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PROTO-PROPERTY IN LITERARY AND ARTISTIC WORKS:
SIXTEENTH-CENTURY PAPAL PRINTING PRIVILEGES

JANE C. GINSBURG

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**Proto-Property in Literary and Artistic Works:
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Jane C. Ginsburg *

ABSTRACT

This Study endeavors to reconstruct the Vatican's precursor system of copyright, and the author's place in it, inferred from examination of over five hundred privileges and petitions and related documents—almost all unpublished—in the Vatican Secret Archives. The typical account of the precopyright world of printing privileges, particularly in Venice, France and England, portrays a system primarily designed to promote investment in the material and labor of producing and disseminating books; protecting or rewarding authorship was at

* This Study commenced during a Michael Sovern Fellowship at the American Academy in Rome and has continued through several stays there as a Visiting Scholar. I am very grateful to the Academy's Directors, Prof. Carmela Franklin and her successor Prof. Christopher Celenza, to Assistant Librarian Denise Gavio, to Assistant Director for Operations Pina Pasquantonio, and to Executive Secretary Gianpaolo Battaglia. Much appreciation also goes to the staffs of the Vatican Secret Archives and of the Vatican Library, and to Dr. Paolo Vian, Director of its manuscript division. Special gratitude to Prof. Christopher Witcombe, whose earlier work on Papal privileges charted my initial path, and whose extraordinary generosity in sharing his notes from the Vatican Secret Archives further enriched this account. For assistance with translation of Latin documents, I am indebted to 2008–2009 Rome Prize winners Prof. Eric Bianchi and Prof. Patricia Larash, and to a team of Columbia Law School students (Ella Aiken '11, Matthew Birkhold '14, Jack Browning '13, Nicholas Flath '11, Catherine Kim '15, James Klugman '12, Katherine Mackey '14, Deborah Sohn '12, Denise Sohn '12, Johan Tatoy '13, Ptrateek Vasireddy '15, and Michael Zaken '14). Thanks for comments and assistance to Prof. Robert Darnton, Prof. Hanoeh Dagan, Dr. Dirk Imhof, Prof. Evelyn Lincoln, Prof. Laura Moscati, Prof. Neil Netanel, Prof. Laurent Pfister, Prof. Lisa Pon, George Spera, Prof. Elissa Weaver, Prof. Steven Wilf, and to fellow ASVat researcher Dom. Paolo Fusar Imperatore (*il mio angelo custode*). The Study has also benefitted from the observations of participants in faculty seminars at Columbia Law School, at the University of Connecticut Law School, in Professor Lisa Pon's seminar in the art history department at Southern Methodist University, at a seminar organized by Edwige Keller-Rahbé of the Faculté des lettres, sciences et art, Groupe renaissance et age classique, of l'Université de Lyon 2, and at a copyright history workshop organized by Professors Robert Brauneis and Tomás Gomez-Arostegui at George Washington University Law School.

A more fully-referenced version of this Chapter, including the original Latin or Italian text of the excerpts from privileges and petitions here quoted in my English translations, as well as a complete Appendix summarizing all the privileges and petitions found, and providing bibliographic information, appears in 36 Colum. J. L. & the Arts 345 (2013), <http://www.lawandarts.org/articles/proto-property-in-literary-and-artistic-works-sixteenth-century-papal-printing-privileges/>

most an ancillary objective.

The sixteenth-century Papal privileges found in the Archives, however, prompt some rethinking of that story because the majority of these privileges were awarded to authors, and even where a printer received a privilege for a work of a living author, the petition increasingly asserted the author's endorsement of the application. The predominance of authors might suggest the conclusion that the Papal privilege system more closely resembled modern copyright than printer-centered systems. That said, it would be inaccurate and anachronistic to claim that authorship supplied the basis for the grant of a Papal privilege. Nonetheless, a sufficient number of petitions and privileges invoke the author's creativity that one may cautiously suggest that authorship afforded a ground for bestowing exclusive rights.

The Study proceeds as follows: first, a description of the sources consulted and methodology employed; second, an account of the system of Papal printing privileges derived from the petitions for and grants of printing monopolies; third, an examination of the justifications for Papal printing monopolies and the inferences appropriately drawn regarding the role of authors in the Papal privilege system.

INTRODUCTION

This Study endeavors to reconstruct the Vatican's precursor system of copyright, and the author's place in it, inferred from examination of over five hundred privileges and petitions and related documents—almost all unpublished—in the Vatican Secret Archives. The typical account of the precopyright world of printing privileges, particularly in Venice, France and England, portrays a system primarily designed to promote investment in the material and labor of producing and disseminating books; protecting or rewarding authorship was at most an ancillary objective.¹ As the former Register of Copyrights Barbara Ringer put

1. See, e.g., ELIZABETH ARMSTRONG, *BEFORE COPYRIGHT: THE FRENCH BOOK-PRIVILEGE SYSTEM 1498–1526* (1990); ANDREW PETTEGREE, *THE BOOK IN THE RENAISSANCE* 163 (2010) (“The privilege was far more frequently granted to the printer or the publisher than to the author.”); Edward S. Rogers, *Some Historical Matter Concerning Literary Property*, 7 MICH. L. REV. 101, 102 (1908) (“The purpose of these privileges could not have been to encourage authorship. They were almost invariably given to printers and were apparently for the purpose of encouraging printing by eliminating competition, and thus making it more profitable.”).

it: “The author was the forgotten figure in th[e] drama [of the origins of copyright], which was played out during the 16th and 17th centuries in England, France and other Western European countries”²

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The Study proceeds as follows: first, a description of the sources consulted and methodology employed; second, an account of the system of Papal printing privileges derived from the petitions for and grants of printing monopolies; third, an examination of the justifications for Papal printing monopolies and the inferences appropriately drawn regarding the role of authors in the Papal privilege system. A few disclaimers: based in primary sources, this Study does not attempt extensive examination of the broader social and economic setting in which the Papacy granted printing privileges. Nor does it delve deeply into the history of the Roman or Italian book trade. Italian book historians have provided the wider context,³ though they also acknowledge that little has been known about the Roman printing privileges.⁴

Finally, a word about the title, “Proto-Property in Literary and Artistic Works.” It is inspired in part by the French term for copyright, “propriété littéraire et artistique.” The French Code of Intellectual Property, expressing the predominant (at least Continental) view, emphasizes that copyright is an “exclusive incorporeal right of property” which authors enjoy in their works “from the sole fact of their creation.”⁵ While printing privileges, Papal or otherwise, established certain exclusive rights for a certain period, to call these rights “property” in the sense of modern “literary property” would be both anachronistic and

2. BARBARA RINGER, *THE DEMONOLOGY OF COPYRIGHT* 7–8 (1974).

3. Representative works are cited in the Bibliography following this article.

4. See, e.g., ANGELA NUOVO & CHRISTIAN COPPENS, *I GIOLITO E LA STAMPA NELL’ITALIA DEL XVI SECOLO* 211 n.184 (2005) (stating there is no systematic study of Papal privileges after 1527); *id.* at 204 n.141; see also ARMSTRONG, *supra* note 1, at 13 (“To my knowledge, there exists as yet no general and systematic study of papal book-privileges in this period.”).

5. C. DE LA PROPRIÉTÉ INTELLECTUELLE art. L. 111-1 (Fr.). The current French law reiterates article 1 of the 1957 copyright law. For an earlier expression of the same principle from the first international copyright treaty, see the Convention between Austria and the Kingdom of Sardinia (1840), the first article of which declared that works of authorship “constitute a property which belongs to those who are their authors” On the Austro-Sardinian treaty, see generally Laura Moscati, *Il caso Pomba-Tasso e l’applicazione della prima convenzione internazionale sulla proprietà intellettuale*, in *MÉLANGES EN L’HONNEUR D’ANNE LEFEBVRE-TEILLARD* 747, 754–57 (Bernard d’Alteroche et al. eds., 2009).

overstated.⁶ The sixteenth-century sovereign *granted* exclusive rights as a “special grace”; rights did not *arise* from the act of creation, nor was the work’s creator necessarily the first beneficiary of any printing monopoly. That said, I believe that examination of the Papal privileges demonstrates, over the course of the sixteenth century, a growing sense of entitlement on the part of those who petitioned for privileges, and an increasing grounding of that entitlement in the creative act. Hence the prefix “Proto-,” suggesting a partly formed precursor to our current concepts. Nonetheless, I emphasize the “partly,” and caution against characterizing the system of Papal printing privileges simply as a kind of *droit d’auteur avant la lettre*. For example, as we will see, ensuring the integrity of text and images preoccupied both popes and petitioners, but often for reasons far from the core of contemporary *droit moral*, rooted as the sixteenth-century objective was in fidelity to Counter Reformation Catholic doctrine,⁷ rather than in respect for the personality of the author.⁸

I. SOURCES AND METHODOLOGY

A. DOCUMENTS

Almost all documents studied are located in the Vatican Secret Archives (ASVat), in compendia of sixteenth-century Papal secretarial letters (*brevi*). These are, in effect, copies (of varying degrees of legibility) for the secretarial files, the originals having been sent to the recipients. The principal relevant collections are volumes XXXIX–LXII in the *Armarium* series (ARM), and volumes 11–399 of the *Registra Brevium* (Sec. Brev. Reg.).⁹ I have now found approximately five hundred privileges and petitions (*suppliche*) and related documents, of which less than 20% have previously been reported; less than 10% of the Papal *brevi* and/or

6. Papal privileges shared many attributes of property, including alienability, descendability and (limited) exclusivity, but the basis of the property right differed markedly from *literary* property as we have known it since the eighteenth century.

7. See, e.g., Sec. Brev. Rev. 293 F 113 (Mar. 6, 1600) (Giulio Calvi) (discussed *infra* Part II.H).

8. Another reason it may be hazardous to speculate that authors are more central to the Papal privileges than to privileges elsewhere concerns the difficulty of comparing Papal and Venetian privileges. While the proportion of author-recipients of Papal privileges is significantly greater than for Venetian privileges, the data sets do not align. My study covers principally 1509–1605; the principal studies excerpting or reproducing the texts of the Venetian privileges begin in the fifteenth century, but end around 1536. See CARLO CASTELLANI, *LA STAMPA IN VENEZIA DALLA SUA ORIGINE ALLA MORTE DI ALDO MANUZIO SENIORE* (1889); CHRISTOPHER L.C.E. WITCOMBE, *COPYRIGHT IN THE RENAISSANCE: PRINTS AND THE PRIVILEGIO IN SIXTEENTH-CENTURY VENICE AND ROME* (2003) (discussing later sixteenth-century Venetian privileges, but only concerning prints and engravings); Carlo Castellani, *I Privilegi di Stampa e la proprietà letteraria in Venezia dalla introduzione della stampa nella città*, 36 ARCHIVIO VENETO 127–39 (1888); Rinaldo Fulin, *Primi privilegi di stampa in Venezia*, 1 ARCHIVIO VENETO 160–64 (1871); Rinaldo Fulin, *Documenti per servire alla Storia della tipografia Veneziana*, 23 ARCHIVIO VENETO 84–212 (1882). According to Angela Nuovo and Christian Coppens, there currently exists no systematic study of sixteenth-century Venetian privileges. See NUOVO & COPPENS, *supra* note 4, at 183 n.42, 211 n.184. Republishing classical authors may have dominated the early years of publishing, but later on publishing shifted to new works both because of a dwindling supply of long-dead authors and because of the role of new works in propagating the Counter Reformation.

9. See generally INDICE DEI FONDI E RELATIVE MEZZI DI DESCRIZIONE E RICERCA DELL’ARCHIVIO SEGRETO VATICANO (2013), available at <http://www.archiviosegretovaticano.va/wp-content/plugins/downloads-manager/upload/Collection%20Index%20and%20related%20description%20and%20research%20resources.pdf>.

petitions have been published either in whole or in part in secondary sources.¹⁰ With very rare exceptions, all of the documents are handwritten.¹¹ Additional documents studied are in the archives of the Plantin Moretus Museum in Antwerp.¹² The privileges are in Latin, and most of the petitions are in Italian, although some are in Latin. More than half of the privileges found in the Archives were granted to authors or their heirs rather than to printers. This Study employs the term “printer” to cover both those who physically printed books (referred to in the documents variously as *stampatore*, *impressore* and *tipografo*) and the publisher-booksellers (*libraro*, *bibliopola*), who played an editorial role and either hired artisans to print, or exercised that function themselves as well. In any event, in sixteenth-century Rome the difference between printers and booksellers was not always clear,¹³ and privileges were awarded both *Bibliopola* and *Typographis*. I have identified over 231 privileges (approximately 52%) as awarded to authors; over 180 (approximately 41%) were awarded to printers, including licenses to print missals and breviaries. (I have classified approximately thirty recipients of privileges, such as religious congregations or foreign sovereigns, neither as author nor as printer.) Of over one hundred petitions: more than half were made by or on behalf of authors or their heirs, and slightly less than half by or on behalf of printers. (This breakdown does not include petitioners, such as religious orders, seeking rights to distribute a category of works that I have called “Tridentine works”: missals, breviaries and similar works of uniform liturgical content intended for broad dissemination across the Catholic world.)¹⁴

10. One of the principal works on the Vatican privileges remains Pierina Fontana, *Inizi della proprietà letteraria nello stato pontificio: Saggio di documenti dell'Archivio Vaticano*, in 3 ACCADEMIE E BIBLIOTECHE D'ITALIA 204 (1929–30). Fontana reproduces facsimiles and partial transcriptions of several privileges accorded during the first half of the sixteenth century. See *id.* See generally WITCOMBE, *supra* note 8 (referencing petitions and privileges, particularly for engravers, and including some partial transcriptions). For further references see Bibliography.

