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Copyright and Mass Social Authorship:

A Case Study of the Making of the Oxford English Dictionary

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The historical development of copyright concepts is the subject of a significant body of interdisciplinary scholarship, published in this journal amongst others (see the special section of *Social & Legal Studies*, 2006, Vol. 15(1), in particular Barron, 2006a: 32; 2006b). While some scholars assert that the legal sphere is distinct and has overlapped with other domains, such as aesthetics, ‘only fortuitously’ (Saunders, 1994: 96; see also Barron, 2002a: 289, 2002b: 378), others have presented copyright concepts as formulated ‘at the intersection of a number of different discourses’ such as law, economics, politics and aesthetics (Scott, 2010: 256 drawing on the notion of ‘boundary concepts’ from the sociology of science).

A much-cited example of the latter approach is Martha Woodmansee’s seminal piece in *Eighteenth Century Studies*, which forms the foundation of what copyright scholars often term the ‘Romanticism thesis’. Woodmansee located the emergence of the modern notion of ‘authorship’ in eighteenth century debates that involved the ‘interplay between legal, economic and social questions on the one hand and philosophical and aesthetic ones on the other’: in a bid to make a living by the pen, writers such as William Wordsworth sought to redefine writing, so as to justify legal protection for their works (Woodmansee, 1984: 440). The concept of ‘authorship’ articulated in this process, argues Woodmansee in her subsequent work with Peter Jaszi, was a solitary one, often termed Romantic, that authorship is ‘*originary* in the sense that it results... in an utterly new, unique – in a word “original” – work which, accordingly, may be said to be the property of its creator and

to merit the law's protection as such' (Jaszi et al. 1996: 947). In the view of these scholars, this idea of authorship has constituted the 'linchpin' of copyright law since the eighteenth century to today (Jaszi et al. 1996: 947).

Other scholars are sceptical about these claims. For example, David Saunders argues against 'the pressure of the discourse of Romantic aesthetics on the historiography of copyright'; such an approach may distort copyright history, misrepresenting it as governed by a 'single dialectic or logic'. Saunders instead sees aesthetics and copyright as 'separate spheres of existence' (Saunders 1994: 95, 103, 96). Similarly, Anne Barron refutes the connection between copyright's concept of authorship and Romanticism, and explains affinities between aesthetic theory and copyright's concept of 'work' by reference to 'peculiarities of copyright's legislative history' divorced from 'deliberate aesthetic discrimination' (Barron 2002b: 374, 380).

Drawing on substantial original archival research, this article presents a historic case study which reveals a relation between copyright and authorship distinct from all these positions: the discussions over copyright protection for the dictionary entitled *A New English Dictionary on Historical Principles*, published by the Clarendon Press, and today known as the *Oxford English Dictionary* (hereafter the *NED*).¹ The case study shares with the Romanticism thesis an interest in the intersection between copyright and wider ideas surrounding authorship. However, the notions of authorship uncovered are very different. Central to the Romanticism thesis is the claim that copyright, with its emphasis on solitary originary authorship, marginalises or denies other types of authorship, such as 'group or collaborative projects' (Jaszi et al. 1996: 948), with the nineteenth century identified by Woodmansee as the time when this 'Romantic' concept of authorship 'acquired the powerful charge' that is said to have transfixed copyright from then to today

(Woodmansee, 2000: 67). In view of this literature, copyright issues arising from the *NED* present an interesting case study, as a nineteenth century example of a highly collaborative project involving masses of public volunteers. While existing scholarship assumes that nineteenth century collaborative practices were either hidden from view (Woodmansee et al., 1994: 3-4, noting the ‘misrepresentation of a collaborative creative process as a solitary, originary one’ in the ‘public persona’ projected by Romantic poets) or organised by the firm (Elkin Koren, 2011: 314-315) this was not the case with the *NED*: instigated by the not-for-profit Philological Society in 1858, the seventy year process of compiling the *NED* first edition involved masses of volunteer contributors from the general public in the UK, her colonies and the USA, sending in their contributions on millions of slips of paper, in response to well advertised appeals for help. As we will see, unlike the image that we today often associate with authorship of the nineteenth century *NED*, of the learned first editor James A.H. Murray working alone in an office, the Scriptorium (Knowles, 2000: 22), both press articles and internal Philological Society discussions contemporaneous with the making of the *NED* presented it as collaborative and democratic – a project of the people to which anyone could contribute. It is argued that copyright law – case law decided under both the common law protection for unpublished works and the Literary Copyright Act 1842 - far from denying and displacing this characterisation and supporting the invocation of solitary Romantic authorship, in fact provided a legal basis for a highly inclusive notion of authorship encompassing the public volunteers. This was the framework within which lawyers acting for the Philological Society and the Clarendon Press articulated and sought to resolve practical issues concerning rights clearance and title to copyright subsisting in the *NED*.

In exposing the practical solutions found by lawyers to issues of rights clearance and title, this article also seeks to cast light on how the past might present a vantage point for reflecting on challenges faced by copyright today relating to social authorship projects such as Wikipedia, that is, large-scale collaborative projects involving masses of public volunteers motivated by sharing and reciprocity. The *NED* case study illustrates that mass ‘social authorship’ practices are far from new, dislodging the assumption expressed in much contemporary scholarship that they are the product of recent changes facilitated by internet technologies (e.g. the work of copyright scholar Elkin Koren, 2011: 314-315, reflecting the claims of wider non-legal literature about the internet e.g. Shirkey, 2008: 48, 2010: 1-29). Moreover, the *NED* story provides a historic example of social authorship in relation to which today’s familiar copyright issues of rights clearance and title were expressly considered (cf. Ezell, 1999: 12, considering ‘social authorship’ manuscript practices of the seventeenth century distinct from paid professional authorship practices informing copyright history scholarship). Indeed, while the context for the *NED* was very different, this article will show that there is remarkable continuity in both the problem and solutions posed for copyright.

With these points in mind, this article is structured as follows. The first part presents an exposition of the making of the *NED*, highlighting the role played by volunteers that supported the public characterisation of the *NED*’s compilation as a collaborative and democratic process. As we will see, the *NED* project was for the first twenty years entirely based on the work of volunteers. While from 1879, following the appointment of the Clarendon Press as publishers, certain personnel involved in the project were paid, mass volunteer labour continued to pervade the project to its completion in 1928 and no attempt was made by the Clarendon Press to

organise the volunteers through contracts or otherwise on an ‘industrial production’ model in which contributors were confined to the ‘organisational structure’ of the firm (cf. Elkin Koren, 2011: 311).

