

### ***Report for the History Project: Brent Salter***

This report discusses some of my preliminary findings from research conducted at Southern Illinois University in 2016. The research is critical for my larger project on the history of American theatrical copyright. Indeed, now that I have had the opportunity to examine the Sherman Collection at SIU I believe there is the potential for future independent projects to emerge out of this preliminary research. I would not have been able to complete this study without the generosity of the History Project and the Institute for New Economic Thinking (INET). I cannot thank you enough for this wonderful opportunity.

Steele MacKaye was fortunate to possess extraordinary theatrical talents.<sup>1</sup> He was an actor, playwright,<sup>2</sup> manager, and patented a remarkable array of inventions that revolutionized the theater in the nineteenth century.<sup>3</sup> MacKaye's production of *Hazel Kirke*, which opened in Madison Square Theater in February of 1880,<sup>4</sup> accentuated his precocious artistic and commercial abilities. The Madison Square Theater was rebuilt for MacKaye by the Rev Dr. George Malloy and his brother Marshall to stage 'wholesome plays'<sup>5</sup>, like *Hazel Kirke*, featuring American performers and new American dramatic voices. The theater itself included MacKaye's 'double stage' invention which could be raised and lowered, expanding and reducing the size of the performance area as well as allowing for quicker changes in scenes.<sup>6</sup> MacKaye's play *Hazel Kirke* was also a box-office phenomenon,

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<sup>1</sup> MacKaye's name was James Morrison Steele MacKaye. His main archival collection pertaining to his legal records are housed at the Rauner Special Collections Library, Dartmouth: MacKaye Family papers, 1751 – 1998, Manuscript ML-5, Rauner Special Collections Library, Dartmouth. Percy MacKaye, Steele MacKaye's son has written what is the most commonly cited work on Steele MacKaye: P MacKaye, *Epoch: The Life of Steel MacKaye, Genius of the Theater* (New York, Boni and Liveright, 1927).

<sup>2</sup> MacKaye wrote about 30 plays throughout his career, but without question his most celebrated work was *Hazel Kirke* written in 1878-1879. Other major works included *Money Mad (Through the Dark)* and *Paul Kauvar (Anarchy)*.

<sup>3</sup> Steele MacKaye's inventions included: Double Stage, Ventilation Devices, Indirect Lighting Devices, Overstage Orchestra, Fireproof Devices for Scenery, Air-cooling and Purifying Devices, Playbills and Tickets, Elevator Stage for Orchestra, Folding Chair, Luxaleator (curtain of light), Nebulator (cloud creator), Proscenium Adjustor, Wave Maker, Sliding Stage, Telescopic Stage, Floating Stage, 13 Devices for Illuminating and Coloring the Stage and Scenery, 40 Apparatus for Producing Increased Realism in Stage Effects, Spectatorium (a large stadium for live events that was never completed). See 'Inventions and Legal Papers: List of Inventions', Box 9.5, MacKaye Family papers, 1751 – 1998, Manuscript ML-5, Rauner Special Collections Library, Dartmouth.

<sup>4</sup> *Hazel Kirke* opened at the *Hazel Kirke* on 4<sup>th</sup> February 1880 and 'withdrawn' after 486 consecutive performances on 31 May 1881. See A H Quinn (ed) *Representative American Plays* (New York: The Century Co., 1921) 498. Copies of the scripts are in the MacKaye collection: 'Hazel Kirke Typescript taped to Paper', 1880, Box 14, MacKaye Family papers, 1751 – 1998, Manuscript ML-5, Rauner Special Collections Library, Dartmouth.

<sup>5</sup> See 'Rev. G.S. Mallory's Dead: ...Madison Square Theatre--Wholesome Plays Only Presented', *New York Times*, 3 March 1897, 1. Extensive documentation in relation to the play including MacKaye's dispute with the Mallory brothers can be found at: 'Hazel Kirke', Box 14.4-14.5, MacKaye Family papers, 1751 – 1998, Manuscript ML-5, Rauner Special Collections Library, Dartmouth.

<sup>6</sup> See 'New Stage Inventions of Steele MacKaye', 'Inventions and Legal Papers: ...', Box 9.7, MacKaye Family papers, 1751 – 1998, Manuscript ML-5, Rauner Special Collections Library, Dartmouth.

celebrated in the popular theatrical press in 1881 as ‘the most successful play ever produced’, having the ‘longest run on record in America’,<sup>7</sup> and eventually touring multiple productions across the country under an innovative organizational booking model.<sup>8</sup>

Steele MacKaye, however, never benefited from the financial riches that inevitably followed the success of his play. MacKaye was an employee of the Mallory brothers and thus did not have a legal interest in *Hazel Kirke*.<sup>9</sup> The oppressive employment contract between producer Marshall Mallory and Steele MacKaye had MacKaye surrender all control and future royalties to his dramatic works in return for a modest annual fee.<sup>10</sup> Further, as a consequence of the assignment, and in the absence of a moral rights regime, the original creator employee abandoned any right to attribution in his work.<sup>11</sup>

The legal dispute between Mallory and MacKaye, which was not resolved until 1897 after MacKaye’s death<sup>12</sup>, can be read as a defining example of the doctrinal shift in employer/employee intellectual property relations in the second half of the nineteenth century from an employee’s right to an employer’s right.<sup>13</sup> There was an alternative history, however, that emerged from the play that was

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<sup>7</sup> See ‘Poster: The Madison Square Theatre Company: Hazel Kirke’, The Jay T. Last Collection of Graphic Arts and Social History, Huntington Digital Library <http://hdl.huntington.org/cdm/singleitem/collection/p16003coll4/id/2378/rec/1>. The *New York Dramatic Mirror* celebrated the increasing popularity of the play see ‘Hazel Kirke’, *New York Dramatic Mirror*, 19 June 1880, 7; ‘The American Dramatist at Home and Abroad’, *New York Dramatic Mirror*, 25 September 1880, 6; ‘An Unreserved Rebuke’, *New York Dramatic Mirror*, 23 October 1880, 6; ‘Daly Suit Against Gulick et al’, *New York Dramatic Mirror*, 26 February 1881, 6.

<sup>8</sup> And these booking systems were under the management of the Frohman Bros, Mark Klaw and Abe Erlanger who would go on to become the central partners of the Theatrical Syndicate formed in 1896.

<sup>9</sup> In *MacKaye v Mallory*, MacKaye had no copyright interest in a work where there had been a contractual assignment of rights from employee creator to employer Marshall Mallory. *MacKaye v Mallory* 6 F. at 76; *MacKaye v Mallory* 12 F. 328 (C.C. S.D.N.Y. 1882). MacKaye counter-sued seeking an injunction. On the dispute see P MacKaye, *Epoch: The Life of Steele MacKaye, Genius of the Theater* (New York, Boni and Liveright, 1927) Chap 13 ‘The Shadow of a Contract’; C Fisk, *Working Knowledge: Employee Innovation and the Rise of Corporate Intellectual Property, 1800-1930* (Chapel Hill, University of North Carolina Press, 2009) 154-158. The first summons and complaint in the dispute: NY Common Pleas: Steele MacKaye agst Marshall Mallory and George Mallory, 5 Jan 1881, Box 8, MacKaye Family papers, 1751 – 1998, Manuscript ML-5, Rauner Special Collections Library, Dartmouth.