11. I have found only two instances of a printed text, in both cases a copy of the privilege as printed in a book was cut from the book and pasted into the *breve* with modification made to correspond to the new grantee. See ARM XL v 46 f. 174 (No. 297) (June 26, 1533) (printed privilege to Melchior Sessa for poetry of Lodovico Martelli (1499–1527), which appears to be a recycling of 1531 privilege to Antonio Blado for Machiavelli's works. That privilege is published in a 1532 Venetian edition of Machiavelli's work. See *Antonio Blado's Privilege for Machiavelli's Works, Vatican (1531)*, PRIMARY SOURCES ON COPYRIGHT (L. Bently & M. Kretschmer eds.), http://copy.law.cam.ac.uk/cam/tools/request/showRepresentation?id=representation_i_1531&pagenumber=1_1&show=translation (last visited Apr. 20, 2013); Sec. Brev. Reg. 339 F pg. ins. between 45–46 (Nov. 5, 1603) (to printer Giovanni Tallini for Summa of St Raymond. Printed privilege recycled from book published by Franzini heirs with privilege from Sec. Brev. Reg. 290 F 107 (Dec. 14, 1599) (to printers for Commentary on St. Luke by the Cardinal of Toledo)).

¹² These documents are labeled MPM Arch.

13. See, e.g., MASSIMO CERESA, *UNA STAMPERIA NELLA ROMA DEL PRIMO SEICENTO: ANNALI TIPOGRAFICI DI GUGLIELMO FACCIOTTI ED EREDI (1592–1640)* 37 (2000) (“It is not always easy separately to identify and distinguish the publishing enterprise from the functional and commercial endeavors of the printer and the bookseller.”); IAN MACLEAN, *SCHOLARSHIP, COMMERCE, RELIGION: THE LEARNED BOOK IN THE AGE OF CONFESSIONS, 1560–1630*, at 101–02 (2012) (describing the conflation of roles of printers, publishers and booksellers).

14. Liturgical works published between 1567 and 1624 are often referred to as “Tridentine,” although the Council of Trent “specifically mandated only revision of the missal and breviary of the Roman Rite. Its intention was to eliminate superstitions, redundancies, scribal errors, and other inappropriate elements that had crept into the texts over the course of time. Once those revisions got under way, they led to revisions of other texts such as the Martyrology, the Pontifical, and the Ritual.” JOHN W. O'MALLEY, *TRENT: WHAT HAPPENED AT THE COUNCIL* 268 (2013).

B. METHODOLOGY FOR FINDING PRIVILEGES AND PETITIONS

Most of the petitions and privileges not only are unpublished, they also have not been catalogued. Locating them has required consulting the eighteenth-century handwritten indexes that list *brevis* for each papacy, and cross-referencing to the volumes of sixteenth-century collected letters. Listings consulted included those labeled “de non imprimen” (or “de non imprimendo”); “indultum super impressione”; “bibliopola”; “impressore”; “privilegium ad X annos.” For the Sec. Brev. Reg. series, covering Pius V through Clement VIII (1566–1605), indexes 748–759 are organized chronologically by year and month, and sometimes alphabetically by diocese, and often provide both volume and page references. For Julius II through Pius IV (1503–1590), indexes 290–315 and 734–738 are organized chronologically by year and month, but most do not specifically refer to a volume of ARM. Concordance listings pasted into the front of the indexes or kept by employees of Vatican Archives lead to the probable volume of ARM; the *brevis* for each month in that collection were reviewed in search (not always successful) for the ones identified in the indexes. Petitions accompanying the privileges have not always been preserved; for only about 25% of the privileges did I also find the petitions, most of them corresponding to the papacy of Clement VIII (1592–1605). Secretarial copies from this period occasionally include annotations on the back of the document summarizing the nature and basis of the request, even where the original petition is no longer included in the file.

On finding a *breve* or at least an index listing, I crossreferenced it with the database of the *Istituto Centrale per il catalogo unico delle biblioteche italiane e per le informazioni bibliografiche* (EDIT 16 database)¹⁵ to ascertain if a book was printed and whether the book was in the Vatican Library (BAVat).¹⁶ If so, I consulted the book at the Vatican Library to see if it referred to or reproduced a Papal privilege.

In the absence of a comprehensive or systematic source of information identifying sixteenth-century Papal printing privileges, one cannot ascertain what proportion of the universe of sixteenth-century Papal privileges the documents found in the Vatican Archives reflect, or, for that matter, what proportion of books published in Italy—or just in Rome—received Papal privileges.¹⁷ Bibliographic records, such as those contained in the *Short-title*

In addition, I have found one instance of a privilege to print breviaries granted to the Pope’s medical doctor as a reward for services apparently unrelated either to printing or to religious activities. See Sec. Brev. Reg. 183 F 504 (Sept. 25, 1591) (to Rodolfo Silvestri). Since Papal privileges in Tridentine works were much sought-after, see *infra* notes 36–39 and accompanying text, it would appear that the grant was expected to generate a handsome compensation. Silvestri two years later succeeded publisher Paolo Blado in the office of papal printer, see DOMENICO BERNONI, *DEI TORRESANI, BLADO E RAGAZZONI, CELEBRI STAMPATORI A VENEZIA E ROMA NEL XV E XVI SECOLO: COGLI ELENCHI ANNOTATI DELLE RISPETTIVE EDIZIONI* 248 (1890).

15. *Edit 16*, Istituto Centrale per il catalogo unico delle biblioteche italiane e per le informazioni bibliografiche—Laboratorio per la bibliografia retrospettiva, http://edit16.iccu.sbn.it/web_iccu/ivain.htm.

16. *Printed Books*, VATICAN LIBR., <http://opac.vatlib.it/iguana/www.main.cls?sUrl=homePRINT> (last visited Apr. 25, 2013).

17. See NUOVO & COPPENS, *supra* note 4, at 204 (pointing out that there are many more books and prints in circulation mentioning privileges than there are privileges found in archives).

Catalogue of Books Printed in Italy and of Italian Books Printed in Other Countries from 1465 to 1600 Now in the British Museum (created in 1958) do not indicate whether the book had a privilege. Some studies cataloging particular sixteenth-century Italian printers' outputs do show whether books claimed Papal privileges, and on the basis of these listings, one may speculate that less than one third of the publications received Papal privileges.¹⁸ However, these catalogues generally do not indicate whether the initial grantee was an author, printer or bookseller. Thus, while these bibliographical sources account for some Papal privileges not found in the records of *brevi*, thus augmenting the overall number of identified sixteenth-century Papal printing privileges, their general failure to disclose these privileges' initial beneficiaries makes it difficult to assess whether the author-dominant proportion of privileges found in the Archives is representative of the wider universe.¹⁹

II. SYNTHESIS OF THE SYSTEM: PERSONS, WORKS AND RIGHTS PROTECTED

A. PROCESS OF OBTAINING VATICAN PRINTING PRIVILEGES²⁰

Before a book could obtain a privilege, its author or printer was first obliged to apply to the Papal censorship authorities, principally the Master of the Sacred Palace and, later in the sixteenth century, the Congregations of the Inquisition and of the Index, for a license to print.²¹ The "*licenza dei superiori*" or "*superiorum permissu*" enabled the book to be published at all; the "*privilegio*" entitled its holder to the exclusive right to publish and sell the work, usually for a period of ten years, potentially renewable.

To obtain a privilege, the petitioner would apply to the Apostolic Secretary or the Secretary of Latin Briefs. Some of the petitions were made by, or were accompanied by the

18. See *Bibliography* (listing sources containing or mentioning Papal privileges). Estimating on the basis of prior bibliographic studies the overall percentage of published books that received Papal privileges is hazardous because some printer-publishers seem to have obtained privileges more often than others, and not all such printers worked exclusively in Rome. For example, one of the printers who most frequently acquired Papal privileges, Michele Tramezzino, worked primarily in Venice; approximately seventy percent of books and maps published by the Tramezzino brothers acquired Papal—as well as Venetian—privileges.

19. In the scanned images in the EDIT 16 database, reference to a privilege did not always identify the granting authority; "*cum privilegio*" or "*con privilegio*" could refer to a variety of sovereigns within or without Italy. Nor does the simple mention "*cum privilegio*" reveal who applied for or initially received the privilege.

20. See generally THOMAS FRENZ, *I DOCUMENTI PONTIFICI NEL MEDIOEVO E NELL'ETÀ MODERNA* 71–91 (2d ed. 1998); WITCOMBE, *supra* note 8, at xxix–xxxi.

21. Many of the privileges pose the condition precedent of censorship approval. See also Sec. Brev. Reg. 39 F 237 (June 1, 1576) (to printer Dionisio Zanchio for works of Polidoro Vergilio, now that they have been "purged" of heretical material and approved by the Congregation of the Index). On Papal censorship and printing in Rome, see, e.g., Gigliola Fragnito, *The Central and Peripheral Organization of Censorship*, in GIGLIOLA FRAGNITO, ed., *CHURCH CENSORSHIP AND CULTURE IN EARLY MODERN ITALY* 13 (2001); MACLEAN, *supra* note 13, at 153–55; Maria Grazia Blasio, *Privilegi e licenze di stampa a Roma fra Quattro e Cinquecento*, 90 *LA BIBLIOFILIA* 147, 154–59 (1988).

endorsement of, a well-connected ecclesiastical or other patron.²² Many petitioners assert that the Master of the Sacred Palace has already approved the work, or that they are applying for the privilege conditional on the approval of the Master of the Sacred Palace. In some instances, the petitioners urge a rapid grant of the privilege because the books have already been printed, and await only the addition of the notice of privilege before they are distributed.²³

In addition to potentially delaying publication, seeking a Papal privilege appears to have been expensive.²⁴ Neither the petitions nor the privileges disclose the fees, although in general a variety of taxes attached to the application and receipt of a *breve*.²⁵ Some petitions refer obliquely to the cost,²⁶ and one expresses considerable annoyance at the imposition of a fee from which the petitioning author believed he should have been dispensed.²⁷

22. For petitions by or invoking patrons, see, for example, Arm XL v 49 F 204rv (n 235) (Dec. 5, 1534) (petition of the humanist and Bishop Claudio Tolomei on behalf of his relative Mariano Lenzi); Sec. Brev. Reg. 199 F 172r (Jan. 26, 1593) (Cardinal Cinzio Aldobrandini on behalf of painter Cesare Ripa); Sec. Brev. Reg. 239 FF 382 rv, 383r (petition), 389v, 390rv (May 26, 1596) (petition of Fra Giovanni Baptista Cavoto invoking Cardinal Aldobrandini); Sec. Brev. Reg. 303 FF 390 rv, 391r (petition), 392v, 393rv (Dec. 16, 1600) (Cardinal Aldobrandini on behalf of printer Antonio Franzini); see also Sec. Brev. Reg. 122 F 529 (second petition of Martin Zuria) (Sept. 3, 1586) (referring to perceived obstructionism by the Cardinal Secretary of Papal *breve*, and asking for another cardinal's intervention to resolve the impasse).

23. See, e.g., Sec. Brev. Reg. 277 F 296 (petition) (Dec. 30, 1598) (Ulisse Aldovrandi requests that his privilege be expedited so that he can have the mention "Cum privilegio" printed in the book); Sec. Brev. Reg. 266 F 51 (petition) (Jan. 5, 1598) (Orazio Torsellini asks for privilege to be granted as soon as possible so that publication is not held up; in published volume of Torsellini's *Lauretanae Historiae* the privilege is dated 5 January, 1598, though the date on the frontispiece is 1597, and says "Cum privilegio summi Pont," with approbations of the Cardinal of Loreto and the General of the Jesuit order dated, respectively 8 May and 8 October, 1597. This suggests the book was already printed or at least type-set, and its final assembly and distribution were delayed by late grant of the privilege.).

24. See, e.g., MPM Arch. 102 F 379 (Latin); MPM Arch. 21 F 357 (French) (Jan Moretus paid his cousin Peter Bras SJ for various services on his behalf at the Vatican, including payment of 20 ducats for a privilege to print bibles; the sum was the equivalent of 90 days wages for an Antwerp printer's craftsman.). Elizabeth Armstrong also discusses this point:

Papal privileges were expensive. When Michael Hummelberg, in Rome, set about obtaining a five-year privilege from Leo X for Froben's edition of the works of St Jerome, prepared by Erasmus, he was told by Roman booksellers whom he consulted that it would cost about thirty gold pieces. Submitting the request to the Pope through a series of highly placed and benevolently disposed intermediaries, he eventually secured the privilege for six ducats. "No one, believe me," he wrote to Froben, enclosing the document and requesting repayment, "could have obtained it for so little."

