Copyright Term, Retrospective Extension, and the Copyright Law of 1790 in Historical Context

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The views of the Founding Fathers concerning the establishment of copyright have received much attention over the past several years, particularly in relation to the enactment of the Sonny Bono Copyright Term Extension Act of 1998. It is well known that Article I, Section 8 of the Constitution serves as the preface for the congressional power to enact copyright laws through its statement: "The Congress shall have Power ... To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." Unfortunately, historical information on the discussion of the issue both at the May-September 1787 Constitutional Convention and the October 1787-July 1788 ratification debates is very thin. For this reason, historians and litigants in court cases often have looked to the actions of the First Federal Congress for precedent.[2] That

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[2]For example, see: Lyman Ray Patterson, *Copyright in Historical Perspective*, (Nashville. Tenn.: Vanderbilt University Press, 1968): 197-202; Edward C. Walterscheid, "Defining the Patent and Copyright Term," 7 *Journal of Intellectual Property Law,* (2000): 315-94.

Congress, in 1790, established the copyright term at 14 years from registration, plus an additional 14 years if the author was still alive after the first term. Proponents of Congress's right to add times to existing terms (e.g., adding 20 years in the 1998 extension) seek support in the actions of the first Congress, while opponents of such retrospective extension cite the "promote the progress" clause of the Constitution itself.[3]

Historical Context

Cultural and legal historians should be pleased to see history being called upon to clarify the direction for current policy as American society moves ever farther into the information age. At the same time, the application of the 1790 statute to current circumstances may not be so direct as suggested. Indeed, before it can be used to support one side or the other, the 1790 law needs to be understood in a historical and bibliographical context. To gain perspective and guidance on whether the 1790 law is relevant to the Sonny Bono Copyright Term Extension Act of 1998 (CTEA), the following matters should be considered:

1) If the 1790 statute is to be elevated to a definitional level, then its limitation to a combined term of only 28 years, provided the author was still living, needs to be given serious weight in the 21st century's attempt to understand what the authors and ratifiers of the Constitution meant when they saw the words "limited times" in Article I, Section 8, of the Constitution. Accounts of debates on the passage of the 1790 law, though relatively sparse, provide guidance on this matter. They indicate that the term of 14 years was thought to be "long enough," and a motion to not limit the term to 14 years was

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[3]For example, see the Government Response filed 5 August 2002 in the case of *Eldred v. Ashcroft* (U.S. Supreme Court No. 01-618). (Available at: http://eon.law.harvard.edu/openlaw/eldredvashcroft/) For an opposing view see: Michael H. Davis, "Extending Copyright and the Constitution," 52 *Florida Law Review* (2000) 989-1037

rejected on 1 February 1790.[4]

2) Special circumstances applied in 1790: the new law was intended to replace a patchwork of existing state laws that provided other terms, ranging from 14 years non-renewable, to 14 years renewable for 14 years, to 20 or 21 years non-renewable. [5] In addition, the Federal copyright law was written in response to several petitions received from authors, and it was to replace the confusion of variant state copyright laws. Thus, Congress needed to make available a single, uniform term, but it did not automatically confer the term on works previously copyrighted in the states. Rather, holders of copyright under a given state law had to register the work again to receive Federal protection just as authors of any new works. For example, Andrew Adgate's *Rudiments of Music / Philadelphia Harmony* (Philadelphia; John McCulloch, 1789) had been previously registered for a Pennsylvania state copyright on 27 March, 1788, but it did not receive a Federal copyright under the 1790 law until it was registered again on 18 November 1790.[6]

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[4]"Lloyd's Notes," in Helen E. Veit et al. eds, *Documentary History of the First Federal Congress of the United States of America,* Volume 12: *Debates in the House of Representatives,* (Baltimore and London: Johns Hopkins University Press, 1994): 122.

[5]Francine Crawford, "Pre-Constitutional Copyright Statutes," 23 *Bulletin, Copyright Society of the U.S.A* (October 1975): 11-37.

[6]Note that while Pennsylvania was one of the most active publishing states, its 1784 copyright law (see Section VII) law did not become fully enforceable until all of the other states enacted comparable laws, a condition never met. Crawford, p. 33-35. *Laws Enacted in the Second Sitting of the Eighth General Assembly of the Commonwealth of Pennsylvania,* (Philadelphia: Bradford, 1784), 306-08.

3) Today, copyright is something that automatically inheres to a broad range of works of authorship from the moment they are fixed into a tangible medium of expression, and the 1998 term extension gave additional coverage to all works already authored. In 1790, however, copyright was available only for published books, maps, and charts, and it was only available through a process of formal registration. In addition, the 1790 law granted no copyright protection to any existing works. Instead, it merely created the means by which authors of limited categories of works–"books, maps, and charts"–could engage in the *quid pro quo* of registering their work to receive copyright protection. Thus, any exclusive rights that the 1790 law may have allowed authors to pursue do not seem to be historically equivalent to the 1998 extension of exclusive rights.[7]

Clearly, then, the 1790 law must be understood in its historical context before it can be used as a precedent. As noted, copyright's scope at the founding of the Republic was significantly and substantively narrower than on the eve of the 21st century, and as such the exclusive rights of copyright closed off from public use a much more limited amount of material. Two related critical factors concern the extent of copyright coverage and the extent of actual "retrospective" coverage exercised under the 1790 law. In both matters, the actual data are quite telling.

