 (Weber, 1842), 145–50; Hartmann Schellwitz, “Motive zu dem Gesetzentwurfe, die Sicherstellung des literarisch-artistisch Eigenthums betreffend (fortsetzung aus Nr. 12),” in *Allgemeine Press-Zeitung. Annalen der Presse, der Literatur und des Buchhandels*, ed. Julius Eduard Hitzig, vol. 3, 13 (Weber, 1842), 138–44.

⁵³² “unbarmherzige Ausräucherung”. Schellwitz, “Motive zu dem Gesetzentwurfe, die Sicherstellung des literarisch-artistisch Eigenthums betreffend (fortsetzung aus Nr. 12),” 144.

⁵³³ “Demgemäß sind alle Auszüge, Bearbeitungen, Sammelwerke von Schriftstellerischen Arbeiten ... unbedingt und ohne Rücksicht darauf, welche Mittel der Vervielfältigung angewendet worden sind, verboten” Schellwitz, “Gesetzentwurf, die Sicherstellung des literarisch-artistischen Eigenthums betreffend (Fortsetzung aus Nr. 11),” 131.

⁵³⁴ “Vielleicht daß §. 39 Entsetzen im Heere der literarischen Handlanger erregt, die von Auszügen, Bearbeitungen und Sammelwerken leben, wir können aber aus vollster Überzeugung mit diesem Geschlechts von Nachahmern kein Mitleid haben, und meinen der Literatur und Kunst die größte Wohltat zu erzeugen, wenn auch der Meßkatalog die Hälfte

trafficked at the fair now, they would not do so after Schellwitz's reform. This group deserved little sympathy in spite of the woes that awaited them once the true nature of their disreputable wares became known to the world. "[W]e can, with the most complete conviction, feel no pity towards this species of emulators."⁵³⁵

Schellwitz expected the coming purge to affect a great quantity of books. The Saxon catalog stood to lose half of its entries if his reform proposal gained traction with confederal politicians. To mitigate the criticism that his reform proposal had been drafted for malicious reasons, he reassured readers that he had nothing but good intentions. "[We] want to show the literature and the arts the greatest benevolence, even if the fair catalog loses half of its entries."⁵³⁶ Dubious motives had led the fair organizers to turn a blind eye to book pirates who visited the fairs in Leipzig. To expand the volume of the trade, they had gradually begun to enforce the ban on unauthorized reprints in a far more relaxed fashion. Schellwitz deplored this lax approach.

The unconditional protection against all unauthorized reprints and the ruthless handling of the ban on unauthorized reprinting have made Leipzig the staple town of the German book trade ..., now in what way will the adoption of laxer principles lead to the same success, or in what way will the denial of a right instill greater confidence?⁵³⁷

Schellwitz also showed little sympathy for the fair organizers' shortsighted motives. According to him, they wrongly feared that a true ban on unauthorized reprinting would deal a deadly economic blow to the trade in Leipzig. "It is a false notion," he wrote, "if one fears for the commissioners' trading in Leipzig when the publishers' rights are protected here in the most expansive way possible."⁵³⁸ He conceded that a purge of piratical wares might hurt the book trade in Leipzig in the short run. In the long term, however, the fair stood to benefit greatly from a

seiner Nummern verlieren sollte." Schellwitz, "Motive zu dem Gesetzentwurfe, die Sicherstellung des literarisch-artistisch Eigenthums betreffend (fortsetzung aus Nr. 12)," 144.

⁵³⁵ See the previous quote.

⁵³⁶ See the end of the previous quote.

⁵³⁷ "Der unbedingte Schutz gegen allen Nachdruck und die rücksichtslose Handhabung des Nachdrucksverbote hat Leipzig zum Stapelplatze des deutschen Buchhandels ... gemacht, wie sollte denn nun die Annahme laxerer Grundsätze denselben Erfolg haben oder wie sollte die Verleugnung eines Rechtes größeres Vertrauen einflößen?" Schellwitz, *Kritik des Nachdruckgesetzes für Württemberg sammt Gesetz-Entwurf die Sicherstellung des literarisch-artistischen Eigenthums betreffend*, 112.