ARMSTRONG, *supra* note 1, at 13 & n.3 (citing A. HORAWICZ, ANALECTEN ZUR GESCHICHTE DES HUMANISMUS IN SCHWABEN 1512–1518, at 217 (1877) (privilege no. xxxviii (Aug. 30 1416)), and pointing out that "[t]he fee paid by Koberger for the privilege referred to above, n. 1, was in fact thirty florins").

25. FRENZ, *supra* note 20, at 71–91.

26. See, e.g., Arm XL 50 F 247, 248r, 249r (first and second petitions) (Feb. 5, 1535) (Tommaso and Benedetto Giunta, Antonio Blado, Antonio Salamanca asking Cardinal Blosio "that you be willing today at the direction of his Blessedness to take the commission and issue the Breve . . ."); Sec. Brev. Reg. 122 F 529 (Sept. 3, 1586) (second petition of Martin Zuria, referring to "the purchase of the privilege").

27. Sec. Brev. Reg. 140 F 316r (second petition) (Apr. 22, 1589) (to Gerard Voss for translation of St Ephrem: "I speak truly and sincerely, if this *motu proprio* [privilege] is not granted and conceded to me in all respects for free, I have decided to entirely cease [the translation entrusted to me by His Holiness] and to suspend the whole thing. Therefore, I would like this matter to be judged appropriately, so that a better resolution will be produced.")

B. RECIPIENTS OF PAPAL PRINTING PRIVILEGES

I have already indicated the breakdown between authors and printers.²⁸ Because the Pope asserted dominium over all of Christendom, a dominion he enforced through excommunication, applicants for privileges often resided far from the Papal States, in such locations as Dalmatia,²⁹ Poland,³⁰ Cologne,³¹ Ingolstadt (Bavaria),³² Paris,³³ and Mexico.³⁴ In addition, it is worth noting that, as the sixteenth century (and the Counter Reformation) progressed, an increasing number of authors receiving privileges were clerics, particularly Jesuits.

C. WORKS PROTECTED

Of approximately 430 privileges identified,³⁵ the great majority—approximately 323—were granted for new works (including new commentaries on religious or literary classics) and another 55 for new editions or translations of older works. Privileges for religious works predominated: 244 privileges, of which approximately 161 were for newly authored works. Of the remaining privileges or licenses for religious works, over half (42) constitute missals, breviaries and other Tridentine works. Printers throughout the Catholic world, perceiving lucrative markets in Tridentine texts,³⁶ vied for geographically subdivided exclusive rights;³⁷ but some licenses were granted to foreign sovereigns for their territories.³⁸ In general, in Rome, as elsewhere throughout the latter half of the sixteenth century, most of the money to be made in printing and publishing came from purveying religious texts.³⁹

28. *See supra* Part I.A.

29. *See* Sec. Brev. Reg. 52 F 429 (June 29, 1582) (to local bishop for publication of works regarding the Roman Jubilee for the people living under Ottoman rule).

30. *See* Sec. Brev. Reg. 220 F 224 (Oct. 29, 1594) (to the Chancellor of Poland to print new and old works at the University of Chelm).

31. *See* Sec. Brev. Reg. 16 F 222 (July 28, 1571) (to Gervinus Calenius, to print missals and breviaries).

32. *See, e.g.*, Sec. Brev. Reg. 39 F 298 (Aug. 28, 1576) (to David Sartorius, printer in Ingolstadt, for works of Peter Canisius); Sec. Brev. Reg. 69 F 7 (Jan. 3, 1581) (same grantee, for works of Johan Eck).

33. *See* Sec. Brev. Reg. 53 F 271 (Nov. 5, 1582) (to Guillaume Chaudière, printer for the University of Paris, for commentaries on the Gospels).

34. *See* Sec. Brev. Reg. 148 F. 148 (Oct. 31, 1589) (to Francisco Beteta, schoolmaster in Tlaxcala for compilation of documents on Mexico).

35. Identification is approximate because, on the one hand, some privileges cover multiple works and, on the other, index entries for other privileges do not detail the works covered, and the indexed privilege has not been found.

36. *See, e.g.*, COLIN CLAIR, CHRISTOPHER PLANTIN 87–104 (1987).

37. *See, e.g.*, Sec. Brev. Reg. 224 F 83, 84r (petition) (Feb. 14, 1595) (Wolfgang Eder, seeking privilege for Bavaria); Sec. Brev. Reg. 318 F 236, 237r (petition) (Feb. 13, 1602) (Jan Keerbergh, seeking privilege for Antwerp and other areas formerly within privilege of late Plantin).

38. *See, e.g.*, Sec. Brev. Reg. 13 F 8v (Jan. 6, 1570) (license to the King of Portugal to print Breviaries for his kingdom). The royal recipients might then designate an exclusive printer. *See, e.g.*, Sec. Brev. Reg. 19 F 441, 442 (petition) (Nov. 15, 1571) (petition names Christopher Plantin as printer of breviaries, missals and other Tridentine works for the Spanish provinces).

39. *See, e.g.*, KAREN L. BOWEN & DIRK IMHOF, CHRISTOPHER PLANTIN AND ENGRAVED BOOK ILLUSTRATIONS IN SIXTEENTH-CENTURY EUROPE 122–25 (2008); PAUL GRENDLER, THE ROMAN INQUISITION AND THE VENETIAN PRESS, 1540–1605, at 170 (1977).

Among works neither liturgical nor commentaries on biblical, patristic or medieval scholastics' texts, the leading categories include prints of historical or religious subjects, architecture, maps and other images (the arrival in Rome of pilgrims and other tourists during jubilee years may account for some of the popularity of these works); works of history, politics and biography, including the lives of saints new and old and Popes; canon law books; contemporary literature (including Ariosto's *Orlando Furioso*⁴⁰ and Tasso's *Gerusalemme Liberata*⁴¹); works about science, mathematics and medicine; educational works, such as grammar books; and works of choral music. These categories of works break down roughly as follows (some overlap, for example a book about the monuments of Rome,⁴² would be listed in both the "tourism" and the "images" categories):

Art, architecture, images: 51
History, biography, geography: 45
Law: 40
Science, mathematics and medicine: 34
Literature: 31
Classics (including translations, new editions): 20
Education: 17
Music: 13
Tourism: 6

D. RIGHTS PROTECTED

1. Geographic Scope

In the sixteenth century, as indeed today, exclusive rights in works of authorship were territorial. Each sovereign's grant of a privilege produced effects only within the borders that sovereign controlled. Sovereigns did, however, grant foreign authors' or printers' petitions for local privileges.⁴³ Because Papal privileges, by contrast, purported to be multiterritorial, the

40. See ARM XL v 46 F 137 (July 8, 1533) (to heirs of Ariosto).

41. See Sec. Brev. Reg. 207 F 274 (Sept. 2, 1593) (to publisher, for new edition prepared by author).

42. See Sec Brev Reg. 126 F 61 (Jan. 7 1587) (to printer Girolamo Franzini for *Le Cose Maravigliose Dell'Alma Citta Di Roma*).

43. The French king might grant a privilege in a foreign work, but a work's initial publication abroad without the French privilege would disqualify it from subsequent protection in France, even if the foreign claimant had obtained a privilege from his local authorities in the country of first publication. See Simon Marion, *Plaidoyé second, sur l'impression des œuvres de Senèque, revues & annotées par feu Marc Antoine Muret* (1586), in PLAIDOYEZ DE MON. SIMON MARION, BARON DE DRUY, CI DEVANT ADVOCAT EN PARLEMENT ET DE PRESENT CONSEILLER DU ROY EN SON CONSEIL D'ESTAT ET SON ADVOCAT GENERAL 9 (Paris, Michel Sonius, 1598), reprinted, translated and available at [http:// copy.law.cam.ac.uk/record/f_1586](http://copy.law.cam.ac.uk/record/f_1586) ("Since [the] death of [the] humanist Marc Antoine Muret, commentator on Seneca], his friends in Rome have had printed the edition of Seneca which he annotated, without obtaining the privilege from the King [of France]. This rendered it entirely public, and free to print in this Kingdom, where it can no longer be subject to the privilege . . .") Marion addressed his plea on behalf of two Paris printers who sought the annulment of a subsequently granted French privilege on Muret's Seneca; the Parlement of Paris ordered the cancellation of the privilege on March 15, 1586.

geographic scope of protection distinguished Papal privileges from those of other sovereigns. The Pope exercised both secular power over the Papal States (in central Italy) and spiritual authority over all Catholic lands. Petitioners from within and without the Papal States requested coverage for all of Italy (to the annoyance of the Venetian Senate⁴⁴) and all lands directly or indirectly subject to the Holy Roman Church. Some privileges, particularly those concerning the distribution of missals and breviaries, are explicitly limited to particular territories outside of Rome.⁴⁵ And some grant a subsequent petitioner a more limited geographical area carved out from a prior grant covering all (Catholic) Christendom.⁴⁶

Along with fines and confiscation of the books, the principal sanction for violation of an extraterritorial privilege was the supraterritorial remedy of automatic excommunication,⁴⁷ a penalty that petitioners must have considered sufficiently efficacious to warrant the effort and expense of obtaining Papal privileges. Nonetheless, claimants who anticipated that their works would be bestsellers frequently sought, in addition to Papal privileges, multiple privileges from a variety of secular sovereigns, most often Venice, France and several Italian principalities, notably Florence. One particularly vigilant grantee, Francesco Priscianese, author of an Italian-language Latin grammar book, received privileges from multiple sovereigns. He published the full text of the Papal and Imperial privileges in the initial pages of the book, followed by this statement: “We have also for the said time the fullest privileges from the Most Christian King of France, from the Most Illustrious Venetian Senate, and from Florence, and from Ferrara, and from other Rulers of Italy, which we do not copy out in order not to create a Volume of Privileges.”⁴⁸

Roman printer Bartolomeo Grassi had obtained a Papal privilege in 1585 for Muret’s Commentaries on Seneca. *See* Sec. Brev. Reg. 116 F 20 (Nov. 23, 1585). It is unclear whether the privilege extended beyond the Papal States. The grant reaches “all and individual Christian faithful, especially book printers and book sellers however named, in our City and its district as well as all our ecclesiastic state and all those directly or indirectly subject to the Holy Roman Church.” Other drafts of the grant specify its application beyond Italy, but that language has been struck out. On the other hand, the draft also strikes out language limiting the privilege to persons “subject to the temporal dominion” of the church.

44. *See Motu proprio Controversy, Venice (1596)*, PRIMARY SOURCES ON COPYRIGHT (1450–1900) (L. Bently & M. Kretschmer eds.), http://copy.law.cam.ac.uk/cam/tools/request/showRepresentation?id=representation_i_1531&pagenumber=1_1&show=translation (last visited Apr. 25, 2013) (complaining that Venetian booksellers and printers were obtaining Papal privileges, to the detriment of the publishing business in Venice, and ordering the beneficiaries of these privileges to renounce them, on pain of confiscation of books and a ten ducat fine per book). *See generally* NUOVO, *supra* note 3, at 224–26.

45. *See, e.g.*, Sec. Brev. Reg. 14 F 248 (July 28, 1578) (to Christopher Plantin to print and distribute missals and breviaries in Flanders, parts of Germany and Hungary); *see also* Sec. Brev. Reg. 69 F 2 (Jan. 1, 1581) (to Felice de Zara to arrange for the printing of religious works in “Illyrian”—Serbo-Croatian—language and alphabet).

46. *See, e.g.*, Sec. Brev. Reg. 58 F 216 (Feb. 1, 1584) (granting Lyonnais printer Charles Pesuot a privilege for printing and distributing the works of Peter Canisius in France and Spain, notwithstanding earlier privilege to Bavarian printer David Sartorius, at Sec. Brev. Reg. 39 F 298 (Aug. 28, 1576)).

47. Remedies are discussed *infra* Part II.G.

48. FRANCESCO PRISCIANESE, DE PRIMI PRINCIPII DELLA LINGUA ROMANA (Venice 1540), BAVat Stamp.Cappon.IV.373(int.2); Stamp.Cappon.IV.374(int.1). Priscianese’s privilege can be found at ARM XLI v 14 F339 (Aug. 27, 1539). *See also* NUOVO, *supra* note 3, at 225–27 (describing the practice of the publishing house of the Tramezzino brothers to obtain privileges from multiple sovereigns inside and outside Italy).