Bibliographic Analysis of Early Copyright Registrations

During the first decade of Federal copyright, only a very small percentage of works were

[7]On the *quid pro quo* structure of the copyright clause See: Paul J. Heald, Suzanna Sherry, "Implied Limits on the Legislative Power: the Intellectual Property Clause as an Absolute Constraint on Congress" 2000 *University of Illinois Law Review* 1119-97.

brought under copyright. Based on information in a modern study by James Gilreath, there are copyright registrations for only 684 works or 3.28 percent, of approximately 21,000 imprints from 1790 to 1800.[8] Even recognizing that not all of the records of copyright registrations from the 1790s survived for inclusion in Gilreath's study, the surviving records make clear that copyright was used in a substantively different manner than at present.

To further assess the historical setting, we are fortunate to have detailed records of all known copyrights registered from 1790 to 1800 as well as bibliographic information on, and copies of, the works. These enable us to determine which copyrights were for new works and which were mere registrations of "old works." If "old works" can be found to occupy a notable percentage of the early registrations, it might be reasonable to claim that the 1790 law, in fact and in perception, could support current notions of retrospective extension. On the other hand, little or no use of copyright to register "old works" might demonstrate that the 1790 law did not play a practical role in retrospective extension, as claimed in some current copyright cases. Thanks to modern bibliographic tools, and the availability of microprint and microfiche copies of the vast majority of pre-1800 imprints, it is possible to examine the early copyright records, compare them with comprehensive bibliographies, and even inspect the works themselves to

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[8]James Gilreath ed, and Elizabeth Carter Wills compiler, *Federal Copyright Records 1790-1800* (Washington: Library of Congress, 1987). Gilreath, without attribution, stated "There were more than fifteen thousand American imprints between 1790 and 1800 . . . ," (p. ix). The most likely source for the 15,000 number is the item count provided in Charles Evans'*American Bibliography* (New York: Peter Smith, 1941) [Subtracting the last entry number (22,297) at the end of 1789 from the last entry number (39,162) at the end of 1800 yields 16,865 works.] However, Gilreath failed to account for the 3,964 additional entries in *Supplement to Charles Evans' American Bibliography* (Charlottesville, Va.: University Press of Virginia for the Bibliography of America, 1970). When both sets of entries are considered, the total output of American imprints for the decade would be approximately 20,829. Furthermore, Gilreath's catalog included 95 entries which duplicated other entries, thus the revised number of unique copyright registrations is 684 works.

determine how often the 1790 Federal copyright was used to provide exclusive rights for pre-existing works.

Bibliographic Analysis: Methodology

The starting point is the 1987 work of James Gilreath, editor, and Elizabeth Carter Wills, compiler, *Federal Copyright Records 1790-1800* [cited as Gilreath], which was the result of exhaustive modern research into all known records of the first decade of Federal copyright registration. The work examined archival copies of State Department and state court ledgers registering copyright, as well as title-page deposits and other bibliographic sources. Gilreath acknowledged that his resulting 779 entries could not represent all copyright registrations since the records for some entire states, such as Connecticut and New Jersey, have been lost, but there is no other comprehensive source or consistent basis for examining early Federal copyright.[9] In addition, further bibliographic research revealed that an isolated 1959 study of music educator Andrew Law listed 15 federal copyright registrations which Gilreath did not report, and those have been joined with the registrations in Gilreath for the purposes of this study.[10]

The 779 entries in Gilreath and the 15 Andrew Law entries were examined against the entries in the landmark *American Bibliography* of Charles Evans (New York: Peter Smith, 1941) [hereafter Evans] and the *Supplement to Charles Evans' American Bibliography*

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[9]Furthermore, on a statistical basis, one could reasonably extrapolate numbers for the missing states, for example assume that the profile for the two most heavily represented states in Gilreath (Pennsylvania and Massachusetts) could be used to characterize the activity in Connecticut, which was known to have had an active publishing industry. As the following analysis will show, even if one simply multiplied the results by a factor of ten, the amount of "retrospective" registration of copyright would be still be unquestionably insignificant when compared to the total volume of publications issued over this decade.

[10]Irving Lowens, "Copyright and Andrew Law," *Papers of the Bibliographical Society of America,* 53 (1959) 150-59.

(Charlottesville, Va.: University Press of Virginia for the Bibliography Society of America, 1970) to find a bibliographic record for each imprint that would be an exact match to the ones cited in Gilreath or the Andrew Law study. Once the main entry was found (generally the author or title), both the cumulative and back-of-the-volume indices for Evans were used to look for any evidence of a prior printing or prior edition of the newly copyrighted work. In those few cases where Evans did not contain a match of the work cited in Gilreath, or where Evans did not resolve questions of whether the copyright registration might be merely for a much earlier imprint, then alternate authoritative bibliographies were used, such as *National Union Catalog Pre-1956 Imprints* (London: Mansell Information Publishing, 1968-81), *Bibliography of American Imprints to 1901: Compiled from the Data Bases of the American Antiquarian Society and the Research Libraries Group Inc.* (Munich, London, Paris, and New York: G. K. Saur, 1993), and the *Dictionary Catalog of the Research Libraries of the New York Public Library, 1911-1971,*(New York: New York Public Library, 1979).