⁵³⁸ "[E]s ist eine falsche Ansicht, wenn man für den Leipziger Commissionshandel fürchtet, wenn hier das Verlagsseigenthum nach seiner weitesten Berechtigung geschützt wird." Hartmann Schellwitz, "Motive zu dem Gesetzentwurfe, die Sicherstellung des literarisch-artistisch Eigenthums betreffend," in *Allgemeine Press-Zeitung. Annalen der Presse, der Literatur und des Buchhandels*, ed. Julius Eduard Hitzig, vol. 3, 14 (Weber, 1842), 149.

thorough housecleaning: “Only with the complete security of property can true ... welfare and prosperity develop.”⁵³⁹

An additional problem made a proper ban on unauthorized reprinting necessary, according to Schellwitz. The fair’s accommodating approach jeopardized Leipzig’s reputation as a beacon of light in an otherwise dark, unprincipled world. Schellwitz argued that Leipzig had attained this standing by being at the forefront of the international struggle against print pirates. Its stalwart protection of intellectual property had made Leipzig a guiding light for anti-piracy advocates in Europe and across the Atlantic.

If we look around us, we see that the number [of those who] acknowledge the law grows day by day; it grows in Germany, in England, in France and even in America; and everybody who has become aware looks trustingly to Saxony, which has maintained, preserved and cared for the seed of inalienable rights, so that no one may take away its crown of ruthless justness.⁵⁴⁰

Saxony still enjoyed this reputation, Schellwitz admitted, but risked losing it; a growing number of book merchants had already begun to question Saxony’s standing as a safe place for reputable businesses. Schellwitz viewed this sad development with a growing sense of unease. The spreading rot had to be stopped. “Saxony cannot, cannot now for a seeming advantage want to cast away a right which it has acknowledged and protected for centuries. It must persevere to the end.”⁵⁴¹ Only with the implementation of painful reforms, Schellwitz maintained, would it “remain a honor for every righteous book merchant to deliver his publications in Leipzig.”⁵⁴² A reform of the kind that he proposed had been avoided by the fair organizers so far, Hartmann explained. Yet rumors of an impending change of order had already caused alarm to

⁵³⁹ “Nur in den höchsten Sicherheit des Eigenthums kann ein wahrer und gedeihlicher Wohlstand sich entwickeln.” Hartmann Schellwitz, “Motive zu dem Gesetzentwurfe, die Sicherstellung des literarisch-artistisch Eigenthums betreffend,” in *Allgemeine Press-Zeitung. Annalen der Presse, der Literatur und des Buchhandels*, ed. Julius Eduard Hitzig, vol. 3, 14 (Weber, 1842), 149.

⁵⁴⁰ “Blicken wir um uns, und wir sehen, daß von Tage zu Tage die Zahl derer wächst, welche dem Rechte zugestehen; sie wächst in Deutschland, in England, in Frankreich und selbst in Amerika; und Alle, welche zur Erkenntniß kommen, sehen vertrauensvoll auf Sachsen, welches den Keim des unveräußerlichen Rechtes gepflegt und bewahrt und gesorgt hat, daß niemand ihm die Krone Rücksichtloser Gerechtigkeit nehme.” Schellwitz, “Motive zu dem Gesetzentwurfe, die Sicherstellung des literarisch-artistisch Eigenthums betreffend (fortsetzung aus Nr. 12),” 150.

⁵⁴¹ “Sachsen kann nie, kann nicht jetzt um eines scheinbaren Vortheils willen ein Recht verleugnen, welches durch Jahrhunderte von ihm anerkannt und gesschützt worden ist. Es muß beharren bis and das Ende.” Ibid.

⁵⁴² “für jeden rechtlichen Buchhändler eine Ehre bleiben, seinen Verlag in Leipzig ausliefern”. Ibid.

break out among those attending the fairs on a regular basis.⁵⁴³ Who would remain at the fair once the purge commenced? Who would face ostracism?