2. Duration

Regarding the duration of exclusive rights, most privileges were granted for a ten-year term effective from issuance or from the date of printing or publication of the work,⁴⁹ though a few lasted for fifteen or twenty years. A comparison of petitions and privileges shows that some petitioners requested longer terms, but routinely received only ten years.⁵⁰ Privileges could be renewed,⁵¹ even after some time had elapsed between the expiration of a prior privilege and the grant of a new term in the same work.⁵² It does not seem that a request for a renewal required special justification, nor that it advert to some new contribution by the author or printer.⁵³ Nor does there appear to have been a limit on the number of renewals sought; some original grantees' heirs sought successive renewals.⁵⁴ It is not clear whether a privilege granted by one Pope continued in effect under his successor. Petitions referring to prior privileges suggest some grantees shared this uncertainty.⁵⁵

3. Reproduction, Sale and Importation

All privileges conferred exclusive rights to reproduce and distribute the work. The specific language forbade third parties from printing, selling, offering for sale or importing the work (or hiring others to engage in these activities) without the express permission of the privilege holder, his grantees, his heirs or successors in title. The importation right would have been particularly significant where a privilege covered a limited territory; even Papal privileges purporting to extend to all Christendom would have lacked effect in jurisdictions whose rulers were Protestant. As a result, recipients of Papal privileges would have sought to prevent the entry into territories covered by the Papal privilege of copies that may have been lawfully printed in a jurisdiction outside the scope of the Papal privilege but which, if allowed

49.*See, e.g.*, Sec. Brev. Reg. 218 F 90 (Aug. 18, 1594) (privilege for Vittorio Benacci is for ten years calculated from the date of printing); ARM XLII 37 F 244 (Feb. 13, 1579) (privilege awarded to Anthonie Zandvoort vests for ten years from present date).

50.*See, e.g.*, Sec. Brev. Reg. 200 F 33 (Feb. 8, 1593) (petition requests 20 years for book on the life of the Virgin; privilege grants 10); Sec. Brev. Reg. 217 F 115 (July 21, 1594) (petition requests 15 years for law book; privilege grants 10); Sec. Brev. Reg. 303 F 390 (Dec. 16, 1600) (petition requests 15 years for work of Cardinal Toledo; privilege grants 10).

51.*See, e.g.*, ARM XLI v 21 F 458 (July 19, 1541) (renewal by author, the jurist Girolamo Giganti, of the privilege on his treatise on pensions, prior privilege (not referred to in renewal) at ARM XL v 34 F 119 (Nov. 4, 1531); Sec. Brev. Reg. 268 F 134 (Mar. 16, 1598) (heir's renewal of privilege in works of Martin de Azpilcueta); Sec. Brev. Reg. 131 F 155 (Nov. 11, 1587) (to author Francisco Toledo; the petition requests an extension of the privilege, without any particular justification; the ensuing privilege grants a renewal for twenty years, without any particular justification).

52.*See, e.g.*, Sec. Brev. Reg. 290 F 107, *supra* note 11; Sec. Brev. Reg. 481 F 427 (July 7, 1612) (renewing Sec. Brev. Reg. 284 F 191 (June 23, 1599); (to printer Giovanni Antonio di Paoli for engravings of images of saints)).

53.*See* renewals cited *supra* notes 51–52.

54.*See, e.g.*, Sec. Brev. Reg. 688 F 402 (Mar. 23, 1624) (seeking renewed privilege for engravings referenced in Sec. Brev. Reg. 284 F 191 (June 23, 1599) (granting privilege to Giovanni Antonio di Paoli for engravings of images of saints); *see also* Sec. Brev. Reg. 481 F 427 (July 7, 1612) (renewing privilege in Sec. Brev. Reg. 284 F 191)).

55.*See, e.g.*, Sec. Brev. Reg. 221 F 98 (Nov. 17, 1594) (petition of Domenico Basa, Vatican printer, to Clement VIII referring to privilege granted his predecessor Paolo Manutio by Sixtus V).

into the geographical ambit of the Papal privilege, would compete with the recipient's copies.⁵⁶

4. Adaptations and Translations

Privileges also came to cover what we would today call derivative works, specifically larger or smaller paper formats (e.g., from *quarto* to *ottavo*), abridgements, additions or any other manner of changing the work, and translations.⁵⁷ With regard to the last of these prohibitions, earlier privileges granted rights in Latin and Italian vernacular; later in the century, they extended to French, Spanish and often all foreign vernaculars. By the end of the sixteenth-century, coverage of different versions of the work had become a matter of course. It is worth emphasizing this point because some commentators contend that rights over translations, abridgements, alterations, or other variations on a prior protected work represent an expansion of the traditionally narrow confines of Anglo-American copyright law.⁵⁸ That critique suggests a distinction between modest judicial adjustment of the scope of copyright to protect against a second-comer's substitution of his version for the underlying work (consonant with constrained contours of copyright) on the one hand,⁵⁹ and expansion of copyright scope to cover the full extent of a work's value, including in new non substitutional

56. See, e.g., Sec. Brev. Reg. 220 F 72, 73r (petition) (Oct. 10, 1594) (Domenico Tarini of Turin has had printed at his expense by Milanese printer Pacifico da Ponte Bishop Panigarola's Disputations against Calvin, and seeks a seven-year privilege prohibiting others from printing the book "nor, if the book were printed elsewhere, from selling it."); Sec. Brev. Reg. 290 F 105, 106r (petition) (Dec. 13, 1599) (Alfonso Ciaccone begs "that no one in the Papal State may for the next ten year neither print, nor if printed elsewhere sell, the *Lives and Deeds of the Popes up to Pius V*," written by his uncle); Sec. Brev. Reg. 293 F 113 (Mar. 6, 1600) (Giulio Calvi, having written a commentary on Aquinas, prays "that for ten years the book may not be printed by others in the Papal State, and if printed in other places, it may not be sold in said State"); Sec. Brev. Reg. 341 F 198 (Jan. 14, 1604) (Ottaviano Faiani, having written a poem on the Passion requests a privilege that no one else may print or sell his work in the Papal State, "nor introduce copies printed by others in other places outside the said State"); ARM XL 46 F 297 (Dec. 19, 1533) (privilege gives Michael Isengrin and Johann Bebel exclusive right to import copies of the works of Polidoro Vergilio into Basel).

57 For a particularly extensive (but not unrepresentative) example, see Sec. Brev. Reg. 130 F 70 (Aug. 29, 1587) (privilege to Venetian printer Giovanni Giolito Ferrari for a Commentary on the Book of Job):

We prohibit and forbid that for the next 10 years anyone print or prepare to be printed, the works themselves or another version of them or anything in whole or in part in whatever form or with a change or transposition or even with whatever other additions, scholarly notes, summaries, glossaries and expositions on those materials ventured or these referred and to anything similar, just as in Latin as in Italian or in whatever other language and at the urging of whoever by whatever request, pretext or contrivance without the license and assent of yourself or your heirs.

This privilege is of particular interest because it revokes a privilege previously granted to a printer from Lyon. See discussion *infra* Part II.H.

⁵⁸ See, e.g., Oren Bracha, *The Ideology of Authorship Revisited: Authors, Markets, and Liberal Values in Early American Copyright*, 118 YALE L.J. 186, 224-26 (2008) (scope of early U.S. copyright limited to full verbatim reproduction); Matthew Sag, *The Prehistory of Fair Use*, 76 Brook. L. Rev. 1371, 1380-87 (2011) (Statute of Anne and caselaw interpreting it did not cover translations or abridgements); but see *id.*, 1387-93 (nuancing prior proposition to emphasize freedom of "fair" abridgements incorporating substantial new authorship).

⁵⁹ Sag at 1387-93.

markets (marking a radical departure), on the other.⁶⁰ Without entering the fraught fray of Anglo-American copyright history, one may nonetheless observe that a fuller “prehistory” of copyright outside the Anglo-American sphere indicates both a wider scope of exclusive rights than those accounts credit, and a combination of motivations for those broad grants.

As Part II.H will examine further, the expansion of the scope of protection to different versions may reflect three motivations, two market-driven, and the third doctrinal. First, coverage of expanded, abridged, or altered versions may have been a response to the tactics of competitors who sought to evade privileges by introducing changes to the copied work.⁶¹ Second, rights over different formats, additions, deletions and other modifications may betoken market-related concerns beyond preventing unfairly competitive near-identical substitutions. Rather, beyond the defensive function of the broader privilege, vesting the rightholder with these extended prerogatives would enable him to control new markets, for example for versions with added illustrations,⁶² as well as for new editions. Similarly, the translation right suggests a capacious view of a work’s potential markets: given the broad territory to which a Papal privilege could apply, together with an increase in vernacular literacy, it is understandable that authors or rightholders would wish the privilege to cover multiple languages, even in advance of producing or authorizing a third party’s translation. That the Papal privileges did indeed come in effect to reserve to the grantee the control over the foreign language market suggests an entrepreneurial, as well as a defensive, conception of the scope of the privilege. Finally, empowering the privilege-holder to prevent variations on or alterations to the work coincided with the interests of the Church: faithful rendering of the contents, particularly of liturgical and theological works, would have been important to ensure adherence to church strictures.

Turning from the right to control the creation of adaptations to the protection accorded derivative works, there is some ambiguity regarding the scope of the rights in a work that built upon a prior, unprotected, work. Did a privilege in a derivative work, such as a translation or a commentary on an ancient or biblical text confer any exclusive rights in the underlying work? Although some privileges granted rights over “annotations” and “interpretations” or glosses,⁶³ the coexistence of privileges conceded within the same ten-year period for

⁶⁰ Bracha at 226-28.

⁶¹ See, e.g., Victor Plahte Tschudi, *Ancient Rome in the Age of Copyright: The Privilegio and Printed Reconstructions*, 25 *ACTA AD ARCHAEOLOGIAM ET ARTIUM HISTORIAM PERTINENTIA* 177, 180–88 (2012); see also *infra* text accompanying note 88 (discussing Tschudi’s article). Similar motivations may explain the expansion of the scope of French privileges to cover various kinds of alterations, see LAURENT PFISTER, *L’AUTEUR, PROPRIÉTAIRE DE SON OEUVRE: FORMATION DU DROIT D’AUTEUR (XVIIÈ SIÈCLE-1957)*, Thesis, Strasbourg, 1999, esp. privileges cited at n. 135 (forbidding the printing, sale or distribution “under pretext of enlargement, correction, change of titles, false marks or otherwise, nor any parts separately, of any kind and manner whatsoever”).

⁶² Particularly as the technology and business arrangements for printing text and illustrations improved in the course of the 16th century. See, e.g., EVELYN LINCOLN, *BRILLIANT DISCOURSE, PICTURES AND READERS IN EARLY MODERN ROME* (2014).

⁶³ See, e.g., Sec. Brev. Reg. 118 F 120 (Mar. 7, 1586) (to printer Bartolommeo Grassi for an edition of the decisions of the Sacra Romana Rota ecclesiastical court); Sec. Brev. Reg. 179 F 167 (May 15, 1591) (to printer

commentaries on the same classical authors, such as Cicero, or of the same biblical texts,⁶⁴ suggests that the privilege holder could prevent annotations of or glosses on the privilege holder's own commentaries, but not on the underlying text that was the object of the commentary. With respect to translations, the petitions evidence some confusion whether a privilege granted the translator exclusive rights to the underlying literary work, or only in his particular translation. Thus, in 1604 Cosimo Gaci requested a privilege,⁶⁵ as well as a derogation from a ten-year privilege granted only the year before to Francisco Soto,⁶⁶ for an Italian translation of works of St. Teresa of Avila. Gaci emphasizes that the translation will be his own, and that Soto has already almost fully sold out his edition. The privilege that issued crosses out the reference to Soto's prior privilege, thus prompting the inference that the Secretary of Latin Briefs did not think it necessary to annul or modify the prior privilege. This may suggest that independently authored translations could each enjoy a privilege, and therefore that the exclusive rights attached only to each grantee's version. The grant three years before Soto's to Venetian bookseller Pietro Fetti and his partners, for Italian translations of the same works,⁶⁷ may reinforce this conclusion. However, because Fetti seems never to have published his translation, his privilege would not have entered into force,⁶⁸ and neither Soto's petition nor his privilege refer to Fetti.

Other documents also evidence an appreciation of what we would today call the "new matter" doctrine, codified in U.S. copyright law at 17 U.S.C. § 103(b), and expressed in the Berne Convention's "without prejudice" principle respecting derivative works.⁶⁹ That is, rights accorded a new work or new additions do not affect the existence or extent of protection for an earlier work incorporated in the new work. Thus, for example, in 1575 Diana Mantuana obtained a privilege covering her engravings of biblical and ancient Roman scenes, as well as her engravings based on works by Daniele da Volterra, Raphael and Michelangelo and "other

Domenico Basa for Jean Etienne Duranti's work on the rites of the Church); Sec. Brev. Reg. 290 F 105 (Dec. 13, 1599) (to Alfonso Ciaccone for his Lives and Acts of the Popes).

64. See, e.g., Sec. Brev. Reg. 268 F 132 (Mar. 16, 1598) (to printer Luigi Zannetti for works by other authors on Cicero); Sec. Brev. Reg. 31 F 361 (Aug. 30, 1601) (to Alfonso Chacòn for his commentaries on Cicero); Sec. Brev. Reg. 59 F 511 (July 7, 1584) (to the Monks of Cassino for works on the Psalms); Sec. Brev. Reg. 120 F 70 (Apr. 1, 1586) (to printer Giovanni Osmarino for Francesco Panigarola's commentaries on the Psalms).