Bibliographic Analysis: Findings

Out of the 779 works listed as copyright registrations by Gilreath for the period from 1790 through 1795, all but nine could be located in Evans or other bibliographies or their content could be determined to be clearly post-1790 (e.g., a 1800 registration of an account of a 1799 military campaign). A total of 95 entries in Gilreath were duplicates. Of the adjusted total of 675 Gilreath verifiable and unique works plus the 15 Andrew Law registrations, the bibliographic entries for a total of 25 Gilreath and 3 Andrew Law registrations suggested that more research was needed to see if the work being registered for copyright might be a pre-1790 work or a reprint of an earlier work. In some cases, it appeared that the work might be a revised edition being published in the 1790s, but in some other cases it appeared that the work could be

simply an imprint or reprint from the 1770s or 1780s that was being registered for Federal copyright and thus not a "new work."

To assess whether these 28 registrations were simply "old works" being registered late, mere reprints of works created earlier, or revised and expanded editions that qualified for being considered as "new works" at the time of their Federal copyright registration, each of the works was examined via the microprint or microfiche in the American Antiquarian Society's *"Early American Imprints" Readex Microprint* series, and each post-1790 registered work was compared to the earlier imprint(s). By comparing attributes such as title-page statements, prefaces, and page counts, it was determined that 16 of these 28 works registered for copyright actually qualified as "new works," that is, they contained expansions of the earlier texts, clear statements of being "newly revised and expanded," or they contained substantively different material.[11] The remaining 12 (or 1.74 percent of the 675 verified and unique Gilreath entries plus the 15 Andrew Law registrations) works were determined to be either mere reprints or

[11]For example, consider the case of Gilreath copyright registraton # 42 [Daniel Fenning], *Der Geschwinde Rechner* (Chestnut Hill, Penn.: Samuel Saur, 1793) (126 pages 7 plates [Evans 25476]) which was registered for Federal copyright on 16 March 1793. This work appears to be based on an English-language work, *The Ready Reckoner* which appeared in 2 pre-1790 and 8 post-1790 editions. The title page on the work registered in 1793, *Der Geschwinde Rechner*, states: "erste auflage," [first edition], and there had been a 1774 work of a similar German title. But the 1793 edition refers to the "Vereinigten Staaten" [United States] and refers to Federal currency vs. old currency ("welche das Federal Geld über unser altes Geld hat") as well as a scale established by Congress ("Die Tabelle der vom Congress eingesetzten"). The similarly titled work from the same press in 1774 (280 pages [Evans 13275]) has a different introduction, here titled "Vorrede." That book starts with a discussion of measures other than money (bales of paper, bushels, stone, days, land distance, etc.), and the currency it describes consists of pennies and farthings. By contrast, in the 1793 edition, the currency is based on cents, and it includes a table of the value of several foreign currencies against Federal currency. The 1774 edition showed many fewer foreign currencies, and reckoned them only against the gold and silver currencies of Pennsylvania and New York. Unquestionably the 1793 work is an updated, revised, and expanded edition of the 1774 edition, and thus a "new work," reflecting the significant changes in government and finance between 1774 and 1793.

examples of what one could reasonable call retrospective copyright registrations for "old works."[12]

Observations on Findings

The resultant numbers from the bibliographic analysis show that only 1.74 percent of all of the verified and unique 675 Gilreath registrations combined with the 15 additional Andrew Law registrations were for "old works." If this total of 12 works is compared to the approximately 20,829 works identified by Evans as published between 1790-1800, it appears that only 0.058 percent of all works issued were "old works" being registered for copyright "retrospectively."[13] This amount of "old works" being registered late is so low that even if one arbitrarily multiplied it several fold to compensate for the unavoidable duplication known to exist in Evans, it would still be extraordinarily insignificant.

Examining the "old works" retrospectively registered is also revealing. Further, only 3 of the "old works" "retrospectively" copyrighted dated from before 1784, and none were more than 13 years old at the time of registration; only 5 were 7 or fewer years old at the time of copyright, a far cry from the millions of truly old works covered retrospectively in 1998. Finally, all but one of the "old works" were published at a time when there was a state copyright law in their state of publication, and indeed 5 of the 12 "old works" had previously been registered for state

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[12]Bibliographic information on these 10 titles and the basis for categorizing them as "old works" can be found in Appendix A.

[13]A more accurate statement of the universe against which to compare the 12 "old works" registered for copyright in the 1790 through 1800 period would be not the 20,829 works published in that decade but the total works published from the time of the earliest of the "old works" later copyrighted through 1800. In that case, the universe since the earliest work (*Das Kleine Davidische Psalterspiel*, [Evans 15242]) from 1777 through 1800 would be 30,685, with "old works" later copyrighted accounting for only 0.039 percent of that total.

copyright in one or more states prior to 1790. In this sense, the Federal copyright protection can be seen as bridging the transition from the now obsolete state copyright regimes while supporting the registration of a dozen rather recent works but not as providing wholesale coverage of pre-existing works.