If these questions did concern fair visitors in the 1840s, worries over a future purge turned out to be unfounded. A “fumigation” of the kind envisioned by Schellwitz did not come to pass. While each successive owner of the fair catalog did promise to improve it, their reform suggestions did not aim to solve the kinds of problems that worried Schellwitz. In 1851, for example, Wigand promised to make the unwieldy catalog easier to use.⁵⁴⁴ Thanks to this inaction, critics such as Schellwitz feared that Saxony had completely lost its standing not only in the eyes of Germans. In 1847, one critic observed that “the English say that five sixths of the fair catalog consists of plagiaries, unauthorized reprints and translations.”⁵⁴⁵ This critic described Leipzig as a once great city that had fallen from grace. In the 1840s, the number of new publications advertised during the fair holidays had shrunk to a mere fifth of the total number of books that appeared in the catalog.

Concluding Remarks

Schellwitz’s proposal probably did not exert an overt influence on the reforms that shaped German authorial rights laws around the end of the nineteenth century. However, Schellwitz belonged to a larger group, the circle around the Börsenverein and Hitzig’s *Allgemeine Preßzeitung*, whose influence did grow in the second half of the century. German states changed their stance on the nature of piracy in accordance with the ideas outlined in Schellwitz’s proposal. In the legal domain, the narrow definition of piracy that Brockhaus, for example, had found so appalling in the early decades of the century slowly gave way to a more expansive definition. Around 1900, books did not have to resemble the original in a mechanical fashion to be considered unauthorized reprints. Courts in

⁵⁴³ Schellwitz’ proposal did give rise to a discussion. See for example the response to Schellwitz in *Über den Gesetzentwurf des Herrn Dr Schellwitz in Nr 11-14 der Allgemeinen Preßzeitung 1842, die Sicherstellung des literarisch-artistischen Eigentums betreffend* (Leipzig: J. J. Weber, 1843).

⁵⁴⁴ Georg Wigand, “Vorwort,” in *Messkatalog. Verzeichniß der Bücher, Zeitschriften u. Landkarten welche von Michaelis 1850 bis OStern 1851 im Gebiete des deutschen Buchhandels erschienen sind und in der nächsten Zeit erscheinen werden, mit Angabe der Verleger, Bogenzahl und Preise. Nebst einem wissenschaftlich geordneten Verzeichniß der wichtigeren Werke*, 1 (Leipzig: Georg Wigands Verlag, 1851), III.

⁵⁴⁵ “Schon sagten Engländer daß fünf Sechstel des Meßkatalogs aus Plagiat, Nachdruck und Uebersetzung bestünde.” “Das Plagiat in den deutschen Zeitungen,” in *Beilage zur Allgemeine Zeitung München*, 19, 1846, 149.

imperial Germany argued instead that publications such as unauthorized translations, compilations and edited works trespassed on the rights of authors.

The fair catalog had ceased to exist before the authorities expanded the legal definition of print piracy. However, the complaint that unauthorized reprints flooded the fair went unheeded by the publishers of the catalog. As I see it, the lack of a response equal to the problems that Schellwitz, for example, pointed out, reflects the relative unpopularity of his definition of unauthorized reprinting. While Schellwitz's view did gain ground over time, legal and political authorities did not share his perspective in the first half of the nineteenth century. The kind of stance that Schellwitz took on the topic of piracy and authorial rights law underscores his marginal position. He took up the role of a critic and reformer of the established order. Though his proposal did not inspire a reform of the fair catalog, his criticism sheds interesting light on the argument that the growth of the fair catalog resulted from a growth of authorial output. Schellwitz and other critics linked the catalog's thickening to a change in the way contemporaries used terms such as plagiarism, authorship and reprinting. Thanks to this unfortunate change, critics argued, the fair catalog advertised an untold number of piratical works and brimmed with disreputable goods in the first decades of the nineteenth century.