65. Sec. Brev. Reg. 349 F 509 (Sept. 23, 1604).

66. Sec. Brev. Reg. 336 F 250 (Aug. 23, 1603).

67. Sec. Brev. Reg. 297 F 274 (July 17, 1600).

68. See *id.* at 274r (privilege effective "for ten years calculated from the first printing of the work, provided that the work was approved by the Master of the Sacred Palace beforehand").

Both the Soto and the Gaci translations were published. See *Camino di perfettione che scrisse per le sue monache la B. madre Teresa di Giesu fondatrice de' frati e delle monache scalze carmelitane. Tradotto della lingua spagnuola nella italiana da Francesco Soto sacerdote della congregazione dell'Oratorio* (1603), BAVat R.G.Teol.IV.878; Stamp.De.Luca.IV.5578; *Il cammino di perfezione, e'l Castello interiore. Libri della b.m. Teresa di Giesu fondatrice degli Scalzi Carmelitani. Trasportati dalla spagnuola nella lingua italiana dal signor Cosimo Gaci, canonico di San Lorenzo in Damaso* (1605), BAVat: R.G.Teol.IV.1494; Stamp.Barb.U.XI.92; Stamp.De.Luca.IV.3943 [also 3944] (1-2). EDIT 16 does not list a Fetti edition. See *Edit 16, supra* note 10.

69. Berne Convention for the Protection of Literary and Artistic Works art. 2.3, Sept. 9, 1886, as revised at Paris July 24, 1971, and as amended Sept. 28, 1979, 102 Stat. 2853, 1161 U.N.T.S. 3 ("Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work.") (emphasis added).

very celebrated painters and engravers, and those works to this point not printed, and concerning the printing of which nobody has yet obtained the privilege for their own use.”⁷⁰ Because Diana’s privilege covers engravings “printed with the inscription of her name,” it appears to have extended only to her own representations of the prior works, and did not give her sole rights to engrave the particular images by Volterra, Raphael or Michelangelo. Nor, According to Evelyn Lincoln, would it have given her rights over non-print media, such as adaptation of her prints into paintings.⁷¹

With respect to the underlying works, the formulation of Diana’s privilege indicates that exclusive rights could be granted in artists’ images; indeed, Roman goldsmith Proto Gaviola de America received a Papal privilege covering the rights to prevent the printing, painting or depicting of his design for wax medallions of the Agnus Dei,⁷² and Titian obtained Venetian privileges allowing him to control the publication of engravings based on certain of his paintings.⁷³ Diana’s privilege does not, however, suggest that, absent his own privilege, the artist who originated the image could prevent others from reproducing or obtaining a privilege to reproduce the work in the form of engravings. At least, Diana’s privilege does not advert to any authorization from the heirs of Volterra, Raphael or Michelangelo, or any of the other unnamed “very celebrated painters and engravers” or their heirs. The privilege’s absence of reference to the underlying artists’ permission could mean that, in the absence of privileges of their own, such permissions were not their province, or instead that even if the unprivileged artist’s accord were relevant to the grant of a privilege over an ensuing engraving, the artists in question had been dead too long (the most recent, Volterra, having died almost ten years before the petition). The latter conclusion, however, seems improbable in light of most privileges’ systematic pairing of “heirs, successors, and grantees” in the scope of the rights accorded petitioners. The inclusion of the heirs, etc. shows that rights, when granted, were descendible. But without a privilege, there may have been no rights to inherit, hence Diana’s silence regarding any authorization from the predecessor painters or their heirs.

What if the derivative work were an update of a work by the same author, already

70.ARM XLII v 28 F 93 (June 5, 1575). This privilege is referenced in WITCOMBE, *supra* note 8, at 183 n.78, and reproduced in EVELYN LINCOLN, *THE INVENTION OF THE ITALIAN RENAISSANCE PRINTMAKER* app. B, 189 (2000). Diana’s is one of only two privileges I have found that was explicitly granted to a woman. The other, Sec. Brev. Reg. 69 F 254 (July 1, 1581), was granted to Jeanne Giunta “mulier bibliopola lugdunen” (a woman bookseller of Lyon). The Giunta were a leading sixteenth-century family of printers, originally from Florence, with branches in Venice and Lyon. Women may have held privileges as the heirs of a named printer; Roman publishing was often a family business, and it was not unusual for widows and/or daughters to succeed their husbands, fathers or brothers. See, e.g., LINCOLN, *BRILLIANT DISCOURSE*, *supra* note 62, at 16-21 (2014) (describing relationships of Roman publishing families).

⁷¹ Lincoln, *supra*, at 128 (pointing out that Bolognese painter Lavinia Fontana in 1581 used Diana’s print of St. Jerome, one of the five prints covered by the 1875 ten-year privilege, and itself modeled on Daniele da Volterr’s painting, as the model for her painting of the same subject).

⁷²Sec. Brev. Reg. 33 F 176 (July 27, 1584).

⁷³See, e.g., WITCOMBE, *supra* note 8, at xix–xxii; Lisa Pon, *Prints and Privileges: Regulating the Image in 16th Italy*, HARV. U. ART MUSEUMS BULL. no. 6, 1998, at 40, 47 (pointing out scholarly disagreement over whether Titian’s privileges protected the underlying paintings or only the engravings that Titian authorized be made from the paintings).

covered by a Papal privilege, as frequently occurred with law books? Did the new privilege apply only to the new matter, or did it cover the whole work, thus effectively prolonging the privilege on the prior version? The advocate Prospero Farinacci (who was a leading criminal lawyer and something of a celebrity in his day, having unsuccessfully defended Beatrice Cenci against charges that she murdered her sexually abusive father) wrote several books on criminal law, some of which had multiple editions. In one case, the petition and the privilege specified that it concerned the additions to prior editions.⁷⁴ Nonetheless, it is difficult to tell whether, in the case of new editions and updates, the principle limiting exclusive rights to new matter, a fundamental tenet of modern copyright law, was fully recognized by the Vatican in the sixteenth century. That said, the reference in many privileges to the “not previously published” status of the work or its edition,⁷⁵ suggests that the novelty of the creation or its publication were an important, if not necessarily determinative, consideration.

E. FORMALITIES

The privileges indicate two different types of formal requirements, the first concerning evidence of the privilege, the second concerning its transfer from authors to printers or from one printer to another. Regarding proof of the existence of the privilege, by the middle of the sixteenth century, the grants routinely called for publication of the privilege in the book and/or registration of the privilege with a notary public. Enforcing officials were to give the printed or registered copy the same faith and credit as an original. Some privileges further required, “so that no one may claim ignorance of the privilege,” that copies of the *breve* be posted in the area of the Campo de’ Fiori,⁷⁶ which was the neighborhood where most of the Roman printers and booksellers were located.⁷⁷

Throughout the century, published books and prints usually incorporated in the frontispiece the mention “con [or cum] privilegio”—or, more specifically, “cum privilegio summi pont”—or similar indication of the provenance of the privilege(s). Many republished the full text of the Papal privilege in the initial inside pages. Sometimes the last pages carried the notice. Some books, particularly in the first half of the century, proclaimed stronger

74. See Sec. Brev. Reg. 301 F 19 (Oct. 31, 1600).

75. See, e.g., ARM XXXIX 46 F 305 (Mar. 24, 1526) (to Giovanni Filoteo Achillini for books for students); Sec. Brev. Reg. 47 F. 96 (Feb. 11, 1580) (to the printer Pacifico da Ponte for a book on the Italian language); Sec. Brev. Reg. 120 F. 261 (June 3, 1586) (to Girolamo Catena for his biography of Pope Pius V); Sec. Brev. Reg. 69 F 8 (Jan. 13, 1591) (to Vincenzo de Franchis for the decisions of the Council of the Kingdom of Naples).

76. See, e.g., ARM XLII vol. 44 F 248 (Dec. 1580) (to Raffaele Bonello for a book of previously unpublished sermons in Italian); privileges reprinted in Ligorio, Pirro, *DELLE ANTICITÀ DI ROMA : NEL QUALE SI TRATTA DE’ CIRCI, THEATRI & ANFITHEATRI: CON LE PARADOSSE DEL MEDESIMO AUTTORE, QUAI CONFUTANO LA COMMUNE OPINIONE SOPRA VARI LUOGHI DELLA CITTÀ DI ROMA* (Venice, Michele Tramezzino, 1553), BAVat: Cicognara.III.3762, Stamp.Barb.O.VI.98, Stamp.Cappon.V.214 (int.3), Stamp.Cappon.V.585(int.2), Stamp.Chig. V.2139; Giovanni Cassiano, *OPERA DI GIOVANNI CASSIANO DELLE COSTITVTIONI ET ORIGINE DE MONACHI, ET DE REMEDIJ & CAUSE DE TUTTI LI UITIJ; DOUE SI RECITANO UENTIQVATTRO RAGIONAMENTI DE I NOSTRI ANTIQUI PADRI, NON MENO DOTTI E BELLI, CHE UTILI & NECESARI À SAPERE* (Venice, Michele Tramezzino, 1563), BAVat: R.G.Storia.IV.8001, Stamp.Barb.D.III.64, Stamp.De.Luca.IV.3028.

77. See, e.g., LINCOLN, *supra* note 62 at 17-18; CHRISTOPHER WITCOMBE, *PRINT PUBLISHING IN SIXTEENTH-CENTURY ROME* 61-67 (2008).

admonitions, warning that the printer or bookseller who violates the privilege will “incur horrendous and most grave fines, and will be anathema,”⁷⁸ or cautioning that “REMEMBER: NO CRIME WILL GO UNPUNISHED;”⁷⁹ or proclaiming this more fulsome warning:

And that shameless one who will be so bold as to disrespect the authority of those Princes [including the Pope], he shall forthwith not only be deprived of the commerce of Christians and the faithful and subject to maledictions and ecclesiastic censure [references to the sanction of excommunication], but he will also immediately incur monetary penalties as set out in each of the privileges granted by the above-named powers. And to make it even clearer to foreign and far-flung printers and booksellers, so that each one of them shall have no excuse, the two following privileges [one of them Papal] are reprinted below.”⁸⁰

F. TRANSFERS OF RIGHTS

Regarding licenses or transfers of rights covered by the privileges, the Papal grants generally barred third parties from printing or selling the work without the privilege holder’s authorization, and frequently required that the authorization be “express” and/or in writing.⁸¹ Once granted, privileges acquired the attributes of property because they could be inherited and transferred: privileges routinely referred to the grantee’s heirs, right holders and successors in title. Some of the privileges granted to authors specify that the rights may pass to the printer chosen by the author, or that others may not print without the permission of the author and/or the printer chosen by the author.⁸² Together with the high proportion of

78.Privilege appearing in RAFFAELLO MAFFEI, DE INSTITUTIONE CHRISTIANA AD LEONEM X (Rome, Giacompo Mazzocchio 1518), BAVat: R.II.103.

79.“MEMOR NULLAM ESSE SCALERUM IMPUNITATEM,” Notice printed in Francesco Minizio Calvo edition of Hippocrates. COI MEDICORUM OMNIUM (1515), BAVat, Stamp.Barb.J.XI.17. Calvo’s privileged publications often include dire warnings of this type. See, e.g., PLUTARCHUS CHAERONEUS, DE CURIOSITATE IDEM DE NUGACITATE INTEPRETE IOANNE LAURENTIO VENETO (1524) BAVat: Stamp.Ross.3895(int.1,4), Stamp.Ross.4147(int.3):

Whoever you are, whether a printer or a bookseller, beware of printing, during the next 10 years anywhere in the world, these little books and whatever others have been first printed or are going to be printed in the book workshop of Francesco Minizio Calvo or beware of selling these books perhaps printed rashly by others. For the protector of good arts, Clement VII Pontifex Maximus, has forbidden this with a most severe edict and whoever does differently, not only does he wish to be punished with 10 gold pieces for each individual volume but also to be deprived from the commerce of Christians and the most important necessities of life.

Farewell and see to it, lest you unwillingly create distress for yourself, that you remember well that no crime goes unpunished.

80. Notice appearing in PIETRO BEMBO, DELLA HISTORIA VENITIANA (Venice 1552); Papal privilege granted to Carlo Gualteruzzo, Pietro Bembo’s testamentary executor for various works in Latin and Italian, ARM XLI v 40 F 219 (Dec. 3, 1547), BAVat copies at, inter alia R.G.Storia.IV.1035; R.G.Storia.IV.599; R.I.IV.520; Stamp.Ferr. IV.5954; Stamp.Ferr.IV.6521; Stamp.Ross.5015; Stamp. De.Luca.IV.8429.

81. See, e.g., Sec. Brev. Reg. 69 F 270 (July 15, 1581) (to Marcello Francolini for his book on canonical hours); Sec. Brev. Reg. 120 F 261 (June 3, 1586) (to Girolamo Catena for his Life of Pius V); Sec. Brev. Reg. 304 F 272 (Jan. 3, 1601) (to Antonio Valli da Todi for his book on bird songs).