<sup>10</sup> And other incentives based on the long-term profitability of the show. P MacKaye, *Epoch: The Life of Steel MacKaye, Genius of the Theater* (New York, Boni and Liveright, 1927) 369. See also T Walsh, *Playwrights and Power: A History of the Dramatists Guild* (University of Texas at Austin, PhD Thesis, Department of Theater, 1996) 18-19, and C Fisk, *Working Knowledge: Employee Innovation and the Rise of Corporate Intellectual Property, 1800-1930* (Chapel Hill, University of North Carolina Press, 2009) 154-158.

<sup>11</sup> See *MacKaye v Mallory* 12 F. 328 (C.C. S.D.N.Y. 1882); C Fisk, *Working Knowledge: Employee Innovation and the Rise of Corporate Intellectual Property, 1800-1930* (Chapel Hill, University of North Carolina Press, 2009) 158.

<sup>12</sup> See *MacKaye v Mallory*, 79 F. 1 (2d Cir 1897); *MacKaye v Mallory*, 80 F. 256 (C.C.S.D.N.Y. 1897); *Mallory v MacKaye*, 86 F. 122 (C.C.S.D.N.Y. 1898). See also ‘At Law About Hazel Kirke’, *New York Sun*, 24 March 1896 transcribed in ‘Notes for Epoch’, Box 48.50, MacKaye Family papers, 1751 – 1998, Manuscript ML-5, Rauner Special Collections Library, Dartmouth.

<sup>13</sup> See C Fisk, *Working Knowledge: Employee Innovation and the Rise of Corporate Intellectual Property, 1800-1930* (Chapel Hill, University of North Carolina Press, 2009) who writes at 157 ‘In terms of the great debates about the relation of labor and

ambivalent towards the operation of the legal employer/employee issues; and was ambivalent towards the notion that copyright law could establish the boundaries of authority in the American theater. *Hazel Kirke* was such a popular play that it was subject to rampant piracy. The *New York Dramatic Mirror*, as part of its larger crusade against play piracy, reported on multiple occasions how Chicago ‘theatrical publisher’ Alexander Byers, and his gang of pirates under the umbrella of the Chicago Manuscript Company, had in their possession unauthorized copies of *Hazel Kirke* that they were moving throughout the country to rogue producers.<sup>14</sup> This led to the establishment of a ‘pirate play-bureau’ in Chicago in 1889 to deal with the highly organized group that operated in defiance of any potential legal rights of either MacKaye or Mallory.<sup>15</sup> The successful market for pirated copies of *Hazel Kirke* also triggered vigorous discussion in the theater press about informal methods of dispute resolution,<sup>16</sup> and the need to introduce copyright reform with stronger penalties.<sup>17</sup>

According to the owners of *Hazel Kirke*, successful resolution of disputes complemented alternative methods to fight piracy. Buoyed by their ‘earnest and intelligent efforts to hunt the rascals down’,<sup>18</sup> the Mallorys – with the assistance of Marc Klaw and the Frohman Brothers Daniel, Charles and Gustave, who would later form the nucleus of the all-powerful Theatrical Syndicate – settled

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capital, the Mallorys were extracting the entire surplus value of MacKaye’s creative labor. The theater press thus came down squarely on the side of labor ... The court came squarely down on the side of capital.’

<sup>14</sup> ‘A list of seventy seven copyrighted plays were found in the possession of this Chicago gang ...’. See ‘Dramatic Thieves at Bay’, *New York Dramatic Mirror*, 11 March 1882, 6; ‘Prosecuting Play thieves’, *New York Dramatic Mirror*, 15 April 1882, 8. Byers, was described in 1909 as reminding one of ‘the cleverest and Shiftiest of the Standard Oil Crowd’. It was a reference Tom Lawson made of Henry E Rogers: see ‘Chicago's Centre For The Disposal Of "Lifted Stuff"’, *Variety*, 6 February 1909, 6.

<sup>15</sup> See *New York Dramatic Mirror*, 6 July 1889, 1.

<sup>16</sup> See ‘Theatrical Litigation and the Remedy’, *New York Dramatic Mirror*, 15 January 1881, 6. Suggesting an industry arbitration process to resolving disputes and: ‘The law-courts begin by being absolutely ignorant of theatrical usage. The lawyers on both sides are generally quite as ignorant.’

<sup>17</sup> Many disputes commenced but settled before judgment. Indeed, the *Dramatic Mirror*, opined in the early 1880s: ‘Who will be the Blaine to devise a Peace Congress for the settlement of all theatrical wars out of court and thus beat the lawyers?’ See *New York Dramatic Mirror*, 6 May 1882, 8. *The Mirror* also suggested the establishment of a fund to litigate against piracy: ‘I wish some decisive action could be taken by the combination managers toward maintaining a fund to defray the expense of prosecuting men who allow a play to be produced without guarantee that the right to do so is clearly in their possession. If this were done it would do much to remove the evil, and I shall be glad to put myself in communication with other travelling managers to attain this result.’ ‘On the Track of Pirates’, *New York Dramatic Mirror*, 1 October 1887, 7 (citing theater manager Seymour). However, see also ‘Drama at the Bar’, *New York Dramatic Mirror*, 13 October 1888, 6 (where Fiske acknowledges ‘that the drama should have secured a lodgment in judicial minds’, as a consequence of more engagement between the theater industry and the courts).

<sup>18</sup> See ‘The Examination of the Chicago Play Thieves’, *New York Dramatic Mirror*, 15 April 1882, 8; see also ‘Dramatic Thieves at Bay’, *New York Dramatic Mirror*, 11 March 1882, 6; ‘Prosecuting the Play Thieves’, *New York Dramatic Mirror*, 15 April 1882, 3.

successfully with Byers, and his accomplices,<sup>19</sup> in April 1882.<sup>20</sup> The group's victory was accompanied by a foreboding notice in the *Dramatic Mirror* to all 'managers, hall owners and hall agents throughout the United States' that any attempt to trespass on the rights of the owners of *Hazel Kirke* 'will be summarily dealt with in Civil and Criminal Courts, and offenders will be punished to the law's fullest extent'.<sup>21</sup>

But this is a story about how stakeholders organized resistance to the copyright owner's authority. Despite the best intentions of those with legal authority to bring the pirates to justice, Byers continued his operations. The **Table** below summarizes a sample of plays, housed in the expansive script collection of the Chicago Manuscript Company preserved in the Sherman Theatre Collection,<sup>22</sup> Byers was alleged to have stolen from owners and authors of dramatic works in the aftermath of the *Hazel Kirke* dispute.<sup>23</sup>

**Table<sup>24</sup>**

Play (Alternative Title)	Copyright Regis Yr/Name (1st regis)	Author or Owner
After Dark	1868/Dion Boucicault	Dion Boucicault
Alixé	1873/Augustin Daly	Augustin Daly
Across the Continent	1870/Oliver Doud Byron	James McCloskey

<sup>19</sup> Mr Laroque and Mr Coby were Byers' accomplices in crime and also prosecuted: see 'The Examination of the Chicago Play Thieves', *New York Dramatic Mirror*, 15 April 1882, 8.

<sup>20</sup> See 'An Illiterate Play Thief', *New York Dramatic Mirror*, 18 November 1882, 7; 'More Piracy', *New York Dramatic Mirror*, 14 April 1883, 10. See also the *Hazel Kirke* script in Byers' collection: 'Hazel Kirke', Box 27, Sherman Theatre collection, Special Collections Research Center, Southern Illinois University Carbondale.

<sup>21</sup> See 'Copyright Notice', *New York Dramatic Mirror*, April 1882, 12.

<sup>22</sup> The extraordinary script collection of the Chicago Manuscript Company, purchased by Robert Sherman after Byers' death in 1992, includes pirated scripts from the early 1880s, but mostly concentrated after 1892: 1/3/MSS 175, Sherman Theatre Collection, Special Collections Research Center, Southern Illinois University Carbondale (86 Boxes).