According to critics such as Schellwitz, the presence of piratical wares in the fair catalog made it necessary to reform it or find a more suitable alternative. With his proposal for a confederal protocol, Brockhaus tried to establish a new system of this kind, though his efforts turned out to be fruitless. While Metternich supported the reform proposal, the other ministers did not. The failure to find a workable replacement meant that the fair catalog continued to serve as the primary source of data in contemporary studies of the German book trade. The first generation of German book historians continued this tradition in the late nineteenth century. Since then, historians and bibliographers have identified several issues that make the fair catalog a problematic source for historical studies. Contemporary discussions about the existence of piratical books in the catalogs have not been one of them, however. On the contrary, scholars such as Woodmansee and Vogel have argued that authorial output in the German language area can be studied with the help of fair catalogs.

By using the publications in this fashion, Woodmansee, Vogel, Schürmann and other historians have told a story about the German book trade that differs from the narrative propounded by Brockhaus, Schellwitz and other contemporary critics of the fair catalog. According to Schürmann, an age of piracy came to an end in the first decades of the

nineteenth century. By then, authorial output in Austria, Württemberg and Hessen had risen so much that these states no longer needed to reproduce and import books from abroad. In this chapter, I have approached the rise of authorial output from a different angle. Instead of counting books, I have instead set out to frame the counting of books as a historical problem worthy of careful exploration. In so doing, I have argued that discussions about the reliability of the fair catalog took place against the backdrop of larger historical developments that helped promote the idea that states, aided by statistical studies, ought to monitor and improve the cultural standing of their populations through interventions in the book trade.

5. Conclusion

Around the turn of the nineteenth century, states within the German language area began to pass groundbreaking laws against the unauthorized reprinting of books. In the wake of these reforms, debates broke out over concepts such as authorship and unauthorized reprinting. How should these be defined and implemented? This dissertation explores this question from three different angles. Chapter two focuses on idealist notions of authorship and the expression *mechanical reproduction*, which both shaped the 1837 confederal ban on unauthorized reprinting. Examining the controversy that surrounded Carl Erhard's *Conversationslexicon*, the third chapter takes a ground-level view of debates about the nature of authorship and reprinting. The fourth chapter examines the Leipzig book fair and the question whether the fair catalog listed unauthorized reprints or new books.

With the help of a wide range of source materials, including fair catalogs, title pages, legal documents and lobbying pamphlets, I argue that quarrels about terms such as authorship and reprinting transcended the bounds of conceptual disputes. In these discussions, the historical actors debated whether the German language area continued to be flooded with reprinted books, or whether the production of new works had gained unprecedented momentum. To answer these questions in a unanimous way, they would have needed first to establish shared definitions of reprinting and authorship. Having failed to do so, they measured the size of authorial and reprinting output in competing ways. This conclusion discusses my broader argument and briefly summarizes the dissertation's three main chapters.

Aims, Questions and Themes

What was unauthorized reprinting in the early nineteenth century? How did Germans define it? How did it differ from authorship? Who commanded the authority to define this difference? With these questions in mind, this dissertation examines a significant but largely overlooked aspect of the authorial rights reform that swept the German language area

from around the turn of the nineteenth century. Scholars such as Martha Woodmansee have thrown light on the question of why the historical actors felt obliged to protect authors and publishers against the unauthorized reprinting of their books. But little work has been done on the debates that arose over the difference between authorship and reprinting. Instead, it has been assumed not only that this difference was unproblematic, but also that reprints and new works were quantifiable genres of books.

This dissertation takes a different approach. Rather than assuming stable definitions of terms such as authorship and reprinting, I study the construction of these contested categories. The debates that I explore took place in the early half of the nineteenth century, but uncertainty over the nature and boundaries of piracy continued to plague German authorial rights laws until the end of the nineteenth century. In these discussions, the German word *Nachdruck* took center stage. Today, this word no longer brings villainy and unauthorized reprinting to mind. Around 1800, however, many historical actors had begun to understand it as a synonym for the English term *press piracy*, or simply *piracy*, a metaphor for literary thievery. A *Nachdrucker*, they argued, was a pirate book merchant. The charge of piracy vilified the *Nachdrucker* as threats not only to individual authors and publishers. Since the English Civil Wars, when a print-based public sphere first began to take shape, it had also been argued that print pirates threatened the common good. While most historical actors seem to have shared the view that the *Nachdrucker* were land-based pirates, one cannot assume that everybody did so. In an earlier epoch, the production and dissemination of a *Nachdruck* had even been understood to propel the Enlightenment, spreading printed books and knowledge to places where the light of civilization rarely reached.