82. See, e.g., ARM XLI vol. 21 F 458 (July 19, 1541) (law book on pensions by Girolamo Giganti, privilege granted to author refers to the printer Giganti will have selected; Sec. Brev. Reg. 278 F 103 (Jan. 8, 1599) (to

privileges accorded to authors, these provisions thus establish the position of the author as an initial grantee (though not necessarily as the primary initial grantee) of exclusive rights. Moreover, in the course of the sixteenth century, petitions for privileges sought by printers or third parties other than the author or his heirs, or even the texts of the privileges themselves, increasingly advert to authors' or heirs' authorization to the printer to obtain the privilege. Thus, for example, in 1593 the painter Cesare Ripa sought a privilege for an iconology, but before the privilege issued it appears that Ripa authorized the heirs of the printer Giovanni Gioliti to publish the work. The ensuing *breve* grants the privilege to the printer's heirs "as far as they have the cause of action from the same Cesare."⁸³ Similarly, bestselling law book author Prospero Farinacci complied with his printer's behest to accompany the printer's petition with a letter endorsing the latter's request for a privilege on a new edition of Farinacci's treatise on criminal practice.⁸⁴

Printers' invocations of the authors' endorsement contrast with my earlier observations regarding engravings based on underlying artistic images. I surmised that unless an artist already held a privilege in his work, the engraver could freely reproduce the image and obtain a privilege over the reproduction.⁸⁵ But it may be possible to reconcile the propositions (other than chronologically). The printers were seeking privileges over the first publication of the literary or artistic work (or its new editions), while the engravers were creating adaptations of already disclosed works.⁸⁶ While it would be anachronistic to speak of authors' inherent rights in their works—recall that privileges were issued as a "special grace" and "favor" of the Pope, and, moreover, that no work could be published without the assent of the censors—there may have been some inchoate concept of what we would today call the "right of divulgation," that is, the author's personal right to determine whether and how first to disclose his work to the public.⁸⁷

G. REMEDIES AND ENFORCEMENT

Typical remedies included excommunication, confiscation of the infringing books or prints and typefonts or copper plates, and a fine, whose amount increased over the course of the century, with five hundred gold ducats becoming the standard sum. Most often, the fine

Giovanni Cecca for medical book; the petition requests "so that no one may print nor have printed a work of mine on certain medical counsels, except for the printer that I shall have chosen for this work").

83. Sec. Brev. Reg. 199 F 172r (Jan. 26, 1593) (petition seeks privilege for author, Cesare Ripa, but privilege refers to Ripa's grant of printing rights to the heirs of Giovanni Gioliti); *see also* Sec. Brev. Reg. 285 F. 86rv, 87rv (petition) (July 4, 1599) (author, Spanish theologian Pedro Jerónimo Sánchez de Lizaro, names licensee, Francesco de Heredia, who should have book printed in author's name).

84. Sec. Brev. Reg. 301 F 19, 20r (petition) (Oct. 31, 1600). To the same effect, *see* Sec. Brev. Reg. 347 F 12rv (July 1, 1604), discussed *infra* Part II.H.

85. *Supra* Part II.D.4.

86. *Cf.* Sec. Brev. Reg. 290 F 269rv, 270r (petition) (Dec. 7, 1599) (Philippe Thomassin seeks transfer of privilege granted to engraver Aliprando Caprioli; petition and privilege advert to petitioner's subrogation to Caprioli heirs' rights).

87. *Cf.* HORATIO F. BROWN, *THE VENETIAN PRINTING PRESS* 79–80, 291 (reprint 1969) (1891) (reproducing and discussing a Venetian decree of 1544–1545 that required proof of author's assent to publication before a license to print would be granted).

was to be divided between the Apostolic Chamber (the repository of Vatican finances) and the grantee. In many cases, the fine was to be further shared with the accuser (if a person other than the grantee) and the magistrate charged with enforcing the judgment of infringement.

I have so far found little evidence of enforcement of Papal privileges. For example, while the amount of the fine to be levied increased substantially throughout the sixteenth century (ranging from twenty-five ducats in the 1520s to over one thousand ducats in the 1590s), I have yet uncovered no evidence of their payment.⁸⁸ This does not necessarily mean that the privileges either were ineffective (excommunication, being *latae sententiae*, was automatic and self-enforcing), or were not enforced. (Making the judge a beneficiary of a share of the fine probably favored enforcement as well.) Art historian Victor Plahte Tschudi has contended that contemporary printer-engravers' apprehension that privileges would be enforced accounts for the later sixteenth-century practice of evading privileges by altering works copied from prior, privileged engravings, which provoked a broadening of privileges to prohibit modifications of images, leading in turn to variants departing ever more fancifully from the copied source.⁸⁹ But sixteenth-century documents attesting to infringement actions or application of remedies for violations of Papal privileges most likely remain to be found. Art historian Michael Bury, writing about a lawsuit between Roman printer Giulio Franceschini and Nicolas van Aelst, a Flemish printseller working in Rome, described it as the "only example that I have so far discovered of an attempt to defend a privilege [over engravings] in Italy."⁹⁰ According to Bury, van Aelst's unsold copies were confiscated, and the parties eventually settled.

While in that instance the privilege seems to have been enforced at least in part, the slim record is mixed at best.⁹¹ In 1598, Antwerp printer Jan Moretus complained to the court in Brussels that local rival Jan van Keerberghen was printing a folio missal in violation of Moretus' Papal privilege.⁹² According to Plantin-Moretus Museum archivist, Dr. Dirk Imhof, the commissioners decided in December 1598 that Moretus could keep his privilege for the printing of liturgical books but that Van Keerberghen could sell the one thousand copies of his missal that he had already printed.⁹³ In other words, the local authorities recognized the privilege but declined to give it any effect against past acts. With an inventory of one

88.MICHELE BASSO, I PRIVILEGI E LE CONSUETUDINI DELLA REV.DA FABBRICA DI SAN PIETRO IN VATICANO (SEC. XVI-XX) (1987). Chapter V, "Le risorse economiche della RFSP," does not list fines from violations of privileges as a source of revenue. *See id.* Privileges granted during the first part of the sixteenth century often listed the Fabbrica as the beneficiary of the fine.

89.Tschudi, *supra* note 61, at 177.

90.Michael Bury, *Infringing Privileges and Copying in Rome c. 1600*, 22 PRINT Q. 133-38 (2005).

91.*See, e.g.*, GRENDLER, *supra* note 39, at 179-81 (detailing unsuccessful attempt in 1573 to enforce a Papal privilege in Venice: "Since the threat of excommunication had little effect, the papacy was forced to ask the civil government to rule against the financial interests of its own subjects.").

92.*See, e.g.*, MPM Arch. 117 F 677 (1598 draft of letter from Jan Moretus to authorities in Brussels regarding violation of Papal and local privileges in Missals and breviaries). MPM Arch 157 contains documents, principally from 1628 and later, concerning attempts to enforce Papal and other privileges in the Low Countries and Germany.

93.MPM Arch. 1179 No. 324 (Dec. 4, 1598) (decision by the Council of Brabant regarding the rights in privileges for liturgical books in dispute between Jan Moretus and Jan Van Keerberghen and Martinus Nutius).

thousand copies he was free to sell off, it is unlikely van Keerberghen would have felt much bite from the threat of future enforcement of the privilege.

Perhaps worse for the practical impact of Papal privileges was the decision of the Parlement de Paris of March 14, 1583, authorizing the University of Paris to print works of Canon Law, notwithstanding a broad Papal privilege accorded to the Popolo Romano publishing house to publish the *Corpus iuris canonici*.⁹⁴ Pius V and Gregory XIII had in fact granted control over many Tridentine documents to the Popolo Romano, then the official Vatican printer, so that even where local printers received territorially restricted Papal privileges carved out or subcontracted from the Popolo Romano's,⁹⁵ they were required to obtain the master text from the Popolo Romano in order to ensure fidelity to the text.⁹⁶ In his plea to the Parlement on behalf of the university, the advocate Simon Marion challenged the authority of the privilege. First, he contended that the true purpose of the Papal privilege was to guarantee the accuracy of the text, rather than to grant an economic advantage to its recipient. Accordingly, permitting the very reliable University of Paris to publish the volumes of canon law might conflict with the words of the privilege, but would honor its spirit.⁹⁷ Second, and far more contentiously, Marion called into question the Pope's authority to grant printing privileges for territories beyond his secular control. Marion distinguished between the Pope's extraterritorial spiritual authority and his temporal authority, confined to Papal lands:

Just as the doctrine of divine things is of purely ecclesiastical authority which extends its effects universally over all the earth but without requiring payment, so the Church, under this pretext, cannot arrogate to itself any privilege concerning the printing of books, because that is of purely temporal law, and entirely subject to the police and secular Princes each in his domain, without in this respect the Pope being able, no more than any others, to exceed the limits of his secular and civil dominion.⁹⁸

94.The basic privilege for the *Corpus juris canonici* referenced at ASVat Index 313 F 224r (July 1, 1580), Pro impressoribus pontefici in Tipografia Popoli Romani, prohibitio ne X/m alibi imprimant, No. 349, and published in A. Adversi, *Saggio di un catalogo delle edizioni del "Decretum Gratiani" posteriori al secolo XVI*, in 6 *STUDIA GRATIANA* 413–26 (1959). The privilege called into question by Marion is probably that of May 7, 1582, which refers to the privilege of 1 July 1580, and which granted rights for France (*in Regno Gallici*), to Domenico Basa and the Lyon printer Guillaume Rouillé. See Sec. Brev. Reg. 52 F 310 (May 7, 1582).

95. See, e.g., Sec. Brev. Reg. 52 F 312 (May 7, 1582) (confirming Popolo Romano's assignment of rights in the *Corpus juris canonici* for Venice to Giorgio Ferrari and Girolamo Franzini).

96. See, e.g., Sec. Brev. Reg. 153 F 346 (Aug. 22, 1590) (awarding Antwerp printer Joachim Trogensius a privilege for lower Germany and the Flemish provinces to print illustrated versions of missals, breviaries and the Mass of the Blessed Virgin Mary, but following the models of the Vatican printing office).

97. Simon Marion, *Plaidoyé premier, Sur l'impression du Droict Canon, reformé de l'autorité de nostre Saint Pere le Pape Gregoire xiii* (1583), in *PLAIDOYEZ DE MON. SIMON MARION, BARON DE DRUY, CI DEVANT ADVOCAT EN PARLEMENT ET DE PRESENT CONSEILLER DU ROY EN SON CONSEIL D'ESTAT ET SON ADVOCAT GENERAL* 1 (Paris, Michel Sonius 1598).

98. *Id.* at 5. On the dispute regarding the *Corpus Iuris Canonici*, see ANNA MARIA GIORGETTI VICHI, *ANNALI DELLA STAMPERIA DEL POPOLO ROMANO* 41–52 (1959) (describing the book market of late 1500s as “an international world of printers, booksellers, agents and men of letters, for whom no barriers of nationality existed, so long they shared a common end; but as soon as an individual national interest predominated, they were ready to retreat behind their national borders, and claim the protection of their national courts in order to void agreements concluded with foreigners, or to elude privileges conceded by the authorities of other countries”).

The spiritual/temporal distinction suited Marion’s client, who wished permission to print, but had no interest in the unrestrained competition in printing the law books that would have ensued had the court denied all effect to the privilege.⁹⁹ The report of Marion’s plea does not recount the reason for the Parlement’s permission to the printers of the University of Paris, hence it is not clear whether the permission was granted in faith of the quality printing the University was expected to extend, or because Papal privileges were unenforceable in France.