The "already printed" Language of the 1790 Copyright Law.

A key part of arguments in recent years concerning extension of existing copyright is based on a reading of the language of the Copyright Law of 1790, especially its language extending the privilege of registration for copyright to authors of works "already printed" as well as to those "already made and composed but not printed or published, or that shall hereafter be made and composed."[14] In order to assess this language properly, one must consider two key historical matters–the differences in the nature of 1790 and post-1976 copyright and the specific circumstances which lead to the drafting of the first copyright bills in 1789-90.

By the law of 1790, the activity that allowed a copyright to exist was not that of creation but that of registration. This is clearly evidenced by the phrasing of Section 3: "That no person shall be entitled to the benefit of this Act, in cases where any map, chart, book or other writing hath or have been already printed, and published, unless he shall first deposit, and in all other cases, unless he shall before publication deposit a printed Copy of the title of such Map, Chart, Book or Books in the Clerk's Office of the District Court." Furthermore, Section 1 made clear that the right is not one that originated when a work was created, or is created in the future, but only when, in the future, the author records the title in the Clerk's Office (". . . for the term of

[14]Government Response, *Eldred v. Ashcroft* (U.S. Supreme Court No. 01-618), 30.

fourteen Years from the recording the title thereof in the Clerks' Office, ...")[15] Thus, the words "already printed" in the 1790 law, as opposed to the post-1976 law did not retrospectively grant copyright but merely made it possible for authors of works already printed as well as newly printed to register for copyright.[16] The 1790 law did not grant a retrospective copyright, but rather a prospective right of registration.

The allowance for authors of works already printed to come forward to register a copyright also needs to be understood in the context of the circumstances of the 1790 copyright law. In 1790, the words "already printed" were not a theoretical abstraction, but a highly specific reference to a handful of petitions that Congress had received requesting private or general bills to grant exclusive rights to authors in the name of some about-to-be-printed or recently printed works. In fact, Congress had no sooner convened and achieved a quorum in April 1789 than it received two petitions requesting essentially private bills to grant exclusive rights of copyright and patent. By early May, it also received a petition (from John Fitch) requesting a patent for his invention of the steam engine for navigation and calling for Congress to set aside the claims of any rival inventors. By mid-summer through late May of the following year, petitions from other authors and inventors also arrived requesting exclusive rights for their

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[15]*Documentary History of the First Federal Congress 1789-1791,* Volume 4 *Legislative Histories* Charlene Bangs Bickford and Helen E. Veit eds., (Baltimore: Johns Hopkins University Press, 1986): 522-23.

[16]When the new copyright law was passed in 1976, the conditions for a work to be copyrighted changed from a system requiring the work to be published with notice to a system seeing copyright as subsisting from the moment the work became fixed into a tangible medium, see Sections 102 and 302 of : United States Copyright Office. (2000). *Circular 92: Copyright Law of the United States and Related Laws Contained in Title 17 of the United States Code.* For the previous law see, *The Copyright Act of 1909 As Amended*, http://www.kasunic.com/1909_act.htm

particular inventions or writings.[17] Congress recognized the need to provide a general bill or bills for copyrights and patents, rather than passing several private bills, because doing the latter would have required them to judge the merits of each writing or invention.[18] In the process, it no doubt recognized that whatever bill it passed would need to address the particular writings that had been called to their attention by the petitioners. Thus, insofar as the 1790 copyright law granted the right to register works "already printed," this grant must be appreciated in the context of the specific works to which Congress had reference.

If one examines closely the works that were the subject of the petitions, it becomes clear that the allowance for registration of works "already printed" was something quite different from the late 20th century notions of wholesale retrospective copyright. In order to do this, historians must rely on the *House of Representatives Journal* and several contemporary accounts, such as from the *Congressional Register,* "Lloyds' Notes," and publications such as the *Gazette of the United States,* and the *New-York Daily Gazette.*[19]

Examination of the House Journal and accounts of the debates suggests that the idea that the copyright law should allow for registration of works "already printed" arose as a way of

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[17]DHFFC Volume 8 *Petition Histories and Nonlegislative Official Documents*, Kenneth R. Bowling, *et al.* eds, (1998) 51-52.

[18]For example, consider the issues raised in the House debate on David Ramsey's petition for a private bill providing copyright for his *History of the American Revolution* noted in Appendix B.