The second part of the article then turns to the detail of the legal discussions regarding rights clearance relating to volunteer contributions and title to copyright in the published *NED*, conducted in the late 1870s between lawyers acting for the Philological Society and the Clarendon Press. It is shown that the arguments articulated by lawyers on both sides, formulated in the context of decided case law and legal treatise statements of the common law relating to unpublished works and the Copyright Act 1842, sustained rather than displaced the wider characterisation of the *NED* as collective and democratic. The final section draws out conclusions for copyright history and the challenges relating to social authorship today.

Authorship, volunteers and the making of the *NED* 1858-1928ⁱⁱ

The *NED*’s origins lay with the activities of the Philological Society, founded in the 1840s for language scholars. In 1857 it appointed an ‘Unregistered Words Committee’ to collect words that had been omitted from existing dictionaries such as the 1818 edition of Samuel Johnson’s *A Dictionary of the English Language*. To do so, they enlisted ‘volunteers’, not just Society members but also the general public, to identify ‘missing words’.ⁱⁱⁱ By December 1857, so many missing words had been found that the Society decided to create a new dictionary, which course was formally adopted on 7 January 1858. The new dictionary would contain every word of the language, explaining its etymological history from early Anglo Saxon to the present, with quotations illustrating change of meaning through time. Volunteers would

contribute from across the English-speaking world, with the philologist George P. Marsh of Vermont appointed in 1859 to co-ordinate US volunteers.

Therefore, from its inception, the project was reliant on volunteers, a model inspired by the German *Worterbuch*, the first volume of which was published in 1854, compiled by Jacob and Wilhelm Grimm with the assistance of 83 volunteers. As the Society's Committee concluded:

this almost boundless field could only be made available for dictionary purposes through the combined action of many.... By such a joining of hand in hand on the part of as many as are willing to take their share in this toil...
(Murray, 1977: 136)

At this early stage, the role of volunteers was limited to providing the material upon which the Committee would work, that is reading prescribed books and noting quotations that illustrated the meaning of words on slips of paper, for compilation by editor Herbert Coleridge. However when Frederick J. Furnivall became editor in 1861, concerns about the task's magnitude led to the widening of volunteer involvement. Accordingly, the Society approved a number of resolutions giving the editor a general power to 'entrust' contributions to the Dictionary 'to the sub-editors as he sees fit', which specifically included the power to delegate sub-editing to volunteers (Murray et al., 1933: x-xi). This became an essential characteristic of work on the dictionary. As the Preface to the *NED*'s first edition acknowledged, while some volunteer sub-editors did nothing more than arrange the words for which quotations had been collected into alphabetical order, 'most of them went much farther, and so

arranged and sub-divided the words they dealt with, and defined their various senses that their work was of real value in the final editing.’ (Murray et al., 1933: xvi)

As explained later, in 1879 the Clarendon Press was appointed the dictionary’s publisher and from this point on directly paid the editor. From 1879 the editor was philologist and schoolmaster James A. H. Murray (replacing Furnivall) and he set up the a centre for sorting the slips sent in by volunteers called the Scriptorium: an iron building at Mill Hill School containing 1,029 pigeonholes, which was relocated to Oxford in 1885. As the decades passed and the dictionary was still nowhere near completion, additional editors were appointed, also on terms of direct payment by the Clarendon Press, each working on different letters concurrently: Henry Bradley in 1888, William Alexander Craigie in 1901 and Charles Talbut Onions in 1914. When the *NED* was completed in 1928, spanning 414,825 headwords, 1,827,306 quotations over 15,487 pages (Winchester, 1998: 132; 2003: 234), only Craigie and Onions were still alive, Murray having died in 1915 and Bradley in 1923.

Each editor worked with a team of ‘assistants’. As explained later, from 1879 they too were generally paid though, at least under Murray’s editorship, this was the editor’s responsibility (not that of the Clarendon Press) and the bill was for some time funded by third parties. The assistants’ role was as follows:

Some became experts in preparing copy for the printer, drafting articles which required only a few editorial changes, or actually writing them in a form which admitted little or no improvement. To these fell the task of taking up the work already done by the sub-editors, of incorporating new material, of making fresh additions that were obviously required, of distinguishing sense and sub-sense, of writing the definitions, and of reconciling the historical

order of the sense with their logical development from the original meaning of the word. (Murray et al., 1933: xvii)

James Murray, for instance, had 38 assistants in total over the fifty years that he worked on the Dictionary, a third of which contributed for less than two years. One of his favourites was Alfred Erlebach, an assistant schoolmaster who worked as Murray's assistant to 1886, though he continued to contribute informally to his death in 1899. As Henry Bradley remarked in seeking new assistants: he wanted 'somebody exactly like Mr Erlebach', as 'it would scarcely ever be necessary for me to undo his work' (Letter Bradley to P.L. Gell 5.5.1888, OED/B/3/1/8).

While from 1879 the editors and most editors' assistants were paid, volunteers continued their involvement in the project, performing the roles of reader and sub-editor noted above. Indeed, 'the typical contributor' to the *NED*, as dictionary historians have noted, 'was an unpaid volunteer who was not only working out-of-house but was in fact often living at a considerable geographical distance' from the editor (Knowles (2000) 22), corresponding with the editors and their assistants by post. Accordingly, a post box was placed outside Murray's home, with the post office directed to look out for packages of slips broken open in transit. Further, with the US an important source for volunteers, Murray persuaded the US Postmaster General to allow the dictionary slips to count as 'printed matter', so reducing postal costs.

While some volunteers were reputed scholars, others were 'unknown' (Murray, 1977: 151), perhaps the most celebrated in recent times being a W.C. Minor, a patient at Broadmoor (Winchester, 1998). Indeed, the general public's involvement was essential to the dictionary's aims:

by involving in the making of the lexicon the very people who spoke and read the language, the project would be *of the people*, a scheme that, quite literally, would be classically *democratic*. (Winchester, 2003: 44)

This aspect was heavily publicised. As an article from *Leisure Hour; An Illustrated Magazine for Home Reading* from 1870, declared to its readership:

do not imagine that *you* have no concern in this great work. Whence came those hundreds of thousands of slips which you beheld? Where does the Philological Society look for the million more that will be required? They call upon you, and upon all who speak and read our mother-tongue, to help them. (*Leisure Hour: An Illustrated Magazine for Home Reading*, 1870).

