
‘Not like Pyrates’: Borrowing, Copyright and Creativity in the Eighteenth Century

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I. Introduction

Even in the eighteenth century, there had long been an established tradition of crafting new works out of existing music through borrowing, transformation, imitation or allusion.¹ Such practices were not considered an infringement of a composer’s intellectual property, but were a common compositional strategy that young composers were encouraged to adopt as a facet of developing their style, using transformative imitation to seed their creativity. Burkholder notes that ‘making old music new is at the very centre of our musical tradition’² and that this practice ‘has its own traditions and its own history’.³ However, if plagiarism⁴ (as we understand it today) was not a material concern of composers of this period, piracy of printed works was. The growth in the commodification of printed music in eighteenth-century England spurred composers to protect their creative outputs – their artistic property – from wholesale theft by unscrupulous publishers and led to a legal and economic revolution in musical ownership.

Drawing on Burkholder’s typology and techniques of uses and reuses of existing musical material, this chapter focuses on examining how this particular compositional strategy was understood as a common practice at the time and on identifying the various methods of borrowing employed by eighteenth-century composers via a snapshot of some key exemplars from the period, considering not only what was borrowed or recycled and how it was transformed within a new work, but also *why* was it borrowed. Conversely, the subject of piracy – the unauthorised printing and dissemination of musical works – and the relational difference between it and creative borrowing must also be considered, and how it drove composers such as Arne, Geminiani and JC Bach to assert their right of authorial property over their printed work and reap the benefit of their mental labour, leading to the establishment of musical

¹ JP Burkholder, ‘The Uses of Existing Music: Musical Borrowing as a Field’ (1994) 50 *Notes* 858.

² JP Burkholder, ‘Making Old Music New: Performance, Arranging, Borrowing, Schemas, Topics, Intertextuality’ in V Kostka, PF DeCastro and WA Everett (eds), *Intertextuality in Music: Dialogic Composition* (Routledge, 2021) 84; JP Burkholder, ‘Borrowing’ (Grove Music Online, 2001) www.oxfordmusiconline.com/grovemusic/view/10.1093/gmo/9781561592630.001.0001/omo-9781561592630-e-0000052918.

³ Burkholder, ‘The Uses of Existing Music’ (n 1) 861.

⁴ ‘Plagiarize’ is defined as ‘1. ‘take and use (the thoughts, writings, inventions, etc. of another person) as one’s own. 2. pass off the thoughts etc. of (another person) as one’s own ... Latin *plagiarius* kidnapper’: ‘Plagiarize’ in D Thompson (ed), *The Concise Oxford Dictionary of Current English* (Clarendon Press, 1995) 1043.

copyright. This nascent legal protection did not mark an end to borrowing, but provided the impetus for a long evolution of legal and social consideration of music as intangible property under the strict control of its creator.⁵

II. The Uses of Existing Music, Structures or Borrowed Ideas During the Eighteenth Century

Burkholder asserts that ‘the use of existing music as a basis for new music is pervasive in all periods and traditions’;⁶ in the eighteenth century, the reworking, revising, transforming and imitating existing ideas (musical and otherwise) was seen as a common practice and an accepted part of the creative paradigm.⁷ Just as early eighteenth-century literary critics of the English Augustan period,⁸ such as John Dryden (1631–1700), Jonathan Swift (1667–1745), Joseph Addison (1672–1719) and Alexander Pope (1688–1744), and, later, the painter

⁵The full and fascinating history of the evolution of musical copyright is one I will set aside here, it having had a thorough exploration by several authors: D Hunter, ‘Music Copyright in Britain to 1800’ (1986) 67 *Music & Letters* 269; J Small, ‘The Development of Musical Copyright’ in M Kassler (ed), *The Music Trade in Georgian England* (Routledge, 2011) 233–386; RJ Rabin and S Zohn, ‘Arne, Handel, Walsh, and Music as Intellectual Property: Two Eighteenth-Century Lawsuits’ (1995) 120 *Journal of the Royal Musical Association* 113, doi.org/10.1080/02690403.1995.11828226; OB Arewa, ‘From JC Bach to Hip Hop: Musical Borrowing, Copyright, and Cultural Context’ (2001) 84 *North Carolina Law Review* 547; S Rogers, ‘The Use of Royal Licences for Printing in England, 1695–1760: A Bibliography’ (2000) 1 *The Library* 133, doi.org/10.1093/library/1.2.133; A van Allen-Russell, ‘Documents Relating to Bach vs Longman and Lukey’ in E Warburton (gen ed), *The Collected Works of Johann Christian Bach, 1735–1782*, 48:2 (Garland 1999) 577–82; A van Allen-Russell, ‘“For Instruments Not Intended”: The Second JC Bach Lawsuit’ (2002) 83 *Music & Letters* 3.