[19]The best compendium of these documents can be found in volumes of the *Documentary History of the First Federal Congress 1789-1791,* Linda Grant DePauw ed., (Baltimore: Johns Hopkins University Press, 1972-94). Volume 4: *Legislative Histories* Charlene Bangs Bickford and Helen E. Veit eds., (1986) [cited as DHFFC Volume 4: *Legislative Histories*], and Volume 12: *Debates in the House of Representatives, Second Session January-March 1790,* Helen E. Veit et al, eds., (1994) [cited as DHFFC Volume 12 *Debates in the House*].

accommodating the works represented by the petitions for exclusive rights. This notion is further strengthened by a specific comment made by Representative Ædanus Burke of South Carolina, who on 25 January 1790 was placed in charge of bringing "in a bill or bills for making a general provision for securing to authors and inventors the exclusive right to their respective writings and discoveries."[20] According to the *Congressional Register* for 25 January 1790. ". . . he [Burke] would beg leave to call upon them to appoint a committee for the purpose of securing literary property: He said that such a bill was very much wanted, as several gentlemen had already published the fruits of their industry and application, and were every hour in danger of having them surreptitiously printed. He believed this to be no unfounded surmise, . . . he would mention one of them. Mr. Morse had published an American geography, ..."[21]

Burke took this suggestion directly from the petition of Jedidiah Morse, which had been submitted to Congress in April-May, 1789. Morse's petition read, in part: "Whereas your Petitioner, has, with much labour & Expense, & wholly at his own Risque, Compiled & published. . . ; And Whereas provision is made in the . . . . Constitution of the United States, for Securing to Authors the exclusive right to their respective, Writings; Your Petitioner prays your honourable body to pass such a General or particular Law as shall secure to him the exclusive benefit that may arise from said book & maps. And as the work is already published and as your Petitioner has no Security against its Republication by any other person. . . . and also that should a statute or law be passed, it might be so expressed as effectually to secure your Petitioner,

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[20]DHFFC Volume 4: *Legislative Histories*, 520. According to the *Dictionary of American Biography*, Burke, as a member of the South Carolina ratification convention, had voted against adoption of the Federal Constitution.

[21] DHFFC Volume 12 *Debates in the House*, 68.

against all mutilations, alterations & abridgements. . . ." [22]

At first glance, the context and statements by both Morse and Burke do not appear entirely foreign to the kind of personal pleadings that appeared, for instance, in the 1997-98 testimony for CTEA although Morse and Burke referred to individual authors and creators not to hereditary beneficiaries. However, if one truly wants to understand the dynamics between 1790 legislative policy and creative production, one needs to examine the specifics of Morse's work, as well as that of the other 1789-90 petitioners for copyright laws. As the following analysis shows, Morse was not seeking or obtaining protection for some work created long in the past, or blanket coverage for unspecified writings, but for a single work that had been in print for barely six years. Secondly, what he was doing was seeking a means to secure Federal copyright for a work (*Geography Made Easy*) which he had published in 1784 with the intention of revising and issuing a "corrected and improved" second edition.[23] Finally, and perhaps most importantly, when he did register the work for copyright, he did not simply claim copyright for an unchanged old work, but he invested considerable creative effort into the book by increasing its text by 50 percent and quadrupling the maps, making it virtually a new work. Morse's case is similar to

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[22]DHFFC Volume 8 *Petition Histories and Nonlegislative Official Documents*, Kenneth R. Bowling, *et al.* eds, (1998) 36. DHFFC notes that a transcription, in the Morse Family Collection, of a manuscript of this petition, indicates that the words "the work is already published and as" were a late addition, by an unknown hand, to the document. DHFFC Volume 4 *Legislative Histories*, 511.

[23]The page facing 214 of the 1784 edition contains a notice "To the reader" stating in part: "And should the Author so far succeed in his attempts, as to meet with the approbation of the public, and have a speedy sale of this first edition, which is but small, he flatters himself, that, from the assistance he hopes to obtain from the friends to science, together with his own particular attention to the subject, he shall be enabled to furnish the public with a second edition, corrected and improved in such a manner, as shall render it more perfect and acceptable." Quotation taken from the Readex Microprint for Evans 18615.

that of the other petitioners (see Appendix B).

Thus, one must be careful in assuming that the 1790 Congress and its contemporary authors were engaged in providing blanket copyright coverage for "old works." To the contrary, a close examination of the works represented by the copyright petitions, shows that by the words "already printed," the first Congress was referring to a small series of known works that in most cases were either just being written or had only been out a few years and were due for revision and expansion.

It becomes clear, from this study, that retrospective copyright was an insignificant and largely unused aspect of the 1790 law. The only retrospective coverage it offered was contingent upon registration, and the authors of extremely few works (from .039 to .058 percent) availed themselves of that protection. Thus, the role of the 1790 copyright was primarily to provide a structure of exclusive rights to support, as the Constitution required, the creation of new works for a new nation.

APPENDIX A: Report of 1790-1800 Copyright Registrations Found to be "Old Works"

Gilreath Entries:

G 9 (Pennsylvania) *Das Kleine Davidische Psalterspeil* (Germantown: Christoph Saur, 1777) (572 pages [Evans 15242]) Title page states "zum vierten mal ans Licht Gegeben." Note the 1791 edition is by a different press: (Chestnut Hill, Pa.: Samuel Sauer, 1791) (572 pages, [Evans 23197]) and its title page states "zum sechsten mal ans Licht gegeben." There is also a 1781 edition by Steiner and Cist, Philadelphia, [Evans 17100]with no edition numbering indicated on the title page, 575 pages.

> Assessment: Probably an example of an "old work" being given a new copyright. In this instance, the earlier (1777) edition was registered for copyright in 1790.

