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The lawsuits of  
Storace v. Longman & Broderip (1788-89) and  
Skillern & Goulding v. Longman & Broderip (1792-94).  
Copyright and ownership over insertion arias  
in late eighteenth century London

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## I. Introduction

Practices of pasticcio or musical borrowing were immensely common in London's theatres throughout the eighteenth century, including both the Italian and English opera genres. "Borrowed Music can be found in about three out of four operas after 1762",<sup>1</sup> or "An opera without some borrowed material was a rarity in eighteenth-century England"<sup>2</sup> are judgments one can easily find in musicological studies on opera in London. One of the preconditions for this practice is the absence of a strictly enforced legal restriction, for example by copyright law. Such enforcement obviously did not exist, although Britain did have the earliest copyright legislation in the *Statute of Anne* (1710). But unlike later copyright laws, the *Statute of Anne* did not at all regulate performance rights.<sup>3</sup> Furthermore, even the status of musical prints as objects being protected by copyright was unclear before being officially recognized in 1777 by Lord Mansfield's famous ruling of *Bach v. Longman*.<sup>4</sup>

This may suggest that the law's interaction with opera has been negligible, but operatic performance and music publishing were not completely disparate worlds: anthologies of *Favourite Songs* from current productions were a popular format throughout the century, purchased as luxury items and for amateur home music making.<sup>5</sup> For performance and publishing businesses alike, it might be said that single popular arias were crucial for attracting and satisfying customers, making them valuable commodities in both their immaterial and materialized forms. But who, legally speaking, owned them? After all, effective arias frequently happened to be borrowed material, often transported by singers from various sources.<sup>6</sup> And even the production of a single arias is a plane of cooperative agency between, at a minimum, the composer, the librettist and the singer.

This paper will attempt to examine how these questions of authorship and cooperation were handled in the negotiation of legal ownership. It has been the merit of Curtis Price's

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<sup>1</sup> ROGER FISKE, *English Theatre Music in the Eighteenth Century*, London et al. 1973, p. 274.

<sup>2</sup> JANE CATHERINE GIRDHAM, *Stephen Storace and the English Opera Tradition of the Late Eighteenth Century*, PhD University of Pennsylvania 1988, p. 471.

<sup>3</sup> JOHN SMALL, "The Development of Musical Copyright", in: *The Music Trade in Georgian England*, ed. by MICHAEL KASSLER, Aldershot 2011, p. 382.

<sup>4</sup> JOHN SMALL, "J. C. Bach Goes to Law", in: *The Musical Times* 126/1711 (1985), pp. 526-529; SMALL, 2011, p. 366.

<sup>5</sup> MICHAEL BURDEN, "From London's Opera House to the Salon? The Favourite (and Not So "Favourite") Songs from the King's Theatre", in: *Beyond Boundaries. Rethinking Music Circulation in Early Modern England*, ed. by LINDA PHYLLIS AUSTERN et al., Bloomington 2017, pp. 223-237, here: p. 229.

<sup>6</sup> REINHARD STROHM, „Wer entscheidet? Möglichkeiten der Zusammenarbeit an Pasticcio-Opern“, in: *Per ben vestir la virtuosa. Die Oper des 18. und frühen 19. Jahrhunderts im Spannungsfeld zwischen Komponisten und Sängern* (= Forum Musikwissenschaft, 6), ed. by DANIEL BRANDENBURG/THOMAS SEEDORF, Schliengen 2011, pp. 62-79, here: pp. 64-66.

contributions<sup>7</sup> to call attention to two lawsuits, both of which directly concerned the copyright over single insertion arias performed at the King's Theatre and sold to publishers: *Storace v. Longman & Broderip* (1788-89) and *Skillern & Goulding v. Longman & Broderip* (1792-94). *Storace v. Longman* pertains to the King's Theatre's 1787 production of Giovanni Paisiello's *Il Re Teodoro in Venezia*. The case's main protagonists are the composer Stephen Storace, his sister and soprano Nancy Storace, publishers Longman & Broderip and the copyist Leopoldo De Michele. During rehearsal, Nancy objected to an aria, and suggested a replacement be produced by her brother. Stephen Storace composed the aria "Care donne che bramate", with words provided by the house librettist Carlo Badini. The aria was inserted into the production and well received, leading Storace to self-publish the individual aria, while the copyist sold the manuscript to Longman and Broderip, who did the same and were sued by Storace.

*Skillern v. Longman* was based on a somewhat similar constellation: Elisabeth Gertrud Mara inserted a rearrangement of Paisiello's duet "Nel cor più non mi sento" as a solo aria into Giuseppe Sarti's *Idalide* in her benefit night on 14 April 1791. The words were changed to "Ah che nel petto io sento" and a new accompaniment with harp and winds was added. She later also introduced the aria into Thomas Arne's *Artaxerses* (1791) with English words ("Hope told a flattering tale") written by Peter Pindar. Mara sold the now popularized piece to Longman & Broderip while the King's Theatre had an exclusive publishing contract with Skillern & Goulding, who then sued their rivals over injunction of sales.

The importance of these lawsuits for the history of musical copyright might yet be vastly underappreciated in scholarship, perhaps due to misunderstanding. Chapter 3 will outline the present state of research on these cases. The main interpretation as it currently stands will be tested against the primary sources found at The National Archives in Kew, Richmond and – if necessary – improved; in hope of reaching a better understanding of the history of intellectual property and London opera, as they uniquely intersect in the interdisciplinary research question of legal ownership over operatic arias. Finally, the cases' impact on public discourse, operatic contracts and future litigation on musical copyright will be outlined briefly.

While later chapters will focus on reconstructing the lawsuits as such, the first one will discuss the insertions on a purely musicological level, highlighting cultural contexts that are relevant to the public perception and demand for the aria. This is done to explain what events and features have caused these musical artefacts to become valuable enough to litigate over in Court. To

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<sup>7</sup> CURTIS PRICE, "Italian Opera and Arson in Late Eighteenth-Century London", in: *Journal of the American Musicological Society* 42/1 (1989), pp. 55-107 ; CURTIS PRICE, "Unity, Originality, and the London Pasticcio", in: *Harvard Library Bulletin* 2/4 (1991), pp. 17-30.

highlight the parallels between both situations, the arias will be discussed in a parallel manner according to different aspects. On a legal level, some context regarding the development of British copyright in the eighteenth century will also be provided, with a focus on lawsuits involving operatic music.

## II. Contexts

### 1. Musical context

#### 1.1. Arias on stage

Under the administration of Giovanni Gallini 1785-1790, the King's Theatre's approach to repertoire was gradually steered away from full pasticcio operas "assembled entirely in England but using pre-existing Italian libretti"<sup>8</sup> in favor of "popular new works, minimally revised, by celebrated composers who never had a chance to come to London or were not at the time in residence."<sup>9</sup> Efforts to import popular opera scores from Italy or Vienna in a more complete manner than previously did not, however, eliminate practices of aria insertion, as adaptation continued to be necessary or desired. Importantly, the agency of singers to substitute arias of their choice has remained firmly in place. Meanwhile, the character and function of arias that singers have chosen to insert has also undergone some stylistic change: Virtuoso bravura-arias have quantitatively declined in favor of comparatively simple, folk-song like tunes suitable for widespread popular appeal, thereby facilitating a hybridization of genre, both between opera seria and opera buffa as well as an affinity to the English ballad opera.<sup>10</sup>

Such was the musical context in which both lawsuits' objects of dispute were first heard: The 1787 London production of Giovanni Paisiello's *Il re Teodoro in Venezia* (first performed at Vienna Burgtheater, 1784) is noted as "practically a straight revival" relative to usual practices in London.<sup>11</sup> Although the part for Lisetta was originally composed for Nancy Storace<sup>12</sup>, she desired to feature an aria by her brother. It is not a borrowing from a previously heard opera, but rather an original piece composed by her "commission".<sup>13</sup> Elisabeth Mara's aria on the other

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<sup>8</sup> MICHAEL TALBOT, "Vivaldi, Polani and the London Pasticcio Croesus", in: *Studi Vivaldiani* 8 (2008), pp. 20-45, here: pp. 23f.

<sup>9</sup> JUDITH MILHOUS/CURTIS PRICE/ROBERT D. HUME, *Italian Opera in Late Eighteenth-Century London, vol. 1: The King's Theatre, Haymarket, 1778-1791*, Oxford 1995, p. 335f.

<sup>10</sup> MILHOUS et al. 1995, pp. ix, 39. (as the previous note)

<sup>11</sup> *IBID.*, p. 388.

<sup>12</sup> The *prima buffa* could not perform the part at the Vienna Burgtheater (1784) due to illness, see CHRISTINE VILLINGER, "Mi vuoi tu corbellar". *Die Opere Buffe von Giovanni Paisiello. Analysen und Interpretationen* (= Mainzer Studien zur Musikwissenschaft, 40), Tutzing 2000, p. 104.

<sup>13</sup> Singers also invested money for insertion arias to be composed specifically for them, see DANIEL E. FREEMAN, "An 18th-Century Singer's Commission of 'Baggage' Arias", in: *Early Music* 20/3 (1992), pp. 427-433.

hand is an “aria di baule” in the classical sense: Mara traveled and performed in northern Italy in 1788-1790<sup>14</sup> and her stay in the region overlapped with the time in which Paisiello's *La Molinara* (1788) was performed at several northern Italian opera houses.<sup>15</sup> She seized the opportunity to bring one of the most popular of its arias with her to London. The two host productions for Mara's insertion – Giuseppe Sarti's *Idalide* and Thomas Augustine Arne's *Artaxerxes* – have also been adaptations of popular operas. The former being an import from Italy, and the latter already having the status of being one of the main staples of English operatic repertoires since its premier in 1762.<sup>16</sup>

The two insertions also correspond to the aforementioned attribute of popular appeal, stylistic contrast and accessibility, and make use of musical forms which have been trending at the time: Storace's aria utilizes a single-tempo rondo form, which has been highly fashionable during this period. With the melody beginning with two eighth notes in the middle of a 2/4 bar, the composer also serves the trope of gavotte rhythms, which scholars have recognized as highly typical for vocal rondo themes of the time.<sup>17</sup> Mara's aria belongs to the type of a cavatina, as contemporaneous reports have referred to it.<sup>18</sup> In fact, both Storace's and Mara's aria have been described as such<sup>19</sup>, denoting them as comparatively simpler and more songlike than other arias. Helga Lühning identifies the cavatina as a popular aria type, which was much more prevalent in opera buffa in the 1780s and 1790s, citing Mara's source “Nel cor più non mi sento” as an important example.<sup>20</sup> By literally transforming a duet from a comic opera into a solo da capo aria suitable for opera seria, Mara's insertion embodies the hybridization of genre most notably. The combination of these two developments suggests the consequence, that inserted arias would be perceived in a more noticeable stylistic and dramatic contrast to the operas in which they were performed. During the lawsuit, Storace confirmed that creating contrast was the primary

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<sup>14</sup> See CLAUDIO SARTORI, *I Libretti Italiani a Stampa Dalle Origini al 1800. Catalogo Analitico con 16 Indici. Indici II: Cantati*, Cueno 1994, p. 396; see also JOSEPH KÜRSCHNER, "Mara, Elisabeth" in: *Allgemeine Deutsche Biographie* 20 (1884), S. 286-289 [Online-Version]; URL: <https://www.deutsche-biographie.de/pnd118730770.html#adbcontent> (27.9.2020).

<sup>15</sup> The opera was given for example in Venice, Bologna, Genova (1789) and Torino (1790), See <http://corago.unibo.it/opera/7A00317742> (27.9.2020).

<sup>16</sup> FISKE, 1973, p. 306: “Revivals at both playhouses in 1767-8 were followed by performances at one or other every season until the end of the century.”.

<sup>17</sup> JOANNE PATERSON, *From rondo aria to cantabile-cabaletta: the Italian opera aria in transition 1780-1825*, unpublished master's thesis, University of Calgary 1996, pp. 12, 17 and 19; HELGA LÜHNING, “Die Rondo-Arie im späten 18. Jahrhundert: Dramatischer Gehalt und musikalischer Bau”, in: *Hamburger Jahrbuch für Musikwissenschaft* 5 (1981), pp. 220-246, here: p. 240.

<sup>18</sup> JUDITH MILHOUS/GABRIELA DIDERIKSEN /ROBERT D. HUME, *Italian Opera in Late Eighteenth-Century London, vol. 2: The Pantheon Opera and Its Aftermath 1789-1795*, Oxford 2001, p. 92.

<sup>19</sup> MILHOUS et al. 1995, Vol 1, p. 391.

<sup>20</sup> HELGA LÜHNING, “die Cavatina in der italienischen Oper um 1800”, in: *Analecta Musicologica* 21 (1982), pp. 333-369, here: p. 337f.

motivation for the insertion: It was “then deemed and considered by many Persons that the Music of the said Opera was dull and heavy it was thought necessary that some lively song or air should be introduced therein in order to enliven it.”<sup>21</sup> Aesthetically, it helped to mitigate the “sameness and monotony” which some London critics - accustomed to pasticcio - found in “Operas, the music of which is composed by one man only.”<sup>22</sup> Perceptually, such contrast also helped the aria stand out from the opera, as newspaper reports confirm: The ten reviews Petty gathered for *Il Re Teodoro* display an interest and acute awareness of Paisiello as a composer<sup>23</sup>, whereas Storace’s “Care donne che bramate” received separate discussions by three of the reviews, recording a highly positive reception and an encore:

“Her [N. Storace] obligato song, in the second act, of *Care donne che bramate* was executed in style of brilliancy and taste hitherto unparalleled; the rapidity and articulation with which she executed the different arduous and masterly divisions, forced them on the imagination. This song is a charming composition by her brother and was encored una voce.”<sup>24</sup>

Contrasted with discussions of the composer and his work, the aria creates the impression of an independent event nested within the main event, belonging primarily to the singer.

For its initial performance Mara’s aria was literally separated from the opera, which happened to be premiered on her benefit night: “MADAME MARA’S NIGHT. / With additional Songs by Madame MARA, accompanied by the Pedal Harp, for this Night only. / KING’S THEATRE, PANTHEON. THIS EVENING, April 14, will be performed (for the first time) the new Grand Serious Opera of IDALIDE. [...]”<sup>25</sup> Originally intended as an exclusive bonus for that event, it was written into the opera’s dramatic climax<sup>26</sup> after proving to be highly effective in performance; Mara is said to have received “the most ardent applause” and multiple encores.<sup>27</sup> On its second insertion it must have been conspicuous as well, being at this point already a highly popular song, introduced into the well-known opera of *Artaxerses*. The reinsertion was even announced as: “Madame MARA, Who will (by particular desire) introduce the favorite Air from Idalide,

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<sup>21</sup> Response of Stephen Storace, 17 Apr 1788. GB-Lpro, C 12/1703/11.

<sup>22</sup> *Morning Post*, 16 April 1785, cit. after: MILHOUS et al., 1995, Vol. 1, p. 322.

<sup>23</sup> See the compilation of reviews in PETTY, 1980, pp. 251-253; Paisiello’s music was highly popular in London at the time, see THEODORE FENNER, *Opera in London: Views of the Press, 1785-1830*, Carbondale/Edwardsville 1994, p. 119.

<sup>24</sup> *The Times*, Monday, 17 December 1787, Issue 942, p. 3.

<sup>25</sup> [Advertisement], “MADAME MARA’S NIGHT. With additional Songs by Madame MARA”, in: *The Times* (London, England), Thursday, April 14, 1791, Issue 1978, p. 1.

<sup>26</sup> Act II, scene 7, the last scene before the finale, see *L’Idalide, o sia La Vergine del Sole. Opera Seria da rappresentarsi nel Regio Teatro del Pantheon. Londra*, Libretto, manuscript, London 1791, p. [23].

<sup>27</sup> MILHOUS et al., Vol. 2, 2001, p. 92.

accompanied upon the Harp”<sup>28</sup> and once again met with great applause and double encores.<sup>29</sup> Mara also performed the aria outside of opera entirely: At the Salomon subscription concert on 6 June 1792, she once again revived “by desire, [the] favourite Air from *Idalide*. Encored”.<sup>30</sup> Also Storace has reused his aria by making it cross-over into an English opera, namely *The Doctor and the Apothecary*, performed in Drury Lane 1788.<sup>31</sup> “How mistaken is the lover”, the last aria before the finale, is in fact the tune of “Care Donne che Bramate” set to new English words.<sup>32</sup> While the customarily reported encore was understood as a clear public measure of success<sup>33</sup>, reusing a successful aria in multiple performance contexts is significant as both a reaction to as well as an enhancement of the piece’s popularity. Being heard in Italian and English operas and subscription concerts enhances its public exposure and strengthens the notion of the singer’s (or, as in Storace’s case, a composer’s) association with it. All in all, the two arias have managed to stand out in an operatic production, being encored, applauded and written about in the press; they have attracted public attention, improved the singer’s reputation and might have created a desire to purchase the music of the aria.

## 1.2. Arias from stage to print

The medium of printed sheet music made the musical information accessible as a permanent object, to be purchased at London music sellers. A recent article by Michael Burden has discussed the topic of ownership of arias in their performed and printed state:

“Once an aria was ‘out there’ in published form, the question of ownership becomes more complex, for an appearance in the *Favourite Songs* was the point at which a singer was forced to relinquish sole ownership of the performance of those arias published. This was not itself a serious matter for the singer, for most Italian performers could be confident that few singers in London could equal them in the skill required to perform this repertory.”<sup>34</sup>

<sup>28</sup> *The Times*, Monday, 21 November, 1791, Issue 2186, p. 1.

<sup>29</sup> Joseph Haydn, cit. after: CARL FERDINANT POHL, *Mozart und Haydn in London*, Wien 1867, p. 160: “Sie erwarb sich neuerdings allgemeine Raserei an Applaus [...] Sie musste die Arie nicht nur wiederholen, sondern man wollte sie auch noch ein drittesmal hören“.

<sup>30</sup> SIMON MCVEIGH, “The Professional Concert and Rival Subscription Series in London, 1783-1793”, in: *Royal Musical Association Research Chronicle* 22 (1989), pp. 1-135, here: p. 114.

<sup>31</sup> DOROTHEA LINK, *Arias for Nancy Storace. Mozart's first Susanna* (= Recent Researches in the Music of the Classical Era, 66), Middleton 2002, p. xii. The production was based on Carl Ditters von Dittersdorf’s *Singspiel Der Doktor und der Apotheker* (Vienna 1786).

<sup>32</sup> See GIRDHAM, 1988, p. 166. A selection of songs from that opera has also been published on Storace’s behalf through Birchall & Andrews: RISM A/I D 3156; RISM A/I S 6666; Amusingly, Longman & Broderip have also produced a (possibly pirated) rival edition of this publication: RISM A/I S 6667 ; SS 6667.

<sup>33</sup> MICHAEL BURDEN, “Play it again, Sam!; the ‘encore’ in 18th-century London opera”. Paper presented at the American Society for 18th-century Studies Annual Meeting, Spring 2008, p. 10. URL: <https://ora4-prd.bodleian.ox.ac.uk/objects/uuid:6ec725fe-0ec1-4dbf-98e7-19d9170de22c> (27.9.2020).

<sup>34</sup> MICHAEL BURDEN, “From London’s Opera House to the Salon? The Favourite (and Not So “Favourite”) Songs from the King’s Theatre”, in: *Beyond Boundaries. Rethinking Music Circulation in Early Modern England*, ed. by LINDA PHYLLIS AUSTERN et al., Bloomington 2017, pp. 223-237, here: p. 228.



Burden's quote was written with the type of aria in mind that produced its impression by being exceedingly difficult to sing and was purchased as an item of luxury rather than as music to be performed. However, the stylistic change towards more song-like insertion arias has also impacted the aria's function as a printed commodity, where the private or semi-public reproduction of the music became a more prevalent part of the object's use value. Occasionally, newspapers articulated the audience's expectation of being presented with some songs suitable for home performance in an opera production, particularly when that expectation was not being met: „*La trame deluse* (originally given in Naples in 1786) was neither a success nor a disaster, *The Oracle* of 15 February [...] observed that the audience would like some 'single songs' that they could sing themselves.”<sup>35</sup> The following pages will examine, what features of the arias might have made them attractive as a commodity on the music publishing market.

### 1.3. Arias in print and in the home

Various scholars have highlighted the fact that the music market in London experienced a rise in activity from about 1760<sup>36</sup>, and that female amateurs from the higher social classes were the most economically relevant buyers and consumers of printed music.<sup>37</sup> To occupy themselves during “those ruffled or lonely hours”<sup>38</sup> spend alone at home, women were encouraged to acquire basic training on a musical instrument and play pieces from sheet music for their own enjoyment and occasionally to provide entertainment for their dependents and guests.<sup>39</sup> Domestic music being strongly regulated by gender norms, the choice of instrument for a female amateur in late eighteenth century London was for the most part restricted to the guitar, the piano forte and the harp.<sup>40</sup> This triad of acceptable instruments shares the common feature of being well suited for solitary music making, while instruments designed for ensemble play were strongly associated with the male gender.<sup>41</sup> Elisabeth Mara's biography is in fact a prime example of how strong this gendered view of musical education was:

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<sup>35</sup> MILHOUS et al., 2001, Vol. 2, p. 156.

<sup>36</sup> FISKE, 1973, p. 299.

<sup>37</sup> ELENA PONS CAPDEVILA, *Arranging the Canon. Keyboard arrangements, publishing practices and the appropriation of musical classics, 1770-1810*, diss. University of London 2017, p. 169.

<sup>38</sup> JOHN BENNETT, *Letters to a Young Lady on a Variety of Useful and Interesting Subjects Calculated to improve the Heart, to Form the Manners, and Enlighten the Understanding*, Dublin 1789, p. 136, cit. after PONS CAPDEVILA, 2017, p. 170.

<sup>39</sup> IBID.

<sup>40</sup> RICHARD LEPPERT, *Music and Image. Domesticity, ideology and socio-cultural formation in eighteenth century England*, Cambridge 1988, p. 147. ; CHRISTOPHER PAGE, *The Guitar and ,the Fair Sex'*. Transcript of a Lecture at Gresham College, 23 April 2015, URL: <https://www.gresham.ac.uk/lectures-and-events/the-guitar-and-the-fair-sex> (27.9.2020).

<sup>41</sup> IBID.