Further, Murray issued *An Appeal to the English-Speaking and English-Reading Public* requesting volunteer assistance in April 1879 and again in June 1879 and January 1880. This four-page document was reproduced widely in magazines and newspapers, and distributed as a pamphlet through bookshops and libraries, not just in the UK but also in the USA and the colonies. Consequently, the number of volunteer readers rose rapidly, over 800 responding to the Appeal of 1879 (Murray, 1888: v-vi), with Murray in 1880 noting the increase in US volunteers (Murray et al., 1933: xv). In 1884, the press reported there to be 1,300 readers who had accumulated 3,000,000 quotations from over 5,000 different authors (*The Academy*, 1884, reproduced in Bridges, 1928: 127). By the project's end, over 6,000,000 slips had been contributed by volunteers (Winchester, 1998: 96). As an article in *The Academy* commented, the

role of reader was one ‘in which anyone can join’ from ‘the most indolent novel-reader’ to school pupils (*The Academy*, 1879).

The number of volunteer sub-editors also grew in the period after 1879. Guidelines were produced defining sub-editors’ duties to include not only the slips’ arrangement, but also semantic analysis, dividing up the slips in accordance with meaning and to ‘write... a provisional definition, at least, for the Editor’s revisal’ (Knowles, 2000: 25). Further, an additional category of volunteer sub-editor was created known as the ‘re-subeditor’. Re-subeditors were requested to ‘read through the subeditor’s definitions, and master his plan of the word’, before making further alterations or adding further quotations, or writing suggestions for changes to the definition (Knowles, 2000: 26).

The contributions of multiple volunteers therefore pervaded the editorial process, with the sub-editors/re-subeditors contribution often present in ‘the ultimate form of the articles’, as acknowledged for *As-Az* in respect of volunteers C.B. Mount of Oxford, Dr Brackebusch of London and E. Gunthorpe of Sheffield (Knowles, 1993: 24). *NED* historians have traced other examples, through the draft definitions held in the archive of Oxford University Press. For example a Miss J.E.A. Brown of Cirencester, the subeditor for *Bel-Betrust* divided ‘bereave’ into eight senses and six sub-senses. As finally published three of Miss Brown’s senses and three sub-senses were retained, with her remaining senses rearranged as contextual examples (Knowles, 1993: 25).

Therefore, the *NED* was a very visible nineteenth century mass collaboration involving public volunteers. As the sections on various completed letters began to be published as Parts in regular intervals from 1884, *The Academy* proclaimed the *NED* to be ‘a triumph of collective energy and cooperation’ and to stand like a ‘mountain’

to the ‘hillock’ that was Dr Johnson’s dictionary of the eighteenth century, that being ‘the dictionary of a single great man, done by himself, without aid from another’ (*The Academy*, 1899).

Copyright, authorship and the *NED*

As ‘combined action’ made the nineteenth century *NED* (*Leisure Hour*, 1870), what copyright issues did this raise and how did this intersect with legal questions concerning authorship? These issues were discussed in 1878, during negotiations between the Philological Society and the *NED*’s then prospective publisher: the Clarendon Press. By this time, a number of publishers had rejected the dictionary: John Murray in 1858, Macmillan & Co in 1876 and Cambridge University Press in 1877. These negotiations highlighted a number of concerns to publishers about the *NED*: the high publishing costs associated with a large dictionary, the uncertainties of completion of a project based on volunteer labour, as well as the importance of copyright ownership to the publisher.^{iv} These issues became conflated in the legal advice that accompanied the negotiations between the Society’s then President Henry Sweet and the Secretary to the Delegates of the Clarendon Press Professor Bartholomew Price.

Sweet’s proposal was that the Dictionary would comprise 6,400 pages, and it would be published in Parts, as various letters were completed, with the entire work comprising four volumes finished within 10 years. The Clarendon Press would bear the cost of publication and also pay £650 per year for 10 years to the editor. However, the editor would be responsible for his own expenses and any payment to his own assistants. While the Clarendon Press would own the copyright in the dictionary, the Society would be entitled to 50 per cent profits, to reflect the work done so far.

It was in expanding on this latter point, that the volunteers' extensive role both in collecting quotations and sub-editing, was revealed to the Clarendon Press. Sweet explained that work was complete on half of the alphabet: volunteer sub-editors appointed for each letter had performed 'the task of working up all the words beginning with that letter into a shape for publication' (Letter Sweet to Price 20.4.1877, Murray, 1977: 342-346, 343). Accordingly, volunteer sub-editors were asked to send work samples to the Clarendon Press to illustrate the work's quality, for review by Professor Friedrich Max Müller, one of the Delegates of the Clarendon Press. As Müller noted, many volunteer contributors were not scholars, but 'unknown' (Murray, 1977: 150-151).

It was not long before the solicitors acting for the Clarendon Press, Freshfields & Williams (hereafter 'Freshfields'), recognised the legal implications of volunteer involvement and raised these with the Philological Society and their legal adviser George Sweet, a solicitor who was Henry Sweet's father. These discussions dealt with two legal issues, which are now explored in turn: first, the infringement of volunteers' rights in the unpublished material that they produced, and secondly, title to copyright in the *NED* once it was published. As we will see, both hinged on the question of whether the volunteers were 'authors' as a matter of law.

Unpublished works

At this time, statutory copyright in literary works was confined to 'books' that had been published during their author's lifetime (s.3 Copyright Act 1842), so the relevant law for considering the volunteers' rights in their unpublished contributions was the common law action protecting authors against the misuse of their unpublished works. As Aplin et al. (2012) note, this was a 'phenomenally restrictive right' and protected

any material that was not unconditionally published; there was no need to prove that the information was confidential, nor held subject to an obligation of confidence, nor any damage (56). Freshfields described the issue in a letter to the Philological Society as follows: assuming the volunteers to be authors, while the volunteers ‘might have been content’ to ‘hand you the results of their labour in order that the Society should itself prepare and publish the proposed new dictionary... it does not follow they would not object to the Society handing it over to others’ (Letter Freshfields to Furnivall 27.7.1878, MP Box 3). As the same letter continued:

One difficulty may arise in this way. Supposing hereafter the Dictionary becomes a profitable speculation, some cantankerous worker (and there may be many) might fancy he was entitled to a share in the results and he might then perhaps set up his complaint that you had no right to transfer his work to anyone else as that was not part of the bargain. Suppose, for instance, I write an article for the *Saturday Review*. The editor would certainly not be justified in handing over my article to the editor of another paper. You must please not suppose that I am creating obstacles or raising unnecessary difficulties.

The letter closed contemplating that it might be ‘of sufficient importance... to insist upon every worker signing a memorandum of agreement’. These concerns were then communicated to the Clarendon Press, in a subsequent letter, in which Freshfields commented on Furnivall’s broad claim that ‘the work we hand over... has been given us by the doers of it... we can burn it, sell it, do what we like with it’ (Letter from Furnivall 26.7.1878, OED/B/3/1/2):

If the workers for the Society placed the result of their labours in their hands in order that they should prepare and publish a Dictionary the workers might hereafter complain if the work is transferred to someone else. I can hardly believe that these gentlemen in parting with their property gave such absolute control over it as Mr Furnivall suggests (Letter Freshfields to Price 27.7.1878, OED/B/3/1/2).