⁶Burkholder, ‘Borrowing’ (n 2).

⁷The following studies explore the various uses of existing music as an influence of one composer over another or one work over another, or as an aspect of the compositional process from the seventeenth to the twentieth century. This is by no means an exhaustive list of sources. Y Balmer, T Lacôte and CB Murray, ‘Messiaen the Borrower’ (2016) 69 *Journal of the American Musicological Society* 699, www.jstor.org/stable/26417270; G Barnett, ‘Handel’s Borrowings and the Disputed “Gloria”’ [2006] *Early Music* 34; G Buelow, ‘The Case for Handel’s Borrowings: The Judgment for Three Centuries’ in S Saide and A Hicks (eds), *Handel: Tercentenary Collection* (UMI Research Press, 1987) 61–82; Burkholder, ‘Making Old Music New’ (n 2) 68–84; D Cranmer, ‘Handel Borrowings’ (1981) 122 *The Musical Times* 524; C Croukamp, ‘Borrowing and Action in Mozart’s Instrumental Music’ (DPhil thesis, University of Oxford, 2011); H Fromm, ‘JS Bach in the Twenty-First Century: The Chapel Becomes a Larder’ (2008) 60 *The Hudson Review* 543; CM Girdlestone, ‘Rameau’s Self-Borrowings’ (1958) 39 *Music & Letters* 52; WD Gudger, ‘A Borrowing from Kerll in “Messiah”’ (1977) 118 *The Musical Times* 1038; A Hicks, ‘Handel [Händel, Hendel], George Frideric’ (Grove Music Online, 2001) www.oxfordmusiconline.com/grovemusic/view/10.1093/gmo/9781561592630.001.0001/omo-9781561592630-e-0000040060; H Meconi (ed), *Early Musical Borrowing* (Routledge, 2004); D Humphreys, ‘Something Borrowed’ (1997) 138 *The Musical Times* 19, doi.org/10.2307/1004029; MJ Lee, ‘The Art of Borrowing: Quotations and Allusions in Western Music’ (DMA thesis, University of North Texas, 2016) digital.library.unt.edu/ark:/67531/metadc849772/m2/1/high_res_d/LEE-DISSERTATION-2016.pdf; D McCaldin, ‘Haydn as Self-Borrower’ (1982) 123 *The Musical Times* 177; N Nettheim, ‘How the Young Schubert Borrowed from Beethoven’ (1991) 132 *The Musical Times* 330, doi.org/10.2307/966281; I Payne, ‘Telemann’s Musical Style c 1709–c 1730 and JS Bach: The Evidence of Borrowing’ (1999) 30 *Bach: Riemenschneider Bach Institute* 42, www.jstor.org/stable/41640474; I Payne, ‘Another Händel Borrowing from Telemann? Capital Gains’ (2001) 142 *The Musical Times* 33, doi.org/10.2307/1004680; I Payne, ‘A Tale of Two French Suites: An Early Telemann Borrowing from Erlebach’ (2006) 147 *The Musical Times* 77; JE Sawyer, ‘Irony and Borrowing in Handel’s “Agrippina”’ (1999) 80 *Music & Letters* 531; MA Smart, ‘In Praise of Convention: Formula and Experiment in Bellini’s Self-Borrowings’ (2000) 53 *Journal of the American Musicological Society* 25; S Taylor, *The Indebtedness of Handel to Works by Other Composers: A Presentation of Evidence* (Cambridge University Press, 2014); JO Urmsen, ‘“Messiah” Borrowings’ (1967) 108 *The Musical Times* 142, doi.org/10.2307/953942; JT Winemiller, ‘Recontextualizing Handel’s Borrowing’ (1997) 15 *Journal of Musicology* 444, doi.org/10.2307/764003; S Wollenberg, ‘Handel and Gottlieb Muffat: A Newly Discovered Borrowing’ (1972) 113 *The Musical Times* 448; S Zohn and I Payne, ‘Bach, Telemann, and the Process of Transformative Imitation in BWV 1056/2 (156/1)’ (1999) 17 *Journal of Musicology* 546.

⁸English Augustan period: 1660 restoration of Stuart monarch to 1740s, with the deaths of Pope and Swift.