Debates in the legal domain constitute the empirical focal point of this study, with the exception of chapter four, which focuses on the Leipzig book fair catalog. I have approached the boundaries between the legal domain and the culture it sought to regulate as permeable ones. To a significant degree, the German authorial rights reform came about as a result of the philosophical revolution instantiated by Immanuel Kant and Johann Gottlieb Fichte, among others. Their efforts to rethink the nature of authorship and books laid the groundwork for German bans on unauthorized reprinting. In their contributions to the debate about authorial rights, they argued that authors imbued books with their unique personalities and voices. Thanks to them, books ceased to be material artifacts like any other. The existence of an authorial voice helped transform books into ideal artifacts, that is, vessels of authors' intellectual property. By redefining books in this way, philosophers such as Kant and Fichte helped legitimate the argument that reprinting ought to be banned.

While purchasers of books could do whatever they wanted with their own copies, they could not reprint them. By doing so, they took unauthorized control over the author's voice and violated the individual's rights to his own person.

Did unauthorized compilers, translators and revisers also impart their unique personalities and voices to their books? Kant and Fichte argued that they did—and that for this reason, they qualified as authors. This view of authorship gave rise to much controversy when south German states, in particular, began to implement it. According to critics such as Friedrich Christoph Perthes, unauthorized compilations, translations and revisions did constitute reprinting. In these discussions, I argue, the books did not compel readers to regard them in a particular way, though paratexts such as title pages and prefaces might incite them to do so. Instead, the conflicts that arose over the proper use of the concept of *Nachdruck* reflect the absence of a shared normative framework. The historical actors categorized books in competing ways because they subscribed to competing ideas about authorship and reprinting. On a theoretical level, I have argued that the term *Nachdruck* ought to be approached as an essentially contested concept: one that gave rise to inconclusive debates about its proper usage. My historicist methodology means that I have refrained from passing judgment on the various uses of such terms. Instead, I have tried to understand the debates from the viewpoints of the historical actors. How, I ask, did they define the meaning of words?

What is an Author?

While this dissertation focuses primarily on the term *Nachdruck*, the meaning of unauthorized reprinting cannot be understood without an analysis of authorship. What counted as authorship in the early nineteenth century? The history of authorship constitutes one of the two principal areas of research that I have contributed to with this dissertation. My contribution to this field consists of a rethinking of the historical significance of the idealist conception of authorship. Until recently, the idealist reconceptualization of authorship has been characterized as having helped create the legal framework that underpins intellectual property laws today, by defining authors as solitary and original creators. Drawing on post-structuralist critiques, historians have argued that this model of authorship hides the fact that all writing depends on the work of others. To recover the collective, social and collaborative nature of authorship, it has been suggested, historians ought to seek out writing

practices that exist outside the framework established by idealist philosophers.

This dissertation has also explored writing practices, such as borrowing and recycling, not usually thought to constitute genuine authorship. Here, however, I have shown that philosophers such as Kant and Fichte conferred legitimacy to writing practices that drew on the existing stock of books. According to them, recyclers of others' works could lay claim to authorship if they transformed the original. Idealist thought provided a powerful line of defense against charges of piracy. Contemporary observers such as Georg Wilhelm Friedrich Hegel considered this use of the notion of authorship to have affected the German book market in profound ways. Its increasing acceptance narrowed the range of publication practices that qualified as piracy and plagiarism. Thanks to this development, Hegel argued, his contemporaries had begun to think that literary thievery did not take place in the German book trade in the early nineteenth century. Others complained about this change as well. Book merchants such as Perthes and Wolfgang Menzel argued that south German laws against unauthorized reprinting defined the offense so narrowly that even their most dubious competitors could market their wares as new and respectable. After the Frankfurt diet had passed the confederal ban in 1837, discussions about this issue revolved around the concept of mechanical reproduction, a phrase that was included in the confederal ban to elucidate the concept of *Nachdruck*.