This point was of concern to the Society; as Furnivall expressed to Murray, it would be impossible to get written consent from all the volunteers:

Williams questions ... our title to the work done for us ... if he pushes it, I don't know how we can meet it. It's impossible for us to get the signatures of all our contributors (Note from Furnivall to Murray 30.7.1878, annexed to letter Freshfields to Furnivall 29.7.1878, MP Box 3).

Accordingly, Freshfields attempted to assist the Society: if the common law protection of unpublished works was subject to a requirement of 'originality' (a position supported by Scrutton, 1883:120; cf. Aplin et al. 2012:56 noting cases protecting mundane works) the volunteers would only be able to 'interfere' if they had 'produced... original matter' (Letter Freshfields to Furnivall 27.7.1878, MP Box 3). Far from interpreting this as a requirement of solitary genius involving the production of a unique work (Jaszi et al. 1996: 947) Freshfields considered that 'originality' would be easily satisfied: while they doubted that the 'mere collection of words and passages from various authors' would 'give these persons any right to interfere', 'the case might be a little different' if volunteers had 'produced original

matter, by comments or suggestions on the words etc. collected' (Letter Freshfields to Price 27.7.1878, OED/B/3/1/2). As was noted above, volunteers contributed not just to reading, but also to sub-editing, which included contributions to definition drafting. As Furnivall expressed to Freshfields: 'There is a certain amount of original work in the subeditors abridgements' (Letter Furnivall to Freshfields 28.7.1878, OED/B/3/1/2). The risk of volunteer interference on the basis of rights in unpublished works remained.

In view of this, George Sweet put forward an alternative argument focussing 'upon the conditions under which [the materials] were given up to you by the respective contributors' (Letter from Furnivall 31.7.1878, OED/B/3/1/2). As has been noted by scholars today, the common law right to prevent misuse of unpublished material was transferrable (Aplin et al., 2012: 57) and according to a contemporary treatise, this did not require 'writing' (Copinger, 1881: 160). Accordingly, Freshfields approved the following approach: 'if you can prove to our satisfaction that the contributors handed over the result of their labour to the Society as a gift that will be sufficient' (Letter Freshfields to Murray 1.8.1878, MP Box 3). As Freshfields advised the Clarendon Press:

What Mr Sweet says is very likely right and it will probably turn out that the title of the Philological Society will be in the nature of a gift by the various contributors. If they can establish this to our satisfaction we shall then I think be quite safe and it will not be necessary (even if it were possible) to require all the contributors to sign an agreement giving up all rights in their work (Letter Freshfields to B. Price 1.8.1878, OED/B/3/1/2).

In lawyers' correspondence this issue seemed to have reached satisfactory conclusion on the basis that contributions were unconditionally gifted to the Society. However, a few months later, as the Society's profit share as against the editor's was being debated (Murray, 1977: 162, 345), the Society received letters from two volunteer contributors, which suggested that this assumption was wrong. As Richard F. Weymouth, a volunteer reader, explained in a letter to Furnivall:

I was writing in the interest of English Lexicography under the direction of the Society, but not with a view to pecuniary interest of the Society itself. I gave my labour to the Dictionary, not to the Society, and the Society has no right to sell my labour without my consent. I should not object to a small fraction of profit (say one-tenth) accruing to the Society, but I do object to so considerable a share being so appropriated (Letter R.F. Weymouth to Furnivall 18.10.1878, MP Box 3. Emphasis as original).

Another volunteer who was not a Society member, a John Shelley of Woodside, Plymouth, supported these concerns:

I think it ought to be remembered that many of those who worked hard for the Dictionary (I may count myself as one) were not members of the Society. It cannot therefore be said that the whole credit of the work belongs to the Society... (Letter J. Shelley to Murray 2.1.1879, MP Box 3).

The complaints made by these volunteers, directly contradicted the conclusion that had been reached in the correspondence some months earlier; the volunteers were

indeed seeking to interfere with the basis on which the Society would proceed with the dictionary. However, it is assumed that the matter did not reach the attention of Freshfields, as the issue was not further discussed before the signature of legal agreements in March 1879. Before we turn to the detail of these contracts and the position thereafter, we turn to the second legal issue arising from the involvement of volunteer labour discussed in the lawyers' correspondence in 1878: title to copyright in the *NED* once it was published.

Copyright under the Literary Copyright Act 1842

The issue of title to copyright in the published *NED* was a matter to be determined under the relevant copyright legislation of the time: the Literary Copyright Act 1842. As barrister William Latham (10 New Square, Lincoln's Inn) stated in advising the Press, it had to ensure that it would be 'in a position to make all the necessary arrangements' to secure copyright in the *NED* once published, which required 'an assignment of the existing material and any possible copyrights therein' (William Latham's Opinion 16.7.1878, OED/B/3/1/2). From whom should the assignment be taken: the Society or the volunteers? Before looking at the negotiations of 1878, we consider the 1842 Act's provisions.

Section 18, 1842 Act, contained special rules regarding the rights of a 'proprietor, projector, publisher or conductor' to use contributions to *inter alia* works published in a series of parts, but these only applied where contributors were paid, a requirement the courts interpreted strictly (e.g. *Richardson v. Gilbert* (1851): Lord Cranworth VC held that a contract for payment was insufficient - actual payment by the publisher was required). Accordingly, the 1842 Act's general rules were applicable: the 'author' would be the first owner of copyright in any published 'book'

(section 3). ‘Book’ was defined to include ‘every volume, part or division of a volume’ and case law resisted attempts to use this to sub-divide the object of protection: an individual article that formed part of a longer publication was not a ‘book’ (*Murray v Maxwell* (1860)). This suggested that each *NED* fascicule, which was to be published every few years from 1884, was a ‘book’ under the 1842 Act.

If each fascicule was a ‘book’, who was its ‘author’? By 1878, when the lawyers’ discussions took place, it would have been contemplated that more than one person could be the ‘author’ of a ‘book’: section 1 1842 Act provided that a reference to ‘any person... importing the singular number... shall be understood to include and to be applied to several persons as well as one person...’. While this would not apply where the ‘context’ was ‘repugnant to such construction’, the interpretation of ‘author’ to include a number of people was supported by judicial dicta: in *Maclean v Moody* (1858), Lord Deas noted in passing that a work ‘may be the joint production of two or more authors, whose contributions to it are indistinguishable’ and in *Marzial v Gibbons* (1873-4), concerning the Act’s transitional provisions, the Court of Appeal did not raise objection to the fact that the work, a Methodist hymn book, had seven authors. Further, there was authority for co-authorship under legislation concerning dramatic copyright (Dramatic Literary Property Act 1833) where authors jointly laboured towards a common design: *Levy v Rutley* (1870-1). While the 1833 Act’s words expressly contemplated co-authorship (sections I and IV), a nineteenth century legal treatise would support the view that the decision in *Levy* was applicable under the 1842 Act (Copinger, 1881: 130-133; Copinger, 1893: 127-140; Copinger, 1904: 109-112.).