<sup>23</sup> See, for eg, the plays identified to have been stolen in: 'Following up the Pirates', *New York Dramatic Mirror*, 23 July 1887, 2; 'A Pirate Play Bureau', *New York Dramatic Mirror*, 6 July 1889, 1; 'Beware of Play Stealer Byers', *New York Dramatic Mirror*, 13 February 1892, 8; 'Chicago's Centre For The Disposal Of "Lifted Stuff"', *Variety*, 6 February 1909, 6; 'Play Piracy Must Stop', *New York Dramatic Mirror*, 5 April 1911, 13; 'Byers Indicted', *New York Dramatic Mirror*, 21 June 1911, 14.

<sup>24</sup> **A note on method of collection:** This report is comprised of preliminary findings as at June 2017 subject to change after further research. The *New York Dramatic Mirror* was examined between 1882 and 1916 and the cases in the Table, were identified in the papers as 1. Attached to Alexander Byers and his Chicago Manuscript Company; and 2. Were the subject of a piracy complaint or piracy litigation. That is, all the subjects in the list were housed and sold by the Chicago Manuscript Company and without the consent of the author. The few plays highlighted in red are not explicitly identified in the press as plays that are the subject of piracy, but an actual examination of the scripts suggests they are highly suspicious examples. The archive in these instances include multiple scripts in handwritten and printed forms. The extent of Byers' piracy activities makes it very difficult to determine where these were examples of legitimate activity. In the first column some plays have alternative names (the second name in brackets). In these instances plays were at one stage or another in their lives registered or trading under either of the names – a method that may have been used to avoid detection of pirated works. The second column identifies the year that the copyright in the work was first registered and under what name it was registered. The third column identifies the name of the author or owner of the work. The registration dates and names were taken from: Library of Congress Copyright Office, *Dramatic Compositions Copyrighted in the United States: 1870-1916* (Washington: Government Printing Office, 1918) Vol. 1 (A-N), Vol. 2 (M-Z).

Alabama	No registration	unknown
Adam the Second	1899/Will C Matthews	Will M. Cressy
(Alias) Jimmy Valentine	1909/Liebler &co., New York	Paul Armstrong
Are You a Mason?	1904/ Emanuel Lederer, Carl Herrmann (adpt)	Emanuel Lederer and Carl Herrmann (adpt)
Arrah na Pogue (Wicklow Wedding)	1891/E H House	E H House
Banker's Daughter (Lillian's Last Love)	1878/B Howard	B Howard
Baby Mine	1910/M M Selwyn (alias M Mayo)	MM Selwyn
Bertha the Sewing Machine Girl	1905/ A H Woods	Theodore Kremer
Ultimo (Big Bonanza)	1875/Augustin Daly	Augustine Daly
Blue Jeans	1888/Joe Arthur	J Arthur
Bunch of Keys	1883/C. Hoyt and W. Edouin	Charles Hoyt and Winnie Edouin
The Builder of Bridges	No registration	John Lawrence
Caprice	1885/H P 'Taylor' (and earlier others)	Howard Taylor
Captain Lettarblair	1906/Bobbs Merrill Co.	Marguerite Merington
The Charity Ball	1888/ D Belasco and H C DeMille	D Belasco and H C DeMille
The Chorus Lady	1906/ James Forbes	James Forbes
The Climax	1909/ Edward Locke	Edward Locke
Col Sellers (Gilded Age)	1874/S L Sellers	Mark Twain
The County Fair	1890/N Burgess	Charles Berhard and Neil Burgess
Country Hero	No registration	Chas Perkins
The Country Boy	1910/E Selwyn (and others)	Charles D. Perkins (c says E Selwyn)
Dad's Girl	1892/Henshaw, Feeley and Pagett, Chicago	Unknown
The Danties "The Heart of the Sierras"	1877/McKee Rankin	Joaquin C.H. Miller
Davey Crockett	1914/Alex Byers (a few versions c regis)	Charles Hart
The Deacon's Daughter	1886/A C Gunter	Archibald C. Gunter
The Deep Purple	1910/Liebler and Co	Paul Armstrong and Wilson Mizner
Divorce (Fate)	1873/Le Clercq (regis as Fate)	Bartley Campbell
Dew Drop (Sea Sands)	No registration	Unknown
East Lynne	cld be various - it is a 3 act play	Ms Henry Woods
The Elopement	1914/Alex Byers	Harold Hargesson (Edwin Emery crossed out)
Esmerelda	1881/Frances Hodgson Burnett, Washington	William Gilette and Frances Hodson Bernett
Bessie's Burglar (Editha's Burglar)	1884/Gus. Thomas and E. McP. Smith,	G. Thomas and Mcp. Smith
Farmer and the Actress	No registration	Unknown
Farmer's Daughter	1914/Alex Byers	Nelson Compston
Divorce (Fate)	1873/C. Le Clercq (Fate)	Bartley Campbell (Fate)
Forgiven	1885/Frederic Bryton and Clay Greene	Unknown
Fun in a Boarding School	1882/Charles P Brown	Charles P. Brown
Forty Five Minutes From Broadway (The New Rochelle)	1905/George M. Cohan	George M. Cohan
A French Marriage	No registration	Unknown
Confusion	1883/John Stetson	Joseph Derrick
The Fortune Hunter	1909/Winchell Smith	Winchell Smith
The Georgia Minstrels	No registration	no author
The Galley Slave	1880/Bartley Campbell	Bartley Campbell
Hazel Kirke	1880/J. Steele MacKaye	J. Steele MacKaye
Hearts of Oak	1898 (orig. 1880)/James A Herne	James A Herne

Held by the Enemy	1898/William Gillette	William Gillette
The Henrietta	1901/Bronson Howard	Bronson Howard
His Wife's Hero	No registration	unknown
How Hearts Broken (Queen)	1905/Langdon McCormick (registered as HHB)	Langdon McCormick
Huckleberry Finn	No registration of dramatic work	Roy Lewis (on script)
Hunting for Hooligan	1902/ C E Royal and A Beeson	James strong but it is C E Royal and A Beeson
Imposter	1905 M Demerest/author is C M Alviene / note: Byers says he copyrighted play in 1913	Nelson Compston
In Old Kentucky	1897/Jacob Litt	Charles T. Dazy
In the Place of the King	No registration	Unknown
Ivy Leaf	1884/William H Power	Con. T. Murphy
Josh Whitcomb	1887/M. E. Osbon	M. E. Osbon
Jim the Penman	1898/L J Howard	L J Howard
Lion and the Mouse	1906/Charles Klein	Charles Klein
Little Sunbeam	No registration	No mention
Little Lord Fauntleroy	1889/Frances Hodgson Burnett	Victorien Sardou-Barnett (adpt)
The Littlest Girl	1908/F. G. King	Unknown
Lord Chummley	No registration	Unknown
Lost Paradise	1899/J Ligon	J Ligon
Lynwood	1884/James K. Tillotson	James K. Tillotson
The Masked Ball	1914/Alex Byers	W.C. Herman
McKenna's Flirtation (Peril)	1887/E. Selden	E. Selden
May Blossom	Various registrations 1883/4/5	David Belasco
The Melting Pot	1909/Macmillan Co.	Israel Zangwill
m'Liss	1873/Harry B. Weaver	Harry B. Weaver
Mixed Pickles	1884/T H Sayre	T.H. Sayre
Monte Cristo	1906/Fred Conrad bt E Moore	O'Neill adaption/Fletcher vers.
The [A] Mountain Pink	1883/Edwyn A. Barron and Morgan Bates,	Morgan Bates and Elwyn A. Barron
Mr Barnes of New York	Not registered	A.C. Gunther
Muldoon's Picnic	1914/Alex Byers	Langdale Williams
My Partner	1880/Bartley Campbell	Bartley Campbell
My Geraldine	1880/Bartley Campbell	Bartley Campbell
Nobody's Claim	1882/Edwin A Locke	Edwin A. Locke
Night Off	1885/Augustin Daly	Augustin Daly
Number 973	No registration	Robert Holland and Edwin Hilliard
Our Boarding House	1876/Leonard Grover	Leonard Grover
Only a Farmer's Daughter	1898/C R Gardiner	C R Gardiner
One of the Bravest (Tim the Fireman)	1883/E. E. Price	E. E. Price
The Operator (The Flag Station)	1891/S. D. Ferguson and Arthur Hornblow,	S.D. Ferguson (and A Hornblow)
Passion's Slave	1913/J A Stevens	John A. Stevens
A Passing Fancy	1914/Mark E Swan	M E Swan
Peck's Bad Boy	1903/W Ren Boazman/1914/Alex Byers	W.C. Herman
Pat and the Genii	1900/Thos. Nawn	Edmund Day and Thomas Nawn
Euchre (The Phoenix)	1916/Fredrick Ziegler	F J Ziegler
The Planter's Wife	1880/James Tillitson	James K. Tillitson
Prince Karl (The German courier)	1886/Archibald C. Gunter	Archibald C. Gunter
Queen's Evidence	1878/J H Rowe	J.H. Rowe
Ranch 10 (Annie From Massachusetts)	1882/Harry Meredith	Harry Meredith