H. JUSTIFICATIONS FOR PRIVILEGES

The most frequent justifications for the grant of a privilege advert to the labor and expense invested in the work, and the fear that, absent exclusive rights, unscrupulous printers will unfairly reap the fruits of the author’s or printer’s endeavors.¹⁰⁰ In this respect, the Papal privileges resemble their counterparts elsewhere.¹⁰¹ The second most often-occurring justification urges the public benefit that will flow from the publication of the work; the Papal privilege variant on this general theme emphasized the importance to Catholic doctrine of

99. While this pleading is known particularly for having asserted “that the book be freely printed in this city and by its Booksellers,” Marion, *supra* note 96, at 7, one should observe that Marion was not arguing for a true freedom of printing. In the same pleading, Marion specified that “the true goal of His Holiness is simply that the book be well printed by approved persons.” *Id.* at 5. And in his third pleading (in 1586), in favor of the maintenance of the privilege on missels and breviaries initially accorded Jacques Kerver and subsequently transferred to the *Compagnie des Usages*, Marion emphasized the importance of restraining the freedom of printing in order to ensure fidelity to the text: “The privileges which were conferred have served as a good remedy to the former evil that these books, previously so coarsely produced, shine again today in all elegance and integrity.” *Id.*

100. Based on the privileges and petitions (both of which may individually offer multiple justifications), the most frequent justifications, in descending order of occurrence are:

JUSTIFICATION	AUTHOR	PRINTER	TOTAL
Unfair Competition	121	84	205
Public Benefit	83	61	144
Labor and Expense	66	49	115
Accuracy	17	20	37
Creation of new matter	24	9	33
“Usual” Privilege	17	10	27
Skill/Merit	14	4	18
Consent of Author to Allow Printer to Print Work	4	10	14
Patronage	7	5	12
Expedite	6	3	9
Approval by Censor	5	2	7
Poverty	4	2	6
Scarcity of Copies	0	5	5
Incentive to Produce Future Works	2	2	4
Prior Privilege	0	5	5
Honor	2	1	3
TOTAL	372	272	644

101. See, e.g., ARMSTRONG, *supra* note 1, at 78–91 (describing sixteenth-century French privileges).

disseminating the works in question. Of course, works could be published without a privilege, and perhaps would achieve wider distribution if their authors or printers did not assert control over their circulation.¹⁰² Hence the importance of a third justification: the privilege will not only recognize the effort and expense invested in a work, but will reward the care the author or printer have taken to ensure the work's accuracy (and conformity to Church doctrine).¹⁰³ For example, Martin Zuria, the nephew and literary executor of the Spanish canon lawyer Martin de Azpilcueta, in 1586 requested a worldwide privilege because he would:

spare no expense or effort so that the said works would emerge well ordered and well printed with summaries, reference numbers, and other diligent emendations as required, and because booksellers intent only on making money do not bestow the care needed for the perfection of the said works and instead print them in any way they please, not without detriment to the public interest.¹⁰⁴

Or Giulio Calvi, a cleric of Frascati, who sought a privilege for a compendium of excerpts of the writings of St. Thomas Aquinas; his work is "very useful to the church of God, and because others might publish it with some additions which do not correspond to the sincere and true doctrine of Aquinas, in the way the petitioner has diligently followed it."¹⁰⁵ While many petitions stress the utility of accurate versions to scholars, popular piety was an important goal as well, hence appeals not only to the works' benefit to "all Christians," but also "to women and ignorant people."¹⁰⁶

But increasing the dissemination of works, whether for popular audiences or of works "necessary to scholars but hard-to-find and then only in inaccurate editions," requires "great expense of thousands of ducats, and it is therefore customary in recompense of so much effort and of such a useful undertaking and so that [the petitioners] can promptly embrace and

102. See discussion *infra* Part II.H (regarding Sec. Brev. Reg. F 53 (Nov. 20, 1582) (revocation of privilege to Antonio Lilio)).

103. Concerns for editions' accuracy and conformity to Church doctrine prevailed in the absence of printing privileges as well. For example, when Gregory XIII partially annulled the printing privilege on the Calendar and Martyrology so that copies might be freely printed and distributed outside of Rome, see Sec. Brev. Reg. 53 F. 264 (Nov. 20, 1582), discussed *infra* Part II.H, he nonetheless required that the works be printed in conformity with the Roman master copy. Similarly, the *breve*, issued the same day, ordering the substitution of the new calendar prohibited the continued use of the old calendars, on pain of confiscation and one hundred ducats fine, in order to "ensure that the use [of the calendar] remained uncorrupted all over the world and purged of faults and errors" Sec. Brev. Reg. 96 F. 304 (Nov. 20, 1582).

104. Sec. Brev. Reg. 122 F 528 (petition) (Sept. 3, 1586). For examples of other petitions and concomitant privileges stressing the accuracy of the text, see, for example, Sec. Brev. Reg. 140 F 314 (Apr. 22, 1589) (privilege granted to Gerard Voss for his translations and editions of works of St Ephrem):

[A]s with the volume that has already been edited, so with the remainder that will later be brought into the light through you, so that they might be produced altogether free from error; and so that they might not be perverted by error through some sort of malice or negligence, or changed, altered or corrupted by some addition or removal.

105. Sec. Brev. Reg. 293 F 113 (Mar. 6, 1600) (Giulio Calvi).

106. Sec. Brev. Reg. 217 F 216 (petition) (July 21, 1594) (petition of Venetian printer Giovanni Varisco for a privilege on printing "the mass of the most Blessed Madonna as revised according to the second Council of Trent with Latin and vernacular headings for the greater understanding of women and ignorant persons, which will also be useful to all Christians.").

pursue these efforts, they plead that Your Holiness will deign to accord them the grace of a privilege.”¹⁰⁷ This petition makes explicit two additional justifications implicit in the general emphasis on effort and expense: first, that privileges provide a necessary incentive to the creation or dissemination of useful works, and, second, that those who undertake such endeavors expect to receive a privilege. Many petitions refer to “the usual” privilege, in the “usual form” or with “the usual” remedies.¹⁰⁸ Some petitions seek to bolster their cause by stressing the author’s or petitioner’s parlous circumstances. A 1599 plea by the nephew of the author of a book of lives of the Popes affords a particularly colorful example, combining pitiful evocations of poverty with incentive arguments:

Because . . . everything has gone to pay the debts which still have not been fully paid; [petitioner] is left with only four old things, which he is unable to sell, [but] by extending to him the said privilege he will republish [his Uncle’s works] as they should be, and the privilege will encourage said petitioner to publish his Uncle’s other works and thus he will be partly acquitted of the money lent to his Uncle and of the fatal servitude [engendered by these debts].¹⁰⁹

Many incentive arguments, particularly when made by authors (although also made by printers in similar terms¹¹⁰) may still resonate with modern readers, and three are worth quoting in full. In 1601, a scholar, Ferrante Palazzo, requested a privilege for a sacred tract, described as:

107. Sec. Brev. Reg. 355 F 2r (petition) (Feb. 20, 1595) (petition of printer Orazio Colutio for works of fifteenth-century Spanish theologian Alonso Tostado).

108. See, e.g., Arm. XL 49 F 204rv (Dec. 5, 1534) (Bottom document is a petition of Claudio Tolomei on behalf of Mariano Lenzi for his translation from the Hebrew of Judah Leone Abravanel’s *Dialogues of Love* (Rome, 1535). Petitioner states that granting a privilege is “a usual thing which is granted without difficulty”); Sec. Brev. Reg. 140 F 314 (Apr. 22, 1589) (petition of Gerard Voss for his translation of Church Father St. Ephrem, requesting “the usual remedies”); Sec. Brev. Reg. 216 F 84rv, 85r (petition) (June 18, 1594) (petition of Venetian printer Domenico Nicolini for new privilege on Tommaso Manrique’s commentary on Aquinas, for which Manrique had previously received a privilege, “such grace and privilege which it is usual to be granted in such cases for such works”); Sec. Brev. Reg. 262 F 284r, 285v (petition) (Sept. 13, 1597) (petition of Jeronimo Gracián de la Madre de Dios for his various theological works, “begs a privilege in the usual form”).

109. Sec. Brev. Reg. 290 F 106r (petition) (Dec. 13, 1599) (petition of Alfonso Chacón, author’s heir); see also Sec. Brev. Reg. 124 F 288r (petition) (Oct. 3, 1586) (petition of Francesco Rocchi, miniaturist, seeking authorization to make wax medallions of the Agnus Dei, “having to support with his labors and art his poor widowed mother who is extremely poor with no [other] help, and with useless grandchildren”); Sec. Brev. Reg. 295 F 174r (petition) (May 15, 1600) (Francisco Rodriguez petitioning for privilege in a book he wrote on the Jubilee because, inter alia, “of being poor, virtuous, and burdened with family, as is expected of those who serve others, I wish to have some earnings from this little book”).

110. Popes early on recognized the broader benefits that might flow from according particular privileges. See, e.g., a 1520 privilege from Leo X, in LEONE BATTISTA ALBERTI, *DE PRINCIPE* (Rome, Etienne Guilleret 1520) (BAVat: Cicognara.V.384) (“Desiring the following, we freely and favorably decree that we favor with papal affection those keen to print and distribute the new books of approved authors for the common use and advantage of literature/scholarship and the state, and grant them a special license, so that they can enjoy the fruit of the labors undertaken and can rouse others like them by their example to make similar things more eagerly.”).

Individual printers also urged that according them a privilege for a given work would encourage others to undertake similar labors. See, e.g., Sec. Brev. Reg. 208 F 13r (petition) (Oct. 6, 1593) (Giulio Burchioni, a Roman bookseller, seeking a privilege for publishing Vincenzo Cervio’s *Il Trinciante* (a book about food and table manners), argues that granting him the privilege will “encourage others so that they will be willing to expend their efforts in similar and other useful works”).

a work which will be of no small usefulness to clerics of both sexes, and which shows the path of regular religious observance, and of the [Catholic] Reform, so greatly desired and achieved with the great vigilance and solicitude of Your Holiness. And because the petitioner's work was a labor requiring ten years, and so that others do not reap his labors, he humbly begs Your Blessedness to deign to grant him a privilege so that for the next ten years no one may print or have printed the said work, neither in the language in which the author will publish it nor in any other language in which it may be translated, without the permission of the author or of his heirs, all of which he will receive through the grace of Your Holiness, and which will encourage him to bring forth other fruits of his labors for the benefit of the public.¹¹¹

Palazzo's public benefit argument very explicitly ties his claim to the advancement of the Counter Reformation. He bases his claim not only on reward for past labors (and fear of their misappropriation), but also on the enhanced likelihood of his creation of future beneficial works, should the Pope reward the current work with a privilege. The scope of the petition is also worth noting, for it anticipates that the work will be translated. While it does not appear that the author has himself translated or authorized foreign language versions, he could well have expected that foreign language versions would be in prospect, particularly given the proclaimed utility of the work to the Counter Reformation, and therefore he wants to ensure that all future translations come within the scope of his grant of exclusive rights. As formulated in the petition, the rights over future translations are part of the author's incentive package.

In 1598, Fabrizio Mordente, a mathematician from Salerno, sought a privilege for his *Propositions of Geometry*:

It seems appropriate that those who exert themselves in study for the benefit of others shall also be recognized and rewarded for their efforts at least with prerogatives so that these same people will more willingly bind themselves to greater labors and so that others will be inspired to similar efforts. Wherefore Fabrizio Mordente of Salerno, the most devoted petitioner of Your Holiness, having through long study and great effort over many years, devised seven Geometric Propositions with a corollary, which effort will be most useful to scholars of that profession, and desiring to publish his work for the public benefit, most humbly begs Your Holiness to deign to extend him the grace of granting him a privilege by Apostolic Letter, so that for ten years no one else, other than this petitioner and those having permission from him, may have the said work printed nor sold in any place in the Papal States, under penalty of 1000 scudi and with such provisions as in similar cases are usually granted, which this petitioner will receive through the most singular grace and clemency of Your Holiness.¹¹²

Mordente has generalized the public benefit argument from the virtues of his particular work to the stimulating effects that the grant of a privilege to him will have not only on his own future creativity, but also on other authors. His rhetoric mixes entitlement for his own achievements with broader consequentialist contentions—a combination that prefigures modern copyright law's complementary (and sometimes competing) natural rights and

111. Sec. Brev. Reg. 304 F 273r (petition) (Jan. 23, 1601).

112. Sec. Brev. Reg. 277 F 290r (petition) (Dec. 30, 1598).

utilitarian rationales.

More grandly still, in 1593, Florentine painter and engraver Antonio Tempesta sought a privilege for his large-scale map of Rome, which he anticipated (correctly) would become a bestseller:

Antonio Tempesta, Florentine painter, having in this city [Rome] sent out for publication a new map of Rome, of which he is not only the creator, but also has designed and engraved it with his own hand, with much personal expense, effort, and care for many years, and fearing that others may usurp this work from him for themselves by copying it, and consequently gather the fruits of his efforts, therefore approaches Your Holiness and humbly requests him to deign to grant him a special privilege as is usually granted to every creator of new works, so that no one in the Papal States may for ten years print, have printed, or have others make the said work, and [further requests] that all other works that the Petitioner shall in the future create or publish with permission of the superiors [Papal censorship authorities] may enjoy the same Privilege as well so that he may with so much greater willingness attend to and labor every day [to create] new things for the utility of all, and for his own honor, because he will receive the singular grace [privilege] from Your Holiness.¹¹³

Notwithstanding the necessary acknowledgement that all his works must receive the approval of the censors, and his recognition of the nature of a privilege as a “particular grace” from the sovereign, Tempesta pushes the themes of authorial entitlement and of incentive/public benefit to argue that a privilege should automatically attach to his future works.¹¹⁴ Moreover, he makes this claim in the name of his honor as an author.