“hohe Kreise hatten sich daran gestoßen, daß ein Mädchen Violine spiele und gerathen, es zur Sängerin auszubilden. Schmeling ließ daher seiner Tochter zunächst Unterricht im Gitarrespiel bei dem Portugiesen Rodrigo geben und führte sie dann dem italienischen Gesangslehrer Paradisi zu.”<sup>42</sup>

Furthermore, instruments such as the guitar or the harp were popular for their accompanying function. Women were encouraged to highlight the ‘natural beauty’ of the female voice.<sup>43</sup> The common title designation ‘for ladies’ was most frequently used in collections of vocal music, with titles such as “Eight canzonets, peculiarly adapted for ladies, with an accompaniment for the pianoforte or harp. (London: Longman and Broderip, ca. 1780).”<sup>44</sup> Nancy Mace’s analysis of the market demonstrates that popular arias with self-accompaniment suited for amateurs were the most economically relevant genre of printed music at that time: “An examination of music entries from 1751 to 1800 suggests that the segment of the British public who purchased printed music was most interested in the popular songs they heard in the pleasure gardens and theatres” and publishers considered “instruments played by amateur musicians more marketable than [sic] those designed for large groups of professional musicians.”<sup>45</sup> Thus, the insertions of *Storace* and *Mara* fit the demands of the market perfectly, being popularized songs one could easily accompany on a keyboard instrument or harp.

In light of this context, *Mara*’s choice of adding obligato harp accompaniment to the aria becomes highly significant, as it strongly evokes the context of female domestic music making, even in performance.<sup>46</sup> Having an original and idiomatic harp accompaniment, identical to that with which it has been performed publicly, must have greatly increased the attractiveness of the aria for music buyers, as was highlighted on the title pages of the prints.<sup>47</sup> This choice can also be taken as an indication that the printing market had been on *Mara*’s mind from the very start. A singer’s fame and reputation could certainly profit from having their name associated with a popular song being circulated among the wealthy public. Thus, from a singer’s point of view, it became desirable to have their songs performed by the public, rather than just being tolerated.

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<sup>42</sup> JOSEPH KÜRSCHNER, "Mara, Elisabeth" in: *Allgemeine Deutsche Biographie* 20 (1884), pp. 286-289 [Online-Version]; URL: <https://www.deutsche-biographie.de/pnd118730770.html#adbcontent> (27.9.2020).

<sup>43</sup> MARK A. RODGERS, *Taste, Gender, and Nation in the Material Culture of Domestic Musical Performance. The Pocket Opera Anthology in England, 1724-6*, UC Berkeley 2011, p. 35.

<sup>44</sup> MATTHEW HEAD, “‘If the pretty little Hand won’t stretch’: Music for the Fair Sex in Eighteenth-Century Germany, in: *Journal of the American Musicological Society* 52/2 (1999), pp. 203-254, here: p. 206.

<sup>45</sup> NANCY A. MACE, “The Market for Music in the Late Eighteenth Century and the Entry Books of the Stationers’ Company”, in: *The Library* 7<sup>th</sup> series, 10/2 (2009), pp. 157-187, here: p. 159, also p. 167.

<sup>46</sup> Although more women have played on the pianoforte and harpsichord, it might be argued that the harp is still a stronger signifier for that context, as it did not have as much of a presence present outside of the private space.

<sup>47</sup> The Skillern & Goulding edition is reproduced in PRICE, 1991, p. 27. “with a Harp Accompaniment by Madam Mara.”; Joseph Mazzinghi[?], *Hope told a Flattering Tale*, London: Skillern & Goulding 1791 advertises “with the Celebrated Harp Accompaniment”, now attributed to Mr. Mazzinghi.

#### 1.4. Expression and temperance in domestic music making

The format and instrumentation of the arias is not the only aspect linking them to the context of domestic music making. It also extends in the realm of aesthetics and expressive function. Based on a survey of reviews, pamphlets and private diaries, Wiebke Thormählen makes a compelling case for considering the aesthetics of public and domestic music in late-eighteenth century Britain in opposition to one another. Whereas public concerts in Britain were expected “to stir the sentiments to breaking point and to create states of emotional rapture”<sup>48</sup> in the latter half of the eighteenth century, music for domestic use was characterized by notions of controlling and tempering emotions, and deeply connected to wellbeing.<sup>49</sup> Thus, Italian opera has sometimes been considered too demanding for domestic performance, on both a physical and emotional level<sup>50</sup>, while “innocent amusements” have been recommended in medical pamphlets, to “help to dispel the gloom which misfortunes may have cast over the mind.”<sup>51</sup>

The two insertion arias represent rather accessible music in Italian styles, which nicely transgresses between the public and domestic aesthetics. Likely performed to great emotional affect with coloratura and other expressive devices on stage, the compositions themselves are not overly challenging from a physical standpoint and resonate in their simple form with the aesthetic of emotional temperance. Both arias have lyrics that relate emotions commonly understood to be negative – jealousy and romantic disappointment respectively – which may cause severe emotional distress to an individual. The music in both arias aims not to expressively amplify, but rather to reframe the emotional state depicted in the lyrics. The stable major tonality and the periodicity of the melody motion could be read as representing the exercise of emotional control. They each provide a lighter, playful subtext to the text’s emotional content, as though the song’s persona had already found a way to contain these emotions in a positive way. The aspect of control is strengthened by the regularity of phrase lengths and the fact that most phrases end with a descending motion to a stable consonance.<sup>52</sup> What a female amateur from eighteenth century London would have seen in them is an opportunity to exercise and showcase her physical and emotional wellbeing, through music that

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<sup>48</sup> WIEBKE THORMÄHLEN, “Lamenting at the Piano. Domestic Music-Making and Well-Being in Eighteenth-Century Britain”, in: *Göttinger Händel-Beiträge* 15 (2014), pp. 144-160, here: p. 148.

<sup>49</sup> *IBID.*, p. 154.

<sup>50</sup> *IBID.*, p. 158: “[Susan Burney] described the act of singing them [Italian operatic arias] as nauseating and bizarre. It makes sense, then, that music collections frequently contained Italian opera arias in simplified arrangements”.

<sup>51</sup> BRYAN CORNWELL, *The Domestic Physician or Guardian of Health*, London 1784, p. 94. urn:nbn:de:hbz:6:1-75631 (27.9.2020).

<sup>52</sup> Joseph Mazzinghi[?], *Hope told a Flattering Tale*, (London: Skillern & Goulding 1791); Stephen Storace, *Care Donne Che bramate*, (London: Longman & Broderip, 1787).

is well suited to her abilities and emotionally resonates with topics which she herself might find challenging in her own life. Additionally, the fact that the songs were associated with star-singers performances endows the buyer with cultural capital, showing awareness and even participation in current trends of the high culture sphere of opera.

Lastly, the reintroduction as an English aria was significant in that it could attract a different section of the market, namely those preferring – be it for reasons of emotional accessibility or political convictions<sup>53</sup> – to hear and sing music in their native language. “Ah che nel petto io sento” / “Hope told a flattering tale” was later used as an example ironically illustrating the politics of translating between the languages, marking a difference in class:

“[Quoting the words of ‘ah che nel petto io sento’] As there are yet, thank Heaven, many vulgar English “country gentlemen” &c. &c. who cannot comprehend the “necessary general gratification” of singing Italian nonsense, we hereby inform them, that “this fine instrument of elegant luxury,” has been set to Peter Pindar’s words, “Hope told a flattering tale.” – But, alas, alas, how different from the “Courtly splendour,” the divine, the tasteful Italian: “Ah quell gusto! – pizzicato! – affettuoso! English be dumb! your language is but so-so!”<sup>54</sup>

## 1.5. Summary

In conclusion, cultural developments within both performed and printed music consumption have contributed to a closer association between the two realms. The attractiveness and commercial appeal of the arias in both domains make it easy to imagine why music publishers desired to capitalize on them – ideally without competition. At the same time, the popularity of the arias is due to the agency provided to singers within the opera house, enabling them to freely introduce music they had acquired through their travels or personal networks. Such ‘pasticcio’ practices as a mode of opera production are generally characterized by rather complex relations of authorships between a multitude of different agents, who are (some of them unknowingly) cooperating to bring about the finished production. Reinhard Strohm has established the metaphor of “conglomeration of voices”<sup>55</sup> to describe this relation. In that regard, music written for the operatic stage differed from more conventionally mono-authorial genres of printed music.

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<sup>53</sup> The act of singing in Italian has been fashionable but controversial throughout the century, see RODGERS, 2011, pp. 3f., 20.

<sup>54</sup> [Anon.], “A new theatre for more Italians and more French Dancers, for the amusement of John Bull, Still an Englishman!”, in: *The Literary Panorama*, Vol. 10, London 1811, p. 478-479.

<sup>55</sup> REINHARD STROHM, Zenobia. Voices and Authorship in Opera Seria, in: *Johann Adolf Hasse in seiner Epoche und in der Gegenwart. Studien zur Stil- und Quellenproblematik*, ed. by SZYMON PACZKOWSKI/ALINA ŻÓRAWSKA-WITKOWSKA, Warsaw 2002, pp. 53-81, here: pp. 56-58.

While the precise allocation of authorship was not necessary for the general purposes of staging an opera, there is a latent potential for conflict once a different context (i. e. the music printing market regulated by copyright law) demands for such a clarification. In order for that complexity to manifest in legal conflict, two other conditions had to be met: the option of legal process would have to be available and different agents of the opera's network needed to involve themselves in selling the aria to publishers. Such initiative has evidently been taken by the Storace siblings and Madam Mara. As this chapter has also indicated, it is highly plausible that they had understood the potential of actively using the sphere of music publishing as a means to advance their status. Interestingly, both Elisabeth Mara and Nancy Storace were looking to (re-)establish themselves in London's cultural life at the time of their insertions, having performed on the continent the previous years. Having their name associated with a popular song circulating in higher social circles was thus a highly desirable objective for the musicians in question. In actively disseminating the music, they have collided with the Theatre's interest of keeping a monopoly on this sphere. This was the central prerequisite of creating the grounds for such lawsuits to arise, aiming for a clarification of the problem that "it was unclear whether copyright in a composition was owned by the composer, the performer or the copyist. This led to trouble, as all three parties could sell rights in a composition to different persons, bringing composers and rival publishers into conflict with one another."<sup>56</sup> In the legal sphere, as the coming chapter will show, such a conflict was almost unprecedented, but had certainly been on the horizon for several decades.

## **2. Legal context**

### **2.1 The *Statute of Anne*, authorship and intellectual property in cooperative situations**

As aforesaid, the *Statute of Anne* had not been applied to music before 1777 and it was conceived as a "booksellers" bill. Music sellers, due to the economic particularities of their market, considered it to be irrelevant.<sup>57</sup> Music's status under the law consequently remained a legal gray area for several decades until composers themselves took actions to clarify it, reacting to an increased sense of injustice.<sup>58</sup> Meanwhile, literary copyright and its relation to authorship

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<sup>56</sup> JENNY NEX, "Longman & Broderip", in: *The Music Trade in Georgian England*, ed. by MICHAEL KASSLER, Aldershot 2011, pp. 9-94, here: p. 27.

<sup>57</sup> SMALL, 2011, p. 262; MARTIN KRETSCHMER/FRIEDEMANN KAWOHL, "The History and Philosophy of Copyright", in: *Music and Copyright*, ed. by SIMON FRITH/LEE MARSHALL, 2<sup>nd</sup> ed., Edinburgh 2004, pp. 21-44, here: p. 27.

<sup>58</sup> DAVID HUNTER, "Music Copyright in Britain to 1800", in: *Music & Letters* 67/3 (1986), pp. 269-282, here: pp. 276f.

was subject to sophisticated legal and cultural debates in and surrounding cases like *Millar v. Taylor* (1769) and *Donaldson v. Becket* (1774).<sup>59</sup> Mark Rose has shown how the interpretation of the law has shifted its focus from the interests of booksellers to those of authors, thereby expanding from material copies of books to immaterial texts, which later became intertwined with “romantic” conceptions of authorship as an expression of an individual’s originality or personality.<sup>60</sup> The concept of intellectual property is a relatively recent legal invention<sup>61</sup> and its conceptualization in eighteenth century England was strongly influenced by John Locke’s ‘Labour Based Theory of Property’, formulated in chapter V of his *Second Treatise on Government* (1690):

“Though the Earth, and all inferior Creatures be common to all men, yet every Man has a *Property* in his own *Person*: this no body has any right to but himself. The *Labour* of his *Body*, and the *Work* of his *Hands*, we may say, are properly his. Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his *Labour* with, and joined to it something that is his own, and thereby makes it his *Property*.”<sup>62</sup>

The reasoning that an individual’s labor creates a private domain may be applied to intellectual property by considering either language itself or ideas as a kind of commons which may through mental labor be brought into a complex arrangement that belongs to its author. Locke himself did not extend the theory to the realm of ideas,<sup>63</sup> but it subsequently became extremely influential for the theory of intellectual property. Its individualist conception of authorship is still at the core of modern copyright and makes situations of joint authorship appear as problematic exceptions.<sup>64</sup> When two or more agents contribute their labor to a work, each of them has a claim to it but no one would be entitled to individually profit from the whole. This problem must be somehow negotiated, for example by clarifying the nature of the property and reducing it to an object shared between the collaborators and defined by law, cultural norms or contract.

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<sup>59</sup> KRETSCHMER/KAWOHL, 2004, pp. 27-29.

<sup>60</sup> MART ROSE, *Authors and Owners. The Invention of Copyright*, Cambridge/London 1993, pp. 91, 127-129.

<sup>61</sup> MARK ROSE, “The Author in Court: Pope v. Curll 1741”, in: *Cultural Critique* 21 (1992), pp. 197-217, here: p. 215.

<sup>62</sup> JOHN LOCKE, 1690, §27, cit. after ROSE, 1993, p. 5.

<sup>63</sup> LIOR ZEMER, *The Idea of Authorship in Copyright* (= Applied Legal Philosophy), Aldershot 2007, pp. 157-161 makes the case that mental labor was already implicit in Locke’s theory.

<sup>64</sup> IBID., p. 188.

## 2.2. Copyright lawsuits relevant to opera before and after 1777

There have been very few actual legal disputes involving music before 1777. Amongst them however, we find a few singular cases related to opera, which, although not leading to definitive judgement, illustrate the problem of joint authorship in pasticcio practices.

One example would be librettist Isaac Bickerstaffe's unsuccessful attempt to claim copyright over the musical parts of his popular ballad-opera *The Maid of the Mill* (1765). He sued against instrumental arrangements of arias in *Bickerstaffe v. Thorowgood* (1765). "As Thorowgood noted in his answer, however, Bickerstaffe himself was not a composer but an author; in fact, Bickerstaffe did not have the rights to the music, since it was written by over 20 different composers and was very likely printed without their consent."<sup>65</sup> In later lawsuits surrounding *The Padlock* (1769), Bickerstaffe bought the rights to the music from the composer.

A remarkable earlier case is *Holt v. Lowe and Arne* (1752), featuring the composer Thomas Augustine Arne, tenor Thomas Lowe and the librettist Thomas Holt. Judith Milhous and Robert Hume summarize: "At the heart of this particular ruckus is a conflict concerning literary and musical copyright. Indeed, this lawsuit is an exceptionally early contribution to the gradually escalating dispute over property rights in artistic compositions [...]."<sup>66</sup> The three of them had collaborated on the unsuccessful opera *Henry and Emma* (1748) and the librettist subsequently objected to Arne's reuse of an aria from it in *Don Saverio* (1750). Arne stated that the aria had been inserted by request of a performer and that "this was done much more on Account of the music than of the words."<sup>67</sup> It was a quarrel between the librettist's wish to be compensated for his labor while Arne and Lowe negated the value that his contribution added, "had it not been for the Addition of the Musick the Audience would never have suffered the same to have been Acted at all."<sup>68</sup> Holt proposed a contract,<sup>69</sup> which remained unsigned and was described as "revolutionary" by scholars for being so distant from common practice. "Holt and Arne would have received performance royalties, something unheard of at the time."<sup>70</sup>

This exceptional case demonstrates the great potential for complex legal struggles if cooperating agents are unable to find agreement on property rights. However, it appears to have

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<sup>65</sup> NANCY A. MACE, "Music Copyright in Late Eighteenth and Early Nineteenth Century Britain", in: *Research Handbook on the History of Copyright Law* (Research Handbooks in Intellectual Property), ed. by ISABELLA ALEXANDER/H. TOMÁS GÓMEZ-AROSTEGUI, Cheltenham/Northampton 2016, pp. 139-157, here: p. 142; SMALL, 2011, p. 321.

<sup>66</sup> JUDITH MILHOUS/ROBERT D. HUME, "Librettist versus Composer: The Property Rights to Arne's *Henry and Emma* and *Don Saverio*", in: *Journal of the Royal Musical Association* 122/1 (1997), pp. 52-67, here: p. 52.

<sup>67</sup> *IBID.*, p. 61.

<sup>68</sup> *IBID.*, p. 63.

<sup>69</sup> *IBID.*, p. 57.

<sup>70</sup> SMALL, 2011, pp. 318f.

been an almost universally accepted part of common practice that a composer may publish or reuse his arias along with the librettist's words, without needing explicit consent.<sup>71</sup> And if a composer did decide to sell a manuscript to a publisher, he would do so in exchange for a single payment.<sup>72</sup> Performance rights and royalties were generally no concern for the law throughout the century. For printed music, musical copyright gained official recognition in 1777: Because Johann Christian Bach partly based his Chancery lawsuit against unauthorized reprinting of a Harpsichord Sonata on the *Statute of Anne*, the King's Bench was brought to finally clarify music's status under the law. Lord Mansfield emphatically certified that music be considered "writing" under the act. On the basis of *Bach v. Longman* (1777), composers could now pursue copyright lawsuits with confidence that the law applied to their work and thus felt more encouraged to do so.<sup>73</sup> For the first full case after 1777 in which a composer directly used the *Statute of Anne* to assert his copyright as an author to an operatic aria against practices and contracts of an institution, we need to look at *Storace v. Longman* (1788-89).

While overall, fewer cases concerning copyright have come before the Courts after the important decision of *Donaldson* in 1774,<sup>74</sup> musical copyright has only just started to become a relevant concern for music publishers in the 1780s and 90s. The data shows a steep increase of copyright registrations at Stationer's Hall in that period<sup>75</sup> and music publishers recognized copyright litigation as an instrument to defend themselves and their industry.<sup>76</sup> It was most notably utilized by Longman & Broderip, who, after losing to Bach in 1777, "began vigorously defending their copyrights in the Courts from 1780 onward."<sup>77</sup> Among the musical copyright cases of that period, *Storace v. Longman* and *Skillern v. Longman* happened to be the ones concerning operatic music and the aforementioned problems of insertion practices more specifically.

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<sup>71</sup> GIRDHAM, 1988, p. 147.

<sup>72</sup> HUNTER, 1986, p. 271.

<sup>73</sup> JOHN SMALL, "J. C. Bach Goes to Law", in: *The Musical Times* 126/1711 (1985), pp. 526-529, here: pp. 528f.

<sup>74</sup> RONAN DEAZLEY, *Rethinking Copyright. History, Theory, Language*, Cheltenham 2006, p. 29.

<sup>75</sup> MACE, 2009, pp. 160-165.

<sup>76</sup> See NANCY A. MACE, "Litigating the Musical Magazine. The Definition of British Music Copyright in the 1780s", in: *Book History* 2 (1999), pp. 122-145.

<sup>77</sup> MACE, 2009, p. 163 suggests that the increase in registration was not directly in response to the affirmation of musical copyright in *Bach v. Longman* (1777), but to the threat of lawsuits by Longman & Broderip.



### III. State of research and archival sources

#### 1. State of research on the two lawsuits in question

Curtis Price's papers from 1989 and 1991<sup>78</sup> deserve credit for bringing musicological attention to the two lawsuits of *Storace* and *Skillern*, by presenting new sources and providing a comprehensive discussion of them and their possible cultural implications. The 1989 paper featured them as a tangent<sup>79</sup> from other questions of opera management, while the 1991 paper discusses them directly in the context of London pasticcio practices. While Price seems to have been the first scholar to treat the two lawsuits as a pair, the *Storace* case had already been discussed in David Hunter's survey from 1986<sup>80</sup> and Jane Girdham also devoted some attention to it in her 1988 dissertation and published affidavits from the case in the appendix.<sup>81</sup>

In all the aforementioned literature, the *Storace* lawsuit is discussed as a challenge to the conventional right of the music copyist Leopoldo De Michele's to sell the Theatre's music for his own profit. After Hunter only cited an affidavit, Price pointed out the existence of the full three sets of pleadings related to the case.<sup>82</sup> He recounts how Storace came to write and publish a replacement aria for his sister Nancy Storace and asked the Court for an injunction against a rival edition by Longman & Broderip, which was based on manuscripts sold by the King's Theatre's copyist.<sup>83</sup> The eventual success of the lawsuit is interpreted as a "a landmark decision for British composers"<sup>84</sup> for establishing the property of the composer over private agreements within the opera house.

Skillern & Goulding's consequent lawsuit is characterized as the plaintiffs having "unwisely decided to test this precedent [...] The case should have been clear-cut but was seriously complicated by disputed authorship."<sup>85</sup> The plaintiffs' case is said to rest on contracts, which were supposed to guarantee them rights to all music performed that season, and the claim that house composer Joseph Mazzinghi authored a considerable part of the song, making it the Theatre's property by contract.<sup>86</sup> The defendants' strategy confused Price: "Oddly, Longman

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<sup>78</sup> CURTIS PRICE, "Italian Opera and Arson in Late Eighteenth-Century London", in: *Journal of the American Musicological Society* 42/1 (1989), pp. 55-107; CURTIS PRICE, "Unity, Originality, and the London Pasticcio", in: *Harvard Library Bulletin* 2/4 (1991), pp. 17-30.

<sup>79</sup> PRICE, 1989, pp. 92-95.

<sup>80</sup> DAVID HUNTER, "Music Copyright in Britain to 1800", in: *Music & Letters* 67/3 (1986), pp. 269-282, here: pp. 280f.

<sup>81</sup> JANE CATHERINE GIRDHAM, *Stephen Storace and the English opera tradition of the late eighteenth century*, PhD University of Pennsylvania 1988, pp. 165f., 170, 585-587.

<sup>82</sup> PRICE, 1989, p. 93, note 49.

<sup>83</sup> IBID., p. 93f.

<sup>84</sup> IBID., p. 94.

<sup>85</sup> IBID.