Who was the ‘author’ or ‘co-authors’ of a *NED* fascicule? While there are no cases which deal directly with dictionary ‘authorship’, one case considered the

subsistence of copyright in dictionaries: *Spiers v Brown* decided by Wood VC in the Court of Chancery in 1858. As Isabella Alexander has shown, in the second half of the nineteenth century ‘labour’ was the ‘touchstone’ of copyright subsistence, as well as infringement, and she cites *Spiers* amongst other cases, to support this (Alexander, 2010: 205-207). These cases, which frequently concerned copyright in mundane works of information such as bills of sale, trade catalogues and lists of articles for sale, provided the context for the House of Lords decision in 1900 on the meaning of ‘authorship’ in *Walter v Lane* [1900], which firmly linked ‘authorship’ to ‘labour’ (Alexander, 2010: 212). As Lord Halsbury expressed in *Walter*, in giving judgment with the majority on the question of whether a journalist who took down a speech in short-hand was an ‘author’, the term had to be interpreted in line with ‘the application of the word “author” to such publications as directories, red books, maps, &c.’. Accordingly, he concluded:

I am unable to understand why the labour of reproducing spoken words into writing or print and first publishing it as a book does not make the person who has so acted as much an author as the person who writes down the names and addresses of the persons who live in a particular street. (546)

Similarly, Lord James, before setting out the types of ‘skill’ and ‘labour’ that characterised the short-hand writer’s work, placed the question in the more general context of case law:

an ‘author’ may come into existence without producing any original matter of his own. Many instances of the claim to authorship without the production of

original matter have been given... The compilation of a street directory, the reports of proceedings in courts of law, and the tables of the times of running of certain railway trains have been held to bring the producers within the word 'author'; and yet in one sense no original matter can be found in such publications. (544)

While authorship was not in issue in *Spiers* (the defendant did not dispute that Spiers compiled his English-French dictionary alone: NA C15/423 Bill of Complaint 20.6.1857, page 2 para. 2) the dicta as to the 'skill' and 'labour' for subsistence of copyright are indicative regarding 'authorship' of dictionaries.

How was subsistence approached in *Spiers*? Spiers' Bill of Complaint set out a detailed case as to why his dictionary was 'an original work', enumerating as 'original characteristics' the breadth of the words included (e.g. mythological words, and terms of arts, sciences and manufactures), the distinction between literary and figurative meanings, 'a characteristic altogether new in dictionaries of the two languages', and the differentiation of persons and things, as 'a feature entirely novel in lexicography' (NA C15/423 Bill of Complaint 20.6.1857, page 4). In the High Court, however, subsistence was approached differently: rather than locating originality in features 'new' to lexicography, Wood VC placed the case in the context of contemporary cases about mundane works of information (noted by Alexander): copyright 'extended... to every description of work, however humble it might be, even to the mere collection of abodes of persons and to streets and places...' (*Spiers*, 352).

Turning to dictionaries, Wood VC outlined the types of 'skill' or 'labour' that would attract copyright protection:

As to dictionaries... there might be a certain degree of skill exhibited as to order and arrangement, and there might be a good deal of ingenuity exhibited (as had been done by Dr Spiers) in the selection of phrases and illustrations which were the best exponents of the sense in which the word was to be used. There might also be great labour in the logical deduction and arrangement of the word in its different sense, when the sense of the word departed from its primary signification. It was to be regretted that in most of the French dictionaries, as in the valuable one of Dr Spiers, it had not been thought necessary to give what formed one of the greatest ornaments and one of the greatest subjects of value of the work of our own great lexicographer – an apt selection of quotations from esteemed authors, showing the sense in which the authors at different periods of the language used the words.... It was obvious that there might be originality in that... (352).

Contemporaneous with the ruling in *Spiers* in February 1858, was the Philological Society's announcement of its dictionary project, characterised by the use of quotations so as to illustrate the history of words. Wood VC's inclusion of this as a source of original skill or labour may be a reference to the *NED*.

While *Spiers* did not deal directly with dictionary authorship, it suggested that this would be defined by tasks identified as attracting 'skill' and 'labour': not only etymological arrangement of a word into senses, but also the selection of quotations to illustrate meaning or show its change in meaning through time. As we have seen above, volunteers were heavily involved in these tasks, which raised the possibility that they might be co-authors: authors that laboured towards a common design as per

Levy v Rutley. This was a highly inclusive notion of authorship. (The fact that some co-authors were US nationals is dealt with below.)

The 1842 Act's general provisions suggested that the volunteers might be the fascicules' co-authors. How was the question of title to copyright under the 1842 Act dealt with in the negotiations between the Philological Society and the Clarendon Press? The initial answer put forward by George Sweet, representing the Society, suggested that the editor was sole author: 'When the materials have been collected and arranged by the Editor it is then that the question of copyright must be considered.' (Letter Freshfields to Price 15.6.1878 OED/B/3/1/2.) This was the first attempt to impose a singular view of authorship. However, this was not a point on which the Society could have been confident, as it contradicted the Society's own discussions about US copyright: until the US Chase Act 1891, foreign authors did not qualify for US copyright, but the Society contemplated that the *NED* might qualify, on the basis that the US volunteer readers were authors. Seeking advice from US lawyers three years later, the Clarendon Press could state that 'about one sixth' of the work of volunteer readers, which 'consists of the selection from designated books of quotations, showing characteristic use of the word in question' was done by US citizens, and it was suggested that they, or US sub-editors (that could be involved in the future) were 'authors' as a matter of US law. US copyright was never secured, US advice being that where a work was 'the product of joint labour, of which some is, and some is not' produced by a qualifying author 'the two contributions being indistinguishable, the joint result is not copyrightable' (Case Submitted to Mr Baines, 12.1881; F.R. Baines Opinion, 9.1.1882 OED/B/3/1/5, para.3; Orders of Delegates, 3.3.1882 Minute 7; which position was consistent with Drone, 1879: 232). Even once the Chase Act was passed, the *NED* project's poor financial position probably

explains why copyright in the US was not pursued; under the Chase Act protection was subject to a ‘manufacturing clause’ which would have required manufacture within the US including costly type-setting, printing and binding (Putnam, 1896: 138).^v

However, these debates highlighted that the Society and the Clarendon Press contemplated that the volunteers might be ‘authors’ for copyright purposes, though interestingly, the implications which foreign co-authors might have for protection under the UK Literary Copyright Act 1842 were not raised: in *Routledge v Lowe* (1868) the House of Lords held that to secure copyright under the 1842 Act a work must be published in the UK, and the works of foreign authors would only be protected provided they resided however temporarily in the British Dominions at the time of such publication (Seville, 2006: 198). While there was no decision on the point, it was arguable that this would also apply to works where only some co-authors were foreigners.