Sir Joshua Reynolds (1723–92), espoused the use of imitation or borrowing as a primary means or 'common property'⁹ in developing style, taste and expression in poetry, drama, literature and art, so the use of existing musical material, models and ideas from the distant past or more recent times was an accepted practice of the creative compositional process.¹⁰ Education during the eighteenth century was 'grounded in Classical approaches to learning',¹¹ formed on rhetorical and oratorical works of Aristotle, Cicero and Quintilian, and had as one of its key pedagogical tenets the concept of imitation or use of existing ideas or models to help students develop their rhetorical style and expression, and seed their creativity.¹² In dispensing advice to his students, Quintilian makes much of the importance of imitation¹³ when crafting their work:

[It is] from these authors [of ancient Greek culture], and others worthy to be read, must be acquired a stock of words, a variety of figures and the art of composition. Our minds must be directed to the imitation of all their excellences, for it cannot be doubted that a great portion of art consists in imitation – for even though to invent was first in order of time and holds the first place in merit, it is nevertheless advantageous to copy what has been invented with success. Indeed, the whole conduct of life is based on the desire of doing ourselves that which we approve in others.¹⁴

Literary critics, theorists, writers and artists of the period advocated the imitation and emulation of ideas and models from both past and more recent writers or artists as best practice in developing a writer's or painter's style, expression and taste.¹⁵ There was little in the way of disapproval of the practice of those who employed the works of others as models, allusions or even overt citations within new contexts. However, unmitigated copying (plagiarism) from sources was a concern that started to enter the debates in the mid-eighteenth century regarding excesses of imitation and its legitimacy as an aspect of creativity. There was an expectation that borrowing would be considered and measured, and would serve to spark new creative works, rather than be used to claim credit for others' efforts.¹⁶ Also, the imitation should not be a direct mapping of the original source within a new work; it had to be transformed in some way during the creative process. Quintilian tells his students that 'it is dishonorable even to rest satisfied with simply equalling what we imitate. For what would have been the case, again, if no one had accomplished more than he whom he copied?'¹⁷ He continues, instructing them that the borrowed material needed to be in some way transformed through the application of the student's own invention to the new work:

If we take a view of all arts, no one can be found exactly as it was when it was invented ... for certainly nothing does improve by imitation only ... exact likeness is attended with such difficulty that not even nature herself has succeeded in contriving that in the simplest objects, and such as may be thought most alike, shall not be distinguished by some perceptible difference.¹⁸

⁹ J Reynolds, *Discourses* (P Rogers ed, Penguin, 1992) 153, 278; G Buelow, 'Originality, Genius, Plagiarism in English Criticism of the Eighteenth Century' (1990) 21 *International Review of the Aesthetics and Sociology of Music* 119.

¹⁰ Buelow, 'Originality, Genius, Plagiarism' (n 9) 120; A Bosker, *Literary Criticism in the Age of Johnson*, 2nd edn (W Heffer & Sons, 1954).

¹¹ Buelow, 'Originality, Genius, Plagiarism' (n 9) 119.

¹² *ibid* 119; JJ Murphy and HC Wiese (eds), *Quintilian on the Teaching of Speaking and Writing: Translations from Books One, Two and Ten of the Institutio Oratoria*, 2nd edn (Southern Illinois University Press, 2016) 132–36.

¹³ Murphy and Wiese (n 12) 125 fn 1.

¹⁴ *ibid* 132.

¹⁵ Buelow, 'Originality, Genius, Plagiarism' (n 9); E Nitchie, 'Longinus and the Theory of Poetic Imitation in Seventeenth and Eighteenth Century England' (1935) 32 *Studies in Philology* 580; Reynolds (n 9).

¹⁶ Winemiller (n 7) 488; Nitchie (n 15) 585, 591.

¹⁷ Murphy and Wiese (n 12) 133.

¹⁸ *ibid* 133.

Pope remarks that borrowing was ‘merely a matter of following tradition, of making use of our inheritance from our ancestors.’¹⁹ Still, the reimagination of that ‘inheritance’ is an element of the creative process:

[T]hat writers, in the case of borrowing from others, are like Trees, which of themselves would produce only one sort of Fruit, but by being grafted upon others may yield variety. A mutual Commerce makes Poetry flourish; but then Poets, like Merchants, should repay with something of their own what they take from others; not, like Pyrates [*sic*], make prize of all they meet.²⁰