<sup>86</sup> IBID.

and Broderip had a trump card they chose not to play: Skillern and Goulding had already published the original duet: ‘Nel cor più non mi sento’ in the *Pantheon Opera Register* under Paisiello’s name (RISM P 142).<sup>87</sup> The best explanation he could find was that “perhaps the defendants saw the difficulty of trying to prove to a musically illiterate judge that the duet and aria were essentially the same piece, a problem which still affects cases of alleged musical plagiarism.”<sup>88</sup> Price quickly concludes that the verdict upholding *Storage*’s lawsuit was spoken “without attempting to disentangle the hopelessly complex question of authorship”<sup>89</sup>. In fact, both the relationship of the aria to Paisiello’s duet and the question of authorship had been thoroughly investigated in the proceedings of the case, as he is about to unveil in his next work on the topic. The conclusion of the 1989 paper must also be taken as somewhat preliminary:

“reaffirming the right of the composer (even when unknown) to his or her music, the Court had effectively invalidated private agreements between opera managers and their employees, while at the same time allowing a plurality of publication of any piece of disputed authorship.”<sup>90</sup>

This reads like a convincing closure to the narrative of breaking “the house copyist’s stranglehold”<sup>91</sup>, but is logically inconsistent as a legal claim: Allowing a plurality of publication directly contradicts the notion of recognizing and protecting the right of an unknown composer. Strictly speaking, the right of an *unknown* composer could only be protected by prohibiting any publication that could not prove to have the author’s consent behind it. Thus, an unresolved tension exists between the two parts of the conclusion: the notion of the Court following *Storage* in affirming authorial rights over theatrical custom, and that of the Court resolving the problem of disputed authorship by effectively allowing plurality of publication.

Written with more archival materials at hand, the 1991 paper develops Price’s understanding of the lawsuits further. The essential interpretation of the *Storage* case remained the same: “the right of a composer to his or her own music, even in an opera house that specialized in producing pasticcios, was clearly affirmed.”<sup>92</sup> The interpretation of the *Skillern* case, on the other hand, changed more significantly in comparison to his first paper. The newly discovered depositions led to the realization, that his previous ideas about the Court being ignorant about the aria’s relation to Paisiello’s original, as well as their avoidance of the question of authorship have been incorrect. To the contrary: the case now revolves around questions of authorship, and the

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<sup>87</sup> PRICE, 1989, p. 95.

<sup>88</sup> IBID.

<sup>89</sup> IBID.

<sup>90</sup> IBID.

<sup>91</sup> IBID.

<sup>92</sup> PRICE, 1991, p. 27.

aria's melody had been identified as Paisiello's by multiple expert witnesses.<sup>93</sup> Mara, rather than just suggesting authorship by overprotective behavior<sup>94</sup>, is shown as making a direct claim to (co-)authorship, from which she then allegedly "back-pedaled fast", after the relation to Paisiello was highlighted.<sup>95</sup> Ultimately, the property over the copyright is said to rely on the question of authorship of the accompaniment: "whether the beguiling accompaniment was the work of Mazzinghi, who supported the plaintiff's rights to the song, or Madam Mara, who had originally claimed to be co-author."<sup>96</sup> The Court sided with the defendants, and Price strongly criticizes them for "tacitly accepting Madam Mara's testimony" despite what he considers to be admitted plagiarism. On a positive note, without citing any evidence for that claim, the judgement is understood to have caused a great "reform" in that it "finally broke the stranglehold which the King's Theatre had on its composers."<sup>97</sup> Finally, Price expresses disappointment because the case

"raised but failed to tackle the moral question which lies at the heart of the pasticcio process. It is right to take other people's arias, make cosmetic alterations, insert them into an alien dramatic context, then pass the whole thing off as one's own, often for considerable profit? [...] Mara was, by her own clumsy admission, trying to deceive; she had stolen Paisiello's intellectual property and was covering her tracks. [...] even so great a figure of Handel was capable of similar deception. [...] Thus was the world of the pasticcio."<sup>98</sup>

In Price's mind, the judgement takes a dark turn: instead of condemning the pasticcio practice of opera production, the Court seems to have taken its low criteria for authorship on board into copyright jurisdiction.

At this point, it is illuminating to understand the conclusions in the context of Price's framing of Pasticcio practice. The first half of this paper is a summary of pasticcio in London, which is written in highly polemic terms and combines anachronistic application of aesthetic ideals with a rather one-sided selection of eighteenth-century opinions<sup>99</sup>, as he makes clear from the outset:

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<sup>93</sup> PRICE, 1991, p. 27f.

<sup>94</sup> See PRICE, 1989, p. 94.

<sup>95</sup> PRICE, 1991, p. 28.

<sup>96</sup> IBID.

<sup>97</sup> IBID., p. 30

<sup>98</sup> IBID.

<sup>99</sup> In the sense that Price either ignores or dismisses the validity of favorable aesthetic arguments for pasticcio, which have been based on *variety*, a more prevalent view in London according to CHRISTINE SIEGERT, "Herausforderung Pasticcio. Zu Johann Schellingens *Alessandro il grande* (1799) und Sabine Radermachers *Demofonte* (2007)", in: *Mitten im Leben. Musiktheater von der Oper zur Everyday Performance*, hrsg. von Anno Mungen, Würzburg 2011, pp. 165-174, here: p. 168; See also *Morning Post*, 16 April 1785, cit. in MILHOUS et al, 1995, Vol. 1, p. 322.

“Ridiculed by some eighteenth-century critics, it also offends our modern notions of originality and structural unity. Musicologists have been loath to deal with any opera which – however popular and esteemed in its own day – does not exist in a single authorized version. Apparently beyond the pale, a pasticcio was often written by committee, typical consisting of some singers aided by hack poets who added new words to existing music, and even by lowly house music copyists acting on vague instructions ‘to cook up something’ for Signor Senesino or Madam Mara.”<sup>100</sup>

Clearly, Curtis Price views the pasticcio practices of eighteenth century London as something inherently aesthetically and morally inferior, later calling it “a repository of excess and tastelessness”.<sup>101</sup> In doing so, he participates and propagates the longstanding tradition of musicologists treating pasticcio as aesthetically deficient for failing to meet nineteenth century ideals of inner unity<sup>102</sup>, disqualifying it as a proper research subject for well into the twentieth century, despite its undoubted historical relevance and occasional appeals that “it is the historian’s business to find the cause before he condemns.”<sup>103</sup> In this condemnation, aesthetic concerns meets with the moral disapproval, that has been traditionally been issued against practices of musical borrowing: One prominent example of how scholars continuously struggle with the topic is the controversy over Georg Friedrich Händel’s tendency to liberally reuse music of other composers in his works. This aspect has largely been treated in harsh terms of illness, felony and moral deficiency on Händel’s part, instead of being understood in its historical context.<sup>104</sup> By presenting pasticcio in such a negative way, he frames the emergence of copyright as a potential solution to this unsatisfactory state of music, with the protection of authors creating conflict “which struck at the heart of the pasticcio system.”<sup>105</sup>

On a very surface level, Price’s 1991 paper invites criticism for approaching the historical event about which he is writing with an openly normative bias that extends over both aesthetics and ethics. By literally criticizing how a society 200 years ago created operas and negotiated copyright, he openly brings certain ideological biases into his research, which might have clouded his perception of the evidence. On one hand, such a negative view of the moral

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<sup>100</sup> PRICE, 1991, p. 17.

<sup>101</sup> PRICE, 1991, p. 22.

<sup>102</sup> See the definition of HERMANN MENDEL/AUGUST REISSMANN, *Musikalisches Conversations-Lexikon. Eine Encyklopädie der gesamten musikalischen Wissenschaften. Für Gebildete aller Stände*, Vol. 8, Berlin 1877, p. 32: „Künstlerische Bedeutung konnten diese Pasticcio selbstverständlich nicht gewinnen, da ihnen das Haupterforderniss: innerer Zusammenhang fehlte.“

<sup>103</sup> OSCAR G. SONNECK, “Ciampi’s ‚Bertoldo, Bertoldino e Cacasenno’ and Favart’s ‘Ninette à la cour’”. A Contribution to the History of Pasticcio”, in: *Sammelbände der Internationalen Musikgesellschaft* 12/4 (1911), pp. 525-564, here: p. 543, see also p. 525.

<sup>104</sup> JOHN T. WINEMILLER, “Recontextualizing Handel’s Borrowing”, in: *The Journal of Musicology* 15/4 (1997), pp. 444-470 ; GEORGE J. BUELOW, “The Case for Handel’s Borrowings: The Judgement of Three Centuries”, in: *Handel Tercentenary Collection*, ed. by STANLEY SADIE and ANTHONY HICKS, London 1987, pp. 61-82.

<sup>105</sup> PRICE, 1991, p. 25.

standards of musical practice may allow him to consider interpretations plausible which would be unlikely in other circumstances. On the other hand, implicitly understanding copyright as a protection for authors *against* such exploits as pasticcio practices may have led him to form incorrect expectations on what the case was about. It goes without saying that identifying an ideological bias does not by itself suffice to falsify the theories and interpretations presented. This can only be the first step, since Price's work does make valid scientific claims about the past, which are falsifiable in nature. Going further, one needs to critically engage these claims on an empirical level, which is exactly what this study sets out to do. This is necessary, because by not returning to the material sources, one runs the danger of either dismissing scientifically sound claims by the mere context or rhetoric in which they have been presented, or continuing to perpetuate false empirical claims, despite distancing oneself from the ideological content.

The latter might have occurred in the 1995 and 2001 published volumes *Italian Opera in Late Eighteenth-Century London*, arguably the most comprehensive reference book about this period of London opera to date. This volume promises a more neutral stance towards pasticcio practices in its prefix:

“The *opera seria pasticcio* survived there long after it had fallen out of favour on the Continent. Rather than dismissing it as a phenomenon dictated by bad taste and production exigencies, we have tried to examine it as a theatrical vehicle that reflected the particular demands of London and the *modus operandi* of the King's Theatre.”<sup>106</sup>

The two volumes also contain significant treatments of both lawsuits<sup>107</sup>, presenting a welcome update in that they are written in a more appropriate tone and enriched by new illustrative quotations from the sources. They also provide helpful lists of legal materials in their appendixes.<sup>108</sup> Still, the general interpretation of the *Skillern* lawsuit did not substantially change from that of Price:

“In all this, Paisiello's rights were not considered though his authorship of the duet was undisputed. Alteration of his original music had evidently shifted copyright to the person responsible for the adaptation – the question was whether that person was Mara or Mazzinghi. [...] Mara, the judge declared, had created the original adaptation and could thus claim authorship of the published version [...]. In transforming Paisiello's duet she had fashioned a new aria and become a composer in her own right.”<sup>109</sup>

Of course, there is a possibility that Price's claims are simply true. After all, it is highly intuitive that two parties fighting over a piece with disputed authorship would each claim a different

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<sup>106</sup> MILHOUS et al., 2001, Vol. 2, p. ix.

<sup>107</sup> *Storace v Longman* is discussed in Vol. 1, pp. 388-393; *Skillern v. Longman* in Vol 2, pp. 458-460, 486-493.

<sup>108</sup> MILHOUS et al, 1995, Vol. 1, pp. 621-630; Vol 2., pp. 757-763.

<sup>109</sup> MILHOUS et al., 2001, Vol 2., p. 460, see also p. 458.

author. But a possible lack of critical reading would be unsurprising in this situation, since Price is himself one of the co-editors of the first volume.<sup>110</sup> An independent reevaluation of the empirical claims is surely called for.

Price's papers and the Milhous et al. volumes have remained the primary treatment of the two cases in the literature, sometimes being cited as an aside in musicological articles for their more sensational aspects, such as "the extent to which singers' additions to the score could be regarded as 'composition' within an event-oriented framework"<sup>111</sup>, or that the act of material insertion into the Theatre's score had some special significance for the transfer of copyright.<sup>112</sup> Serious scholarship on musical copyright seems to have tacitly ignored Price's contributions, neither expanding nor refuting his theories. For that reason, the *Skillern* case itself is largely absent from modern writing on musical copyright. Of the two perhaps most relevant recent summaries of musical copyright of that period, Smalls (2011) just mentions it in passing as a confirmation of *Storace*, and Mace (2016) only acknowledges its existence in a footnote.<sup>113</sup>

## 2. Sources at The National Archives

Various types of documents from Chancery cases are stored in The National Archives in Kew, Richmond. For most Chancery cases of that period, the surviving sources mostly include pleadings, meaning the initial "bill of complaint" by the plaintiff and "responses" by the defendant, preserved in large manuscript rolls. Occasionally depositions are available as well, meaning sworn witness testimonies collected to prove or test aspects raised in the pleadings. This means that for the most part, surviving sources include statements and evidence collected for the lawsuit, but not what the Court thought or made of them. Therefore, these types of sources are well suited to reconstruct the argumentations of the parties, whereas the Court's considerations and judgements must be reconstructed either from secondary sources, or from "decrees and order books", which provide information for procedural aspects of a lawsuit.<sup>114</sup>

Regarding the case of *Storace*, the further reconstruction of the case must largely be based on the three sets of pleadings<sup>115</sup> and affidavits given by both parties. Other than that, a few decrees

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<sup>110</sup> The first volume is edited by Curtis Price, Judith Milhous and Robert D. Hume the second one by Judith Milhous, Gabriela Dideriksen and Robert D. Hume. For the sake of simplicity, both volumes are referred to by the abbreviation "MILHOUS et al." to represent the state of research as presented in this publication.

<sup>111</sup> JENNIFER HALL-WITT, *Fashionable Acts, Opera and Elite Culture in London, 1780-1880*, (= Becoming Modern: New Nineteenth-Century Studies), Hanover/London 2007, p. 39.

<sup>112</sup> BURDEN, 2017, p. 229; MILHOUS et al., 2001, Vol. 2, p. 459.

<sup>113</sup> SMALL, 2011, p. 382; MACE, 2016, p. 148.

<sup>114</sup> See <https://www.nationalarchives.gov.uk/help-with-your-research/research-guides/chancery-equity-suits-after-1558/#5-pleadings-proceedings> (28.9.2020) for further explanation on the different source types.

<sup>115</sup> GB-Lpro, C 12/618/12; C 12/1703/11 and C 12/623/35.

and orders had been found, which primarily concern procedural details. The existence of immediately available sets of depositions in C 24 had been ruled out through a manual search of the entirety of Chancery depositions from the year 1788, encompassing boxes C 24/1925 to 1932. Unfortunately, the work at the archives preceded the awareness of a reference made to a set of depositions for the defendants in C 24/1936.<sup>116</sup> However, dated as late as June 1789, they could not have been relevant for the 1788 verdict of the King's Bench.

For *Skillern v. Longman*, one set of pleadings exists<sup>117</sup>, as well as three complete sets of depositions with interrogatories included.<sup>118</sup> It is possible that more deposition have been taken in 1793, as indicated by a motion of the plaintiffs being granted,<sup>119</sup> but no further ones were found in C24/1963 to 1969. Furthermore, an historical index has pointed to two newly discovered affidavits for the case, dated to 24 Nov. 1792 and 29 Jan. 1793.<sup>120</sup> Unfortunately, due to being stored offsite, they could not have been at present examined.

Both Chancery cases were transferred to the King's Bench Court under Lord Kenyon. Since no primary documents of the King's Bench are known for either lawsuit, information about the decisions will be taken from newspaper reports by the *London Times* or citations in legal literature. The discussion of the cases will proceed by source types, affidavits and the three pleadings for *Storace*, and newspaper reports, pleadings and depositions for *Skillern*, and will focus on argumentative rather than procedural aspects of the cases.

## **IV. The lawsuits**

### **1. Storace v. Longman & Broderip (1788-1789)**

#### **1.1. Affidavits**

The lawsuit between Stephen Storace and Longman & Broderip arose because Storace decided to register and self-publish the popular aria "Care donne che bramate"<sup>121</sup> while the house copyist, Leopoldo De Michele, made use of his customary privilege to sell a copy of the entire score, now including the inserted aria, to Longman & Broderip, who consequently put a rival

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<sup>116</sup> MILHOUS et al, 1995, Vol. 1, p. 623.

<sup>117</sup> GB-Lpro C 12/185/34.

<sup>118</sup> GB-Lpro.C 24/1964 Mich 1792.

<sup>119</sup> GB-Lpro C 33/482, 187: Decree from 19 February 1793 „the afsd. Plt. may be at liberty to examine one or more persons viva [sic] voce of the hearing of the cause to prove the agreement between Robt. Bray O'Reilly and the Plts Skillern & Goulding bearing date the 24<sup>th</sup> day of March 1791”

<sup>120</sup> Index to Chancery affidavits, 1700-1800 (S-T). GB-Lpro, IND 1/14565.

<sup>121</sup> Stephen Storace, *Care Donne Che Bramate [...] in the opera of Il Re Teodoro in Venezia*, (London: Birchhall & Andrews; for the author 1787), RISM A/I S 6869.

edition on the market.<sup>122</sup> The affidavits<sup>123</sup> have been the main source of the earlier scholarship on the case (see chapter III.1). They are well suited to gain a first understanding of the argumentations of the conflicting parties, as they lay out each sides' perspective in a much more concise way than the pleadings, which tended to be written in such a way to fill a large scale folio and are challenging to read due to their redundant writing.

Storace does not mention the aria's performance nor his sister in the affidavit. He simply argues that he has composed the song called "Care donne che bramate" and registered the copyright at Stationer's Hall. "Being the entire and sole owner and Proprietor thereof he hath since caus'd the same to be printed and published and hath disposed of near two hundred Copies"<sup>124</sup> The defendants later published "the same or substantially the same" without his permission and hence injured his property.<sup>125</sup>

Francis Broderip, assisted by King's Theatre poet Badini and copyist De Michele, instead based his case on the common practice of the theatre, which would grant them exclusive ownership over the composition: De Michele deposes the following information:

"this Deponent further saith that ever since he has been Copyist for the said Theatre (and as he heard and verily believes for upwards of Thirty Years past) the Usage and Custom of the Proprietors of the said Theatre has been that all Musical pieces or Compositions introduced and performed at the said Theatre on their being performed became and were the property of said Proprietors and under them the Copyist for the time being who has always been considered to have an absolute and exclusive power of disposing of the Copy right thereof it being part of his salary".<sup>126</sup>

The song in question thus, by being inserted into a production by Nancy Storace, was claimed to have automatically become the exclusive property of the Theatre and was subsequently sold to the defendants as such. They also argued that they legally acquired the copyright to the words from Badini and registered the publication at the Stationers Company after having bought the music from De Michele.<sup>127</sup> Notwithstanding Storace's undisputed authorship, both parties claimed the sole ownership over the copyright for themselves with vastly different arguments. This lawsuit is already informative for providing insight on how ownership to the Theatre's music had been handled in the previous decades. The arrangement between manager and copyist gave De Michele a powerful business opportunity: He effectively held a monopoly for

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<sup>122</sup> NEX, 2011, pp. 27f.

<sup>123</sup> Both are reproduced in GIRDHAM, 1988, pp. 585-587. Affidavits are voluntary statements made under oath.

<sup>124</sup> *Affidavit* of Stephan Storace, 28 January 1788. GB-Lpro, C31/237/39.

<sup>125</sup> IBID. Paraphrased because the entire affidavit can be read in GIRDHAM, 1988, pp. 585.

<sup>126</sup> *Affidavit* signed by Leopoldo De Michele, Charles Francis Badini, and Francis Broderip, in reply to Storace's deposition, dated 31 January 1788. GB-Lpro, C31/247/81.

<sup>127</sup> IBID.



Italian operatic music in London, making him a central figure for music circulation both within and outside of the Theatre. By allowing the Theatre's administration to save money on the copyist salary in return, the deal was a win-win situation, but one that could only be sustained on the premise that composers would not have the motivation and means to lay claim to the products of their labor.

## 1.2. Pleadings 1: *Storace v. Longman & Broderip*

Storace's initial bill of complaint from 25 January 1788 features essentially the same line of reasoning that he puts forth in his affidavit from 28 January 1788: He explains that he has composed a piece of music, went through the process of entering it at Stationer's Hall to secure his copyright, and went on to publish it on his own expense. At this point, he did not need to refute any claim made by defendants, but simply charged that they had published the same without his permission, and thus violated his property.<sup>128</sup>

The defendants' first response from 4 February 1788 elaborates their understanding about how the Theatre acquires the property over music performed there:

"They have been informed and believe it to be true that whenever any Opera or Musical Composition or Work of that nature is produced and presented to the Proprietors of the Opera House at the Kings Theatre in Haymarket in order to be performed and brought out there that the absolute Property of the same is either purchased by them of the author and composer of the words and music or that the same are respectively written and composed by persons whom they engage and pay an adequate Compensation to for that purpose or by some other means every Opera or Musical Composition especially as to the Music thereof is and always hath been in general understood to be the absolute property of such proprietors of the said Opera House for the Time being before or at the Time of the first Public representation thereof".<sup>129</sup>

The most important aspect of this quote are the three kinds of claims that the Theater could make over the music. The first two criteria seem quite sound: The music could be acquired directly from the author or written by someone they have employed and compensated. But the third one simply refers to music that had been introduced and made property "by some other means". This claim has no stronger support than that it "always hath been in general understood to be the absolute property of such proprietors of the said Opera House". If this premise is accepted, the rest of their argumentation leads to the claim of property being customarily handed to the copyist as part of his salary and eventually to them via purchase. One point that both parties have preemptively raised in their respective bills, was that the pieces of music they

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<sup>128</sup> *Bill of Complaint* by Stephen Storace, 25 January 1788. GB-Lpro, C 12/618/12.

<sup>129</sup> *Response* of Longman & Broderip, 4 February 1788. GB-Lpro, C 12/618/12.

were selling are essentially the same. Both have predicted the possibility of arguing that some minor alterations may have created a new piece of music, but since both parties were unhappy with the plurality of publications, neither of them went with that strategy: “such Variations are not such as materially[sic] to differ therefrom or to constitute a distinct piece of Music nor were ever meant by these Defendants so to do or to be understood.”<sup>130</sup>

### **1.3. Pleadings 2: Longman & Broderip v. Storace (Countersuit)**

In their countersuit bill from 12 February 1788, Longman & Broderip rely on the same argumentation while going on the offensive with Storace, trying to make the point that it was in fact him that did not have a right to publish his own music without their permission. The argument that the King’s Theatre legally gains absolute ownership is expanded by an interesting comparison to other theatre’s practices in that regard:

“For your orators charge that the custom and practice of the said Opera House differs in that respect from that of the theatres at Drury Lane and Covent garden and all other theatres where the authors of Musical and other Entertainments have the Emoluments of every thirds successive nights immediately following on the first Representation of any such new piece for their alone benefit and as a Compensation for the liberty given the manager of performing such pieces at such Theatres as last mentioned and yet such authors still retaining the Copyright or property thereof”.<sup>131</sup>

They make the case that the King’s Theatre would in fact be unique in taking the copyright from the author, while London’s other theatres would not only grant him the copyright, but also additional financial compensation from ticket sales. Storace was asked to respond to these claims of theatrical practice.

