Rose, Mark. *Authors and Owners: the Invention of Copyright*. Harvard University Press, 1993.

・Discussions of copyright not infrequently regard intellectual property as an "ancient and eternal idea" (Prager 106) or "a natural need of the human mind" (Streibich 2). But copyright—the practice of securing marketable rights in texts that are treated as commodities—is a specifically modern institution, the creature of the printing press, the individualization of authorship in the late Middle Ages and early Renaissance, and the development of the advanced marketplace society in the seventeenth and eighteenth centuries. (3)

・Before authors could become professionals …, as Terry Belanger among others has emphasized, did not occur until the eighteenth century. Politically, socially, and economically, eighteenth-century Britain was the most advanced country in Europe, and it was there that the world's first copyright statute was enacted in 1710. (4)

・At the start of this struggle stands this first copyright law, the Statute of Anne. (4)

・The London booksellers …, sought to maintain their position by establishing that, despite the statute, copyright was perpetual. Their rights, they argued, derived not from the statute but from the common-law rights of property transferred to them by authors. (4-5)

・significantly, the parties in these cases were all booksellers, not authors (5)

・The familiar passage from the *Two Treatises of Government* (1690): Though the Earth, and all inferior Creatures be common to all Men, yet every Man has a Property in his own Person. This no Body has any Right to but himself. The Labour of his Body, and the Work of his Hands, we may say, are properly his. (5)

・Let me emphasize that the focus of my discussion of authorship is not on subjectivity but on discourse (7)

・If an author created a work, then why should he not have "sole and despotic dominion" over it? But this effort, strenuously pressed though it was, never succeeded. In refusing to affirm perpetual copyright, whatever of the concept of the autonomous author. After all, authors do not really create in any literal sense, but rather produce texts through complex processes of adaptation and transformation. (8)

・the story that I tell ends—or should be understood to end—in irresolution. The eighteenth-century lawyers soughto fix the notion of literary property, and that project continues today in the vast legal literature devoted to such problems as exactly where to draw the line between idea and expression or exactly how to define the nature of "fair use." (8)

・A discussion of romantic aesthetic theory is outside the scope of this book. Nevertheless, as Martha Woodmansee has shown, German romantic theory formed in the context of a legal and economic struggle that in some of its concerns recalls the English debates (130-131)

・Johann Gottlieb Fichte's concept of "form,"… What did a literary work consist of? Fichte

distinguished between the material and the immaterial aspects of a book. He then divided the immaterial aspects into content and form. The content of the book, the ideas, could not be considered property. Thee form of the book, however, the specific way in which the ideas were presented, remained the author's property forever; (131)

・We should also note the continuity between earlier literary-property debates and modern copyright doctrine. By 1774, the year in which the Donaldson decision resolved the issue of the perpetuity, all the essential elements of modern Anglo-American copyright law were in place. Most important, of course, was the notion of the author as the creator and ultimate source of property. This representation of authorship was at the heart of the long struggle over perpetual copyright; … "Copyright, in a word, is about authorship," writes Paul Goldstein. (132)

・Ideas are not protected, but expression is. (132)

・In the nineteenth century, however, the emphasis in litigation shifted to the abstract "work," which now came to be understood as equivalent, in the words of *Drone on Copyright*, the standard U. S. treatise of the period, to the "essence and value of a literary composition" rather than limited to the literal language of the text. (133)

・The persistence of the discourse of original genius implicit in the notion of creativity not only obscures the fact that cultural production is always a matter of appropriation and transformation, but also elides the role of the publisher─or, in the case of films, of the studio or producer─in cultural production. (135)

・In the landmark case of *Burrow-Giles Lithographic Co. V. Sarony* (1884), for example, the U. S. Supreme Court decided that the crucial element in the making of the photograph in question─a studio portrait of Oscar Wilde─was simply the photographer's "intellectual invention" (282). Citing the finding of facts, which described the portrait as deriving entirely from the photographer's "original mental conception" (279), given visible form in the posing and lighting of the subject and the selection and arrangement of the draperies and other accessories, the court ruled that the portrait was indeed "an original work of art" and that the photographer Napoleon Salony was its author. Thus not only did the camera disappear as a significant factor in the production of the photographs, but so did Oscar Wilde. (135-136)

・In a stimulating treatment of Burrow-Giles, Jane Gaines discusses how the photographer─rather than, say, the subject or, for that matter, nature itself in the form of light─came to be constructed as the author of the photographic image. (136)

・In 1890 Samuel Warren and Louis Brandeis published their famous Harvard Law Review essay arguing for the existence of a common-law right to privacy. (139)

・Warren and Brandeis' use of copyright as a precedent for the right to privacy draws attention to the fact that the institution of copyright stands squarely on the boundary between private and public. Understanding copyright in this way helps to explain its notorious duplicity: copyright is sometimes

treated as a form of private property and sometimes as an instrument of public policy for the encouragement of learning. (140)

・Not every aspects of a　protected work is declared to be private property, however, because at this point the distinction between “expression” and “idea” comes into play, again calling for a division between the private and the public. Finally, at the third and narrowest level of adjudication, once “protected expression” has been determined, the concept of “fair use” comes into play, again calling for a division. How does one determine what is an noninfringing fair use of a copyright work? (140-141)

・There is no fixed boundary between the private and the public; it always waits to be drawn; and since significant interests are at stake in copyright questions, precisely where to draw the lines is always a contest. Copyright does more, the, than govern the passage of commodified exchanges across the boundary between the private sphere and the public; it actually constitutes the boundary on which it stands. Change the rules of copyright─determine that fair use applies more restrictively to unpublished works than to published─and the demarcation between private and public changes. “Private” and “public” are radically unstable concepts, and yet we can no more do without them than we can do without such dialectical concepts as “inside” and “outside” or “self” and “other.” Copyright law will consequently always remain a site of contestation and also a site of cultural production, a place where new maps are drawn and new entities such as the photographer-author are assembled. (141-142)