Tempesta’s petition may be the most explicit example of authorship-based sixteenth-century assertions of rights in creative works, but it is consistent with an evolution throughout the century toward grounding claims to privileges in authorship rather than merely in the labor of production and dissemination, labor which printers even more than authors might advance to justify their petitions. A comparison of privileges from the first third of the sixteenth century (during the papacies of Leo X and Clement VII) with petitions from the end of that

113. Sec. Brev. Reg. 208 F 76r (petition) (Oct. 13, 1593).

114. The ensuing privilege does in fact grant Tempesta exclusive rights to print and sell, including in greater or lesser sizes and altered form, not only the map of Rome but also to “maps of this kind that he intends to devise and engrave of other places and cities.” Sec. Brev. Reg. 208 F 74r (Oct. 13, 1593). While grants covering future works seem infrequent, others did receive such prospective rights. See Sec. Brev. Reg. 356 F 91 (Oct. 8, 1596) (cited in Eckhard Leuschner, *The Papal Printing Privilege*, 15 Print Q. 359, 365.n.8 (1998) (granting privilege in engraver Francesco Villamena’s future production of religious images). By contrast, extensions of the privilege to cover potential future translations were more common. See discussion *supra* text accompanying notes 57-62; see also 1547 privilege to Venetian printer Michele Tramezzino for “various Latin and Italian works not yet printed, the Italian works translated from Latin and Spanish and French, as well as translations to be made from Italian to those languages,” reported in Pier Silverio Leicht, *L’Editore veneziano Michele Tramezzino ed i suoi privilegi*, in MISCELLANEA DI SCRITTI DI BIBLIOGRAFIA ED ERUDIZIONE IN MEMORIA DI LUIGI FERRARI 357, 365 (1952). A similarly worded privilege appears in another work published by Tramezzino. See LUCIO FAUNO, DELLE ANTICHITA DELLA CITTA DI ROMA (rev. ed. 1552) (“various works in Latin and Italian the Italian works translated from the Latin and the Spanish, and vice-versa, heretofore not printed”); Sec. Brev. Reg. 126 F 61rv, 62rv, 64rv (Jan. 7, 1587) (to Girolamo Franzini for LE MERAVIGLIE DELL’ALMA CITTA DI ROMA, (“to print the said narrations as aforesaid or in any other language”).

century and the first years of the seventeenth century (still during the papacy of Clement VIII) illustrates the point. In 1520, Leo X granted Rinaldo Gencia a ten-year privilege to publish and sell Leon Battista Alberti's (1404–1472) *De Principe*. The basis of Gencia's claim was that the previously unpublished work had "come into his hands" ("*ad manus tuas pervenerit*"), and were others to print the work it would harm Gencia.¹¹⁵ The privilege does not indicate that Gencia holds any title to the work through Alberti's heirs; rather, it appears that however he obtained the work, the act of publishing it is what entitles him to a privilege granting the exclusive rights to print and sell it. Similarly, in 1531, Roman printer Antonio Blado received a ten-year privilege to print and sell the Italian works of Niccolò Machiavelli (1469–1527), namely *The Prince*, *The History of Florence* and the *Discourses*; the privilege refers to Blado's labor, expense and fear of unfair competition from other printers.¹¹⁶ A later Papal decree regarding the same works makes clear that Blado's privilege issued without regard to the works' authorship. The second petitioner, Florentine printer Bernardo Giunti, contends that notwithstanding Antonio Blado's privilege, Giunti should be permitted to print and sell the works in Florence because he has "the will and consent of the descendants of Niccolò Machiavelli himself, whose consent the said Antonio at no time ever had" The Pope agreed to a carve-out from Blado's privilege:

For which reason you have humbly made supplication to us that we with regard to apostolic benevolence deem it worthy to grant license to you on the basis of the consent of the descendants of the said late Niccolò that his books of Histories and on the Prince and the Discourses be printed in Florence. We, considering it equitable that the books of the said Niccolò be printed both in his Fatherland and also with respect to the will of his descendants, and also attentive to the fact that the said Antonio has up until now been able to sell for the greater part of the country the books of Discourses which he has printed, and having been persuaded by your supplications herein, concede and grant to you that you are free, by the apostolic authority and legal tenor of those present, to print the books of the Histories and on the Prince and Discourses, and to sell them wherever they have been printed and to keep them for sale, freely and with license and without incursion of any penalty.¹¹⁷

By contrast, by the end of the sixteenth century, petitions from printers seeking to publish works by living or recently deceased authors advert specifically to the authorization of the authors or their heirs.¹¹⁸ Thus, in 1599, engraver Philippe Thomassin petitioned for a new ten-year privilege following the grant of a privilege to engraver Aliprando Capriolo:

Said Aliprando having died, his heirs sold to the petitioner all the plates and prints engraved and designed [by Aliprando] of the Story of the Marriage of Isaac and

115.Privilege, in LEONE BATTISTA ALBERTI, *DE PRINCIPE* (Rome, Etienne Guilleret 1520) (BAVat: Cicognara.V.384).

116.*Antonio Blado's Privilege for Machiavelli's Works, Vatican (1531)*, *supra* note 11 (translation of privilege for NICCOLO MACHIAVELLI, *HISTORIE FIORNTINE* (Venice, Antonio Blado 1532)).

117.Bernardo Giunta's privilege for Machiavelli's works, ARM. 40 v. 37, F. 297rv, doc. nr 573, (Dec. 20, 1531). For a translation and transcription of this privilege, see *Bernardo Giunta's Privilege for Machiavelli's Work, Vatican (1531)*, PRIMARY SOURCES ON COPYRIGHT (L. Bently & M. Kretschmer eds.), http://copy.law.cam.ac.uk/cam/tools/request/showRepresentation?id=representation_i_1531a&pagenumber=1_1&show=translation (last visited April 20, 2013).

118.*See* sources cited *supra* Part II.F.

Rebecca, engraved in four and half sheets, and subrogated the petitioner in all their claims and actions.¹¹⁹

And in 1604, Prospero Farinacci's Venetian printers, seeking a privilege in a new volume of Farinacci's treatise on criminal practice not only state in their petition that the "author's consent supports" their request,¹²⁰ but also solicit from Farinacci a letter of endorsement to accompany their petition. Farinacci wrote:

The person who delivers this letter will be the agent of the Giunti, printers and booksellers in Venice, who have printed my most recent work. They have petitioned Our Lord [the Pope] for the Privilege and I have been told that their request has been sent to Your Illustriousness [the Cardinal having jurisdiction over the issuance of *breve*]. I beg that the *Breve* be issued as soon as possible, for which I not only give my consent by this letter but also I would be much obliged [were the *Breve* granted].¹²¹

Nonetheless, I do not wish to overstate the role of the author relative to that of printers in the sixteenth-century Papal privileges. For one thing, many printers, especially early in the century when much printing activity focused on producing quality editions of classical authors,¹²² may have performed tasks we would today consider "authorial" such as preparing critical editions and translations.¹²³ Thus, creation and dissemination may not always have been clearly differentiated.¹²⁴ For another, while many petitions and privileges stressed the importance of ensuring the integrity of a text, whether a new work or a new edition of a medieval or Patristic author, the frequent advancement of these claims by printers, and the often liturgical nature of the works at issue, belie contentions that concern for authors' reputations underlay the preoccupation with textual fidelity.

Similarly, the one document I have found that addresses authorship attribution should not be construed as an embryonic "right of paternity." The right of "paternity" safeguards the personality of the author that inheres in his creations;¹²⁵ this petition addresses the authoritativeness of the text, not the creative individuality of its author. The name of the previously unknown author of a commentary on the Psalms of David came to light, and the Procurator General of the Carmelite Order, of which the newly identified author, Michele Aiguani (d. c. 1400) had been a member, petitioned both for a privilege over a new edition of the commentary and to prohibit other printers from continuing to publish the commentary as by an unknown author. The petition asserts that such publication "would thus greatly harm the

119. Sec. Brev. Reg. 290 F 270r (petition) (Dec. 7, 1599).

120. Sec. Brev. Reg. 347 F 13r (petition from publisher) (July 1, 1604).

121. *Id.* at 14r.

122. *See, e.g.*, BROWN, *supra* note 86, at 40–49; MARTIN LOWRY, *THE WORLD OF ALDUS MANUTIUS: BUSINESS AND SCHOLARSHIP IN RENAISSANCE VENICE* 20–21 (1979).

123. Remo Franceschelli makes this point, too. 1 REMO FRANCESCHELLI, *TRATTATO DI DIRITTO INDUSTRIALE* 347 (1960).

124. For a discussion of different concepts of authorship in sixteenth-century Italy, see, e.g., Evelyn Lincoln, *Invention, Origin, and Dedication: Republishing Women's Prints in Early Modern Italy*, in *MAKING AND UNMAKING INTELLECTUAL PROPERTY* 339 (Mario Biagioli, Peter Jaszi & Martha Woodmansee eds., 2011).

125. *See generally* STIG STRÖMHOLM, *LE DROIT MORAL DE L'AUTEUR EN DROIT ALLEMAND, FRANÇAIS ET SCANDINAVE* (1973).

demonstrated truth.”¹²⁶ The ensuing privilege appears to place great value on the “truth” because the privilege sets a fine of one thousand ducats for unauthorized printing or selling of the new edition, but two thousand ducats for publishing the work without the author’s name.

Finally, the few instances of revocation of privileges suggest that Papal policy favored dissemination of accurately printed works, even over the interests of their creators. Most often, the affected persons are both printers: for example, where a later privilege carved out a particular territory from the scope of the prior grant,¹²⁷ or where a prior printer’s edition was so error-filled that the Pope revoked the privilege and granted the rights to another printer.¹²⁸ Two other revocations, however, illustrate the paramount goal of dissemination. In both cases, it appears that the authors were unable to ensure the works’ distribution. In 1603, the Pope rescinded a privilege granted to Spanish theologian Miguel Llot de Ribera (1555–1607) for his edition of the summa of canon law by St Raymond (b. 1175, canonized 1601). According to the petition, the books were printed but never distributed because the creditor-printers were never paid. One may infer from this statement that the books had been printed at the author’s expense, a common practice in Rome.¹²⁹ The petitioner, the Duke of Sessa, asserts that a new bookseller has been found to pay off the creditors, take over the stock of books and sell them, but only if Llot’s privilege is transferred to the new bookseller, Giovanni Tallini. Sessa therefore prays that the Pope will “accord him the grace of granting to said bookseller that same privilege annulling that of Padre Llot, with which in that way satisfaction will be given to said creditors.”¹³⁰ And in 1582, Pope Gregory XIII substantially revoked a privilege granted to Antonio Lilio, mathematician, astronomer and cocreator of the Gregorian calendar, because Lilio had not managed to arrange for the calendars, which were used to determine feast days and liturgical events, to be published throughout the lands subject to the Church. The Pope concluded:

Now having considered the inconvenience and the harm which such prohibitions [on the printing of the calendar and the martyrology, imposed by the prior grant of a privilege] can bring about because of the great difficulty of sending the quantity of calendars and martyrologies that are needed for the most remote provinces, and that Antonio Lilio is unable to make arrangements with foreign printers as quickly as is

126. Sec. Brev. Reg. 315 F 282r (petition) (Dec. 20, 1601).

127. See discussion of the Blado and Giunta privileges, *supra* text accompanying notes 111–13; see also Sec. Brev. Reg. 58 F 216rv, 217r (Feb. 1, 1584) (to Charles Pesuot bookseller in Lyon, privilege to print works of Peter Canisius SJ, appears to carve France and Spain out of earlier privilege granted to David Sartorius of Ingolstadt, perhaps the privilege at Sec. Brev. Reg. 39 F 298rv (Aug. 28, 1576)).

128. See Sec. Brev. Reg. 130 F 70rv, 71rv (Aug. 29, 1587) (privilege to Venetian printer Giovanni Giolito di Ferrari for a commentary on the Book of Job, revoking earlier one for same work given to Lyon printer Jean Stratus for poor quality of Lyon edition; Giolito’s Venice edition of 1587 includes a foreword by Cardinal Carafa referring to improvements in new edition.).

129. See, e.g., BRIAN RICHARDSON, PRINTERS, WRITERS AND READERS IN RENAISSANCE ITALY 58–59 (1999); GIAN LUDOVICO MASETTI ZANNINI, STAMPATORI E LIBRAI A ROMA NELLA SECONDA METÀ DEL CINQUECENTO 206–08 (1980).

130. Sec. Brev. Reg. 339 F 45r (petition) (Nov. 5, 1603). Tallini did in fact that year publish the Summa of St. Raymond. See RAYMUNDUS DE PEÑAFORT, SUMMA S.TI RAYMUNDI DE PENIAFORT DE POENITENTIA ET MATRIMONIO, CUM GLOSSIS IOANNIS DE FRIBURGO (Rome, Giovanni Tallini 1603) (BAVat: R.I.II.862; Stamp.Barb.G.IV.49.).

needed, we of our own motion remove and annul both prohibitions, and we leave it open to all persons outside the city of Rome freely to print and sell the said calendars and martyrologies without incurring any penalty whatsoever, so long as they are printed in a way which does not compete in any way with the copies printed in Rome. And we wish that everyone who is obliged to say the mass may use those calendars thus printed without any fear whatsoever.¹³¹

Thus, while the Popes recognized that privileges could stimulate creation and dissemination of publicly beneficial works, they also acknowledged that conferring exclusive rights to print and sell works could undermine the Church's interests if the grantees failed in fact to make the works widely available. In this respect, yet another basic theme of copyright law, the tension between private rights and the broader public interest (or, in the most recent parlance, "access to culture"), finds a Counter Reformation Roman antecedent.

131. *See* Sec. Brev. Reg. 53 F 264rv (Nov. 20, 1582).

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