Storace’s response to the countersuit provides the complimentary part of the original bill’s argumentation, as he was now forced to defend his claim against the opposing party’s arguments. To the differing practices of Theatres, Storace contents “it may be true [...] although he knows not the same of his own knowledge” [...] but “denies it to be true that it has always been the case for every production at the King’s Theatre.”<sup>132</sup> Storace’s answer contains several sharp rebuttals of the claim that the Theatre secures rights to all music performed by legal means. First, he points out that Paisiello’s opera itself “was composed and set to music three years ago by some person or persons in Germany or some other place or places abroad [...] and that the said musical entertainment still continues to be printed, published and sold in several

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<sup>130</sup> *Further Answer* by James Longman & Francis Broderip, 4 April 1788. GB-Lpro, C 12/618/12.

<sup>131</sup> *Bill of Complaint* by James Longman & Francis Broderip, 12 February 1788. GB-Lpro, C 12/1703/11.

<sup>132</sup> *Response of* Stephen Storace, 17 April 1788. GB-Lpro, C 12/1703/11.

places.”<sup>133</sup> This remark brings to attention that the main bulk of the King’s Theatre’s repertoire in fact consists of operas that are ‘imported’ from abroad after having been performed and printed on the continent for several years. Storace hence makes the publishers’ statement, that the Theatre takes pains to secure exclusive rights, seem rather absurd. He is in an ideal position to make this point, as he himself was the person tasked with acquiring the score of *Il Re Teodoro* in Vienna for the impresario in September 1786, as he mentions. Storace states that the Theatre’s customary claim to the majority of the music hinged on the fact that most composers have been foreigners who were either unaware of the British legal system, or not themselves present in Britain to protect their right. This story does well to focus the weak point of the publishers argumentation: Storace effectively shows that “some other means” is the usual mode by which an opera becomes treated as the King’s Theatre’s property, instead of the more convincing direct, mutually consensual transactions with the author.<sup>134</sup>

The most relevant part of Storace’s argumentation will be how he estimates the legality of these other kinds of copyright transfers, and to which extent they apply to his situation. Musicologists following Curtis Price’s work have been led to understand the case as being a struggle for authorial rights superseding all kinds of private and contractual agreements with the Theatre, which may suggest that Storace would have disregarded transfer of ownership by means of compensated engagement as well. The opposite is true: Storace picks up on this theme by strongly affirming that situation to be applicable to the co-author of his song, King’s Theatre’s house poet Carlo Badini:

“[Badini] was then under some contract or agreement for that purpose made between him and the said Mr. Gallini at some yearly Salary or another adequate Compensation engaged to write and compose all additions with respect to words and Language which may be deemed necessary for any opera or entertainment”.<sup>135</sup>

Badini composed the words “which thereupon as this Defendant believes became the property of the Managers and proprietors of the said opera House”.<sup>136</sup> The catch of this story is, that Longman & Broderip have purchased the copyright to the words from Badini directly. Storace flips their own argument against them:

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<sup>133</sup> *Response* of Stephen Storace, 17 April 1788. GB-Lpro, C 12/1703/11.

<sup>134</sup> *IBID.* Several statements of the pleadings are represented by paraphrasing. Where paraphrasing is used, it is because there has not been enough time available at the archive to fully transcribe each manuscript.

<sup>135</sup> *IBID.*

<sup>136</sup> *IBID.*

“And this Defendant further saith he verily believes that the Complaints did not purchase the words of the aforesaid song in case they have purchased the same from the said Signor Badini [...] This Defendant humbly insists that Signor Badini has no right or title whatsoever to sell or dispose of the words for the said air or song they being the property of the manager”.<sup>137</sup>

Storace tries to muddy the waters regarding the property to the words. His own claim rests on the fact that the manager, who in his eyes was the true proprietor, permitted him to print it. Storace’s argumentation on this point has some vulnerabilities. For one, a case could be made that the copyright of the words would also have reached the publishers by the route of the manager bestowing the rights to the copyist – assuming that the private deal concerned musical as well as literary copyrights, which would be reasonable. This would only mean that the transaction with Badini was superfluous, without diminishing the publishers’ claim to the copyright. If that is accepted, then Storace may find himself in a situation where the fact that a previous owner (here: Gallini) had agreed to tolerate his use of the words would be meaningless. Notably, this is the exact same logic Storace had used, just transposed one step further down the chain of transmission.

More importantly though, Badini’s situation is utilized to delineate Storace’s position in contrast to it. This point has previously been understood as a mistake on Storace part: “the admission that Badini’s words were the property of the opera-house undermined his claim to ownership.”<sup>138</sup> But in fact, Storace uses it because he argues that the same does not apply to him: Unlike the officially employed poet, Storace did not receive any compensation for the act of composing the substitute aria in question. In his view, he – unlike Badini – should thus be able to retain his right to the aria. The following quote summarizes Storace’s stance, which explicitly references the concept of ‘lending’/‘borrowing’, as opposed to ‘disposing’/‘owning’: “this defendant further saith that he only *lent* the same for that purpose and would not upon any Consideration allow or permit the same to be printed published vended or otherwise disposed of without his consent”.<sup>139</sup> The idea is thus, that the song was only intended to be used by the opera house in a way in which no actual transfer of property was to take place. He also importantly highlights that he did not authorize his sister to dispose of the aria’s copyright in any way either. In his mind, he merely allowed his sister and by extension, the King’s Theatre as an institution, to make use of, or ‘borrow’ the product of his work, in much the same way as

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<sup>137</sup> *Response of Stephen Storace*, 17 April 1788. GB-Lpro, C 12/1703/11.

<sup>138</sup> MILHOUS et al., 1995, Vol. 1, p. 391.

<sup>139</sup> *Response of Stephen Storace*, 17 April 1788. GB-Lpro, C 12/1703/11.

he was allowed to use the poets words while printing it, similarly without any claim to exclusive ownership being necessitated by that use.<sup>140</sup>

The argumentation thus reveals that Storace was arguing from a position that on one hand calls into question the legality of the King's Theatre's claim to music that has been imported from authors not employed or compensated by the manager, while on the other hand recognizing the potential for contractual relationships which cause an author to lose all rights to his work, as exemplified by Badini. This entire line of argumentation is evidence that Stephen Storace was not at that point in time acting in the role of a house composer of the King's Theatre, as is often erroneously suggested in the literature.<sup>141</sup>

### ***Regarding Stephen Storace's employment status in 1787-88***

This point deserves some elaboration. On Storace's employment status depends whether the case is a struggle of a house composer against his employer, or an independent composer against the opera house. He is considered to have been joint musical director in 1787 due to the following evidence: The production of Giovanni Paisiello's *Gli schiavi per amore* (premiered on 24 April 1787) is credited as being "under the direction of Mr. Storace"<sup>142</sup> and an Italian opera by Storace called *La cameriera astuta* was performed later in the season, premiering on 4 March 1788.<sup>143</sup> Gallini also once justified payments to Storace in the following way:

"Signor Storace composed two pasticcios for which he [...] was paid 25 guineas each and he brought over some Music from Germany for which he was [...] paid ten guineas [...] Signor Storace well deserved what he so received [...] another composer [Mazzinghi or Gresnick] was also employed and paid for composing at the same time with Signor Storace but [...] Signor Storaces Music [...] [was] much admired and repaid the price paid for it."<sup>144</sup>

This evidence proves that Storace did carry out work for the Theatre at the time, but it is not clear whether he did so from a full employment as a second house composer or if he was only commissioned for specific tasks. The wording of the manager, which enumerates certain tasks and their respective payments, seems to imply the latter. Further, it is possible to argue backwards from the pleadings: Storace's entire argumentation, how he contrasts his authorial rights to the those of the house librettist and how he emphasizes having received no payment for the composition, would be entirely futile, if he was under a contract that gave the King's

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<sup>140</sup> IBID.

<sup>141</sup> BURDEN, 2017, p. 229: "The aria had been written for the Opera House by the house composer".

<sup>142</sup> *Gli schiavi per amore*, Libretto, London 1787, URL: <http://corago.unibo.it/libretto/DRT0038819> (28.9.2020).

<sup>143</sup> JANE GIRDHAM, Art. "Storace, Stephen", in: *Grove Music Online* (2001), URL:

<https://www.oxfordmusiconline.com/grovemusic/view/10.1093/gmo/9781561592630.001.0001/omo-9781561592630-e-0000041410> (28.9.2020).

<sup>144</sup> Giovanni Gallini, in: GB-Lpro, C 206/201, 21 July 1789, cit. after MILHOUS et al., 1995, p. 362.

Theatre rights to all compositions he produced for it. Thus, for the purposes of reconstructing the lawsuit, it is justified to confidently assume Storace to be acting as an independent agent, not from the position of a (second) house composer.

#### **1.4. Pleadings 3: Storace’s “follow up suit” and issues of procedural reconstruction**

The third set of pleadings<sup>145</sup> features what one might call a “follow up suit” issued by Storace one year after the original bill. In this bill, signed on 14 February 1789, Stephen Storace refers to a judgement in his favor, made by the King’s Bench “after Michaelians Term last”<sup>146</sup>. His bill of complaint charged that the defendants have allegedly not respected the Court’s decision and continued selling the aria.<sup>147</sup> Longman & Broderip’s response issued on 10 April 1789 confirmed that there has been a „special jury appointed for that purpose in Order to establish his [Storace’s] title” and they denied having sold any more copies after Storace’s property had been established. They did however use the opportunity to boldly state that they still believe that they would have the right to print the song and that the jury had not given enough consideration to their defense.<sup>148</sup>

The follow up suit represents Storace’s attempt to press the Court of Chancery to convert the special juries’ opinion into an actual injunction. His expressed fears and suspicions function as a way of adding urgency to a much-prolonged chancery procedure. In a similar manner, the defendants’ open dismissal for the King’s Bench’s opinion would read as a completely pointless act of spite against the empire’s highest legal institution, if it was not for the fact these statements are part of an ongoing case in the Chancery, which still could be swayed so as to perhaps give less weight to that opinion. Considering the King’s Bench hearing as an intermediary, rather than a concluding event, means that Storace’s title to his aria was confirmed by an authority, but not yet executed in a legally binding manner. Only as late as 15 July 1789 was Storace awarded an injunction from the Chancery Court.<sup>149</sup>

Special jury trials in front of King’s Bench have been used when the Chancery Courts application of equity hinged on questions about the interpretation of common law – such as the *Statute of Anne* in copyright cases – that were thus referred to Courts of common law like the King’s Bench. The use of special juries to clarify and codify principles of commercial practice

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<sup>145</sup> *Bill of Complaint* by Stephen Storace, 14 February 1789. GB-Lpro, C 12/623/35.

<sup>146</sup> IBID.

<sup>147</sup> IBID. Considering the timing, it is possible that Storace was now referring to the English version of the song, which has also been reprinted by Longman & Broderip, see note 32.

<sup>148</sup> *Response* of James Longman & Francis Broderip, 10 April 1789. GB-Lpro, C 12/623/35.

<sup>149</sup> C 33/472, Pt. 2, fols. 607-608, 15 July 1789, see PRICE, 1991, p. 27.

into common law has been initiated by Lord Mansfield in the 1750s and carried on by his successors.<sup>150</sup> Such special jury trials have been criticized for slowing down the proceedings and made them more costly for the losing party if they touched about issues which have not been authoritatively dealt with before.<sup>151</sup> Questions of musical copyright were, as Small points out, of such quality and remote from juries' usual tasks.<sup>152</sup> The arguments of *Storace* revolve so closely around the issue the copyright statute relates to a complex set of very specific aspects of common practice of both the opera house and the music printing business, that there was no possibility for a Court of Chancery to fully negotiate them on its own. For that reason, *Storace v. Longman* as well as *Skillern v. Longman* featured, despite originating in Chancery, such a special jury trial in front of King's Bench in their proceedings.

### 1.5. Judgement and discussion

The King's Bench judgement was later referenced in *Clementi v. Golding* (1809) as "Lord Kenyon said, [...] that the statute vests the property in the author; and that no such private regulation could interfere with the public right."<sup>153</sup> The King's Bench thus upheld Storace's authorial ownership over the customary agreements of the King's Theatre; a quite significant affirmation of composers' rights indeed. "The judge established that a composer retained ownership of his composition until he chose to dispose of it himself."<sup>154</sup> Meanwhile, the Court had corroborated the common practice that composers can publish or sell their arias along with the librettist's words: Longman & Broderip lawfully owned the copyright to the words, but that did not entitle them to print Storace's music. Storace won the Chancery case in July 1789 and was awarded the injunction against Longman, a token compensation and legal costs.<sup>155</sup>

The analysis of the pleadings has shown that previous accounts have missed some argumentative, most importantly Storace's arguments regarding contracts. Milhous et al. have considered this a "preliminary consideration",<sup>156</sup> while it seems to be crucial to the entire case. Instead, the literature has emphasized questions such as "does an aria introduced into a pre-existing work become a part of that work, or does it remain a discrete object?"<sup>157</sup> or whether

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<sup>150</sup> SMALL, 2011, p. 328 also explains the legal basis of the practice.

<sup>151</sup> See RICHARD BOOTE, *An historical treatise of an action or suit at law*, London 1791, p. 112f.

<sup>152</sup> SMALL, 2011, p. 328f. For that reason, the case of *Pyle v. Falkner* was adjourned in 1773 by the plaintiff's request, until the question was dealt with in a case "of a similar nature".

<sup>153</sup> *Clementi and Others v. Golding and Others* (1809), 2 Camp. 25, English Reports, Vol. 170, p. 1070.

<sup>154</sup> GIRDHAM, 1988, p. 166.

<sup>155</sup> NEX, 2011, p. 27; GIRDHAM, 1988, p. 166.

<sup>156</sup> MILHOUS et al., 1995, Vol 1, p. 392.

<sup>157</sup> *IBID.*

Longman taunted Storace by saying that the music has been written before the lyrics, à la Antonio Salieri's *Prima la musica e poi le parole* (1786).<sup>158</sup> The archival evidence does in no way substantiate that these questions carry any actual relevance to the case: The copyist does not have to worry about the aria's relation to the metaphysical notion of 'the work', he merely needs it to be part of the production to get his hands on the material score. His affidavit also explicitly emphasized performance as the point of ownership transmission, not material insertion.<sup>159</sup> While the more general claims of the previous literature have been confirmed by this reading, it seems as though a 'musicological bias' has permeated the discussion of the lawsuit, looking for "fundamental questions about the nature of Italian opera itself"<sup>160</sup> and obscure musical references instead of understanding the logic of contractual agreements. As was shown, Stephen Storace was not in fact acting as the house composer of the King's Theatre while composing the aria. The situation may have been very different if Storace had himself taken part in a contractual agreement which would relocate the property rights to his work. Through the second copyright case, we may be able to further explore the hypothesis that this kind of private agreement would have been valid, while a 'third party contract' would not.

## **2. Skillern & Goulding v. Longman & Broderip (1792-1794)**

### **2.1. Introduction: authorship and ownership**

Though based on a similar constellation, the *Skillern v. Longman* case has posed a much bigger problem to scholarship and received less attention overall. While Storace's authorship was unquestioned, the *Skillern* case included both the reuse, or 'borrowing' of a melody originally written by a foreign composer, as well seemingly complicated rearrangement process involving multiple people, collaboratively making improvements and changes to a sketch.<sup>161</sup> The most current full account of the case, from the volume *The Pantheon Opera and Its Aftermath 1789-1795*<sup>162</sup> frames the legal case itself under the same narrative as the earlier papers did, namely that the arrangement of Paisiello's music "had evidently shifted copyright to the person responsible for the adaptation – the question was whether that person was Mara or

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<sup>158</sup> IBID.

<sup>159</sup> BURDEN, 2017, p. 229: "such a transfer seems restricted to those occasions on which an act of copying or official insertion took place"; MILHOUS et al., 2001, Vol. 2, p. 459: "As long as the music was not inserted into the opera-house score, she retained a hold on the aria".

<sup>160</sup> MILHOUS et al., 1995, Vol 1, p. 390.

<sup>161</sup> MILHOUS et al., 2001, Vol. 2, pp. 458, 491.

<sup>162</sup> IBID., pp. 458-460, 486-493.



Mazzinghi.”<sup>163</sup> They also needed to admit that the reasoning behind the judgement seems rather “tenuous”:

“Mara, the judge declared, had created the original adaptation and could thus claim authorship of the published version; her rights remained unaffected by whatever minor improvements the house composer had made. [...] In transforming Paisiello’s duet she had fashioned a new aria and become a composer in her own right. [...] However tenuous the basis of this judgement may seem to a modern reader, [...]”<sup>164</sup>

It is indeed plausible that the Court had significant difficulties in dealing with this matter due to the lack of precedent with musical matters and the peculiar constellations of cooperation that they uniquely entail. However, the alleged tenuousness of the reasoning may also hint at the possibility that scholarship has not yet found the appropriate way to interpret the case. In other words, there may be a misalignment between what scholars and what the historical agents themselves deemed relevant to the case.

The premature equation of authorship and ownership is a frequent cause of such situations in scholarship. This has been convincingly demonstrated for the almost contemporaneous case of *Forster v. Longman* (1788-92), concerning Haydn’s sale of piano trios by Ignaz Pleyel. Scholarship was mystified by the fact that Joseph Haydn’s testimony apparently admitted to plagiarizing his student’s work, without detriment to the plaintiffs case.<sup>165</sup> Fisher convincingly explained that Haydn legally ‘owned’ them due to them being ‘authored’ by Pleyel during his apprenticeship with the former.

“The real issue in Forster’s lawsuit [...] was not Pleyel’s authorship but Haydn’s ownership of the copyright. [...] In other words, the most sensational aspect of the case today was barely an issue at the time of the lawsuit. This reflects a mistake that is commonly made by historians and biographers in their discussion of copyright cases, that is, the confusion between authorship and ownership.”<sup>166</sup>

We indeed must be mindful of the difference between the musicological question of authorship and the legal question of ownership, and it might very well be that this problem also deeply permeates previous readings of the cases, and may obstruct our view from a simpler, more consistent explanation for the sources. In a very similar manner, Price’s discussion of *Skillern v. Longman* focusses largely on Mara’s “plagiarism”, and he appears to be bewildered and outraged that the Court did not take this fact into account.<sup>167</sup> We should keep in mind “that we should not judge actions that were permissible and legal in the past by the standards of our day

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<sup>163</sup> MILHOUS et al., 2001, Vol. 2, p. 460

<sup>164</sup> IBID.

<sup>165</sup> ROGER S. FISHER, “‘Say it ain’t so, Joe’: Haydn, Pleyel and Copyright in Music in the Late 18th Century”, in: *Intellectual Property Law Journal* 23/1 (2010), pp. 1-35, here: pp. 2, 9-11.

<sup>166</sup> FISHER, 2010, p. 19.

<sup>167</sup> PRICE, 1991, p. 30.

(or indeed to confuse the standards of our day with universal moral principles).”<sup>168</sup> If the goal is to faithfully reconstruct the legal conditions and cultural preconceptions that surrounded these legal disputes, we need a keen awareness of how our modern concepts of intellectual property and their influence on aesthetics and economics may direct our focus to the wrong aspects.

In light of this issue, the following reevaluation will not start from the vastness of claims archived in pleadings and depositions, which easily lends itself to selective reading, but instead methodologically limit itself to the reporting that the London *Times* dedicated to the case. *The Times*’ “Law Reports” can be treated as containing largely reliable information<sup>169</sup> and for this particular case, we have the privilege of an unusually extensive reporting, even featuring quotes and details from within the courtroom. This source is not exactly a new discovery, since it has already been cited in the Milhous et al. volume’s treatment of the case. In that publication, it was treated as supplementary material “The substance of the judgement is drawn from the legal report in *The Times*, 13 Feb. 1794, we have been unable to trace the original document in the Public Record Office.”<sup>170</sup> The novelty of the present approach lies in assigning this source a central standing, allowing it to inform the most general level of the interpretation, functioning as a first test for the currently standing theory. These texts will be read closely under the general assumption that what was written follows a somewhat consistent legal logic and would have made sense to a lawyer at that time, who would have read these “Law Reports” to quickly gain insight on the judge’s reasoning on the key legal questions of a case. The goal of this hermeneutic process is precisely to bring light to the questions that the case attempted to find an answer to. Once such an understanding is reached, it can be enhanced and further tested by an analysis of the pleadings and depositions.

## **2.2. Law Reports in the Times**

### **Law Report 1 – 18 December 1793**

*The Times* dedicated two “Law Reports” to the case,<sup>171</sup> one dated 18 December 1793 and a much more extensive one spanning two entire sections, starting on 10 and concluding on 13 February 1794. It is remarkable that such large public attention was dedicated to this case. The first report from December 1793 was already relatively lengthy, taking as much space in the

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<sup>168</sup> FISHER, 2010, p. 34.

<sup>169</sup> See JAMES OLDHAM, “Law Reporting in the London Newspapers, 1756-1786”, in: *The American Journal of Legal History* 31/3 (1987), pp. 177-206, here: p. 177.

<sup>170</sup> MILHOUS et al., 2001, Vol. 2, p. 460, note nr. 3.

<sup>171</sup> *The Times* (London, England), Issue 2862, Wednesday, 18 December 1793, p. 3; Issue 2908, Monday, 10 February 1794, p. 4; Issue 2911, Thursday, 13 February 1794, p. 4.

column as the three other non-musical cases contained in the report combined, part of whose discussion was postponed to later issues as a result: “[We shall give a fuller statement of these causes the first opportunity.]”<sup>172</sup> This report on *Skillern v. Longman* first relates the circumstances of the case and the plaintiffs’ desire to recover the penalty and in the second half outlines the critical points. The first point was the plaintiffs’ claim, which seems to revolve around how the nature of the contract determines the issue of copyright:

“Mr. O’Reilly by his engagement with Madam Mara and that gentleman [Mazzinghi], secured himself to all the property in any musical composition that should arise in consequence of that engagement: and as this song constituted a part of that property, the plaintiffs, as assignees of Mr. O’Reilly [sic], laid claim to it.”<sup>173</sup>

It then goes on to elaborate the question of ‘new music’ on which the case apparently depended. It also credits the composition of the main accompaniment not to Madam, but to Mr. Mara:

“It appeared in evidence, that the melody of the first part of this song was composed by Signior *Paesiello*, and the accompaniments were the composition of Mr. [sic!] Mara. Madam Mara gave this Song in this state to Mazzinghi, who altered some of the harp accompaniments; and the question was, Whether the alterations so made by Mazzinghi were such as to make this a piece of new music, and to entitle the plaintiffs to maintain an action against the defendants for publishing it? On hearing the whole of the case the Court and Jury were of [sic] opinion, that the plaintiffs could not recover in this action.”<sup>174</sup>

We can fortunately unravel these aspects of authorship, originality and contract law in the more extensive second report, published about two months later.