Rosedale (The Rifle Ball)	1890/H S Taylor	John Lester Wallack
Sam'l of Posen (The commercial drummer)	1880/G. H. Jessop	G. H. Jessop
Seven Sisters	Not registered	Unknown
Seven Days	1909/Avery Hopwood	Mary Roberts Rinehart and Avery Hapgood
Shenandoah	1897/Bronson Howard	Bronson Howard
Springtime	1909/Fredrick Thompson	Booth Tarkington and Harry Leon Wilson
The Still Alarm	1887/Joseph Arthur	Joseph Arthur
The Stowaway	1887/Hal S Taylor	Hal S. Taylor
Supper for Two	No registered	Unknown
Texas Steer	1899/Charles Hoyt	Charles Hoyt
Ten Nights in a Bar Room	1916/Alex Byers	Nelson Compston
A Tale of a Turkey	1905/Edward R. Burton, Cornev Brookes	Edward R. Burton and Cornev Brookes.
A Touch of Nature	Multiple registrations under various names	H P Leonard
Uncle Josh Perkins	1891/TS Denison	Jordan Show Printing Co
Uncle Tom's Cabin	1912/Alex Byers	Chas Morton addapt
Woman's Devotion (Vigilante)	1904/Preston Gibson	Preston Gibson
Waterloo	1907/Samuel French	Arthur Conan Doyle
Widow Bedott (A hunt for a husband)	1879/D. R. Locke	D. R. Locke
Whirlpool	No registration	John Kaiser
Zig Zag	1888/ William Tollitson	William W. Tollitson
Young Mrs Winthrop	1882/ Marshall H. Mallory	Bronson Howard

The list is notable not only for its size but because it also provides an insight into how Byers went about his operations.<sup>25</sup> Some of the authors identified worked for Byers, including well-known ‘notorious’ play pirates such as Nelson Compston.<sup>26</sup> Other plays have multiple titles, as identified in brackets, which was a strategy to avoid detection from original authors or owners. Many of the plays were commercial successes – *Uncle Tom's Cabin*, *Little Lord Fauntleroy*, *After Dark*, *Hazel Kirkee*, *Monte Cristo*, and *Big Bonanza* – suggesting that Byers was audacious enough to want to profit from the potentially more lucrative works.

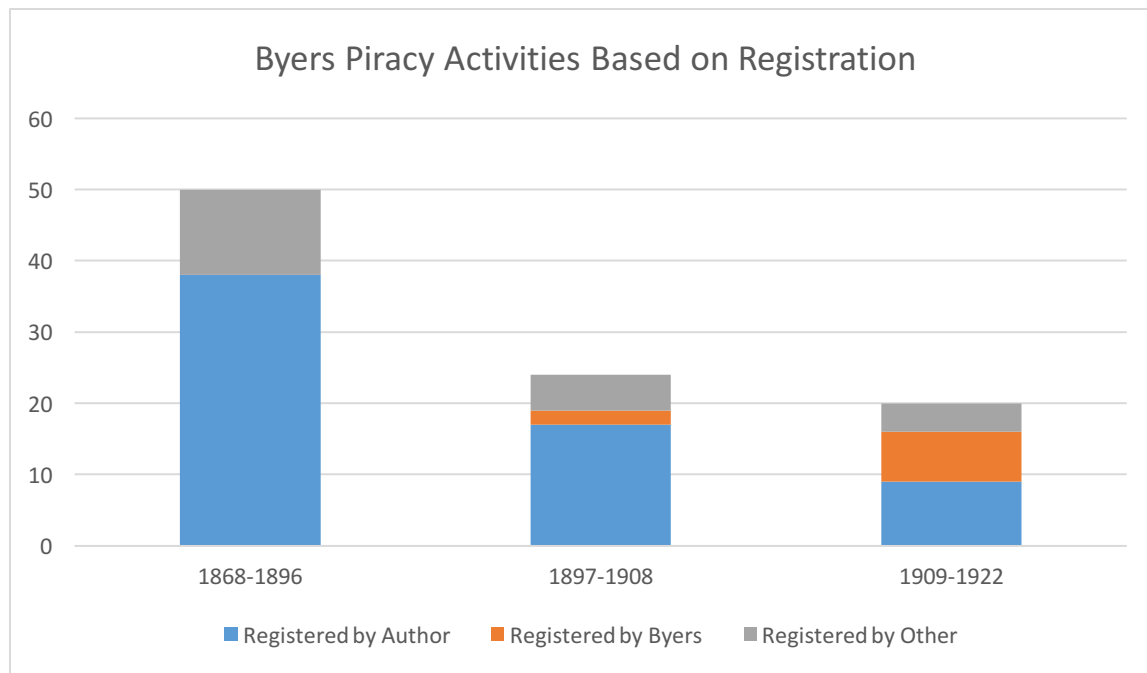
Byers also appears to use the copyright registration system where it best served his purposes – perhaps using the system as a way to disguise his illegal activities. **Graph 1** below suggests that in the earlier

<sup>25</sup> On the operations of the Chicago Manuscript Company see: ‘Pirated Plays and the Pirates’, *New York Dramatic Mirror*, 9 July 1887, 2; ‘Following up the Pirates’, *New York Dramatic Mirror*, 23 July 1887, 2; ‘A Pirate Play Bureau’, *New York Dramatic Mirror*, 6 July 1889, 1; ‘Pestiferous Pirates’, *New York Dramatic Mirror*, 13 July 1889, 3; ‘Pirate Play Bureaus’, *New York Dramatic Mirror*, 24 May 1890, 9; ‘Beware of Play Stealer Byers’, *New York Dramatic Mirror*, 13 February 1892, 8; ‘An Audacious Theft’, *New York Dramatic Mirror*, 2 July 1892, 4; ‘A Pirate in Court’, *New York Dramatic Mirror*, 11 February 1894, 11; ‘Dishonest and Audacious’, *New York Dramatic Mirror*, 16 March 1895, 8; ‘A Foe to Pirates’, *New York Dramatic Mirror*, 15 June 1895, 8; ‘Still at It’, *New York Dramatic Mirror*, 5 October 1895.