Returning to the question of title, that the volunteers might be ‘authors’ under the 1842 Act was recognised by Freshfields early in the negotiations of 1878: ‘we shall have to satisfy ourselves practically that the contributors have absolutely parted with all interest in their work to the Society’ (Letter Freshfields to Price 1.8.1878 OED/B/3/1/2). Freshfields advised that the position was analogous to that faced by the Clarendon Press when the Revised Version of the Bible was prepared in the years following 1873 (it being published in 1881: see Sutcliffe, 1978: v, 48-50). With this in mind, Freshfields referred back to legal advice from 1871 on that issue from three senior barristers: Roundell Palmer (Lord Chancellor 1872-4 and 1880-5), Richard Baggallay (appointed to the Court of Appeal in 1875) and John Wickens (Vice Chancellor from 1871). In a joint Opinion, they had advised that the ‘persons engaged

in the revision' of the Bible 'can.... transfer and give an exclusive right in the result to anyone... to print and publish the results of their labours' (Copy of Questions and Opinion to the Oxford and Cambridge Universities, 1.5.1871 OED/B/3/1/2).vi Accordingly, the Clarendon Press had obtained a copyright assignment from the authors of the Bible revision (Orders of the Delegates, Minute 6, 20.5.1881), and the implications were that the same was required for the *NED*. Again this was based on the assumption that the volunteers were co-authors.

The solution that was finally agreed by lawyers on both sides mirrored that which we saw above with regard to unpublished works: it was understood that the volunteers unconditionally gifted their contribution to the Society, who would in turn transfer title to the Clarendon Press by executing a written assignment. As Freshfields stated in a letter to Murray: 'The Title of the Society... will be by right of gift... by the various contributors'. Accordingly, as Freshfields concluded in a letter to the Clarendon Press: 'If they can establish this to our satisfaction... it will not be necessary (even if it were possible) to require all the contributors to sign an agreement giving up all rights in their work' (Letter Freshfields to Price 1.8.1878 OED/B/3/1/2). Even if the 'gift' assumption proved wrong, as suggested by the letters from Weymouth and Shelley (noted above), the barrister William Latham advised the Clarendon Press that the legal agreement would place the risk of a claim on the Society, through a covenant on title. As Latham concluded his advice on title: 'It is therefore rather with the Society to raise this question' (Latham Opinion, 17.7.1878, para.2, OED/B/3/1/2).

To modern eyes the chain of title appears defective: how was title to copyright transferred from the volunteers to the Society without an assignment in writing? The answer lies with the 1842 Act's intersection with the common law on unpublished

works. Copyright under the 1842 Act only came into existence on publication, and it vested in the ‘author and his assigns’, the latter defined as: ‘every person in whom the interest of an author in copyright shall be vested, whether derived from such author before or after the publication of any book, and whether acquired by sale, *gift*, bequest or by operation of law, or otherwise’ (s.1 and 3, emphasis added). In this way, not only could a transfer be by way of ‘gift’, but also, according to a contemporary treatise, the transfer of the author’s interest prior to publication did not need to be in writing, as this was not required under the common law on unpublished works (Copinger, 1881: 160, which position was consistent with the law on personal property noted in Williams, 1870: 35-36: conveyance by way of gift required ‘no deed or writing’).

With the lawyers in agreement, two contracts were finally executed on 1 March 1879. Under the first, between the Delegates and the Society, the Society assigned all copyright in the existing ‘papers, writings and materials’ which the ‘Society have caused to be prepared and collected and partially arranged by the Sub-Editors’ to the Delegates, and covenanted that they had good title to do so, and that the same could be ‘used, enjoyed and exercised... without any lawful interruption, claim or demand’ (Agreement 1.3.1879, OED/B/2/1/2). In exchange, the Delegates agreed to, ‘without unreasonable delay, cause to be completed... and print’ the Dictionary and pay 15 per cent net profits to the Society (cl.11). Under the second agreement between the Delegates and James Murray (Agreement 1.3.1879, MP Box 33), Murray was appointed editor (cl.1), obliging him to deliver the dictionary to the Clarendon Press within 10 years, unless extended (cl.3), and entitling him to a £9,000 salary paid over ten years in addition to 20 per cent ‘net profits (if any)’ for so long as copyright in the dictionary once published ‘remains in force’ (cl.7-8).

These agreements, of course, did not deal with copyright title issues going forward, in material to be prepared *after* 1 March 1879. In particular, as regards copyright in the published dictionary under the 1842 Act, section 18 (which set out special rules allowing a publisher to use contributions to *inter alia* a work consisting of a series of parts) would not assist the Clarendon Press. First, section 18 required contributors to be paid, which did not account for the significant contribution of unpaid volunteers, including the sub-editors and re-subeditors. Secondly, at least under Murray's editorship, the Press only paid the editor. Indeed, the obligation of 'payment, if any' to assistants rested with the editor and not the Delegates (cl.6), and in practice, when Murray fell on hard times assistants were for some time paid by his friend Hucks Gibbs or public donations paid through the Murray Indemnity Fund (Murray, 1977: 213). By contrast, case law interpreted section 18 to require payment by the publisher direct to the contributors; in particular, the requirement of payment was not satisfied where a publisher paid the editor, and the editor in turn paid contributors from his salary (*Browne v Cooke* (1846)). With no contracts signed by the volunteers or assistants, it seems it was thought that the copyright position going forward was secured by the assumption that the volunteers gifted their contributions to the Clarendon Press.