## **Law Report 2 – 10 and 13 February 1794**

The reporting from February 1794 fleshes out the case with direct and indirect quotations of Court proceedings and gives more detail to the legal arguments and considerations. It begins with an elaborate account of the rhetoric brought forward by the plaintiffs’ counsel Mr. Erskine: He opens by considering the concept of music as property, because “the Gentlemen of the Jury might be apt to imagine they were assembled there to decide on what may be thought a fugitive property.”<sup>175</sup> He motivates the relevance of the aria in question for being a “song of Madam Mara’s” and emphasizes the function of notation as a form of permanent, commercially relevant manifestation: “the written score; which, after the sound, that was transitory, was lost, being

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<sup>172</sup> “Law Report”, in: *The Times*, 18 December 1793, p. 3.

<sup>173</sup> IBID.

<sup>174</sup> IBID.

<sup>175</sup> “Law Report”, in: *The Times*, 10 February 1794, p. 4.

recorded, the eye of the musician could communicate it to another [...]”. A reference to *Bach v. Longman* (1777) solidifies that music is ‘writing’ under the *Statute of Anne*.

This shows that the idea of an aria as an object of property was still quite a novel concept at the time. Due to lack of case law, the reference to *Bach v. Longman* will remain the only mention of a music related case in this report. From this general address, he transitions to the circumstances of the case by stating that O’Reilly “knew the value of musical composition” and thus engaged Mazzinghi and Mara with generous salaries. In return he “secured to himself all the property in any musical composition that should arise in consequence of that engagement.” The point being that the contract that Mara has consented to financially compensates her for surrendering the copyright of new music to the manager, so that after having received that “large sum of money [...] she was to recommend by her voice that musical composition which became Mr. O’Reilly’s property by virtue of his engagement with her.”<sup>176</sup>

### ***Originality***

Being certain of the validity of the contract, Mr. Erskine goes on to argue for the composition’s newness, which apparently must be given for the piece to qualify as the manager’s property. He does so by making the point that nothing is ever truly original, thereby anticipating objections of the defendants:

“by the same rule it might be said that neither Pope, Swift, nor Milton, were originals, since they talked about the sun, moon, and stars, all of which were to be found in Homer. [...] it was impossible at this day for any man to produce a work that could be called perfectly original. [...] This song was not Signior Pazziello’s [sic], in as much as the accompaniments were perfectly new. He should be glad to see a song in which there was nor a crotched or a quaver which was to be found in some other song.”<sup>177</sup>

While clearing up the first basic facts of the case, Lord Kenyon obviously accepts the presuppositions of the plaintiff’s case. It becomes abundantly clear in multiple statements that the Court takes the theatre’s contracts very seriously, so we may discard the view that such contract had been completely “illegal”<sup>178</sup> in the aftermath of *Storace v. Longman*. The issue of originality does however present some challenge to the Court. The concluding part of the law report starts with the Lord of the Rolls contemplating the concept of originality in music:

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<sup>176</sup> IBID.

<sup>177</sup> IBID.

<sup>178</sup> PRICE, 1989, p. 94.

“Lord Kenyon – The question here is, Whether this is fairly an original work? The eight notes in music, which constitute the gamut are as much the property of every man as the alphabet is, as much as the mechanic powers, or the nine digits and cypher in arithmetic. Human genius must be exerted in producing various combinations and arrangements of these simple elements before any thing can arise that is useful or entertaining to mankind, and of course, before there can be any thing like exclusive property. [...]”<sup>179</sup>

This demonstrates that Kenyon was assuming a Lockean view of intellectual property, wherein the basic elements of music are understood to be a common property out of which an exclusive property may be formed through mental labor.<sup>180</sup> This however needs to be qualified by the degree to which considerable effort, or “genius” has been exerted. The term “genius” in this context is to be understood in relation to labor as it was used in contemporary pamphlets, such as William Enfield’s *Observations on Literary Property* (London 1774), as “not the natural organic genius that would later be celebrated by Romantic theory, but the mechanical skill of putting together a new sequence of ideas gleaned from ‘the continued exertion of mental abilities’.”<sup>181</sup> Originality enters as a qualification for property: The question is not *who* authored and thus owns the property, but if the arrangement is sufficiently different from Paisiello’s original to become someone’s property in the first place. The case now revolves around the concept of “New Music”, which of course links back to the contracts.

Taken broadly, “New Music” may include any piece of music that gets added to a production. Then, all *arie di baule* would automatically become property of the house by virtue of being new in relation to the music already part of the work. But this was what has been claimed in *Storace v. Longman* and was denied by the Court. We must therefore follow a narrower interpretation that takes the problem of authorship into account, namely, that the contractual clause, which is cited as “any new musical composition that should arise in consequence of that engagement”,<sup>182</sup> implies only original compositions created by employees for the theatre. The choice of the word “arise” implies a novel creation<sup>183</sup> and the “in consequence of that engagement” a direct relationship to the labor arrangement. This interpretation appears to be the most consistent with the evidence.

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<sup>179</sup> “Law Report”, in: *The Times*, 13 February 1794, p. 4. As all quotes from here on unless noted otherwise.

<sup>180</sup> See chapter II.2.1., p. 15.

<sup>181</sup> BARRON, ANNE: “Copyright Law’s Musical Work”, in: *Social & Legal Studies* 15/1 (2006), pp. 101-127, here: p. 111.

<sup>182</sup> In the “Law Reports” of *The Times*, 18 December 1793 and 10 February 1794, the same wording is used.

<sup>183</sup> Kenyon also uses the phrase “new music that should be produced”, see “Law Report”, in: *The Times*, 13 February 1794.

## *Authorship*

In the report, we can clearly observe that the judge and the plaintiffs' counsel treat Mazzinghi and Mara identically, because they have the same contractual relationship to the house.

“Mr. Erskine – ‘We will show that Madam Mara is the original author of the harp accompaniments.’

Lord Kenyon – ‘That is another thing. You have a right to take her and Mr. Mazzinghi together, as they both agreed with the manager to let him have all the new music that should be produced.’”

If the plaintiffs can also “claim through her [Mara]”, authorship cannot be the central issue. It seems to be erroneous to assume that the plaintiffs argue for Mazzinghi's authorship while the defendants would claim Mara's, implying that whoever purchased the composition from the actual author is the true proprietor of the aria. Instead, if the plaintiffs can show that any combination of Mara's and Mazzinghi's labor has produced the accompaniment in question and that it is original enough to constitute a new composition, they would win. If this is correct, Mara would be well advised to ‘not’ call attention to her own authorship if she wants to help the party that she has sold the aria to. Because her status as author would, instead of securing ownership, lead to her automatically losing her status as owner over the composition due to her contract. This only seemingly paradoxical situation is consistent with the logic of the statute itself: The author is defined as the first owner of the copyright, allowing him or her to freely sell it to another.<sup>184</sup> If Mara were not the author, she would never have had the copyright in the first place, and thus could not have relinquished it to the Theatre. In any case, there would be no scenario in which claiming authorship would help her. Thus, at least in the Law Report, she does not make that effort, and instead claims in her final testimony that the harp accompaniment was created by her husband, and only slightly altered by Mazzinghi.

The defendants' lawyer's few reported statements also follow the strategy of proving that someone outside of the theatre is the main author of the aria: Mr. Mingay speculates that Mazzinghi may have copied from another composer, and attempts to claim “Paesiello's music, which the defendants have sold for many years”, taking the side that the arrangement does not constitute a new composition. In fact, it seems to have been one of the major advantages of the defendants that Mara's authorship did not seem to have significantly entered the discussion. The plaintiffs were proposing to prove it, but the accompaniment only gets described as something that has been ‘delivered’ by Madam Mara. This leads Kenyon to doubt their case:

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<sup>184</sup> The Statute protects the „authors or purchasers”, see KRETSCHMER/KAWOHL, 2004, p. 26.

“One of my [Lord Kenyon] difficulties with regard to the plaintiff’s case is, that they claim the whole accompaniments for the harp, whereas Mr. Mazinghi has said, that there was a harp accompaniment to the score delivered to him by Madam Mara, and that he only altered a part of that accompaniment. In patents, if they go beyond the part invented, they are absolutely void. No man shall be permitted to hold a terror over the heads of others not to do what they have a right to do.”<sup>185</sup>

### *Accompaniments and Mazinghi’s contribution*

This aspect put the plaintiffs in a difficult position: Now they had to argue that Mazinghi’s alterations were by themselves enough to be qualified as an original composition. And the Court was already quite skeptical about new accompaniments being sufficient in general, disagreeing with the opinion brought forward by a “Professor of Music”:

“[John Calcott] perceived, that if he were to take the air of “God save the King,” and to publish it with new accompaniments; that would be his property.

Lord Kenyon – ‘I am not at all of that opinion. The alteration would not be sufficient to entitle it to be called a new piece of music. Every composer of music wishes to give a right of property as extensive as he can.’”<sup>186</sup>

The case features some interesting discussion about the nature of accompaniments as having elements of both craft and creativity, or, as Mara had put it: “At the same time Accompaniments in general were the effect of a mechanical operation, and had more or less merit according to the mind and genius of the person who wrote them.”<sup>187</sup> The implication seems to be that if accompaniments were derived from melodies by the application of a basic mechanical process, it would not be fair for them to constitute exclusive property of a single individual. The labor applied would need to qualify as being at least partly ‘creative’ in nature. This mirrors Rose’s analysis of the literary discourse of authorship: “Both in the literary-property debates and in Young’s *Conjectures* the task was to differentiate true authorship from mechanical invention and to mystify and valorize the former.”<sup>188</sup> The plaintiff’s main argument was based on the analogy between accompaniments to a preexisting melody and annotations written to a classic text. The latter was accepted by Kenyon as a type of textual relationship that relates to a pre-text while still being original, so the annotator “will certainly have a right to his notes.” But Mara’s testimony relegated the house composer’s changes to be mere application of craft.

Because the judge believed the testimony brought forward by Mara, he ruled in favor of the defendants. An interesting procedural side note is his appeal to a Mr. Bearcroft: “will you please

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<sup>185</sup> “Law Report”, in: *The Times*, 13 February 1794, p. 4.

<sup>186</sup> IBID.

<sup>187</sup> IBID.

<sup>188</sup> ROSE, 1993, p. 119.

relieve me from difficulties and adjust this business between the parties? You are the only one in the Court who can do it.” Adding, after Bearcroft raised procedural concerns, “I feel my incompetency in the strongest degree.”<sup>189</sup> Bearcroft likely had a musical background.<sup>190</sup> The reported judgement ends with reference to him:

“Lord Kenyon – I confess the very strong bent of my mind is, that this cannot be called an original composition. According to the evidence of Madame Mara, there have been only some small alterations made in the original accompaniments. And I have a whisper from my friend (Mr. Bearcroft) which is of more use to me than all the knowledge I should ever acquire on the subject. Plaintiffs nonsuited.”<sup>191</sup>

This little twist at the end speaks to how difficult it was for the Court to decide on musical matters of this sort. Since the plaintiffs were ruled nonsuited in their claim of exclusive property, both editions had to continue to coexist on the market.

The freely available sources examined here tell a drastically different story from what has been previously drawn from this case: Mara was not awarded authorial copyright for having adapted the aria. It was decided that the whole “cannot be called an original composition” and Mara instead successfully convinced the Court that neither she nor Mazzinghi had claim to authorial rights over the adaptation. If Mara had authored the aria herself, her contract would have caused her to automatically surrender her ownership over the composition to her contractor and ultimately entitled the plaintiffs. We are also invited to reconsider the case as an interesting source for the treatment of derivative works, revising the following conclusion

“The lawsuit illustrates an important aspect of contemporary thinking on musical composition in general and opera in particular. Adapting existing works did not depreciate their value and was in fact considered a genuine creative act.”<sup>192</sup>

In fact, the considerations given by the legal agents in the report do not show any signs of a culture that assigns work status and protection to any minor adaptation. Instead, they appear to be rather mindful while trying to qualify the conditions “before there can be any thing like exclusive property.”<sup>193</sup> In the coming chapters, this new perspective on *Skillern v. Longman* will be tested, supplemented and improved against all evidence found in The National Archives. Unless the *Times*’ reporting was completely faulty, it would not be surprising if many

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<sup>189</sup> “Law Report”, in: *The Times*, 13 February 1794, p. 4.

<sup>190</sup> Mr. Bearcroft is Edward Bearcroft, King’s Counsel. His name can also be found on the subscription list for Charles Burney’s *A General History of Music* (p. xii) as “Edward Bearcroft, Esq. Lincoln’s Inn.”, indicating at least a casual interest for music.

<sup>191</sup> “Law Report”, in: *The Times*, 13 February 1794, p. 4.

<sup>192</sup> MILHOUS et al., Vol. 2, 2001, p. 460.

<sup>193</sup> See above.



previously confusing elements would appear to make more sense in light of the precepts here proposed.

### 2.3. Pleadings

#### Bill of Complaint

Thomas Skillern's bill from 21 May 1792 is argumentatively based on a series of contractual agreements: First, it is argued that both house composer Mazzinghi and soprano Mara signed a contract with the manager of the opera house. Both employment contracts contained a clause which made “the Copy Rights of all such [added above: new] music”<sup>194</sup> the property of the manager. The plaintiffs go so far as to include both newly composed and inserted compositions:

„in case the said Gertrude Elisabeth Mara should at any time during the said season introduce or Sing any New Music in any Performance at the said Opera House whether of her own composition or the composition of any other the copyright of all such productions should of the time of the same being respectively brought forward or sung be the sole right and property of the said Robert Bray O`Reilly”.<sup>195</sup>

This thus represents the first part of the argumentation, essentially stating that such contracts exist and would apply to this specific situation. This is the very basis for the plaintiffs’ case, establishing their right to the aria.

The beginning of the “charging part” of the bill begins with the words “But now so may it please your Lordship.”<sup>196</sup> In this part, the charge is made that Longman and Broderip produced a rival edition of the piece of music without the plaintiff’s approval and that „your orators have been thereby injured and damnified of the amount of several Hundred Pounds”. It is in this context, that questions of musical or literary authorship enter the plaintiff’s argumentation: They are preemptively brought up as potential arguments for the plaintiff’s side. They assume that Longman and Broderip operate under the belief that “[...] [the song] did in some manner belong to and was the property of the said Gertrude Elisabeth Mara and that she in some manner transferred the same to them the said James Longman and Francis Broderip” This claim gets contradicted by positing the sole authorship of the English lyrics on Peter Pindar, and the most significant share of musical authorship on the house composer:

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<sup>194</sup> *Bill of Complaint* by Thomas Skillern, 21 May 1792, Amended by Order dated 24 Nov 1792. GB-Lpro, C 12/185/34.

<sup>195</sup> IBID.

<sup>196</sup> TONY TROWLES, “Eighteenth-Century Exchequer Records as a Genealogical Source“, in: *Genealogists' Magazine* 25/3 (1995), pp. 93-98, URL: <https://archives.history.ac.uk/cmh/exchequer.html> (29.9.2020).

“whereas as your Orators charge that the said John Wolcot otherwise Peter Pindar was the author of the said English song and that the said Signor Mazzinghi during the aforesaid season was the author of and did compose diverse parts of the Music of such song [...] and that such Song or such Music never did in any manner become the property of the said Gertrude Elisabeth Mara”.<sup>197</sup>

Thus, the plaintiff’s negated the possibility of the singer’s ownership of the aria. This charge also carried the implication, that the defendants may hold Mara to be the author of the aria. This entire passage seems to increase the credibility of the existing literature’s interpretation of the case, in which Longman & Broderip argue just what Skillern’s charge assumes them to, by crediting Mara as an author. One must, however, consider the actual responses of the defendants.

## Responses

James Longman and Francis Broderip have chosen to respond in two separate responses. Francis Broderip’s response is dated to 31 July 1792, thus a little more than two months after the bill. James Longman’s response was signed shortly thereafter on 3 August.<sup>198</sup> Both responses overlap for the most part in terms of argumentative content. For one thing, they both start by reacting to the argumentation that the plaintiff’s bill has attributed to them in terms of authorship.

„this Defendant advised that notwithstanding what is alleged by the said Bill to the contrary that such part of the said music as was composed by the said John Baptist and Gertrude Elisabeth Mara respectively and so printed by or for this Defendant and the said Francis Broderip as aforesaid was and continued to be the property of the said John Baptist Mara and Gertrude Elisabeth Mara and that the Complainants never acquired any right to or became exclusively entitled to print and sell the same and with respect to such part of the said Music as was composed by the said Signor Paesiello this Defendant doth not know or believe that he ever granted his property therein to either the said John Baptist or Gertrude Elisabeth Mara or the Complainants in any manner whatsoever”.<sup>199</sup>

Longman considers Paesiello to be the main author of the music, who did not transfer any rights to any of the people involved. This is the main thrust of the defendants’ arguments. Further, it does get mentioned, that John Baptist and Gertrude Elisabeth Mara did compose parts of the music. The former part of the quote is by far the strongest indication for the interpretation that the defendants were trying to base an ownership claim on the notion of Mara creating a new version. It is a premature, however, to assume that they were claiming Mara’s authorship *over*

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<sup>197</sup> *Bill of Complaint* by Thomas Skillern, 21 May 1792, Amended by Order dated 24 Nov 1792. GB-Lpro, C 12/185/34.

<sup>198</sup> MILHOUS et al., Vol. 2, 2001, p. 758.

<sup>199</sup> *Response* of James Longman, 3 Aug 1792. GB-Lpro, C 12/185/34.

Paisiello's as a legal strategy. Importantly, Longman and Broderip never bothered to lay claim to the work of Mara and her husband, although they did credit them as contributors in their responses: "And this Defendant further saith he (or to his knowledge) the said Francis Broderip his partner never pretended to have any other right or title to print and publish the said Song and Music."<sup>200</sup> Unlike in *Storace*, they did not go on the offensive by countersuing. This is possibly because they were aware that the argument would be tenuous considering Mara also being under contract. All that their argumentation on that point is supposed to highlight, is that "that the Complainants never acquired any right to or became exclusively entitled to print and sell the same." It is thus a purely defensive point, not a counterclaim. What this point accomplishes is that the complexity of the authorship situation is highlighted, thereby undermining the plaintiffs attempt to claim Mazzinghi as a musical author. Broderip denied Mazzinghi's authorship even more directly:

"[Deponent] doth not know or believe that Signor Mazzinghi composed the same or any part of or introduced his own music into the same for this Def hath been informed and believes that the whole of the Music of the said Song was Composed partly by Signor Paesiello and partly by the said Gertrude Elisabeth Mara".<sup>201</sup>

Again, Mara is explicitly credited as a co-author, even in direct opposition to Mazzinghi, but no argumentative claim to her 'version' follows from it. The defendants also addressed the other, and perhaps more essential part of the bill's line of argumentation: the idea that the series of contracts cited gives the opera house rights to all new music introduced by their employees. This is a claim that Longman & Broderip have unsuccessfully tried to argue in their case against *Storace*. Now, they take almost the same position which defeated them:

"and this Defendant doth not know or believe that Signor Paesiello ever granted to the Complainants or either of them any permission to publish any part of the music of the said Song and this Defendant submits that the music so composed as aforesaid cannot be affected by any such agreement as in the Bill suggested".<sup>202</sup>

This statement is based on the understanding, that the theatre's claim to music written by a composer external to the theatre could not be affected by the contracts and private agreements within the theatre. However, the argumentation focused upon a more specific aspect: the special case of arias inserted at benefit performances.

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<sup>200</sup> *Response* of James Longman, 3 Aug 1792. GB-Lpro, C 12/185/34.

<sup>201</sup> *Response* of Francis Broderip, 31 July 1792. GB-Lpro, C 12/185/34.

<sup>202</sup> *IBID.*

“and this Defendant hath been informed by the said Gertrude Elisabeth Mara that it was clearly understood between her and her husband John Baptist Mara and the said Robert Bray O’Reilly that her engagements at the said Pantheon Opera had not any thing to do with or any reference to any Song which she might introduce and sing at her benefit”.<sup>203</sup>

The special case of benefit performances adds an additional layer to Longman & Broderip’s defense. Meaning that it is not argued instead but rather in addition to their main line of argumentation, which is akin to the winning argument of *Storace*: that the Theatre’s contracts cannot secure exclusive property to an aria whose musical author, here Giovanni Paisiello, has never given the copyright to any of the relevant parties.

Longman & Broderip have had their ownership of literary copyright affirmed by the Court in *Storace v. Longman*, without helping them reach their desired outcome. In the *Skillern* case, the opposing side held the author’s receipt. Still, despite being a presumably less important and disadvantageous argumentative battleground, the defendants once again did not concede it. Without direct authorial support in hand, they argue „that the said John Walcott otherwise Peter Pindar esquire had given her [Mara] permission to do what she pleases with the words of the said English Song.”<sup>204</sup> Once again, this is a complicating factor for the plaintiff’s arguments, who now had to expend energy on investigating the arrangements between Mara and Peter Pindar. This all fits into what appears to be the overarching strategy behind the Defendant’s responses: Not aggressively making any counterclaims as in *Storace v. Longman*, but rather trying to meticulously bring up complicating factors and potential problems in the plaintiff’s argumentation.

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All in all, the pleadings make it understandable why the “Mara vs. Mazzinghi” interpretation originated, but a closer reading of the materials and the argumentative content reveals, that it needs to be understood in a more nuanced way. This kind of argumentation is preemptively addressed by the plaintiffs, but the defendants chose to pursue a different strategy. Their response, which consistently seeks to complicate the plaintiffs case, is much more consistent with the strategy visible in the *Times*’ report, namely that of trying to posit authorship in a composer outside of the Theatre’s contracts, than it is with trying to argue for a “new version”, to which Mara had “retained the rights.”<sup>205</sup> Still, it is factually correct that the defendants mentioned Elisabeth Mara as a co-author, which must be explained. The hypothesis that will be

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<sup>203</sup> *Response* of Francis Broderip, 31 July 1792. GB-Lpro, C 12/185/34.

<sup>204</sup> *IBID.*

<sup>205</sup> MILHOUS et al., 2001, Vol. 2, p. 758.

explored later on is that Mara's partly authorship was not stated as a strategy, but simply as a matter of fact.