<sup>26</sup> See ‘Some Notorious Play Pirates’, *New York Dramatic Mirror*, 20 December 1888, 11.

years of the Chicago Manuscript Company, Byers may have been more likely to brazenly steal plays that were already registered under the author or owner's name.<sup>27</sup> In later years, however, a more insidious strategy may have been adopted. It appears that Byers, in some instances, waited for the initial 14-year copyright period to end, or just before it ended, and then re-registered the work under his own name.<sup>28</sup> The original owner often forgot to renew his or her work allowing Byers to register it in his own name to create the illusion of legitimacy under the cloak of the copyright registration system:<sup>29</sup>

**Graph 1:**



<sup>27</sup> Graph 1 also suggests that his pirating activities declined – particularly after the 1897 amendment to copyright law which provided for the first time criminal penalties. But this is small sample does not necessarily represent the full extent of Byers pirating activities after 1897, just those reported mostly in the *Dramatic Mirror*. The editor of the *Mirror* Harrison Fiske seemed to drop the issue after 1897 when the copyright amendment was introduced and focused his energy on the rise of the theatrical trusts.

<sup>28</sup> As also discussed by Sarah Blackstone: S Blackstone, 'Alexander Byers, Play Pirate Extraordinaire' (June 1994) 14 *Theatre History Studies* 107, 107-108.

<sup>29</sup> William Stout suggests that after the major copyright amendments of 1909 Byers changed his model to a more legitimate business. His 'stable of writers included known play pirate Nelson Compston, W C Herman, Myron Leffingwell, Langdale Williams and Clarence Black, serving tent managers throughout the country. See W L Slout, *Theater in a Tent* (Wildside Press, 2000 revised ed) 99. There is serious doubt about this claim – particularly with respect to plays 'authored' by Nelson Compston. Although there may have been small pockets of legitimacy in Byers' activities, he was still the subject of ongoing litigation after 1909, a grand jury trial in 1911, and constant complaints about his activities in the press. Indeed, Byers may have acted as the broker for a limited number of legitimate works in order to disguise the extent of his illegal operations.



For example, the play *Hunting for Hooligan* was registered initially under the names of the actual authors ‘Beeson and Royal’ in 1902, but in 1916, at the 14-year re-registration mark, the script is registered under the name of Alexander Byers. The script in the archive collection is said to be authored by a ‘James Strong’ – a further indication that Byers was attempting to distance the real authors from their work.<sup>30</sup> In other instances, Sarah Blackstone has argued that Byers registered relatively unknown scripts under his own name,<sup>31</sup> or made slight changes to well-known works and registered them under his name or the name of his employees.<sup>32</sup> He would also run a separate entity which included abridged versions of popular works – stamping these works with the notice ‘Byer’s Library of Tabloid Plays’.<sup>33</sup>

But in general, Byers was not concerned about concealing his piracy. Over the course of his entire career, as shown below in **Graph 2**, it is clear that Byers had no fear about pirating works that were registered under the copyright owner or author’s name (blue column), or the name of the legitimate publisher/broker (the yellow column).<sup>34</sup> Byers also had the audacity to use the courts when he believed he was the victim of piracy, striking out only where the play was registered in his own name. In many of these instances, it is unclear whether he was the legitimate owner of the work which he claimed had been stolen.<sup>35</sup>

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<sup>30</sup> See ‘Hunting for Hooligan’, Box 31, Sherman Theatre collection, Special Collections Research Center, Southern Illinois University Carbondale.

<sup>31</sup> See ‘The Elopement’, Box 18, Sherman Theatre collection, Special Collections Research Center, Southern Illinois University Carbondale.

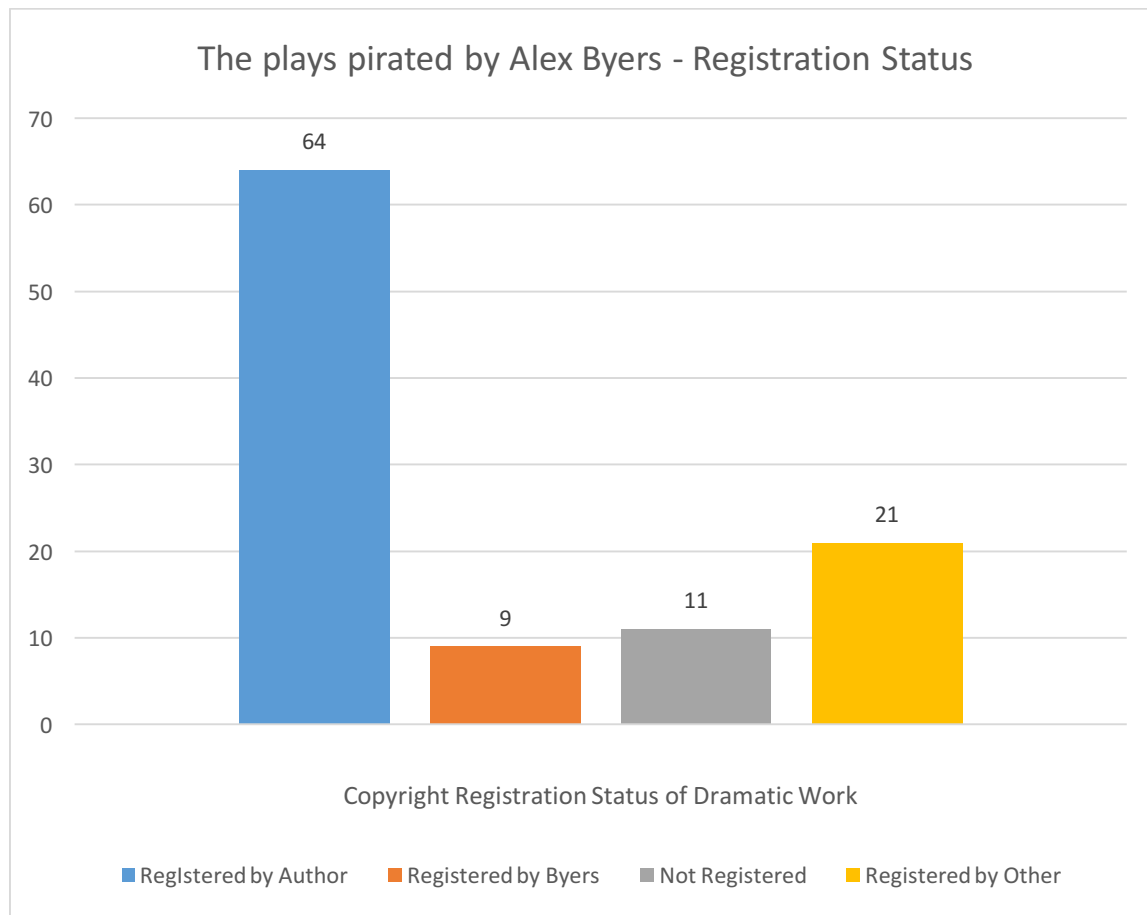
<sup>32</sup> See, for eg, ‘East Lynne’, Box 18, Sherman Theatre collection, Special Collections Research Center, Southern Illinois University Carbondale; ‘Uncle Tom’s Cabin’ – multiple versions, Box 78, Sherman Theatre Collection, Special Collections Research Center, Southern Illinois University Carbondale; ‘Count of Monte Cristo’, Box 13, Sherman Theatre Collection, Special Collections Research Center, Southern Illinois University Carbondale. As discussed in S Blackstone, ‘Alexander Byers, Play Pirate Extraordinaire’ (June 1994) 14 *Theatre History Studies* 107, 107-108. Noting that *East Lynne* and *The Elopement* have been used interchangeably for the same work in an earlier musical burlesque version of the play by James Barnes. See Internet Broadway Database: <https://www.ibdb.com/broadway-show/east-lynnne-438892>. The later play version of *East Lynne* was the book adaptation of Mrs Henry Wood (also written by Wood): <https://www.ibdb.com/broadway-show/east-lynnne-3246>.