In the second chapter, "Print Piracy in the Age of Mechanical Reproduction", I take a closer look at the debates that arose in conjunction with the confederal ban and the expression mechanical reproduction. German heads of state promised to deliver the confederal ban at the Congress of Vienna in 1815, though disagreements about the definition of unauthorized reprinting and a range of other issues delayed its implementation until 1837. The expression mechanical reproduction proved far from helpful, contemporary observers complained. Its unclear meaning added more fuel to the controversy that had arisen over the term *Nachdruck*. I argue that the use of this expression must be understood in light of the mechanization of printing that took place in the early half of the nineteenth century. During the so-called machine age, technology such as Friedrich König's steam press became a powerful metaphor. Did the phrase refer to copies produced with the help of machines such as the printing press? Or did it describe copyists who reproduced the works of others in the manner of mindless machines? These two uses of the expression emphasized two different stages in the book making process. The first described the printing process in a technical sense. The second referred in a metaphorical sense to the mindlessness with which

unauthorized reprinters reproduced original editions without changing them.

In my study, I focus on the figurative use of the expression mechanical reproduction. Those who used it as a metaphor did so to argue that unauthorized reprinting failed to leave the marks of authorship on the reprint edition. A reprinter working in a mechanical fashion reproduced books with the same lack of originality that seemed characteristic of machines in the era of German industrialization. The use of this metaphor presupposed an idealist conception of authorship. Copyists who did change the original edition, it was argued, marked the reproduction with their unique personalities. In so doing, they could lay claim to authorship and avoid the reach of the law. The middle section of this chapter analyzes these ideas about authorship, while the final one examines the criticism leveled at the authorial rights laws that implemented them. The prime movers in this debate were Julius Eduard Hitzig and other members of the Börsenverein. According to Hitzig, the legal use of the expression mechanical reproduction had been counterproductive, shielding print pirates from prosecution. To prevent piracy from running rampant, he argued, the concept of piracy had to be defined differently. By lobbying for a revision, Hitzig and his allies helped create the legal framework that shapes intellectual property laws today. In chapter two, the aim is to analyze a debate where champions of today's legal framework had to struggle to gain recognition.

The third chapter, "Weights and Counterweights: North German Editions and their South German Counterparts," provides a ground-level view of the effects of the debates analyzed in chapter two. Through an object study, it explores the publication and reception of an individual book, using Carl Erhard's *Conversationslexicon*, one of the many popular encyclopedias that appeared in the nineteenth century, as a cultural tracer. The Württemberg book merchant Erhard began producing this work in 1816 by adding to and revising Friedrich Arnold Brockhaus's *Conversationslexicon*. Erhard's publication quickly became controversial. As soon as Brockhaus found out about it, he tried to stop Erhard from selling it. While Erhard did eventually cancel production, Brockhaus enjoyed limited success. Though he had applied for a privilege in the kingdom of Württemberg, state officials there refused to take action against Erhard. Württemberg's college of censors argued that a revised and expanded edition of the original publication did not qualify as an unauthorized reprint.

Undeterred, Brockhaus reasoned that he could stop Erhard by making a private deal with him. While the two did strike a bargain in 1816, Erhard still began producing a second edition of his *Conversationslexicon* shortly afterwards. He chose to do so, he claimed, because Brockhaus

had insulted him and his editorial changes in public and thereby broken the pact between them. After the appearance of this second edition, the feud grew even more antagonistic, and Brockhaus tried to sue Erhard for breaching their contract. Amandus Müllner offered Erhard unexpected help, arguing in a vitriolic pamphlet that Brockhaus could not be trusted as a credible information broker. He had let his passions and personal views affect the articles in his *Conversationslexicon*. Its subjective distortion of the facts meant that Brockhaus's encyclopedia could not be trusted. Erhard urged the public to view Brockhaus's work in much the same way, portraying its publisher as a lying con man.