#### 2.4. Interrogatories

The depositions in C 24/1964 include manuscripts which contain the "interrogatories", meaning the full set of questions to which the deponents were asked to respond. There is one set of questions for the plaintiffs and two for the defendants, because Johann Baptist and Elisabeth Mara received a separate set of questions on their cross examination. One "interrogatory" usually contains an array of questions designed to collect evidence pertaining to relevant parts of the arguments put forth in the pleadings. The plaintiffs interrogatories line up very neatly with what has been elaborated as their central argumentation in the previous chapter: Questions 2, 3, 4, and 7 have the sole purpose of confirming contracts, by asking deponents to identify certain documents handed out to them. Question 7 does the same with two documents, which turned out as being copyright entries at Stationer's Hall.<sup>206</sup> Only the remaining two questions, finally, concern musical (5) and literary (6) authorship, respectively.<sup>207</sup>

On the other side, the defendant's second question concentrated on musical authorship in a much more detailed way, focusing on the private rehearsal at Mara's home. It also indirectly asked for a comparison between musical scores. No deponent answered the third question, which concerned Stationer's Hall entries for the same scores. The fourth was a direct question regarding the Theatre's customs towards ownership of inserted arias at benefit nights specifically. The cross examination of the Mara couple, originally witnesses for the plaintiffs, has some overlap with these questions, as they also ask for a comparison of two pieces (1) and common practice for benefit nights (3). They also have some leading questions which concern Mara's understanding of her own contract (6) and whether or not they see reason why "Robert O'Reilly would not have considered himself to have an authoritative right to the music" (4). Furthermore, Mara is asked to explain if Peter Pindar is the author of the words (2) and if he had sold the rights to his words to the plaintiffs (5). Question 7 is open to further comments

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<sup>206</sup> *Deposition* by Barrington Woods, for the Plaintiffs, 28 Nov. 1792. GB-Lpro, C 24/1964. (to Nr. 7).

<sup>207</sup> *Interrogatories* for the Plaintiffs. GB-Lpro, C 24/1963. The Interrogations are paraphrased here because not enough time has been available at The National Archives to transcribe them fully. The line of questioning related to musical aspects was formulated as follows:

"Fifth Interry\_ Do you know the Italian Song called or beginning with the Italian Words "ah che nel petto io sento" in the pleadings in this Cause mentioned? was the same at any time and when first and by whom Introduced and sung at the Opera House in the Pleadings of this Cause mentioned in any and what Opera performed there? By whom was the Music of such Song as sung at the said Opera house or any and what part or parts of such Music Composed or Introduced as you know or for any and what reason believe [...]".

which may help the defendants. An additional question asks for details regarding musical authorship: who composed which part of the piece, whether or not a new piece was created in the process, and if any of the authors have sold their respective rights to the plaintiffs.<sup>208</sup> All of this confirms the strategies derived from the pleadings, the plaintiffs arguing on a basis of contracts, whose reach the defendants try to escape by complicating the questions of authorship and theatrical practice.

Between 26 November and 5 December 1792, the Plaintiffs swiftly examined eight witnesses, including mostly musicians and administrative staff of the opera house, as well Peter Pindar as the author of the lyrics.<sup>209</sup> Other than the cross-examined Mara couple, the defendants only had three witnesses: harp player Jacques Philipp Meyer, former deputy manager Antonio Ravelli and a family friend of the Maras who witnessed the rehearsals.<sup>210</sup>

## 2.5. Depositions

Not all questions are of equal interest to this study. The focus will lie on questions that pertain to the understanding of authorship, contracts and theatrical practice, as they are most related to this studies' general research interest. One needs to keep in mind that although depositions were collected on behalf of one party, the witnesses answering the question are generally not trying to argue for either. The depositions no longer directly reflect the argumentations, but rather the evidence available to assess or support them.

### *Mara's Authorship*

The depositions may provide more context to what is tangentially alleged in the defendants' responses, that Gertrud Elisabeth Mara authored part of the songs in question. Out of everyone who answered one of the questions pertaining to the musical authorship of the song, several deponents do in fact credit musical co-authorship to Madam Mara: herself, her spouse and Gregorio Patria. Furthermore, the three of them also concurrently substantiate, which part of the piece exactly was written by her, and which parts were not:

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<sup>208</sup> *Interrogatories* for the Defendants. GB-Lpro, C 24/1963.

<sup>209</sup> The full list of the plaintiffs' witnesses: Joseph Mazzinghi ["Composer of Music"] (26 November 1792), Louis Borghi ["Deputy Manager"], John Wolcot[alias Peter Pindar] and John Baptist Mara (27 November 1792), Gertrude Elisabeth Mara, Barrington Woods (28 November 1792), Gregorio Patria ["Professor of Music"] (4 December 1792), John Wall Callcot ["Bachelor of Music"] (5 December 1792).

<sup>210</sup> The defendants seemed to struggle finding witnesses, as they repeatedly requested more time, see orders from C 33/483 - 36: 13 Nov 1792; 36: 21 Nov 1792, 95: 27. Nov 1792; 182: 23 Jan 1793.

“Dep. [Md. Mara] Saith she has always understood that the Music of the two Songs was originally composed and written by Signor Pasiello[sic] and saith that the Music of the Recitative and the accompaniment of the Harp and of the Bass to each of the Songs were composed by this Dep. Husband John Baptist Mara and *that the whole of the second part of the said Music Tunes or Songs were Composed & written by this Dep.*“<sup>211</sup>

“and this Dep further saith that the whole of *the second part of the said song is the Invention and Composition of Madam Mara* and there is not any variation of the said printed Copy from the Manuscript”<sup>212</sup>

“Dep. [...] believes that the *minor part of the said Song only was composed by her* [Mara] and that the other part of said Music had been composed by Signior Paesiello[sic]”<sup>213</sup>

Mara has answered question five of the plaintiffs in the same way: „The music of such song was part of it composed by Signior Paisiello other part thereof by this Dep. And the remaining part thereof by Mr. Mara dep. Husband”<sup>214</sup> The three testimonies are strong evidence for the hypothesis that Gertrud Elisabeth was in fact the composer of the inserted aria’s added middle section in minor tonality<sup>215</sup>, which was not part of Paisiello’s original composition. This is a fact that has never been reported or explored in the literature.

Considering how clearly these deponents delineate Mara’s authorship from Paisiello’s, who was understood to be the main author of the music, speaks against the framing of Mara as a plagiarist of Paisiello’s music.<sup>216</sup> However, other deponents have reported some confusion about whether or not Mara was claiming to be the author of the entire composition at the rehearsal: Joseph Mazzinghi deposed that Madam Mara did just that: “she produced to Dep. a sketch of some Music she said she intended to introduce [...] which she informed Dep. she had composed”<sup>217</sup> He only realized that she did not compose the main melody while working on the Opera from which it was taken: “Dep. was requested by the Manager of the said Opera House to compile and revise and Opera of Signor Paesiello’s called La Molinarella[sic] wherein this Dep. found a part of the Music or Melody which Madam Mara had before at the time she sent for Dep. told this dep. she had composed.”<sup>218</sup>

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<sup>211</sup> *Deposition* by Gertrude Elisabeth Mara, Cross Exam for the Defendants, 18 Dec 1792. GB-Lpro, C 24/1964.

<sup>212</sup> *Deposition* by John Baptist Mara, Cross Exam for the Defendants, 11 Dec 1792. GB-Lpro, C 24/1964.

<sup>213</sup> *Deposition* by Gregorio Patria, for the Defendants, 4. Dec 1792. GB-Lpro, C 24/1964. Here, “minor part” clearly refers to the tonality of the added middle passage.

<sup>214</sup> *Deposition* by Gertrude Elisabeth Mara, 28<sup>th</sup> Nov 1792, for the Plaintiffs. GB-Lpro, C 24/1964. (to Nr. 5).

<sup>215</sup> Joseph Mazzinghi[?], *Hope told a Flattering Tale*, London: Skillern & Goulding 1791, p. 4, bars 36-52.

<sup>216</sup> MILHOUS et al., 2001, Vol. 2 p. 492, agree: “Amidst the claims and counterclaims, nobody – not even Mara herself – disputed that Paisiello’s duet had formed the basis for the aria, though Mara had certainly omitted to tell either Mazzinghi or any of the other musicians about the original setting during those early rehearsals.”

<sup>217</sup> *Deposition* by Joseph Mazzinghi, for the Plaintiffs, 26 Nov. 1792. GB-Lpro, C 24/1964.

<sup>218</sup> *IBID.*; Mazzinghi’s full deposition is reproduced in the Appendix.

This deposition was very likely the main inspiration for Price's narrative. It must also be said that Mazzinghi was not entirely alone in that sentiment. Gregorio Patria's account of the private rehearsal also contains that "the said Madam Mara produced them the Sketch of a Song that she had wrote out and which she then said were of her own Composing."<sup>219</sup> In a similar manner, William Winter, "Apothecary aged 52 years", who claims to have been present at three rehearsals of the song, has also been left to attribute the composition to someone other than Paisiello. But here, it is Mara's husband who appears to credit himself to be the composer:

"Dep. remembers being at his [J. B. Mara's] Home [...] about the time of March 1791 when Dep. observed Mr. Mara very much engaged and on asking on what the said Mr. Mara informed Dep. that he was composing a ~~piece of music~~ Song to be performed for Madam Mara's benefit [...] At each of three rehearsals the Dep. understood that the said Song was composed by said Mr Mara".<sup>220</sup>

Thus, the evidence suggests that both members of the Mara household have not been clear in communicating to their guests, that they have arranged or contributed to, but not 'invented' the main melodic musical content of the piece on a private occasion. This, of course, is a far cry from committing plagiarism against Paisiello. Ultimately, the apparent confusion may come down to the vagueness surrounding what the word 'composing' means. Actually, Mr. Winter's deposition is consistent with how Johann Mara reacted to the question of musical authorship. Notwithstanding the credit he gives to Paisiello and his wife for their respective contributions, he does consider himself to be the composer and author of the version at hand:

„saith that that [add: musical subject of the ~~song~~] song was composed by Paisiello [added: In a Trio[sic] from a Comic Opera] and Dep. brought it from Italy and altered it for the Harp and other accompaniments and Dep. considers himself as the author of the Song as it is printed and published".<sup>221</sup>

He seems to make the case, that he should be considered the author by virtue of having and initiating the idea of the arrangement, whereas Paisiello only happened to have invented the melodic material, and musicians such as Meyer or Mazzinghi have contributed by improving its effect by virtue of applying their craft. It is debatable, generally, whether invention, idea or execution shall be the determining factor for authorship. The depositions show large disagreements around this topic, which will be the subject of the following section.

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<sup>219</sup> *Deposition* by Gregorio Patria, 4 December 1792. GB-Lpro, C 24/1964.

<sup>220</sup> *Deposition* by William Winter, for the Defendants, 16 January 1793. GB-Lpro, C 24/1964.

<sup>221</sup> *Deposition* by John Baptist Mara, Cross Exam for the Defendants, 11 December 1792. GB-Lpro, C 24/1964.



### *Collaborative composition on the harp accompaniment*

Several witnesses have deposed information about the process of arranging and rehearsing the aria. Together, they create quite a detailed picture about who contributed in what way to the song as published. The biggest conflict, by far, exists between the descriptions and evaluation of Mazzinghi's contribution, particularly those by himself and of Madam Mara, greatly fueling the "Mara vs. Mazzinghi" interpretation. Reading them side by side highlights the contrast:

"the Music of said Song was much approved by all the persons then present but Dep being Desirous of having some of the Instruments or Accompaniments varied the said Mr. Mazzinghi [...] decided to take the Song away with him and said he would make the alterations Dep. desired and which he acc. did and returned the Original Song with his own Copy varied and altered in some very trifling respect and in a way that was not of any material ma[ttter] or consequence to the music of the said Song".<sup>222</sup>

"Dep. upon hearing the same [song] informed her [Mara] that it [add.: the accompaniment] would not do or have the Desired Effect in the State it was there in upon which Md. Mara then suggested Dep. would take the same home with him as she had then Sketched it out and for him to compose alter and set [add.: it] in any State Dep. should think but for the purpose of it being performed [...] Dep. does not believe that he let any part of such music that had been sketched out by M. Mara and Delivered to Dep. as aforesaid stand or remain in his Composition".<sup>223</sup>

Two accounts of the same event could hardly be more different: According to Mara, only she noticed deficiencies in the accompaniments, while according to Mazzinghi, it was himself. Mara claims that Mazzinghi was simply making the exact changes she had desired,<sup>224</sup> while in Mazzinghi's version of the story, he is given free range to do whatever he feels is appropriate. From Mara's point of view, the result amounts to some "trifling alterations", while in Mazzinghi's words, no part was left untouched in what was now "his composition".

Despite the obvious conflict between the perspectives, it is not entirely impossible to imagine that both were sincere reflections of how the given person has perceived the situation: A house composer may take pride in the act of adjusting the instrumentation and orchestration to best effect, while a singer might see it as mere application of craft. Much of the other deponents accounts also differ in regards to observation and assessment of Mazzinghis involvement: The possible perspectives reach from Mazzinghi making a "fair copy"<sup>225</sup> of what has been discussed

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<sup>222</sup> *Deposition* by Gertrude E. Mara, Cross Exam for the Defendants, 18 December 1792. GB-Lpro, C 24/1964.

<sup>223</sup> *Deposition* by Joseph Mazzinghi, for the Plaintiffs, 26 November 1792. GB-Lpro, C 24/1964.

<sup>224</sup> In Mara's deposition for the Plaintiffs, the wording is used: "the said Mr. Mazzinghi then offered [...] to alter it in the way Dep. had proposed", (28 November 1792, Question 5).

<sup>225</sup> *Deposition* by John Baptist Mara, Cross Exam for the Defendants, 11 December 1792. GB-Lpro, C 24/1964.

at the rehearsal, to him creating an original accompaniment, which solves the problems that the company has collectively gotten stuck on.<sup>226</sup>

John Baptist Mara provides some useful detail during his cross examination: He compares his own manuscript to one of the printed versions, and thereby highlights what exactly has been changed during and after the rehearsal. According to his comparative analysis, the most significant change was to leave out the doubling of the vocal melody in the harp part, which, among other things, was already indicated in the rehearsal sketch:

“from m. 9 to 17 of the printed song Paesiellos subject for the Harp is left out in the printed Copy [sic] saith that on the private rehearsal of the said Song dep. did not like it. And in the Manuscript Dep. hath marked the same Struckout which shows the intentions of leaving out all other forms of the Subject which Dep. intended at his leisure to alter accordingly [...]”<sup>227</sup>

Besides this recurring change of texture, he indicates precisely what he and his wife meant by “trifling alterations”: Between m. 7-20, he noticed “the changing of a new Notes or putting them in another Position which never alters the Sound or Harmony”. Further, the “Flourish” in m. 23 is new, “and from m. 29 to m. 30 there is a little alteration from the original of trifling Notes in the upper part of the Harp accompaniment but founded upon the Harmony”<sup>228</sup>. As far as the harp-part is concerned, Mazzinghi thus appears to have mostly changed some of the arpeggiation patterns, keeping most of it as it had been prepared by J. B. Mara and harpist Jacques Philippe Meyer, who had previously supervised it.<sup>229</sup>

According to the *Times*' report, Mazzinghi has later relativized his bold statement of having changed practically everything about the accompaniment: “Mazzinghi, on being further examined, said, the harp accompaniments delivered to him by Madam Mara, were not entirely altered by him, but were only altered so as to produce the best effect”<sup>230</sup>, thereby giving credence to Mr. Mara's analysis. It might be the case that the adjustment of the wind orchestration has been the more significant part of Mazzinghi's contribution. The lawsuit seemed to focus more on the harp part, perhaps because it was considered the more essential part, influenced by the preferences of domestic music making: Voice and harp function as a self-sufficient unit. The other voices, in that context, are well understood as ‘ad libitum’.

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<sup>226</sup> *Deposition* by Gregorio Patria, 4 December 1792. GB-Lpro, C 24/1964. (to Question 5).

<sup>227</sup> *Deposition* by John Baptist Mara, Cross Exam for the Defendants, 11 December 1792. GB-Lpro, C 24/1964.

<sup>228</sup> IBID.

<sup>229</sup> *Deposition* by Jacques Philipp Meyer, for the Defendants, 19 December 1793. GB-Lpro, C 24/1964: “the same was brought to Dep. [...] for Dep. to looke over and to consider whether the part that was in the accompaniment of the Harp was [...] written in the rules for the Harp”.

<sup>230</sup> *The Times*, “Law Report”, 13 February 1794, p. 3.

In summary of that point, the many conflicting opinions and perspectives on Mazzinghi's involvement have surely made it difficult for the Court to "disentangle the complex correlation between the various creative contributions."<sup>231</sup> But by viewing the totality of evidence produced, it becomes understandable why the Court swayed to not declare Mazzinghi the main author. Particularly the analysis of Mr. Mara, indicating how little of substance was changed in the most central part of the accompaniment, might well have convinced them that Mazzinghi's contribution was not enough.

### *Literary copyright*

The literary portion of the English version of the song<sup>232</sup> has been subject to no less controversy: Peter Pindar's testimony supported the plaintiffs by unequivocally confirming that he is the sole author of "Hope told a flattering tale", and further clarified that "he had not given sold or Disposed of the Copy right of such Song to Madam Mara or to the Defendants or any other person or persons other than the Complaints in this Cause."<sup>233</sup>

Mara's response to the defendants brings up some intrigue: According to her, Pindar was initially agreeing to publish the song with the defendants, but was upset that he did not receive a proof copy from them, leading him to sell it to the plaintiffs out of spite:

"Dep. told him [Pindar] she had ordered his name to be part of the said Publication as the author of the words of the said Song at which the said Doctor Wolcot proud and readily consented to the said Defendants Printing and Publishing the said songs [...] 5. [...] having been informed that Dr. Walcot had sold the words [...] to the said Compl. to Print and Publish this Dep. asked the said Dr. Wolcot "how he could serve the Deft. So" and he the said Dr. Walcott replied that They (Meaning the Defts in this Case) had not sent him any of the Copys of the Song and that Broderip (meaning the Def. Francis Broderip) was a naughty proud Fellow that did not care for any body and that he did it out of Spite".<sup>234</sup>

The Maras attempted to emphasize the singer's involvement in writing the words. John Baptist Mara designated his wife and Peter Pindar as co-authors: "Dr. Walcot and Madam Mara were the Writers or authors of the Words of the Said Song [...] they having sat down together and with the assistance of each other composed and wrote the words of the said song in Dep. presence."<sup>235</sup> It is probable that Mara did have some guiding influence on Pindar in the process of him writing the aria, but it seems rather implausible that a German immigrant singer was an

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<sup>231</sup> MILHOUS et al., 2001, Vol. 2, p. 493.

<sup>232</sup> The rights to the Italian words of "Ah che nel petto io sento" have never been discussed in the examined sources.

<sup>233</sup> *Deposition* by John Wolcott, for the Plaintiffs, 27 November 1792. GB-Lpro, C 24/1964.

<sup>234</sup> *Deposition* by Gertrude Elisabeth Mara, Cross Exam for the Defendants, 18 December 1792. GB-Lpro, C 24/1964. The full deposition is reproduced in the Appendix.

<sup>235</sup> *Deposition* by John Baptist Mara, Cross Exam for the Defendants, 11 December 1792. GB-Lpro, C 24/1964.

equal collaborator<sup>236</sup> to one of the most famous English poets of the time. For all we know, Pindar might well have written the lyrics in Mara's presence, reacting to her feedback. This kind of constellation would once again be one in which the collaborating agents may differ significantly in estimating the importance of their respective input: The person suggesting the lyrics may retrospectively consider himself the sole author, while the person reacting to them may have felt engaged in the process to the point where they feel just as important for the end product.

### *Contracts and customs regarding benefit nights*

The general existence and validity of Mazzinghi's and Mara's contracts has been established by the plaintiff's depositions.<sup>237</sup> Mazzinghi's deposition clearly indicates, that he assumes the products of his work to become the manager's property by virtue of contract:

"Dep. by the means afs. became [added: as he hath always understood and believes by the usage of the Profession] the Author or Composer of said Music and thereof entitled to a Copy right and property therein and which Dep. by the agreement mentioned [...] has disposed of to the said Robert Bray O'Reilly as Proprietor or Manager of the said Pantheon Opera House for the year 1791".<sup>238</sup>

The understanding of the contract's applicability in the special cases of inserted arias and benefit performances has only been directly enquired into by the defendant's questions. The defendants had a rather limited group of subjects at their disposal to speak on these issues: one musician (Mr. Meyer), a former deputy manager of the opera house (Mr. Ravelli) and a singer and her husband (Mr. and Mrs. Mara). Mara and her husband make it very clear, that they did not consider the contract to apply in such a way and detail how Mara's behavior indicated her interest in preserving any property over the song.<sup>239</sup> The negotiation between Madam Mara and the manager over the aria becoming a permanent insertion to *Idalide* is elaborated in Mara's response to question four:

"4. [...] the said Robert Bray O'Reilly applied to Dep. and requested dep. would again perform the said Song which dep. declined doing saying she never intended it otherwise than as a Song to be sung for her benefit but dep. saith that the said Robert Bray O'Reilly having again repeatedly applied to Dept. to sing it and observing it to be very much the wish of the public and that it would be very much to the advantage of the Proprietors of the said Opera House dep. consented to it on condition that said Song should every Night

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<sup>236</sup> Equal collaboration is also implied in Elisabeth Mara's wording "This Dep and the said Dr. Wolcot having assisted each other in writing and composing the same", (18 December 1792, Question 2).

<sup>237</sup> *Depositions* for the Plaintiffs by Lewis Borghi, 27 November 1792 (to Question 2 and 3); Gertrud Elisabeth Mara, 28 November 1792, (to Question 3); Joseph Mazzinghi, 26 November 1792, (to Question 2). Generally, the plaintiffs' witnesses have confirmed the documents produced to them, even those destroyed by fire.

<sup>238</sup> *Deposition* by Joseph Mazzinghi, for the Plaintiffs, 26 November 1792. GB-Lpro, C 24/1964. (to Question 5).

<sup>239</sup> *Deposition* by John B. Mara, Cross Exam for the Defendants, 11 December 1792. GB-Lpro, C 24/1964. (to Question 3).

be returned to her so that dep. might preserve her property therein to which the said Robert Bray O Reilly consented and dep. always delivered or caused the said Song to be delivered to the Instrumental Performers at the said Opera House every Night dep. wants to sing it and the said Song was delivered back to Dep. as soon as it was ended and which the said Robert Bray O'Reilly would not have submitted to have done if he had considered himself in having any right or Authority to have caused or demanded the performance thereof without dep. consent as dep. apprehends and believes and further Dep. cannot depose to this Int.”<sup>240</sup>

This quote contains multiple valuable points: She initially considered the song to be exclusively for her benefit and did consider herself to have some “property therein” which may be retained. The term property does not necessarily imply a copyright in the common law sense, but still some sense of ownership. The fact that she did desire to protect it from the theatre is a strong indicator for ideas of selling it to publishers being already present. The story of how she had ordered the music back to her dressing room is initially brought up to Nr. 3 because this behavior aligns with the understanding of the contract that she and the defendants suggested, stressing that she did have such understanding at the time and did not knowingly breach any contractual promises. In a very clever argumentative switch, the answer to Nr. 4 used the same story to make the point that the manager’s compliance to her terms as evidence that he also did not consider himself the owner of the inserted aria.