<sup>33</sup> See, for eg, ‘The Fortune Hunter’, Box 23, Sherman Theatre collection, Special Collections Research Center, Southern Illinois University Carbondale; ‘Uncle Tom’s Cabin’ – multiple versions, Box 78, Sherman Theatre Collection, Special Collections Research Center, Southern Illinois University Carbondale.

<sup>34</sup> This strategy would sometimes backfire against the brazen pirate in the most public of ways. The *Dramatic Mirror* would often post names of plays that were registered in the copyright register and the legal authors and owners of the work in order, particularly where a play was possibly the subject of piracy. Edgar Selden, the author of McKenna’s *Flirtation*, noticed in a list of ‘successful copyrighted plays’ in a previous issue his play was included. Selden wrote in his comment to the *Mirror* – ‘in January, 1888, a man was discovered comfortably seated in an orchestra chair industriously engaged in taking down, in shorthand, the language, business of the play, etc, and who was promptly ejected from the theater by the watchful usher, but unfortunately permitted to escape without arrest. Eventually his attempted theft must have met with success, and furthermore he was undoubtedly acting for and in league with this same Alex Byers’. See ‘Pestiferous Pirates’, *New York Dramatic Mirror*, 13 July 1889, 3.

<sup>35</sup> Indeed, in some instances Byers was not the owner of the work in which he was suing for piracy. One of the more interesting examples involved Byers’ claim against George Clancy, a former employee of Byers who according to the

Graph 2:<sup>36</sup>



The scripts in the Chicago Manuscript Company archives provide further insights into how Byers successfully operated his business. The first suspicion of the illegality of the collection can be gleaned from what is missing rather than what is present. Although there is a small amount of correspondence accompanying the scripts, what is notably absent, in comparison to other large collections of script

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*Dramatic Mirror* 'Clancy saw that Byers was making money rapidly in this dishonest business, and bethought him that if it was a good thing for one it ought to be a good thing for two'. The court however was not able to determine whether the plays in question 'belong to Byers' including *The Masked Ball*, *Esmerelda*, *The Danites*, *The Lost Paradise*, *Caprice*, *Held by the Enemy*, *the Old Homestead*, *Forgiven*, and *The Charity Ball* among 'a score or more of other dramas'. 'A Pirate in Court: The Remarkable Case of Alexander Byers, Play Thief of Chicago', *New York Dramatic Mirror*, 11 February 1894, 11. In other instances it appears that Byers may have been the victim of piracy – for eg with respect to the plays *Rube and Mandy*, *Plain Molly*, *Why Lindy Ran Away*, *The Boss of Z Ranch* and *Clouds and Sunshine* which were all registered under Alex Byers. See 'The Suppression of Piracy', *Opera House Reporter*, 4 February 1916, 2; 'Says he Stole a Play', *La Crosse Tribune*, 24 June 1915; 'In Repertoire: Clouds and Sunshine', *Billboard*, 15 June 1918, 23.

<sup>36</sup> Using the same method extracting data from the copyright registry as above from: Library of Congress Copyright Office, *Dramatic Compositions Copyrighted in the United States: 1870-1916* (Washington: Government Printing Office, 1918) Vol. 1 (A-N), Vol. 2 (M-Z).

archives from this period,<sup>37</sup> is accompanying accounting documentation related to author royalty payments.

Further, many of the scripts in the collection that were the subject of piracy claims evolve in several different suspicious forms. For example, *Seven Days*, authored by Mary Roberts Rinehart and Avery Hapgood, and registered under the name of Hopwood in 1909.<sup>38</sup> The second version was usually typed up in Byers' back office rooms,<sup>39</sup> by a small team of stenographers. Multiple variations of this process are littered throughout the collection. In some instances, a third version of the script exists in a more publishable or presentable form.<sup>40</sup> Suspicious annotations are written over copies of scripts throughout the collection including 'George, Be careful, don't lose this. It will be impossible to replace it ... nothing left out',<sup>41</sup> 'ask mr byers if he wants copyright sheet',<sup>42</sup> 'cut the opening',<sup>43</sup> 'register the title of the script as "regis as "Editha's Burglar"',<sup>44</sup> cover notes ask 'if you want to cut any out...',<sup>45</sup> and numerous script covers include a handwritten seal stating the version of the script was 'original, don't sell'.<sup>46</sup> The collection includes handwritten notes that confirm the script in question is the exact copy

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<sup>37</sup> For example the following major collections from the same period include extensive accounting documentation with respect to royalty payments to authors directly or their representatives: Shubert Archives private collection at <http://www.shubertarchive.org/noflash.htm>; John Rumsey's American Play Company Collection at the New York Public Library Archives: <http://archives.nypl.org/the/88>; Samuel French Collection at Amherst: <https://www.amherst.edu/library/archives/holdings/samfrench> which are all examined in this work.

<sup>38</sup> See 'Seven Days' Box 66, Sherman Theatre collection, Special Collections Research Center, Southern Illinois University Carbondale. Indeed, many of the scripts in the collection include handwritten first version – the work of stenographers either transcribed in the theater or copied from a script obtained by Byers.

<sup>39</sup> See 'Against Play Piracies', *New York Dramatic Mirror*, 1 April 1905, 15.

<sup>40</sup> See, for eg, 'Seven Days' Box 66, Sherman Theatre collection, Special Collections Research Center, Southern Illinois University Carbondale; 'Farmer's Daughter', Box 20, Sherman Theatre collection, Special Collections Research Center, Southern Illinois University Carbondale; 'East Lynne', Box 18, Sherman Theatre collection, Special Collections Research Center, Southern Illinois University Carbondale; 'Huckleberry Finn', Box 31, Sherman Theatre collection, Special Collections Research Center, Southern Illinois University Carbondale; 'Peck's Bad Boy', Box 56, Sherman Theatre collection, Special Collections Research Center, Southern Illinois University Carbondale.

<sup>41</sup> 'Are you a Mason', Box 3, Sherman Theatre collection, Special Collections Research Center, Southern Illinois University Carbondale. This play was subject to a raid of Byers' office and subsequent litigation: see 'Raid on Byers', *New York Dramatic Mirror*, 31 May 1902, 13.

<sup>42</sup> 'Farmer's Daughter', Box xx, Sherman Theatre collection, Special Collections Research Center, Southern Illinois University Carbondale.

<sup>43</sup> 'How Hearts Broken', Box 31, Sherman Theatre collection, Special Collections Research Center, Southern Illinois University Carbondale.

<sup>44</sup> Existing under the name of Bessie's Burglar or Editha's Burglar, Box 18, Sherman Theatre collection, Special Collections Research Center, Southern Illinois University Carbondale.

<sup>45</sup> 'Why Lindy Ran Away', Box 83, Sherman Theatre collection, Special Collections Research Center, Southern Illinois University Carbondale (noting this is a play which Byers claimed was the subject of piracy against him).