G 11 (Pennsylvania) Andrew Adgate, *Rudiments of Music / Philadelphia Harmony* (Philadelphia; John McCulloch, 1789) [20 pages, 56 plates Evans 21629]. Contains a notice of Pennsylvania state copyright dated 27 March, 1788. There was a 1788 edition [Evans 20916] by same printer with the same state copyright certificate (i.e., 27 March 1788), but only 22 pages and with no plates.

> Assessment: The 1790 registration was a copyright for an "old work" from 1789.

G 56 (Pennsylvania) Robert Davidson, *Geography Epitomized*, (Philadelphia, 1794). The American Antiquarian Society's "Early American Imprints" Readex Microprint for Evans 26850 indicates that Evans' entry came from the copyright notice only–no copy available. There is a 1784 edition (Philadelphia: Joseph Crukshank) (60 pages [Evans 18435]). Evans [22448] also describes a 1790 edition, but the Readex Microprint indicates that this Evans' entry was from an advertisement–no copy available. Entries in Mansell and the *Bibliography of American Imprints* do not provide further clarification. Evans describes a 1791 edition (N.J.: Neale and Lawrence) (64 pages [Evans 23311]), but the Microprint contains no copyright information or any comments to enable a determination if either the 1791 or 1794 works were revised editions of the 1784 work.

> Assessment: Evaluation of this registration is problematic because the 1794 edition cannot be compared to the 1784 edition. However, given the similarity in content of the 1784 and 1791 editions, it would appear to be an "old work."

G 71 (Pennsylvania) Joseph Priestly, *An Appeal to the Serious and Candid Professors of Christianity,* (Philadelphia: Thomas Dobson, 1794) (vi, 52 pages, [Evans 27552]) Preface is dated 30 June 1794. This is an American edition of an oration by Priestly to which was added "Concise History of the Rise of those Doctrines and an account of the Trial of Mr. Elwall for Heresy and Blasphemy" There is a Philadelphia: Robert Bell, 1784 edition (57 pages [Evans 18741]) containing much the same text except a different preface and introductory material.

> Assessment: Appears to be a case of a 1794 reprint copyright registration for an "old work" of 1784.

G 267 (Massachusetts) Noah Webster, *The American Spelling Book Containing an Easy Standard of Pronunciation being the First Part of a Grammatical Institute of the English Language,* (Boston: Isaiah Thomas and Ebenezer Andrews, 1790. Title page reads "Thomas and Andrews Second Edition, with additional lessons corrected by the author." (144 pages [Evans 23052]). Federal copyright certificate 7 October 15th year of independence [1790] for 3 parts (American Spelling Book; Grammar, and An American Selection of Lessons in Reading and Speaking). There is a 1789 (Worcester: Thomas and Andrews) imprint with the title page stating "Thomas and Andrews's First Edition. With additional lessons corrected by the author." (144 pages [Evans 22257]). This 1789 edition contains a statement from Webster saying that he has sold to Thomas and Andrews, for a period of 10 years, "the exclusive right of printing, publishing, and vending *The American Spelling Book,* or *First Part* of my *Grammatical Institute* of the *English Language* in Massachusetts, New Hampshire, and Rhode Island." There is an Evans entry 23051 for *The American Spelling Book* eighth Connecticut edition, 1789, but the microprint states "the unique copy could not be found."

Evans lists an edition [Evans 20869] of the *Grammatical Institute . . . Part I* (Philadelphia: Young and M'Culloch, 1787) to which Evans adds a note that this was the first edition printed in Philadelphia and "the Pennsylvania State Copyright was issued to Noah Webster, junior, as Author, 11 May 1785, on the edition Printed at Hartford, by Hudson and Goodwin." On 30 June 1785 Webster registered a work entitled *An Institute of the English Language in Three Parts,* in South Carolina. ("Copyrights and Patents Granted by South Carolina," *South Carolina Historical and Genealogical Magazine,* 9 (1908): 56-58.)

Webster, presumably to comply with the Massachusetts state copyright law, deposited a copy of *A Grammatical Institute . . . Part I. Containing a New and Accurate Standard of Pronunciation*, (Hartford, Hudson & Goodwin, 1783), at the Harvard College Library on 6 December 1783. (Evans 18297) [Earle E. Coleman, "Copyright Deposit at Harvard," 10 *Harvard Library Bulletin*, (1956): 135-41.]

> Assessment: Given the similarity of the Worcester: Thomas and Andrews, 1789 edition as well as the connection between the *American Spelling Book* and the *Grammatical Institutes*, it seems reasonable to consider this a 1790 reprint and copyright registration for an "old work."

G 278 (Massachusetts) Jeremy Belknap, *The History of New Hampshire. Volume I*, (Boston, 1792 (362, viii and ciii pages [Evans 24087]). Title page reads "Boston: Re-printed for the author" date is obscured as is text that may read "Published [according to act] of Congress." Registration dated 31 August 16th year of independence [1791] covering 3 volumes and a map. Preface is dated 1 June 1784. Evans' notations say that the preface from 1784, body of work pp 1-362 and Appendix i-xxxviii were unchanged from original printing. Evans 18344 is a 1784 Philadelphia edition by Aitken (viii, 361, and lxxxiv pages) with a 18-June 1784 certificate of copyright from Pennsylvania. And a preface dated "Dover, 1 June 1784."