The other two deponents, Meyer and Ravelli, differed widely in their understanding of the practice: Ravelli attested that singers retained the rights to arias inserted at benefit performances and that no contrary practice exists in London or Italy<sup>241</sup>, while Meyer was strongly of the belief that every composition performed at the theatre automatically becomes property of the copyist, directly echoing the ‘losing’ side of *Storace v. Longman*.<sup>242</sup>

## 2.6. Discussion

One of the most important new ideas brought to consideration is that Mara probably was in fact the musical author of the entire middle-section that has been added to the aria, as has been confirmed by multiple witnesses. This fully explains why her co-authorship was mentioned both in the defendants’ pleadings as well as some of the testimonies, despite it not being beneficial to the defendants’ case. Previous research has evidently been biased against Mara and towards Mazzinghi.<sup>243</sup> But as stated previously, assuming the entire case to revolve around

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<sup>240</sup> *Deposition* by Gertrud E. Mara, Cross Exam for the Defendants, 16 December 1792. GB-Lpro, C 24/1964.

<sup>241</sup> *Deposition* by Antonio Ravelli, for the Defendants, 9 January 1793. GB-Lpro, C 24/1964.

<sup>242</sup> *Deposition* by Jacques Philippe Meyer, for the Defendants, 19 December 1792. GB-Lpro, C 24/1964; Both Depositions will be quoted and discussed in chapter V.2.

<sup>243</sup> MILHOUS et al., 2001, Vol 2, p. 492.

‘Mara vs. Mazzinghi’ is a red herring in the first place. While the interrogatories align well with the strategies drawn from the pleadings, the depositions also explain why certain elements have entered the case’s reading laid out in Price and Milhous et al.: Mazzinghi recounting how he rediscovered the aria in *La Molinara* and thereby found out it was not Mara’s own composition certainly helps the “Mara as plagiarist” angle somewhat, in conjunction with how she does claim to be a co-author to the music and words and how much conflict exists between her and Mazzinghi’s testimonies.

For one thing, it must be clarified that the temporal relationships of the cross examination as described by Curtis Price are entirely imaginary; meaning how Mara first claimed authorship, then “got confronted with this unambiguous evidence under cross-examination” and “back paddled fast”.<sup>244</sup> First of all, the people who would allegedly expose her in the cross are acting on behalf of the defendants, who are – according to the old reading – trying to argue *for* her authorship. Also, in this legal context, “cross examination” merely means that the defendants have gotten permission to examine witnesses previously examined by the plaintiffs.<sup>245</sup> It was not a criminal trial. The questions asked to her are directly related to the defendants’ general strategy and are mostly the same asked to all other musically literate witnesses. Besides, it is untrue or at the very least misleading that „Mara admitted the full extent of her debt to Paisiello only under cross-examination, when asked to compare the original and the adaptation.”<sup>246</sup> Mara’s two testimonies are fully consistent in claiming “The music of such song was part of it composed by Signior Paisiello other part thereof by this Dep.”<sup>247</sup> The only reason she goes more into detail during the cross examination, is that the defendants, due to their strategy, asked much more detailed questions about authorship.

While the examination of all sources has made it somewhat understandable why previous interpretations came to arise, the evidence simply refutes some of the claims being made, while all elements on which it is founded can be explained more consistently by the theory that the defendants’ strategy revolved around claiming that no new work has been created from the adaptation. Seen in this light, the evidence does seem to be beneficial for the defendants’ case: Witnesses, even by conflicting with each other, must have helped them show that neither the conditions of authorship, the transmission of literary copyright, nor the applicability of the contracts are as clear cut as the plaintiffs would have liked them to be.

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<sup>244</sup> PRICE, 1991, p. 28.

<sup>245</sup> See the introductory phrase for her deposition in the Appendix.

<sup>246</sup> MILHOUS et al., 2001, Vol 2, p. 492.

<sup>247</sup> *Deposition* by Gertrude Elisabeth Mara, 28 November 1792, for the Plaintiffs. GB-Lpro, C 24/1964.

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With all this in mind, how does one answer the question of who legally owned insertion arias performed at the King's Theatre or the Pantheon Opera House, respectively? From *Storace v. Longman* we see that for much of the century, the management successfully laid claim to all music circulating within the Theatre as their property and enabled the copyist to sell copies as a lucrative side-business. This absolute claim was denied by the Court in that case. Now, arias would in theory have had to be treated separately depending on the circumstances of authorship: through contract, the theatre could still make exclusive property claims to new compositions by their own employees,<sup>248</sup> but they could not claim pieces from outside of the theatre. This is the end-result of *Skillern v. Longman*: Since the adaptations made from within the theatre were judged insufficient to constitute a new piece of music, the aria had the same status as the old aria of Paisiello. It is correct that the case is a confirmation of *Storace v. Longman*, but in a different way from what was previously thought. The author who is functionally equivalent to Storace is not Mara, but Paisiello. The same principle as developed in *Storace* applied: the opera house could not claim an aria by an external composer as exclusive property without the author's consent. On this basis, the nonsuit of the plaintiffs by Lord Kenyon seems a lot less bewildering, and constitutes a rather careful decision, as the *Times*' reports had also indicated.

## V. Aftermath

Now that a more accurate understanding of the two cases 'inner workings' has been presented another question begs to be addressed: How much of an impact did these judgements have on history? How much did they change operatic production, cultural discourse and musical copyright jurisdiction? These questions would warrant an entirely different kind of investigation and methodology. They are, however, too important to be left completely unaddressed. Therefore, this chapter will attempt to outline, some preliminary observations and ideas about the case's influence.

### 1. Culture and public discourse

Firstly, both lawsuits do not seem to have been highly publicized affairs. Systematic searches of OCR-supporting newspaper databases<sup>249</sup> for the lawsuits or keywords related to them, yields hardly any relevant results. The London *Times* certainly did not report on the *Storace* case at

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<sup>248</sup> We may have to reconsider the notion that these legal cases have contributed to freeing composers from the Theatre's contractual 'stranglehold', as argued by PRICE, 1989, p. 95 and MILHOUS et al., 2001, p. 460.

<sup>249</sup> Such resources searched include: <https://www.hathitrust.org/>, <https://www.thetimes.co.uk/archive> , <https://newspaperarchive.com/>, <https://books.google.de/> (all 28.9.2020).

all<sup>250</sup>, and its extensive reporting on the *Skillern* case seems to be rather singular among immediately available sources. While there might yet be more to be discovered,<sup>251</sup> the current state of knowledge necessitates to consider them rather secluded, unpublicized affairs, which is surprising in light of the prominence of the people involved in them and the many publications that regularly reported on proceeding at the King's Bench. It may be assumed that the omission of *Storace* from *the Times*' reporting was probably not by deliberation on part of the journalists but rather simply by lack of awareness.

When considering the cultural impact of the case, a lack of newspaper coverage diminishes the estimate of how many people were aware of it. Furthermore, if we can assume that the journalists did not get notified of the case but would have reported on it in some way if they did, then this is a large indicator that the case was not widely discussed to begin with. This calls into question some comments made about the public relevance of the cases: Curtis Price recounts an instance, in which a critic from *the Times* accuses the composer Vincenzo Federici of deception, even though the two arias in question were introduced into his opera *L'usurpator innocente* (London, season 1789-90) on behalf of Elisabeth Mara:

“[Federici] announces the music of the Opera on Saturday, to be a genuine composition of his own: and therefore we may fairly ask him, why the two sweetest airs in the whole [...] happen to be not only in the music, but in the very words taken from an Opera composed by the celebrated Signor *Andreozzi*? [...] The airs no doubt are divine, and they were well executed; but, Signor [Federici], you should not rob *Andreozzi* of his laurels.”<sup>252</sup>

Price explains this misunderstanding by postulating that the author was writing “with *Storace* vs. Longman fresh in mind.”<sup>253</sup> However, the fact that *the Times* has fully neglected or failed to report on *Storace* makes it less likely that it was in fact a pertinent event in that writer's mind. Furthermore, similar critiques can be found before *Storace*'s lawsuit: Early in 1788, the newspaper already showed considerable interested in reporting on alleged plagiarism in the opera as a sort of gossip. Stephen *Storace* himself has been accused of “an offensive effrontery” due to “the melody of his last composition being the same as *Chi mi mostra* [by Paisiello].”<sup>254</sup>

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<sup>250</sup> RICHARD FREEBURY (Ed.), *The Times Index, January – December 1788*, Reading 1983, p. 253, URL: <https://hdl.handle.net/2027/uc1.31175029887695?urlappend=%3Bseq=261> (17.9.2020) references a “Piracy Case” in connection with *Storace*, but this is another affair entirely, relating to his friend Michael Kelly considering a lawsuit over literary copyright. See *The Times*, Issue 952, 15 January 1788, p. 2.

<sup>251</sup> A reference to “The World No. 2176 Dec 18, 1793 p. 3” relating to *Skillern* is made in H. TOMAS GOMEZ-AROSTEGUI, “The untold story of the First copyright suit under the statute of Anne in 1710”, in: *Berkeley Technology Law Journal* 25/3 (2010), pp. 1247-1350, here: p. 1325. This must refer to the London newspaper *The World and Fashionable Advertiser* (1787-1794), but the issue is unfortunately not easily accessible through digital means and will have to be examined in the future.

<sup>252</sup> *The Times*, 8 April 1790, cit. after: PRICE, 1991, p. 27.

<sup>253</sup> PRICE, 1991, p. 27.

<sup>254</sup> *The Times*, Issue 952, Tuesday, 15 January 1788, p. 2.



Michael Kelly was subsequently called out for falsely implying authorship over a piece of Viennese music without proper credit.<sup>255</sup> The fact that those passages were written before the pleadings of *Storace* at the very least suggests, that it was not this specific lawsuit that caused a sudden change in thinking on musical authorship. Rather, it is more parsimonious to link such comments within a larger context and a more gradual shift in perception.

Leslie Ritchie suggests links between the ruling of *Skillern v. Longman* and certain attitudes which she attributes to female writers and composers of the time. A heavily ornamented print of “God Save the King“ published by Signora Banti is interpreted in a way where “it suggests the power and authority of a singer given the new ruling by Judge Lord Kenyon on the importance of melody; and it demonstrates a woman defining herself with and against British ideals of nation using musical means.”<sup>256</sup> The empirically completely unfounded idea that the *Skillern v. Longman* case amounted to an affirmation of melody as the central marker of copyright stems from an unpublished address by Howard Irving.<sup>257</sup> Mara’s point “melody [is] the basis of accompaniments”<sup>258</sup> is quoted out of context as if she was simplistically trying to argue for the primacy of melody.<sup>259</sup> Further, there is no indication or proof whatsoever that Banti was even aware of the lawsuit, much less trying to make a musical statement about it. It is a highly speculative link based upon a misreading. For any such claims to be convincing, the lawsuit’s public relevance must first be proven, which at present does not seem obvious.

## **2. Consequences for the opera house’s business relations and contracts**

While neither of the lawsuits appear to have changed Britain’s collective understanding of the nature of music overnight, it may have provoked a change on the inner workings of the opera house. First, it needs to be understood what economic incentive would exist for a change to occur in the first place. In a time before performance rights, the Theatre’s ‘side-branch’ business of selling manuscripts to music publishers was the only region the lawsuits could directly compromise. It is a branch which only recently became profitable: According to Giovanni Gallini, Leopoldo De Michele has sold music to Longman & Broderip “for the sum of £40 or thereabouts each season. And this examinant believes it may be true that it had before the year 1785/6 been usual for the managers of the said opera house to sell music [...] but this examinant

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<sup>255</sup> IBID.

<sup>256</sup> LESLIE RICHIE, *Composing Themselves. Music, Morality and Social Harmony in Women’s Writing, 1740-1815*, PhD Ontario 2000, p. 264.

<sup>257</sup> The address was titled “Handel and the Case of Skillern and Golden[sic] v. Longman and Broderip” (1999).

<sup>258</sup> RITCHIE, 2000, p. 263f.

<sup>259</sup> See above, chapter IV.2.2. for the actual context of the quote.

believes very little profit was ever made thereby.”<sup>260</sup> Skillern & Goulding claim to have invested £150 for the music of one season in the early 1790s.<sup>261</sup> This was a significant sum for the opera house. To put it in context: with no extra work required, it was enough to cover the entire salary of composer Joseph Mazzinghi for the Season of 1790-91, who received “£300 per annum.”<sup>262</sup>

Both cases have turned out to be situations in which a publisher’s investment in assumed exclusive property did not in fact lead to the expected privilege: Associates of the opera house had promised more than what they could legally secure in Court. From the publishers’ point of view, this would certainly decrease the value that they would be willing to assign to these privileges. However, when the Theatre’s manager negotiated with a publisher in the immediate aftermath of *Skillern v. Longman*, they could still offer some worthwhile perks:

- Exclusive publishing rights for some of the house’s compositions (now: mostly original compositions made by its staff)
- Non-exclusive publishing rights for most of the music. For music authored by foreign composers, it was highly unlikely that the original authors would interfere.
- Convenient and early access to the material scores, giving a market advantage over competitors.

Because the domestic market response to printed operatic arias was growing (see chapter II.1.3.), it would be rational for such deals to continue. Similarly, the opera house had no reason to discontinue their growing engagement with music publishers. An advertisement by Skillern & Goulding indicates a very close cooperation indeed, even hinting at plans of renting an office located within the Pantheon.<sup>263</sup> The kind of constellation that was introduced in the *Storace* case is a caveat, since it means that there actually are situations in which music performed at the theatre would remain the exclusive property of the author, and the publisher would commit piracy by publishing it with only the theatre’s consent.

One of the primary ways to ‘fix’ the issues brought up in the lawsuits would have been to improve the contracts that employees had to sign. Unfortunately, contracts of eighteenth century opera personnel survived notoriously rarely, but due to the emergence of the Bedford Opera Papers contracts from London’s seasons 1790-91 and 1791-92 are preserved.<sup>264</sup> For example,

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<sup>260</sup> Giovanni Gallini, 21 July 1789. GB-Lpro C 107/201, cit. after: MILHOUS et al, 1995, Vol. 1, p. 38.

<sup>261</sup> *Bill of Complaint* by Thomas Skillern, 21 May 1792. GB-Lpro, C 12/185/34.

<sup>262</sup> MILHOUS et al., 2001, Vol. 2, p. 661.

<sup>263</sup> See *The Oracle*, 28 March 1791, cit. in MILHOUS et al. 2001, Vol. 2, p. 457.

<sup>264</sup> MILHOUS et al. 2001, Vol. 2, p. 674.

the contract of the buffa singer Anna Casentini, which shared a template also used for several other singers, was signed on behalf of Casentini on 17 September 1790 and is written in Italian. It includes the following clause regulating the property over the music:

“Si conviene in oltre, e si stabilisce, che tutta la Musica, che verrà eseguita al Pantheon, (venga questa prodotto dal Compositore, o Maestro di Musica a tale effetto stipendiato dal detto Signor Roberto Bray O’Reilly, o venga questa volontariamente inserita negli spartiti delle Opere, Balli, o altri Teatrali Spettacoli che verranno rappresentati al detto Teatro del Pantheon), nel corso della stagione sudetta dalla detta Signora Anna Casentini o da altre persone appartenente, o non appartenente al detto Teatro del Pantheon), debba d. Musica (sia Aria, Duetto, Terzetto, Quartetto, Coro, Recitativo, Aria di Ballo, o qualsivoglia altro pezzo di Musica Vocale, o instrumentale) esser riguarda, e considerata come proprietà del sudetto impresario Roberto Bray O’Reilly, e sia in sua libertà di disporre come più gli piacerà; e ciò perche cosi resta stabilito, e non altrimenti, &c.”<sup>265</sup>

The clause explicitly claims *all the music* performed at the Pantheon, while the brackets further emphasize, that this means music by all composers of all genres at all kinds of performances. Most relevantly, it makes clear that even music introduced by people not employed or associated with the Theatre (“persone appartenente, o non appartenente al detto Teatro del Pantheon”) also falls under this clause. The boldness of that clause seems astounding, considering that the Theatre, albeit under a different impresario, recently witnessed Storage’s lawsuit, in which the possibility of such a vast claim to external composers’ music was explicitly denied by Lord Kenyon. A closer reading of the exact wording reveals a cunning intention behind the clause: While the first part enumerates in impressive detail all types of music, the claim itself is much more modest. The wording only commits the singer to ‘consider’ (“esser riguarda, e considerata come proprietà”) all music to be the manager’s property, meaning to behave *as if* it was the case. It does not actually secure the manager’s property in the music, which could theoretically be accomplished by the completely impractical clause of forcing singers to secure and write over the copyright to all music they wish to introduce themselves.

Meanwhile, the contract of primo uomo Gasparo Pacchierotti had an opposite relationship of detail in his clause:

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<sup>265</sup> MILHOUS et al. 2001, Vol. 2, p. 678. English translation p. 679: “We further agree, and settle, that all the music which will be performed at the Pantheon Theatre (whether the product of the Composer, or Director of Music who will be paid for it by the said Robert Bray O’Reilly, or any which is voluntarily inserted in the scores of the operas, dances, or other theatrical entertainments that will be presented at the Pantheon Theatre) during the aforesaid season by the said Signora Anna Casentini or any other person belonging or not belonging to the said Pantheon Theatre), such music (whether aria, duet, trio, quartet, chorus, recitative, aria di ballo, or any other piece of vocal or instrumental music), must be regarded and considered the property of the aforesaid manager Robert Bray O’Reilly and he is at liberty to dispose of these as he pleases, and this is as it has been determined, and is not to be altered &c.”

”[...] And further that in case he the said Gasparo Pacchierotti shall at any time during his attending the Operas introduce any New Music in any performance the Copy right of all such productions and all Emoluments to arise therefrom or from the sale thereof shall from the time of the same being respectively brought forward be and become the sole Right and property of the said Robert Bray O’Reilly his Executors Administrators [...]”<sup>266</sup>

Here, the transfer is explicit in claiming the “Copy right” and “sole property”,<sup>267</sup> but Pacchierotti’s version of the clause has the purposefully ambiguous wording of “new music” discussed above, which may be read in a way where it reflects the Court’s opinion in *Storace* (newly composed music) while its implied meaning is a more extensive claim (newly introduced music). As the investigation of *Skillern* suggested, such contracts were not, as Price had claimed, “technically illegal”<sup>268</sup>, because “new music” can be understood as music newly composed by the signee. In being purposefully firm and vague about different parts of the clause, these ‘post *Storace*’ clauses may be read as trying to stay within the realms of legality, while at the same time attempting to make employees refrain from engaging in certain behaviors, i. e. selling their arias to publishers, which they would be legally able to do. The intention behind it was simply to make sure that singers were operating under the assumption that the institution owned all music, so that they would become less likely to cross the Theatre’s business relationships with the music publishing industry – as *Storace* and *Mara* have done.

To this reading, an objection may be raised that the wording chosen was purely coincidental and that the clauses should be assumed to purport the administrations actual legal opinion, that they do have a valid claim to all music performed. This objection can be met with a strong piece of evidence: the deposition by Antonio Ravelli in the *Skillern* case.<sup>269</sup> “Signor Ravelli was the deputy manager of the King’s Theatre in 1789, serving under “Sir” John Gallini [...]. His wife was one of the performers that season.”<sup>270</sup> Drawing from his professional experience in London as well as Naples, he answers the question of whether or not it is commonly assumed that a Piece of music introduced at a performer’s benefit night would become the property of the manager. This gets strongly denied by the former deputy manager, who goes as far as to say that he “never heard of any manager having claimed any right to any new Opera Song or Tune introduced by any performer at their respective benefit as [aforesaid] and further saith this [...] prevails in Italy respectively as in London.”<sup>271</sup> Although insertion arias in benefit nights are

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<sup>266</sup> Contract of Gasparo Pacchierotti, 16 August 1790, cit. after PRICE, 1989, pp. 103f.

<sup>267</sup> MILHOUS et al. 2001, Vol. 2, p. 676.

<sup>268</sup> PRICE, 1989, p. 94.

<sup>269</sup> *Deposition* by Antonio Ravelli, for the Defendants, 9 January 1793. GB-Lpro, C 24/1964.

<sup>270</sup> PHILIP H. HIGHFILL et al., *A Biographical Dictionary of Actors, Actresses, Musicians, Dancers, Managers & Other Stage Personnel in London, 1660-1800*, Vol. 12, Carbondale 1987, p. 262.

<sup>271</sup> *Deposition* by Antonio Ravelli, for the Defendants, 9 January 1793. GB-Lpro, C 24/1964.

discussed as a special case, even they would without doubt fall into what the wording of the template contract claims: “tutta la Musica, che verrà eseguita al Pantheon.”<sup>272</sup>

The deposition of harpist Philipp Jacques Meyer is even more relevant, in that it shows the potential success of the described strategy of keeping the musicians under the assumption that nothing has changed after *Storace*. He answered the same question with the following:

“To the 4<sup>th</sup> Int. Dep saith he hath been informed and believes that it is the Custom and reputed Practice and understanding of the Pantheon Opera House and all Theatres in England for the Copyist of such Theatres to claim the property and right of and in such Music Song or Tune as may be introduced performed and sung by and Performer there on the Night of their respective benefit or any othertime”.<sup>273</sup>

He goes on to support his understanding with a personal anecdote:

“And Dep. remembers that he did compose a Song and Ballad that was performed at the little Theatre in the Haymarket in London and mentioned to some of his friends his intentions of Printing the said Song and Ballad and Dep. was then told he had not any right to Print or Publish it but that the same [add.: by custom] belonged to this Copyist of the said Theatre where it had been performed and dep. thus desisted from publishing the same”.<sup>274</sup>

Regardless of whether the recounted incident took place before or after 1788, Meyer’s testimony is highly relevant for the question of the *Storace* case’s impact. Meyer was an active musician in the opera house and has published original music with both publishers of the *Storace* case.<sup>275</sup> So the fact that his deposition almost directly reiterates the same opinion as fact which was effectively overruled in *Storace*, at the very least shows that even someone of his description did not register any change in practice between 1788 and the end of 1792, as far as property over inserted music is concerned. Though obviously anecdotal evidence, this suggests that the implications of *Storace*’s lawsuit were not widely known or discussed among London music circles.