Brockhaus's feud with Erhard throws light on the publication practices that were promoted and forbidden in a culture suffused with the idealist notion of authorship. When Württemberg officials decided to turn down Brockhaus's suit against Erhard, they followed instructions laid down in an edict passed in 1815. This edict determined that a privilege against book piracy would not provide any protection against the kinds of revisions and adaptations that Kant and Fichte had discussed in the late eighteenth century. The final section of chapter three analyzes the Württemberg edict on book piracy as well as the argument that the kingdom's protection of book merchants such as Erhard was anomalous in the German confederation. To determine whether Württemberg was unique in this regard would require a more detailed examination of the authorial rights laws of other German states. For Brockhaus, however, the frustration he encountered there seemed symptomatic of a problem that transcended the borders of Württemberg.

The legal framework that Brockhaus, Perthes and Menzel found so offensive disappeared towards the end of the nineteenth century. By then, German authorial rights laws began to define derivative works as infringements on the rights of authors. The question why they did so lies outside the scope of this study. However, it would be a worthwhile topic for future research in the history of German reprinting, authorship and authorial rights. Why did the political and legal establishment abandon the paradigm analyzed in this dissertation? Who demanded change? What were the consequences of this change?

The End of Piracy?

The debates that broke out over the issue of authorship raises pressing questions about the prevalence of piracy on the German book market in the early nineteenth century. Did unauthorized reprints continue to flood the book market in the early nineteenth century? Or had they already

disappeared? The history of piracy constitutes the second area of research to which this dissertation contributes. In the scholarship, the early decades of the nineteenth century are seen to mark the end of an age of piracy in the German language area. This so-called age of piracy began in the late eighteenth century, when a rift is believed to have opened between the north and the south, and south German book merchants began to reprint the works of their northern colleagues. To help their struggling publishing industries, it has been argued, south German sovereigns supported unauthorized reprinting until the first decades of the nineteenth century, when they withdrew their backing. Between 1810 and 1850, south German publishing is thought to have caught up with north German standards. When this had happened, states south of the Mainlinien did not need to import books from abroad.

Complaints from contemporaries that unauthorized reprints continued to flood the market in the mid-nineteenth century undermine historians' claims that reprinting had declined in the preceding decades. To contemporary observers such as Perthes and Menzel, the suggestion that unauthorized reprinting had come to an end in the early nineteenth century would have seemed perverse. In their view, unauthorized reprints from the south continued to flood the market long after 1837. As Perthes and Menzel pointed out, pirate publishers continued to flourish thanks to, not in spite of, the recent authorial rights reform in the German language area. These laws defined piracy so narrowly that unauthorized reprinters only needed to superficially alter the original edition to evade prosecution. Reprinters could even lay claim to authorship.

Focusing on the criticism leveled at German authorial rights reform, I have questioned the traditional narrative about the process of modernization in the German language area. However, my aim is not to reject the assertion that reprints disappeared from the region. Instead, I wish to understand the disappearance of reprints in a different way. As I argue, whether or not reprint editions had disappeared from bookstores depended on who could muster the authority to define the nature of unauthorized reprinting. Chapter four, "Bibliopolitics and the Measurement of Culture," addresses this issue by analyzing the debates that arose over the Leipzig book fair catalog in the early nineteenth century. Since Philipp Erasmus Reich's reform efforts in the late eighteenth century, this catalog had established itself as a resource for quantifying the number of new books that had appeared in the German language area between the two fair holidays. In the scholarship, the fair catalog has been used as problematic but still viable evidence of the authorial output in the German language area. According to historians such as Woodmansee, August Schürmann and Martin Vogel, the increasing size of the fair catalog suggests that book merchants in the

south and southwest no longer needed to pirate books from northern states. Between 1810 and 1840, authorial output in the south and southwest had begun to catch up.