Belknap, presumably to comply with the Massachusetts state copyright law, deposited a copy of *History of New Hampshire, Volume I*, (Philadelphia: Robtert Aitken, 1784), at the Harvard

College Library on 30 September 1784. (Evans 18297) [Earle E. Coleman, "Copyright Deposit at Harvard," 10 *Harvard Library Bulletin*, (1956): 135-41.]

> Assessment: The comment from Evans makes clear that insofar as the copyright registration (G 278) was for Volume 1, it was for an "old work," and since volumes 2, 3 and the map are reflected as separate Gilreath entries (279, 280, and 281), it is not improper to count 278 as an "old work."

G 470 (New York) Bible. O.T. Psalms. English. Paraphrases. Reformed Dutch Church, *The Psalms of David, with Hymns and Spiritual Songs also the Catechism, Confession of Faith and Liturgy,* (New York: Hodge & Campbell, 1792) (498 pages [Evans 24107]). Title page states: "with privilege of Copy Right according to Law." Begins with "extracts from the Acts of the Reverend Synod of the Reformed Dutch Church in North America, October 1788" and "Synod Extraordinary, May 1789" as prefatory material for a 22 October 1789 certificate from church official John H. Livingston. Two parts are separately paginated: 1-348 and then follows the "Heidelbergh Catechism" pp. 350-498. There is a Hodge, Allen, and Campbell 1789 edition [Evans 21688]which is in two parts: pp. 1-348 and 1-148, and it contains the same introductory material attested to by John H. Livingston. There are no indications of state or Federal registration on the work itself.

> Assessment: An example of an "old work" of 1789 being reprinted and registered in 1791 for copyright.

G 599 (Rhode Island) Alexander McDonald[M'Donald], *The Youth's Assistant; being a plain, easy, comprehensive guide to practical arithmetic,* (Litchfield: T. Collier, 1789) (103 pages, [Evans 21928]. The title page states "second edition" and "with privilege of Copy-Right." The Readex Microprint for a 1791 edition by Wheeler in Providence [Evans 23521] contains only a note saying "description from copyright entry." There is also a 1785 edition by John Trumbull of Norwich [Connecticut] [Evans 19066].

> Assessment: The 1793 copyright registration seems to be for the "old work" of 1789.

G 601 (Rhode Island) Joseph Brown Ladd, *The Poems of Arouet* (Charleston: Bowen & Markland, 1786) (xvi, 128 pages [Evans 19747]). No copyright information on work, and no other pre-1800 editions or revisions of this work were found.

> Assessment: The 1793 copyright registration seems to be for the "old work" of 1786.

G 602 (Rhode Island) Joseph Brown Ladd, *An Essay on Primitive, Latent and Regenerated Light*, (Charleston: Bowen and Markland, [1786]) (23 pages [Evans 19746]). No copyright information on work, and no other pre-1800 editions or revisions of this work were found.

> Assessment: The 1793 copyright registration seems to be for the "old work" of 1786.

Entries from other than Gilreath:
From Irving Lowens, "Copyright and Andrew Law," *Papers of the Bibliographical Society of America,* 53 (1959) 150-59.

Connecticut. Andrew Law, *Select Harmony*, (Cheshire, Conn.: William Law, 1779 or 1782 edition) (8 pages 100 pages of plates, [Evans 16318, 23492, or 24467] registered for Federal copyright 18 October 1791 and 28 August 1792. A work of this title had previously been registered for state copyright in Maryland (21 April 1783) and New York (29 April 1786). Because of Evans' inclusion of this title based on various copyright registrations and because of Law's apparent recycling of his material, it is difficult to be certain that the editions currently available for examination match those which were registered. However, based on a comparison of imprints available on the Readex Microprint, the work registered in 1791 and 1792 does not appear to be a revised edition..

Assessment: apparently, a later registration for an "old work" of 1779 or 1782.

Connecticut. Andrew Law, *A Collection of Hymn Tunes,* (Cheshire, Conn.: William Law, 1783) (48 pp. 36 pp. of plates [Evans 19753]) registered for Federal copyright 28 August 1792. A work of this title had previously been registered for state copyright in Massachusetts (17 March 1783).

Assessment: As with the other works of Andrew Law, determining differences among the various editions and among the various Evans bibliography entries is very difficult, but it is not unreasonable to consider the 1792 registration to be for an "old work" of 1783.

APPENDIX B: Bibliographic Analysis of Works by Copyright Petitioners to the First Congress 1789-1790