Edward Young (1683–1765), who was more a proponent of originality than imitation,²¹ still employed this specific transformative form of imitation in his own prose, writing in 1730 ‘we must exert [the original’s] energy in subject and designs of our own.’²² The painter Sir Joshua Reynolds strongly argued in his *Discourse VI* (1774) that an artist needed to be ‘conversant with the inventions of others’²³ and that invention is ‘the child of imitation.’²⁴ In *Discourse XII* (1784), the painter notes that ‘The daily food and nourishment of the mind of an Artist is found in the great works of his predecessors.’²⁵ In fact, Reynold’s own practice involved various degrees of borrowing and modelling paintings on earlier masters, but employing the borrowed elements in a completely different manner to the original.²⁶

It is vain for painters or poets to endeavour to invent without materials on which the mind may work, and from which invention must originate. Nothing can come of nothing.²⁷

After you [the student] have taken a figure, or any idea of a figure, from any of those great Painters, there is another operation still remaining, which I hold to be indispensably necessary, that is, never to neglect finishing from nature every part of the work. What is taken from a model, though the first idea may have been suggested by another, you have a just right to consider as your own property.²⁸

Reynold’s level of extensive borrowing found him accused of plagiarism.²⁹ However, this aspect of Reynold’s creative process was defended by his friend, the English writer and politician

¹⁹ Nitchie (n 15) 583–84.

²⁰ Alexander Pope to William Walsh (2 July 1706): ‘I would beg your Opinion, too, as to another point: it is, how far the Liberty of borrowing may extend? I have defended it sometimes by saying, that it seems not so much the Perfection of Sense, to say things that had never been said before, as to express those best that have been said oftenest; and that Writers, in the Case of borrowing from others, are like Trees, which of themselves would produce only one sort of Fruit, but by being grafted upon others, may yield variety. A mutual Commerce makes Poetry flourish; but then Poets, like Merchants, should repay with something of their own what they take from others; not, like Pyrates [*sic*], make prize of all they meet. I desire you to tell me sincerely, if I have not stretch’d this Licence too far in these Pastorals? I hope to become a Critic by your Precepts, and a Poet by your Example. Since I have seen your Eclogues, I cannot be much pleas’d with my own; however, you have not taken away all my Vanity, so long as you give me leave to profess myself yours, &c’: *Letters of Mr Pope and Several Eminent Persons, From the Year 1705, to 1735*, vol I (London, 1735) 54; also cited in G Sherburn (ed), *The Correspondence of Alexander Pope*, vol 1 (Clarendon Press, 1956) 19–20.

²¹ ‘Imitation are of two kinds; one of Nature, one of Authors: The first we call *Originals*, and confine the term *Imitation* to the second ... *Imitators* only give us a sort of Duplicates of what we had, possibly much better, before; increasing the mere Drug of books, while all that makes them valuable, *Knowledge* and *Genius*, are at a stand’: E Young, *Conjectures on Original Composition*, facs edn (first published 1759, Leeds, 1966) 9–10.

²² E Young, *Imperium Pelagi. A Naval Lyrick: Written in Imitation of Pindar’s Spirit. Occasion’d by His Majesty’s Return, September 1729. and the Succeeding Peace* (Lawton Gilliver, Homer’s Head against St Dunstan’s Church, Fleetstreet, 1730) 2.

²³ Reynolds (n 9) 151.

²⁴ *ibid* 154.

²⁵ *ibid* 273.

²⁶ Reynolds (n 9) 153–54; E Wind, *Hume and the Heroic Portrait: Studies in Eighteenth-Century Imagery* (J Anderson ed, Clarendon Press, 1986) 74.

²⁷ Reynolds (n 9) 158.

²⁸ *ibid* 278.

²⁹ Wind (n 26) 69–73.

Horace Walpole (1717–97), who argued that Reynolds's borrowings were transformed 'pictorial quotations',³⁰ not direct copies.

Sir J Reynolds has been accused of plagiarism for having borrowed attitudes from ancient masters ... [But] when a single posture is imitated from an historic picture and applied to the portrait in a different dress and with new attributes, this is not plagiarism but quotation: and a quotation from a great author, with a novel application of the sense, has allowed to be an instance of parts and taste; and may have more merit than the original.³¹

Just as borrowing was seen as a normative aspect of the creative process by writers, literary critics and artists, so too did contemporary music critics and theorists consider the practice of using existing music as a basis for, or within, new works as a common aspect of compositional strategy.³² German composer, singer, music theorist and Handel's close friend Johann Mattheson (1681–1764) notes in his treatise, *Kern melodischer Wissenschaft* (1737), that some composers would 'gladly snatch a foreign idea from the mass of things that fall under their hands, of which often not two notes are their own'.³³ In her biography of Handel, Marshall makes similar observations to those of Quintilian, Pope and Reynolds, in that the use of existing music was far from an anomaly in new works. Marshall stresses that 'Existing music was a huge vocabulary ... capable of endless combination and arrangements to suit different ideas and plans',³⁴ and that quite often new compositions contained borrowed material just as literary works (and paintings) would draw on works by predecessors or coevals.³⁵