<sup>46</sup> 'Alias (Jimmy Valentine)', Box 1, Sherman Theatre collection, Special Collections Research Center, Southern Illinois University Carbondale; 'The Climax', Box 11, Sherman Theatre collection, Special Collections Research Center, Southern Illinois University Carbondale; 'Divorce (Fate)', Box 16, Sherman Theatre collection, Special Collections Research Center, Southern Illinois University Carbondale; 'The Fortune Hunter', Box 23, Sherman Theatre collection, Special Collections Research Center, Southern Illinois University Carbondale; 'The Galley Slave', Box 24, Sherman Theatre collection,

of the one in copyright office except for the title page.<sup>47</sup> Scripts contain major deletions,<sup>48</sup> additions,<sup>49</sup> text that is underlined subject to further revision,<sup>50</sup> and printed extracts of text that is copied and pasted from one version to another.<sup>51</sup>

Byers had, therefore, built an organizational structure that was agile enough to move in and out of the copyright system depending on the circumstances. He would alter, add and delete material, change titles and change characters in the plays. He would govern the movement of intellectual creation through his control over the tools of theatrical administration – scripts, registration notices, and catalogs advertising his stock. Byers' illegal processes were streamlined with the assistance of new technologies to commit longstanding theatrical crimes. The Chicago Manuscript office space housed 'the best plays now on the stage, together with three typewriters and two devices for mimeographing' for rapid reproduction.<sup>52</sup> Byers' office is described as 'small and dingy' filled with 'several stenographers...always at work, hammering out abstracted scripts and pilfered parts.'<sup>53</sup>

Authority over creative material also involved efficient processes of moving that creativity between authors and audiences. The press reported detailed accounts about how Byers sold the physical text and licensed performance rights throughout the country. Byers published catalogs which included over 150 plays all in a manuscript form, and offered at '\$5 a piece'.<sup>54</sup> To view a script one would have

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Special Collections Research Center, Southern Illinois University Carbondale; 'Little Sunbeam', Box 39, Sherman Theatre collection, Special Collections Research Center, Southern Illinois University Carbondale; 'The Masked Ball', Box 44, Sherman Theatre collection, Special Collections Research Center, Southern Illinois University Carbondale; 'My Geraldine', Box 49, Sherman Theatre collection, Special Collections Research Center, Southern Illinois University Carbondale.

<sup>47</sup> See 'Rube and Mandy', Box 64, Sherman Theatre collection, Special Collections Research Center, Southern Illinois University Carbondale.

<sup>48</sup> See, for eg, 'Huckleberry Finn', Box 31, Sherman Theatre collection, Special Collections Research Center, Southern Illinois University Carbondale; 'Ivy Leaf', Box 33, Sherman Theatre collection, Special Collections Research Center, Southern Illinois University Carbondale; 'McKenna's Flirtation (Peril)', Box 45, Sherman Theatre collection, Special Collections Research Center, Southern Illinois University Carbondale.

<sup>49</sup> See, for eg, 'The Galley Slave', Box 24, Sherman Theatre collection, Special Collections Research Center, Southern Illinois University Carbondale; 'Ten Nights in a Bar Room', Box 73, Sherman Theatre collection, Special Collections Research Center, Southern Illinois University Carbondale.

<sup>50</sup> See, for eg, 'Bertha the Sewing Machine Girl', Box 5, Sherman Theatre collection, Special Collections Research Center, Southern Illinois University Carbondale.

<sup>51</sup> See, for eg, 'The Planter's Wife', Box 57, Sherman Theatre collection, Special Collections Research Center, Southern Illinois University Carbondale; 'The Masked Ball', Box 44, Sherman Theatre collection, Special Collections Research Center, Southern Illinois University Carbondale.

<sup>52</sup> See 'To Kill Piracy', *New York Dramatic Mirror*, 8 January 1898, 15s.

<sup>53</sup> See 'Chicago's Centre For The Disposal Of "Lifted Stuff"', *Variety*, 6 February 1909, 6.

<sup>54</sup> See 'Following Up the Pirates', *New York Dramatic Mirror*, 23 July 1887, 2.

to deposit \$1 which he or she would lose if the script was not purchased.<sup>55</sup> A selection of the most popular plays from the previous decade could be purchased at a reduced rate – 6 for \$25 in one instance,<sup>56</sup> and in other instances side parts could be leased for performance, selling the rights at \$5 to \$10 a piece.<sup>57</sup> Byers moved his product to the west along the train lines stating in one report: the express companies, knowing his trade, carried on business with him to the profit of both, and that many companies in Western one-night stands presented the stolen pieces.<sup>58</sup>

The rampant piratical activities of Byers, and his like, that besieged the industry in the second half of the nineteenth century was a sobering reminder that intellectual creation in the industry moved, with relative ease, outside of formal copyright structures. And Byers always felt completely justified by his actions – driven in part by audaciousness and in part by ignorance of the law. In a circular to its patrons written in 1895, The Chicago Manuscript Company wrote that the owner of the very few successful plays written in the United States, ‘jealously guards his property, and by every means in his power endeavors to prevent others from obtaining a copy of it. For this reason, successful plays are never printed until long after they have ceased to be sources of profit to their producers.’<sup>59</sup> Thus, the Chicago Manuscript Company provided a service to the public that the owners had ‘jealously guarded’. For Byers, it was the copyright laws that were the problem and he was simply acting on the supposed belief that only published manuscripts were protected – ‘I am doing the public a favor by placing at their disposal works which would otherwise be restricted.’<sup>60</sup> Byers was, however, a complicated and contradictory man, who on other occasions candidly stated that broke authors and actors and other

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<sup>55</sup> ‘Following Up the Pirates’, *New York Dramatic Mirror*, 23 July 1887, 2. See also ‘Beware of Play Stealer Byers’, *New York Dramatic Mirror*, 13 February 1892, 8 where Byers’ policy statement in his catalog is revealed: ‘In order to avoid unnecessary correspondence, parties ordering plays will please conform to the following rules: Enclose \$1 with order for each manuscript. Order will be filled and sent C.O.D. for the balance due, with privilege of examination: but will positively not send any manuscript entirely C.O.D. Correspondence solicited with parties having manuscripts not in this list’.

<sup>56</sup> See ‘To Kill Piracy’, *New York Dramatic Mirror*, 8 January 1898, 15s.

<sup>57</sup> ‘To Kill Piracy’, *New York Dramatic Mirror*, 8 January 1898, 15s. See also Blackstone who comments

<sup>58</sup> ‘To Kill Piracy’, *New York Dramatic Mirror*, 8 January 1898, 15s.

<sup>59</sup> See ‘Dishonest and Audacious’, *New York Dramatic Mirror*, 16 March 1895, 8.