All in all, both contracts suggest a strategy which relies on the Theatre keeping their employed singers and musicians aligned with the impression that the manager owns the copyright to all inserted music, instead of actually taking the pains to acquire all copyright in a proper way.<sup>276</sup>

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<sup>272</sup> See above.

<sup>273</sup> *Deposition* by Jacques Philippe Meyer, for the Defendants, 19 December 1792. GB-Lpro, C 24/1964.

<sup>274</sup> *IBID.*

<sup>275</sup> Jacques Philippe Meyer, *Twelve English songs for the great or small harp, forte piano or harpsichord, with an accompaniment for the flute or violin* (London, Longman & Broderip), RISM A/I M 2511. ; *A second set of twelve new English songs, ballads, elegies, & c. for a voice, small or pedal harp, harpsichord, or piano-forte.* [London, Robert Birchall], RISM A/I MM 2522a. These publications should be dated before 1787, because the *third set of six new English songs* (RISM A/I M 2523) is dated to 1787.

<sup>276</sup> For how much paperwork was required to prove the sole copyright over an opera such as Arne’s *Artaxerxes*, see NANCY A. MACE, “Litigating the Musical Magazine. The Definition of British Music Copyright in the 1780s”, in: *Book History* 2 (1999), pp. 122-145, here: p. 129f.

The stark contrast between the deputy manager (Ravelli), who claims to never have heard of such a practice, and the musician (Meyer), who considers it to be general truth, further supports the hypothesis that it might have been a conscious effort on part of the administration to spread this view among musicians, while being aware that it probably might not hold up to legal scrutiny. It is thus a highly pragmatic way of trying to steer clear of the types of rival editions and lawsuits that *Storace*'s and *Skillern*'s have been.

### 3. Reception in future cases and legal textbooks

A last question that remains to be addressed is how much impact these decisions have in fact had on the negotiation on future lawsuits and the understanding of musical copyright in the Anglo-American legal tradition. As many other eighteenth century copyright cases, they have been unreported initially, meaning they were not yet part of the canon of 'law reports' from which law professionals would commonly cite precedents. They did, however, become part of that tradition by being cited in two early nineteenth century cases: *Hime v. Dale* (1803) and *Clementi v. Golding* (1809). The content of these cases tried under Lord Ellenborough concerned, however, not questions of musical authorship, but the rather formal matter of arguing that a piece of music written on a single sheet could still qualify as a "book" under the *Statute of Anne*. It was in this context, that *Storace* and *Skillern* were introduced into the report of *Clementi v. Golding*:

"In actions upon this statute, compositions of a single sheet have frequently been considered as within its protection. In *Storace v. Longman (a)*, before Lord Kenyon, which was an action for pirating an Italian air published upon one sheet, the objection now relied on was not thought of, and the plaintiff recovered. So another action was brought soon after, with the same success, for pirating the popular melody, "*Hope told a flattering Tale*," which was printed in the same Form."<sup>277</sup>

The more relevant precedent was *Hime v. Dale*, in which the definition of the word 'book' was brought up and was deemed relevant enough for a new trial to be ordered. Still, John Campbell conscientiously provided a summary of the previously unreported case of *Storace v. Longman* in his footnote:

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<sup>277</sup> JOHN CAMPBELL, "Clementi and others v. Golding and others", in: *Reports of Cases Determined at Nisi Prius, Sittings after Hilary Term, 49 Geo. III. 1809 to the Sittings before Easter Term, 51 Geo. III. 1811*, Vol. 2, London 1811, pp. 15-32, here: p. 27.

“(a) *Storage v. Longman*. Sittings after M. T. 1788. The declaration stated that the plaintiff was composer of a musical air, tune and writing, and that it was reprinted by the defendant within the 14 years limited by the act, &c. *Erskine* for the defendant examined the plaintiff’s sister [Nancy Storage] to show that the song was composed to be sung by her at the Italian Opera, and that all compositions so performed were the property of the house, not of the composer. Lord Kenyon said, that this defence could not be supported; that the statute vests the property in the author, and that no such private regulation could interfere with the public right.”<sup>278</sup>

It has been this particular footnote that introduced the previously unreported case into the canon of nineteenth century legal literature. Several legal publications of the Anglo-American legal tradition cited it almost verbatim to relate the principle established.<sup>279</sup> Notably, these publications chose to refer to Storage as the brother of a singer, and not as a composer employed by the theatre. Also, the constantly used wording “private regulation” is significant in that it implies something negotiated outside of the authors influence, unlike a ‘private *agreement*’. A prestigious publication supports the notion that a composer entering a contractual agreement with a manager is a different situation, by bringing up a contrasting constellation:

“[...] does not divest the copyright out of the composer. *Storage v. Longman*, 2 Camp. 27, n. But where the defendant, the manager of a theatre, employed the plaintiff to compose music, as part of the representation of a dramatic piece, adapted to the stage by the defendant, on the terms that the music should form part of the dramatic piece, and that the defendant should have the sole liberty of performing such music as part of the piece ; it was held, that the music formed a mere accessory to the defendant’s piece, and that he, as against the plaintiff, had the sole right of performing the music as part of the piece, without assignment or consent in writing from the plaintiff. *Hatton v. Kean*, 7 C.B., N.S. 268 ; 29 L. J., C. P. ; [...]”<sup>280</sup>

Thus, the *Storage* case’s main principle did make a small but lasting mark in copyright history, and the way it is cited throughout the centuries supports the theories drawn from the materials in this study. Conversely, the *Skillern* case is mostly absent in legal textbooks. This is unsurprising, as it did not establish any new principle, but was, by what is conveyed in the *Times*’ reports, a very unwieldy reached decision made for the specific constellation at hand.

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<sup>278</sup> *IBID.*, the formulation was copied from the *Times*’ “Law Report” for *Hime v. Dale*, see *The Times* (London, England), Issue 5930, Friday, 27 January 1804, p. 3, where Erskine brings up *Storage* as precedent. “I was counsel for the Defendant, and I examined his sister *Storage*, to shew, that it was composed to be sung by her at the Italian Opera, and my defence was, that all compositions of this kind, so performed, were the property of the house. Lord Kenyon said, that this defence could not be supported ; that the Statute vests the property in the author, and that no such private regulation could interfere with the public right.”

<sup>279</sup> See BURDETT A. RICH (Ed.), *The Lawyers Reports Annotated*, Vol 51-52, Rochester 1915, p. 359; ROBERT HENLEY EDEN / THOMAS W. WATERMAN, *A Compendium of the Law and Practice of Injunctions and of Interlocutory Orders in the Nature of Injunctions*, Vol. 1, New York/Albany 1852, pp. cxlv-cxlvii; CHARLES PETERSDORFF, *A Practical and Elementary Abridgement of the Cases Argued and Determined at the Courts of King’s Bench, Common Pleas, Exchequer, and at Nisi Prius*, Vol. 6, New York 1830, p. 492.

<sup>280</sup> HENRY ROSCOE/MAURICE POWELL, *Digest on the Law of Evidence on the Trial of Actions at Nisi Prius*, Vol. 2, London 1891, p. 813, URL: <https://archive.org/details/digestlaweviden01powegoog/page/n101/mode/2up> (22.9.2020).

Outside the legal realm, *Skillern's* object of dispute, "Hope told a flattering tale", went on to become one of the most widely disseminated and popular songs in the English speaking world throughout the nineteenth century, while the story of Mara and Pindar causing a lawsuit between publishers over it somehow survived as an amusing anecdote.<sup>281</sup>

## VI. End

In the last quarter of the eighteenth century, both printed scores of operatic arias and musical copyright have considerably gained in relevance for London's music publishers. It has been shown how the two insertion arias by Storace and Mara have essentially become ideal pieces from a commercial standpoint, by proving themselves as highly effective in public performances, and simultaneously being perfectly suitable for the demands of amateur musicians in the domestic music market. By becoming objects of lawsuits, they have fully introduced the complicated procedures of operatic production to the legal realm.

Previous research on the two lawsuits had considered the *Storace* case to be an affirmation of an author's copyright against customary claims of the opera house administration, that has thus far operated on the assumption of owning all music performed in it. While the analysis of primary sources has confirmed that interpretation, the argumentation of the pleadings has highlighted the importance of contractual relationships for the result of the case, which has previously been understated or left ambiguous. The outcome not only depended on Storace being an author, but also him not being party to any contract relocating his copyright.

The view that authorship is not synonymous with ownership was further developed in *Skillern v. Longman*. Curtis Price and Milhous et al. have interpreted the case as relying on two opposing claims of authorship, resulting in the Court affirming that Mara's adaptation had created a new work. However, large parts of the empirical sources are completely incommensurable with this theory, and much better explained by the view that employment contracts relocating the copyright are valid in principle, as long as they concern compositions authored by the signee. In light of that fact, it would be irrational for the defendants to base their arguments on Mara having authored a new version, though she probably did author the second part of the aria. Indeed, a closer reading of the argumentation revealed that their strategy was entirely based on arguing that the adaptations made by people in such contracts did not create a new work. These

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<sup>281</sup> [Anon.], *Anecdotes for the Steamboat and Railroad: Selected from the best Authors*, Philadelphia 1857, p. 267; FREDERICK JAMES CROWEST, *A Book of musical anecdote*, Vol. 2, London 1878, p. 66.



nuances have changed the entire understanding of the case dramatically: With these points in mind, the *Skillern* case can no longer be dismissed as an incompetent Court naively attributing authorship to a plagiarist, but has to be recognized as attempting to deal carefully with the same sorts of problems that the legal system is addressing on a case-by-case basis until today. Questions over the status of derivative works and collective composition are among the most challenging points in modern musical copyright.<sup>282</sup> Therefore, *Skillern*'s historical significance lies not in a solution it established, but rather the nature of the problems it faced. It might be the very first known case in the Anglo-American copyright tradition, where these issues emerged so vehemently.

Finally, ideas about the cases' immediate impact on cultural discourse and theatrical management were called into question, insofar as very little evidence can be found to substantiate such claims. Instead, it seems as though the cases have received little public attention and that the opera house's management could practically retain their position by ambiguous contractual clauses. Surely, the impact of the cases, which has only been able to be explored tangentially in the present study, deserves closer attention in the future. Hopefully, the improved interpretation of the *Skillern* case may allow it to be better integrated in the lineage of musical copyright lawsuits, bridging into the nineteenth century. Regardless of their perhaps smaller practical influence, the theoretical result of the two lawsuits was quite significant, in that exclusive ownership over an aria in late eighteenth century London could only be assigned with the composer's consent. In consequence, the legal status of insertion arias from absent external composers is fittingly described as 'borrowed', in the sense that they get used and circulate among different agents without any transfer of exclusive property taking place.

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<sup>282</sup> See DANIELA SIMONE, *Copyright and Collective Authorship. Locating the Authors of Collaborative Work* (= Cambridge Intellectual Property and Information Law), Cambridge 2019.

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## Appendix: Two selected witness depositions from C 24/1964

Due to being the two most controversial documents for the previous accounts of the *Skillern & Goulding v. Longman & Broderip* case, the witness testimonies of Gertrud Elisabeth Mara and Joseph Mazzinghi will be reproduced in full. These depositions are particularly informative about several aspects discussed within the case.

### Gertrud Elisabeth Mara's deposition for the defendants' cross examination:

18. Dec. 1792

Gertude Elizabeth Mara a Witness already examined on the parts of the Complt. and being now again examined on the part of the Defend[ants]. Deponent Saith ~

1. To the first Int. Deponent saith she hath looked upon the two Original and printed pieces of Music<sup>283</sup> produced and shown to her at this the time of her exam[ination] And marked respectively with the Letters (A | B) and saith she hath always understood that the Music of the two Songs was originally composed and written by Signor Pasiello[sic] and saith that the Music of the Recitative and the accompaniment of the Harp and of the Bass to each of the Songs were composed by this Dep. Husband John Baptist Mara and that the whole of the second part of the said Music Tunes or Songs were Composed & written by this Dep. and this Dep. hath introduced performed and sung the said Music or Song marked with the letter (A) for her own benefit at the Pantheon Opera House in London on the 31 day of March 1791 and having caused an advertisement to be inserted in the Public News Papers that a New Song would be introduced by this Dep for her Benefit at the said Opera House for that Night only and Dep. saith that Mr Mazzinghi the late Copyist of the said Opera House happened to call at Depts Home [in] respect of another Song to be performed by Dep. At the said Opera House when Dep. among others with Depts Husband Mr. Meyer Sen. Mr. Meyer jun. and Mr. Patria [added<sup>284</sup>: were Trying out said Song] and the said Mr. Mazzinghi was introduced into the said Company and was present when the said Tune or Song was so Tryed and the Music of the said Song was much approved by all the persons then present but Dep being Desirous of having some of the Instruments or Accompaniments varied the said Mr. Mazzinghi in the absence of Deps Husband from the Room decided to take the Song away with him and

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<sup>283</sup> The transcription attempted to reproduce the capitalization, punctuation and orthography as it appears in the original manuscript. Only some obvious abbreviations were written out, i. e. "y." = "the".

<sup>284</sup> "added" / or "add" designates words or phrases written in between the lines in the document.



said he would make the alterations Dep desired and which he accord[ingly] did and returned the Original Song with his own Copy varied and altered in some very trifling respect and in a way that was not of any material ma[ttter] or consequence to the music of the said Song and if such alternating had been to have been paid for would not have been worth 2/4[?]<sup>285</sup> according to the usual salaries[?] paid for composing of Music and Saith the said Mr. Mazzinghi never had any concern with either of the said Tunes or Songs save as aforesaid nor had the said Mr. Mazzinghi any Degree of Interest therein and Further Dep. cannot Dep. To this Interry.

2. To the second Int. deponent saith that she hath known Dr. Wolcot commonly called Peter Pindar in the Int. mentioned [striked out] for several years last part and saith the said Dr. Wolcot and this Dep. were the writers and authors of the words of the said song marked with the letter (B) and mentioned in Depts answer to the forgoing Int. this Dep and the said Dr. Wolcot having assisted each other in writing and composing the same and Dep. Saith that she informed the said Dr. Wolcot that she had been applied to by the said Defendants to Print and publish the said Songs and Dep. Told him [s?]he had ordered his name to be part of the said Publication as the author of the words of the said Song at which the said Doctor Wolcot proud and readily consented to the said Defendants Printing and Publishing the said songs and further saith that the said Defendants when they had engraved the said Song sent the Proof Copy thereof to this Dep. And when the said Def. sent her the said Proof Copy to be returned the said Dr. Wolcot was present with Dep. and said to Dep. “Don’t send it to Broderip in the State it is in let me correct it” and the said Dr. Wolcot accordingly corrected the said Proof Copy in his own hand but it was then with his Privity and consent returned to the said Defendants to be Printed and Published and the same hath been printed and Published by them with the name Peter Pindar (being the assumed name of the said Dr. Wolcot) as the author and further or otherwise Dep cannot Depose to this Int. ~
3. To the third Int. Dep saith she doth not know or believe it is the Custom or reputed practice and understanding of the Proprietors of the Pantheon Opera House in London or of the Performers engaged therein or any Theatre in England to claim the Property in any Music Song or Tune that may be introduced performed or sung by any performer there or at any other Theater on the Night of his or her respective benefit nor doth Dep. believe that by any Usage or Custom at the said Opera House any Song introduced by

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<sup>285</sup> It is not clear whether “/4” is supposed to represent a certain currency.

a Performer for their benefit doth belong and become the Property of the Copyist of the Opera House and in acc. with that when she introduced the said Song marked with the Letter (A) the several parts of it were Distributed to the several Instrumental Performers in the Orchestra of the said Pantheon Opera House and as long as the said Song was over ~~and sung~~ it was ~~returned~~ by Deps. orders immediately returned to her and further Dep. cannot dep. to this Int. ~

4. To the fourth Int. Dep. saith that after dep had performed and sung the said Song marked with the Letter (A) and mentioned in depts. answer to the second Int. the said Robert Bray O'Reilly applied to Dep. and requested dep. would again perform the said Song which dep. declined doing saying she never intended it otherwise than as a Song to be sung for her benefit but dep. saith that the said Robert Bray O Reilly having again repeatedly applied to Dept. to sing it and observing it to be very much the wish of the public and that it would be very much to the advantage of the Proprietors of the said Opera House dep. consented to it on condition that said Song should every Night be returned to her so that dep. might preserve her property therein to which the said Robert Bray O Reilly consented and dep. always delivered or caused the said Song to be delivered to the Instrumental Performers at the said Opera House every Night dep. wants to sing it and the said Song was delivered back to Dep. as soon as it was ended and which the said Robert Bray O'Reilly would not have submitted to have done if he had considered himself in having any right or Authority to have caused or demanded the performance thereof without Dept. consent as dep. apprehends and believes and further Dep. cannot Depose to this Int. ~
5. To the 5<sup>th</sup> Int. Dep. saith that having been informed that Dr. Walcot had sold the words to the Song written and adapted to the Music and Tune of the said Song marked with the Letter (B) to the said Compl. to Print and Publish this Dep. asked the said Dr. Wolcot "how he could serve the Deft. so" and the the said Dr. Walcott replied that They (Meaning the Defts in this cause) had not sent him any of the Copys of the Song and that Broderip (meaning the Def. Francis Broderip) was a naughty proud Fellow that did not care for any body and that he did it out of Spite and further or otherwise Dep. cannot depose ~

G.E. Mara

## Joseph Mazzinghi's deposition for the plaintiffs

Sworn 26. Nov 1792

Joseph Mazzinghi of Newman Street [...] Composer of Music aged about 27 years [...]

1. To the first Int. Dep saith he knows the parties Compl. And Deft. in the Files of this Int. named and Dep. hath so known them respectively for several years last past ~
2. To the second Int. Dep. saith he hath looked upon the Paper writing produced and shown to him at this the time of this Examining marked with the Letter (A) and dated 10 July 1790 and saith that the said agreement was signed sealed and delivered by Robert Bray O'Reiley and the Dep. and that the names Rob.<sup>rt</sup> Bray O'Reilly and J. Mazzinghi appearing to be subscribed to said agreement as the parties executing the same and of the respective proper hand writing of this Dep. and of the said Rob. Bray O'Reilly and further Dep. cannot dep to this Int. ~
5. To the 5<sup>th</sup>. Int. Dep saith that he knows the Italian Song ~~marked~~ and beginning with the Italian words "ah che nel Petto io sento[?]" mentioned in the pleadings of this cause and in this Int. inquired after and saith that the same was [added: first] introduced and sung at the Opera House in the Pleadings of this Cause ment[ioned] in an Opera performed there called Idalide in or about the month of March 1791 by Madam Mara and Dep. saith that some little time previous to the said Opera being performed as aforesaid Dep. was sent forth by Madam Mara to her Home to hear a piece of Music played and saith that he waited on M. Mara accordingly by [added.: and met there Mr. Patria and Mr. Borghi] when she produced to Dep. a sketch of some Music she said she intended to introduce in the afs. Opera called Idalide which she informed Dep. she had composed when [add.: the same was sung by her accompanied by Mr. Patria on the Flutes Mr. Meyer on the Harp and Mr. Mara on the Violincello and] Dep. upon hearing the same informed her that ~~it~~ [add.: the accompaniment] would not do or have the Desired Effect in the State it was there in upon which Md. Mara then suggested Dep. would take the same home with him as she had then Sketched it out and for him to compose alter and set [add.: it] in any State Dep. should think but for the purpose of it being performed and Dep thus observed to the said Md. Mara that the Air as she had sketched out had not sufficient accompaniments to perform the Effect dep. thought it would provided such others wind added when the said Mrs. Mara replied he might add which he thought proper and Dep. thus proposed to add by way of accompaniments 2 flutes 2 french Horns a Basoon[sic] and a Harp to which the said Md. Mara acquined[?] and Dep. then tooke

the said Sketches of Music home and endeavoured [sic] to set it to proper Music but on trying it Dep. found that no part of what Madam Mara had so Sketched out and delivered to Dep. as aforesaid would do. And therefore he this Dep. composed the accompaniments intirely[sic] new and Dep. does not believe that he let any part of such music that had been sketched out by M. Mara and Delivered to Dep. as aforesaid stand or remain in his Composition [add: and Dep.] saith that after Dep. had composed the said Music entirely new as afs. together with the several accompaniments afs. Dep. took the same to Madam Mara when she tried it and highly approved thereof without ever altering or attempting to alter a single Note saith the same was as ment[ioned] rehearsed, played and approved of by the Manager of the said Pantheon Opera House in the same manner and without any alterations whatever and Dep. by the means afs. became [added: as he hath always understood and believes by the usage of the Profession] the Author or Composer of said Music and thereof entitled to a Copy right and property therein and which Dep. by the agreement mentioned in Dept. answer to the second Int. marked with the Letter (A) has disposed of to the said Robert Bray O`Reilly as Proprietor or Manager of the said Pantheon Opera House for the year 1791 and dep. further saith that sometime after the said Music [crossed] had been [crossed] performed and sung as afs Dep was requested by the Manager of the said Opera House to compile and revise and Opera of Signor Paesiello's called La Molinarella[sic] wherein this Dep. found a part of the Music or Melody which Madam Mara had before at the time she sent for Dep. told this dep. she had composed but dep. saith that not having adapted the Sketch that Madam Mara had given him as afs Dep. finds he has not composed any of the Music that Signor Paisiello had composed in this afs. Opera called La Molinarella for that the said Signor Paisiello had composed Music in that Opera only for 2 Violins a Tenor and a Bass Whereas the Dep. composed Music for none of those Instruments but only for 2 flutes 2 french horns and Bassoon and a Harp as appears by the Paper produced and shown to Dep. at this the time of his exam[ination] and marked respectively with the Letters (J/N)<sup>286</sup> that marked with the Letter (J) being the Music ~~composition or song~~ composed by Signor Paesiello and ~~given to the Dep~~ which the said Madam Mara had delivered to Dep. as her own Composition as afs but that marked with the Letter (N) being the Music composed by this Dep. and returned to said Mr. Mara and sung by her in the Opera of Idalide afs. ~~And Dep. saith and doth with that according~~

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<sup>286</sup> The letters used are not clearly identifiable but are certainly corresponding to the ones used in the next parts, respectively.

~~to the Custom that he [not intelligible] professions of music [add.: on such like occasion]  
that he is to be considered and would be considered as the author and Composer of the  
said Music and intitled to the Copy right thereof and further or otherwise Dep. cannot  
Dep.~~

J. Mazzinghi

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Köln, \_\_\_\_\_

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