Were there any copyright discussions in the period after 1879? Lawyers were later consulted as regards the amendment of the agreements of 1879 in 1882 and 1900. While these agreements do not survive, the changes discussed did not raise any copyright issues (instead relating to the *NED*'s size and the Society's profit share: Orders of the Delegates, Minute 1 27.1.1882, Minute 23 19.5.1882, Minute 14 10.2.1883, Minute 7 4.5.1900). Copyright issues did arise after 1879, however, in the context of claims that other dictionaries infringed the published *NED* fascicules. For

example, in 1889, Murray received intelligence that Charles Fennell, preparing the *Stanford Dictionary* for publication by Cambridge University Press, was ‘systematically appropriating our work’ (Letter Murray to C.E. Doble 5.6.1889, OED/DUP/PUB/11/29; see further Gilliver, 2010: 68-71; Ogilvie, 2010: 85-108). The Clarendon Press put the Syndics of Cambridge University Press on notice (Letter P. L. Gell to C.J. Clay, 4.12.1889, Cambridge University Library: Pr.B.13.G.8) and while the Syndics promised to ‘guard against excessive use of the *New English Dictionary*’ (Minute 18 Orders of the Delegates 29.11.1889) when the *Stanford Dictionary* was eventually published in 1892, Murray remained livid, complaining of the ‘enormous use made of our Dictionary, in supplying the senses, definitions, derivations and general framework of the earlier articles’ (Letter Murray to P.L. Gell 20.10.1893, OED/DUP/PUB/11/29). The claim, however, was not pursued, and there is no record of why this was the case, for example, if this related to concerns about proving title.

Records of legal advice do survive, however, in respect of two further occasions on which unauthorised copying by other dictionaries was alleged. First, in 1889, barrister Frederick Pollock advised Murray regarding alleged unauthorised copying by the *Century Dictionary* (see further Gilliver, 2010: 62-68): applying the test set down by Wood VC in *Spiers* (1858) that infringement required the ‘unfair use of the work of another’ rather than the creation of ‘a different work from the plaintiff’ (354, see further Bowrey, 2010: 45-72), Pollock concluded that there was no ‘evidence to warrant a conviction for wholesale copying or unfair use’ as the ‘arrangement of the meanings and the choice of quotations is as a rule independent’ (Letter Pollock to Murray 20.10.1889, MP Box 8). Accordingly, the ‘the case’ on

infringement was not ‘so strong as to enable the Delegates to call the law into action’ (Letter R. Martineau to Murray 22.10.1889, MP Box 8).

Secondly, in 1909 the Clarendon Press sought an Opinion from Thomas Edward Scrutton KC, about whether the *Shakespeare Pocket Lexicon* compiled by Marion Edwards and published by J.M. Dent infringed published *NED* fascicules. While asking for more detailed instructions involving a ‘careful comparison of the two works’, Scrutton advised that *Spiers* illustrated the ‘difficulty’ in ‘deciding whether a previous dictionary has been unfairly used’ rather than being a different work, the book in question being for assisting the student of Shakespeare (Scrutton Opinion, 2.7.1909, OUP, CPGE000312). Accordingly, instructing solicitors’ advice was that ‘we think it will be best to let the matter drop’ (Copy of Letter Rivington & Son to C. Cannan 11.8.1909, OUP, CPGE000312).

Therefore, on each of these occasions, the focus was on the question of infringement and title was not raised, the relevant case law emphasising the unfair nature of the taking rather than ‘authorship’. Indeed, copyright in the *NED* was never litigated, because it was never registered (see NA COPY 3), a condition precedent to taking legal action under the 1842 Act (Seville, 1999: 237 noting *Warne v Lawrence* (1886)). Accordingly, the Clarendon Press never had to prove title to copyright in court; the project was completed notwithstanding the questions that surrounded the assumption of the ‘gift’.

Conclusions

The case study explored in this article presents original material that enables us critically to reflect on the breadth of claims made by existing interdisciplinary literature concerning copyright’s category of ‘authorship’. The Romanticism thesis

has presented the 1842 Act, through focus on the debates culminating in its passage, as the point at which solitary originary authorship acquired its ‘powerful charge’ over UK copyright (Woodmansee, 2000: 67; though contrast to Seville, 1999: 215). Amongst other things, this is a concept that is said to impede copyright’s recognition of collaborative authorship (Jaszi et al. 1996: 947). By contrast, the *NED* case study illustrates how the copyright negotiations between lawyers, applying the 1842 Act’s provisions as interpreted by case law (such as *Spiers* (1858)), as well as the common law protecting authors’ unpublished works, sustained rather than displaced, a very different notion of authorship: one that was collective and democratic, envisaging that the volunteers were authors. This stemmed from judicial decisions that suggest that nineteenth century literary copyright was, as one copyright historian has argued, a ‘commercial right, the main function of which was to regulate trade and competition’ rather than a law concerned with creative authorship (Alexander, 2010: 211, 212). In this way, by widening the parameters of the nineteenth century material beyond the legislative debates considered by Romanticism thesis scholars, this article highlights the many facets of copyright history: a terrain irreducible to a single logic or generalising principle, such as Romantic authorship.

Further, the *NED* case study provides a rare example of how nineteenth century copyright rules intersected with the negotiation of agreements concluded for the purpose of enabling a publisher to bring a work to market. In so doing, it draws attention to hitherto unexplored implications of nineteenth century copyright’s nature as a ‘trade right’ for the exploitation of huge multi-authored works. Interestingly, it was copyright’s highly inclusive concept of authorship - not a solitary and originary Romantic one - that was the root of the practical problems faced by lawyers seeking to provide the copyright conditions necessary for turning the dictionary into a

commodity of the marketplace (securing title to the *NED* and ensuring that volunteers' rights were adequately cleared). Indeed, had the law been committed to Romantic authorship this might have, to use Peter Jaszi's phrase, been 'pressed into the service of commerce' (Jaszi, 1991: 487); a solitary and originary idea of authorship could have been deployed to accord authorship status to a more limited group of contributors, which in turn would have made the resolution of issues of title and rights clearance far easier. This highlights the complexity of the relation between two values that are often presented as conflicting: 'authorship norms', emphasising copyright's role in protecting authors' works of creative/personal self-expression, and 'marketplace norms', favouring investment in socially useful works by *inter alia* allocating rights so as to facilitate their bringing to market (Geller, 1994: 159, 171, 172).

In exposing the practical solutions negotiated by lawyers to problems of rights clearance and title, the case study also provides us with a vantage point for reflecting on how analogous issues are dealt with in mass social authorship projects today, that is projects such as Wikipedia involving masses of public volunteers motivated by sharing and reciprocity. Today copyright is thought to sit uneasily with such authorship practices, as the law is premised on the right to exclude rather than to share (Elkin Koren, 2011: 311-312, 338). While Creative Commons licensing, by which contributors consent to free uses of their work, provide the solution to some problems, this is far from a panacea. Not only are the widespread use of such licences criticised as having undesirable effects on creative practices (Dusollier, 2005-2006: 271), they do not overcome completely the problem of 'identifying the right-holders and getting their permission': even where all contributors have consented to terms involving free uses of their work, it might be necessary to seek further consent to modify those

terms, for example in the face of technological change or the emergence of new business models (Elkin Koren, 2011: 340).