<sup>60</sup> See ‘Chicago’s Centre For The Disposal Of “Lifted Stuff”’, *Variety*, 6 February 1909, 6. Of course a playwrights work was protected at common law when their work was in a manuscript unpublished form. On the common law play right see J Litman, ‘The Invention of Common Law Play Right’ (2010) 25 *Berkeley Technology Law Journal* 1381. Blackstone suggest that Robert Sherman continued Byers’ piracy business after taking over the business. An examination of Sherman’s play lists and correspondence shows that Sherman continued to provide copyrighted material that he did not own for lease. Sherman also seemed to distinguish the notion of leasing manuscripts (perceived as legal) and selling scripts (illegal). But even in some instances he was open to the idea of selling scripts where ‘there seems to be a quite a desire of the colleges to acquire copies’. See R Sherman to G Hughes, 9 Dec 1933, ‘Sherman Files’, University of Washington School of Drama records, Accession # 70-002, Box 58, fol 1. See also on Sherman’s perpetuation of Byers’ illegal activities: S Blackstone, ‘Alexander Byers, Play Pirate Extraordinaire’ (June 1994) 14 *Theatre History Studies* 107, 108-112.

publishers would sell him manuscripts – as ‘a purely legitimate’ transaction – ‘[t]here is always a leak somewhere, even in the most regulated shows’.<sup>61</sup>

And throughout the life of the Chicago Manuscript Company, Byers continued to be tormented by those who wanted to see him brought to justice. In 1898, TH French triumphantly raided Byers’ offices, which resulted in a remedy of 5c damages to five respective plaintiffs.<sup>62</sup> In 1902 Byers was prosecuted in Chicago for stealing *Are You a Mason* and slapped with a permanent injunction against using the work. When asked if criminal proceedings would be pursued the plaintiff replied, ‘No; we have accomplished our purpose, and as I understand that Byers is impoverished and practically in hiding, we do not care to proceed criminally against him.’<sup>63</sup> Byers obviously recovered as he was the subject of several disputes in the following years and faced a grand jury for pirating numerous plays in 1911.<sup>64</sup> For his recalcitrance, Byers was fined a meager \$500 and only had to release hundreds of foreign works which formed a small part of his collection of thousands of plays.<sup>65</sup>

The alternative organizational system of authority over intellectual creation that Byers had built existed against the backdrop of a legal environment that suggested by the end of the nineteenth century American dramatists were the beneficiaries of an expanding legislative framework of copyright protections. In the second half of the nineteenth century, the landmark 1856 amendments provided authors, for the first time, performance rights in their dramatic works.<sup>66</sup> In 1870, Congress allowed authors or owners to register their work through the Library of Congress, a prerequisite for protection. The 1870 amendment also granted authors the right to dramatize their work, if it was in another artistic form such as a book, and translate their work.<sup>67</sup> The international copyright amendments to federal copyright law in 1891 protected foreign authors in America and American dramatists overseas,<sup>68</sup> and in 1897 after an extensive campaign waged by the dramatists in *Dramatic Mirror*,<sup>69</sup> amendments to

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<sup>61</sup> ‘Chicago’s Centre For The Disposal Of “Lifted Stuff”’, *Variety*, 6 February 1909, 6.

<sup>62</sup> See ‘Pays Only Five Cents Damages’, *Boston Daily Globe*, 14 December 1900, 2.

<sup>63</sup> See ‘Against Play Piracies’, *New York Dramatic Mirror*, 1 April 1905, 15.

<sup>64</sup> These plays included *Builder of Bridges*; *The Country Boy*; *Baby Mine*; *The Nigger*; *The Deep Purple*; *Alias Jimmy Valentine*; *The Melting Pot*; *In the Place of the King*; see ‘Byers Indicted’, *New York Dramatic Mirror*, 21 June 1911, 14.

<sup>65</sup> See ‘Flaw in Foreign Copyrights’, *New York Dramatic Mirror*, 23 April 1913, 10.

<sup>66</sup> 11 Stat 38 (1856).

<sup>67</sup> 16 Stat. 198 (1870).

<sup>68</sup> 26 Stat. 1106 (1891).

<sup>69</sup> See, for eg, a selection of the numerous articles in relation to the 1897 Cummings Bill including: ‘To Prevent Play Piracy’, *New York Dramatic Mirror*, 21 December 1895, 13; ‘Play Piracy’, *New York Dramatic Mirror*, 29 June 1895, 8; ‘For the Copyright Law Amendment’, *New York Dramatic Mirror*, 28 December 1895, 23; ‘The Cummings Bill’, *New York Dramatic Mirror*, 18 January 1896, 14; ‘Copyright Amendment’, *New York Dramatic Mirror*, 1 February 1896; ‘To Prevent Play Piracy’,

copyright legislation included criminal penalties to combat piracy.<sup>70</sup> Within the space of forty years, the copyright statutory regime evolved from protecting nothing more than the mere published dramatic text to protecting a performance of the dramatist's text, adaptations of the dramatic work, including translations of the work, and protecting the dramatist's work in foreign jurisdictions. The dramatist had a range of remedies if an infringement could be established, a more efficient system of registration through the Library of Congress, and access to criminal penalties which could potentially send an infringer to jail.

Byers' business, however, continued to exist, and indeed flourish, throughout it all. Byers created a system for moving theatrical material between authors and audiences that not only survived the 1882 dispute with Mallorys, but endured for another 40 years until his death in 1922.<sup>71</sup> At the same time, other burgeoning industries engaged in the movement of creativity in the American theater – including play brokers, and legitimate publishers, theatrical impresarios and also non-profit organizations – made their own claims to authority over creativity.

Alexander Byers' extraordinary, extended, survival is not only a history about his piratical pursuits but about his ability to create an organizational system that asserted authority over the movement of intellectual creation in the industry. This project is about how illegal mediators (like Alexander Byers), but mostly legal mediators (including non-commercial, commercial, transnational, government stakeholders) organized the movement of copyright between authors and audiences in ways that challenged presumptions about the legal authority dramatists had over the work they created. In this alternative space, control over the movement of intellectual creation is contested and is not assumed to rest initially with the author. In this alternative space, the author imbued with authority under copyright law can be understood as an adjunct participant in terms of understanding authority over

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*New York Dramatic Mirror*, 29 February 1896, 10, 11; 'The Copyright Bill', *New York Dramatic Mirror*, 30 May 1896, 12; 'To Prevent Piracy', *New York Dramatic Mirror*, 19 December 1896, 3; 'A long-needed law', *New York Dramatic Mirror*, 26 December 1896, 15; 'Piracy's Death', *New York Dramatic Mirror*, 16 January 1897, 11; 'The Anti-Piracy Law', *New York Dramatic Mirror*, 23 January 1897, 11; 'Views of the Copyright Law', *New York Dramatic Mirror*, 6 February 1897, 15; 'Dramatists and Managers Banquet', *New York Dramatic Mirror*, 27 March 1897, 10.

<sup>70</sup> 29 Stat. 481 (1897). On the Cummings Bill see also Zvi Rosen's 'The Twilight of the Opera Pirates: A Prehistory of the Right of Public Performance for Musical Compositions' (2007) 24 *Cardozo Arts and Entertainment Law Journal* 1157.

<sup>71</sup> In Byers' obituary of 1922 Byers' is described as 'an authority on copyright law', which given his ability to manipulate and avoid the copyright system for almost 40 years is perhaps a fair statement – 'Obituary Alexander Byers', *Variety*, 7 April 1922, 8, 25. As soon as the *Hazel Kirke* dispute was resolved between Byers and Mallory in 1882, there were reports coming out of the west that the play was subject to piracy – illegal copies that were possibly coming from Byers' office: see 'More Piracy', *New York Dramatic Mirror*, 14 April 1883, 10.

intellectual creation; an administrative starting point from which substantive authority can subsequently be derived and observed.

Mediators created authority structures over dramatic copyright by manipulating a range of tangible objects and processes involved in the movement of creativity in the American theatre – handwritten, printed and published dramatic scripts, earlier prompt scripts, dramaturgical notes, written correspondence, newspapers, advanced royalty notices, theatrical contracts, as well as accounting, administrative, and rehearsal processes. This story, therefore, examines the ways in which these stakeholders would recast the contours of economic and artistic authority over intellectual creation by how they interacted with their surrounding materials – a fusion of the historical mediator and the tools of their trade. These micro interactions were the engines behind how intellectual creation moved in the theatrical economy, how industry authority was asserted, and how the dramatist's legal authority was resisted.