Historical actors used the fair catalog in this way too. However, the fair catalog's viability as evidence did not go unchallenged. Critics complained about a range of problems, arguing that the catalog could not be trusted. Plagiarism and unauthorized reprinting constituted two core concerns. Though Reich had banned unauthorized copies in the 1770s, critics argued that the fair catalog still advertised dubious merchandise in the early nineteenth century. The fair catalog continued to expand thanks to the inclusion of dubious books. The belief that the fair catalog brimmed with piratical and plagiaristic publications prompted efforts to replace or reform it. Friedrich Arnold Brockhaus's attempt to establish a list of new works embroiled him in the conservative backlash that enveloped the German language area in the period between the Congress of Vienna and the year of revolution in 1848. Austrian foreign minister Klemenz Metternich aimed to use Brockhaus's system to monitor the public press more efficiently. In a later attempt to address the problem of the fair catalog, the Saxon legal scholar Hartmann Schellwitz argued that the deterioration of the Leipzig book fair paralleled the unfortunate developments that had characterized the legal situation since the passing of the confederal ban in 1837. The fair organizers defined authorship so generously that even reprinters were now welcome to advertise their wares. As a result, half of the catalog consisted of piratical publications in the 1840s, according to Schellwitz. In light of this adulteration, he argued, a purge was needed to cleanse the fair of books that did not belong there. Without such measures, the city of Leipzig ran the risk of becoming the new capital of the piratical book trade.

Though the fair catalog was withdrawn from publication in the 1860s, critics such as Brockhaus and Schellwitz proved largely unsuccessful in their attempts to replace and reform it. Still, their efforts provide a new perspective on the rise of authorial output in the German language area in the early nineteenth century. This perspective calls for a more thorough historization of the fair catalog. My attempt to contextualize the fair catalog and the controversies it engendered put the concept of bibliopolitics at the forefront of the analysis. Bibliopolitics, I have argued, formed a part of biopolitics, a new type of governmentality that emerged in Europe towards the late eighteenth century. As Michel Foucault defined it, biopolitics consists of the techniques that states employ to monitor and optimize the productivity and welfare of their populations. By the same token, bibliopolitics aimed to surveil and nourish the cultural standing of the populace. Bibliopolitical statistics

required credible sources. Without a trusted source material, attempts to quantify new publications would face criticism.

Discussions about the credibility of the fair catalog gravitated around the proper application of words. Did the fair catalog employ terms such as unauthorized reprinting and authorship in the right way? This raises the question whether quarrels comparable to those about the size of the German reprinting industry have taken place elsewhere. Was this a phenomenon unique to the German language area in the nineteenth century? If not, how would other debates compare to those studied here? Again, these questions lay outside the scope of this study, but the stakes involved in German debates about the nature of unauthorized reprinting calls for a broader study of the issues addressed in this dissertation. In the bibliopolitical regime that took shape in the first decades of the nineteenth century, those who controlled the meaning of words such as authorship and unauthorized reprinting also gained the power to measure the production of new books and unauthorized reprints. The question whether the book market overflowed with unauthorized reprints depended on the definitions of piracy and authorship one chose to adopt. By the same token, quarrels over the meaning of terms such as *Nachdruck* evolved into disputes over the proper way to characterize the German book market in the early nineteenth century. In this regard, the controversies raised by the term *Nachdruck* in the early nineteenth century offer lessons about much more than a particular moment in the history of piracy. They testify to the power of words to not only describe things and practices, but also to shape our perception of them.

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Figure II: Title-page to Martin Span's *Denkschrift gegen den Büchernachdruck: Den am Wiener Congresse versammelten Gesandten von einer Deputation der Leipziger Buchhändler überreicht, mit Berichtigungen der darin aufgestellten irrigen Ansichten, von einem Oesterreicher* (Vienna, Bruno Bauer, 1815). Reproduced with the permission of Houghton Library, Harvard University

Figure III: Title-page to Friedrich Arnold Brockhaus's *Conversationslexicon oder encyclopädisches Handwörterbuch für gebildete Stände*, vol. 1 (Leipzig: Friedrich Arnold Brockhaus, 1817). Reproduced with the permission of Ghent University.

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