The context for social authorship today is of course very different to the *NED*: in particular there is no need in the on-line environment for heavy financial investment by a publisher to bring the work to market (for example in type-setting, printing and distributing the work). Yet, despite these differences there is remarkable continuity between past and present. There is continuity in the problem's nature: how to manage the rights of masses of informally organised volunteers who were motivated, in the words of the Philological Society's President in a letter of 1878, by 'the love of the thing' (letter Freshfields to F.J. Furnivall 26.7.1878, OED/B/3/1/2). Moreover, there is also some continuity in the solutions proposed: just as the Creative Commons movement today solves the legal problem of 'identifying the right-holders and getting their permission' (Elkin Koren, 2011: 340) through a consent model rooted in the 'narrative of the free gift to society' (Dusollier, 2005-2006: 290), the assumption that the volunteers gifted their contributions unconditionally to the Society, enabled the lawyers in 1878 to conclude that it would 'not be necessary (even if it were possible) to require all the contributors to sign an agreement giving up all rights in their work' (Letter Freshfields to Price 1.8.1878, OED/B/3/1/2). In the *NED* context, this assumption was far from beyond doubt: correspondence from contributors directly contradicted the breadth of the 'gift' given by volunteers on which the lawyers' advice was based. Today, scholars such as Séverine Dusollier have written of the danger of the assumption that volunteers gift their contributions, in the context of the proliferation of Creative Commons licences. She argues that the 'gift' assumption may be an 'imposed logic... for the sole profit of users' rather than freely given; the narrative of the 'gift' sustains the 'norm' of 'free access to works'

and this may be detrimental to the interests of creators today (Dusollier, 2005-2006: 288, 293). The negotiations of 1878, relating to the *NED*, well illustrate how such assumptions can indeed be misguided: objections lodged by volunteers suggest the ‘gift’s’ inadequacy as a solution in all circumstances. Concerns voiced by scholars today, therefore, are borne out by the nineteenth century experience in debating copyright issues surrounding the *NED*.

Finally, the *NED* copyright negotiations reveal the importance of mechanisms for managing the litigation risk that rights are not adequately cleared, to providing the conditions for a project to proceed notwithstanding legal difficulties. As we saw, advice from Counsel, William Latham, was that the litigation risk would ultimately be borne by the Society, so while Clarendon Press ‘had better satisfy themselves’ on the ‘subject of title’, it was considered to be of some comfort that they would have recourse against the Society if this later proved wrong. In recent times, ‘ex-post’ solutions for minimising users’ litigation risk have been considered in the context of the difficulties of clearing rights in ‘orphan works’, that is copyright works where the rights-owner is unknown or known but untraceable. These solutions have included statutory limits on remedies where the user has acted in good faith, or the payment of a reasonable royalty into escrow for later release to a re-appearing rights-holder (Favale et al., 2013: 2). The *NED* story suggests that analogous approaches might be one component of the solution to another instance where rights clearance is unfeasible: where the scale of a mass social authorship project make it, to use the words of Furnivall in 1878, ‘impossible... to get the signatures of all our contributors’ (Note from Furnivall to Murray 30.7.1878, annexed to letter Freshfields to Furnivall 29.7.1878, MP Box 3). For example, in the context of mass social authorship projects, ‘ex-post’ solutions might deal with litigation risks related to new uses of contributions

where reasonable consultation/notification to contributors, as defined by statutory default rules on exploitation, has been given. In this way, while things were different in the nineteenth century, perhaps the nineteenth century can inspire us to think differently today.

Notes

ⁱ The research upon which this article is based involved the fullest possible search for unpublished papers concerning the discussions relating to copyright issues about the *NED*, spanning the views expressed by lawyers, publishers, Philological Society members and contributors from the general public. This involved the review of sources held at the following archives: Oxford University Press Archive (both the papers of the Delegates of Clarendon Press and the Philological Society), Bodleian Library (papers of JAH Murray), King's College London Archive (papers of FJ Furnivall and W Skeat), National Library of Scotland (papers of WA Craigie), Balliol College, Oxford (papers of B Jowett) and Cambridge University Library (papers of Cambridge University Press).

ⁱⁱ The author is indebted to Murray, 1977, Winchester, 2003 and Murray et al., 1933.

ⁱⁱⁱ The involvement of volunteers stemmed from a descriptive (as opposed to prescriptive) starting purpose for lexicography i.e. the purpose of a dictionary is to record language as it is used, rather than to set out how language should be used. This is a particular feature of English lexicography and contrasts to the prescriptive approach dominant in certain continental countries, e.g. French dictionaries approved by the Académie Française, an official body related to the French state, tasked with prescribing proper French language usage. See Winchester, 2003: 27.

^{iv} John Murray (no relation to James Murray) rejected Furnivall's proposal both because the Society's proposed terms, e.g. copyright ownership by the Society, were 'contrary to any thing of previous occurrence in my literary experience' containing 'a stack of things of the highest degree objectionable', and because of concerns regarding the uncertain extent of a work that 'entailed so large an outlay' (Letters John Murray to F.J. Furnivall 12.5.1858, 13.5.1858, and Draft Agreement, 1858, MP Box 1). In the discussions with Macmillan in 1876, the Society accepted that the publisher would own copyright, but Macmillan was in favour of a shorter work: a shorter work itself 'involved a very large expenditure of capital and labour on our part' and 'it was most difficult to make any satisfactory forecast with reference to a work... which was to be undertaken... by volunteers' (Letter Macmillan to Philological Society, 18.12.1876, MP Box 3). Negotiations with Macmillan finally failed when Furnivall suddenly demanded a 50% profit share for the Society, unpredictable behaviour that may explain the immediate rejection of his subsequent approach to Cambridge University Press in early 1877 (Syndics of Cambridge University Press Minutes, Minute 6 24.2.1877, Cambridge University Library: Pr.V.II.); records of the Cambridge discussions do not survive, but Murray (1977) argues that this was due to the perception that Furnivall was not to be trusted (148).

v The implications of the Chase Act for the ‘business of the Press’ were discussed during the course of 1891: while there were a number of works for which the Clarendon Press was minded to ‘take the necessary steps to secure American copyright’, the *NED* was not one of them (Orders of the Delegates: Minute 10 6.3.1891, Minute 11 19.6.1891).

vi As the Opinion made clear, the advice related to the ‘private right to the copyright’ in the Revised Version that would vest at first instance in its authors, as ‘distinct from their monopoly of printing and publishing the authorised version’ - the University’s monopoly to print and publish the Bible under the Universities Act 1775.

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