David Ramsay petitioned Congress April, 1789 for a copyright on *History of the American Revolution* (2 vols. 359 and 360 pages). (*Documentary History of the First Federal Congress*, vol. 3, p. 29 and vol. 8, p. 35). This was based on his 1785 *History of the Revolution in South Carolina* (2 vols. of 453 and 574 pages, [Evans 19211] registered for South Carolina state copyright on 26 March 1784). Note there is a discrepancy between a statement in Evans (that Ramsey received a copyright from Congress in 1789) and the comments of a representative from Georgia who objected to the grant of this petition. There is no other evidence to clarify whether Congress granted the petition.[24] Note that volume 1 of Ramsey's *History of the American Revolution* appeared in October 1789, and volume 2 the following May (see Evans 22090 (although title page of volume 2 lists the date as 1789). Federal copyright records for South Carolina are largely lost. The works, as examined on the Readex Microprint, show no evidence of a copyright claim, nor does Gilreath contain an indication of a copyright registration for this work, even though there are South Carolina registrations for two other Ramsay works (both "Orations"). According to notations on the 1789/90 work (Evans 22090), Ramsay's *History of the American Revolution* was republished in London, then in Ireland, and later translated into Dutch and German in the later 1790s. Note that the absence of any copyright notice on the work suggests he may have not received the private copyright he sought from Congress in April 1789, since a private law would have stood out and called for attention in the printed work. Similarly, if this work had been registered for Federal copyright, it likely would have carried a notice, as can be found for Ramsey's other works, such as his *An Oration, Delivered in St. Michaels, Church, . . . on the fourth of July, 1794* [Evans 27590].

John Churchman petitioned Congress in April, 1789 for a subsidy to conduct an exploratory voyage and for copyright for his *Magnetic Atlas or Variation Chart* and *Explanation of the Magnetic Atlas* (together they constitute 46 pages, a chart, and 2 tables [Evans 22406]. They were registered in Pennsylvania 17 June 1790 according to the terms of newly passed Copyright law and appeared for the first time in 1790. The notice statement appears in *Explanation* but it

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[24]*DHFFC,* volume 10, *Debates in the House of Representatives 1st Session*, Charlene Bickford et al. eds., (1992) p. 218: report of 20 April 1789 debate on Ramsay petition. "Mr. Jackson (of Virginia [*Georgia*] arose and objected to the report; Dr. Ramsay, he observed, had given a partial account of some transactions, that respected the State of Georgia; and if so respectable a body as Congress, should sanction the work by making it the subject of a legislative act, it would so far confirm his relations as to deter some other historian from taking up the subject, and do justice to the State of Georgia; he would therefore move for an act upon general principles. A committee was then appointed to prepare a bill on general principles, to secure to authors &c. & c." It is interesting to note that the criticism from Jackson surely must have raised concerns in Congress that they would be called upon to assess the merits of every work brought to them for copyright, just as the claims of Fitch to having been the first to invent a steam engine for navigation, would have given them pause about exercising their Article I, Section 8 rights through the passage of individual patents or copyrights.

refers to both works.

Jedidiah Morse petitioned Congress May 1789 for copyright for a work on geography. His *Geography Made Easy* had been published in 1784 (New Haven: Meigs, Bowen, and Dana, 1784) (214 pages, 2 maps [Evans 18615]) with an "Avertisement" dated 28 October 1784. An expanded version, *The American Geography*, was published in 1789 and called a "second edition" (534 pages, 2 maps [Evans 21978]). His *Geography Made Easy Being an Abridgement of the American Geography* was published in 1790 (322 pages, 8 maps [Evans 22681]). With a 10 July 1790 Massachusetts registration, Morse secured Federal copyright for *The American Geography* and its abridgement in *Geography Made Easy*. Note that the title page for the 1790 works makes clear that this is a second edition and an abridgement, thus not an "old work" being given retrospective copyright. Regarding Morse, note that James Gilreath states that "he benefitted more than any of his fellow petitioners" from the copyright law, but he did so not by gaining more time on simply registering or reprinting his 1784 work, but by adapting and refining his work.

Nicholas Pike petitioned Congress in June 1789 for a work "lately written" on arithmetic. He had published *New and Complete System of Arithmetick* in 1788 (Newburyport, Mass.: John Mycall, 1788) (512 pages [Evans 21394] for which he had obtained state copyright in 4 states, but interestingly, there is no record that he registered his 1788 edition for federal copyright). A "first edition" of *Abridgement of the New & Complete System of Arithmetick* was published 1793 (371 pages [Evans 26002]) and registered 9 May 1793 for Federal copyright by the printer Isaiah Thomas of Massachusetts (see Gilreath 309).

Hannah Adams petitioned Congress July 1789 for an exclusive privilege for a work she was writing on religious sects. She had written *Alphabetical Compendium of the Various Sects* in 1784 (204 pages, plus lxxxiii pages [Evans 18319]). It was registered for copyright under Massachusetts state law (DHFFC 8:31) although no notice appears in the work. After the 1790 passage of the Federal copyright law, she published "a second edition with large additions" as *A View of Religion in Two Parts* (approximately 410 pages [Evans 23102]) which was registered 6 July 1791. Adams provides a clear example of the creation of a new work in exchange for the new copyright, evident from the page count alone.

Enos Hitchcock petitioned Congress on 26 May 1790 for copyright on a book "lately published." This was a new work, *Memoirs of the Bloomsgrove Family* published in 1790 (2 volumes 299 and 300 pages[Evans 22570]) and provides a straightforward example of a new work being the basis of the petitioner's request. Note that at the time Hitchcock submitted his petition, his native Rhode Island had not ratified the Constitution, and he was not entitled to register for the benefit of the general Federal copyright law which had been passed and was merely awaiting a Presidential signature. However, Rhode Island soon joined the Union, and Hitchcock was able to register his work 9 August 1790.