Writing in 1740, Mattheson describes various reasons why a composer might utilise existing musical ideas ranging from a musical earworm stuck in one's mind to the intentional use of an idea:

1. Sometimes a composer will use another composer's ideas by accident, simply because he cannot remember where he had heard the music originally
2. However, some composers have an almost perfect, much more gifted ability to remember music, which must be most convenient (he says) for them.
3. That when a composer's borrowed idea receives a good working-out, it must please the music's inventor and true owner.
4. That this practice is of no disadvantage to the composer of the original idea, but rather a special honour when a famous person comes upon his ideas and makes from them a true basis of his own music.³⁶

Likewise, the important distinction between imitation and outright plagiarism made by art and literary critics was also the subject of discussion among eighteenth-century music theorists and critics. As part of a composer's development, Mattheson recommends borrowing musical ideas and imitating models as a means of stimulating the creative process. The borrowed and imitated

³⁰ *ibid* 69.

³¹ Reynolds (n 9) 381 endnote 6.

³² Buelow, 'The Case for Handel's Borrowings' (n 7) 68; Burkholder, 'The Uses of Existing Music' (n 1) 862; Burkholder, 'Making Old Music New' (n 2) 68.

³³ J Mattheson, *Kern melodischer Wissenschaft* (Hamburg, 1737) 128. Quoted in JH Roberts, 'Why Did Handel Borrow?' in Saide and Hicks (n 7) 86.

³⁴ J Marshall, *George Frederick Handel* (Sampson Low, Marston & Co, 1883) 35. 'Existing music was a huge vocabulary of words and phrases, capable of endless combinations and arrangements to suit different ideas and plan, and it was no more expected of a new composition that it should contain none but original themes, than it would be required of a literary work to contain an original proverb or aphorism in every paragraph. Hitherto, ownership had been acquired or conferred in virtue of treatment, and it was really not till Beethoven's time that the principle of property in ideas became generally recognized.' Also cited in Saide and Hicks (n 7) 84.

³⁵ Marshall (n 33) 35.

³⁶ J Mattheson's *Grundlage einer Ehren-Pfote* (1740) quoted in Buelow, 'The Case for Handel's Borrowings' (n 7) 63.

material must nevertheless be of good quality ('only fine models are chosen'), and be transformed or reimagined in some way ('not however copied and stolen ... most is fetched out of this source for invention').³⁷ Furthermore, Mattheson instructs that 'borrowing is permissible; but one must return the thing borrowed with interest, i.e. one must so construct and develop imitations that they are prettier and better than the pieces from which they are derived'.³⁸ This advice is similar to that given by Pope in his 1706 letter on transforming the 'inheritance' from one's predecessors, and that of Reynold's, where the artist's daily food and nourishment is found in the great works of their predecessors. Mattheson further stipulates that while there may be those who do not need to borrow existing music as they have 'enough resources of [their] own' that they 'need not begrudge' those who do employ this technique, nevertheless, to the theorist, this applies to a minority of composers.³⁹

[A]s even the greatest capitalists are given to borrowing money, if they see special advantages or benefit in this. The last *loco testimoniorum* is most useful in music when one quotes in a certain way a song by someone else which is known to virtually everyone, as for example church hymn, etc, so that the quoted material would serve as proof of confirmation, as *citatum* or *allegatum*; this then is sometimes very beautifully expressive and can be seen as a good invention, especially if such quoted phrases seem to come at the right moment and are developed with diligence and reflections. Thus ends this very brief report or essay on how the familiar *loci topici* or sources of inventions, in so far as they are taken from oratory, can also perform unusual service in musical composition.⁴⁰

The music historian Charles Burney (1726–1814), too, focuses on the uses of existing music as part of the creative process, writing of one of the more well-known prolific borrowers of the eighteenth century – George Fredrick Handel.⁴¹ Burney opens the section 'Character of Handel, as a Composer' in his 1785 *Account of the Musical Performance in Westminster Abbey* by explaining that producing a 'wholly and rigorously new'⁴² composition is impossible and that even the best composers 'avail [themselves] of the best effusions, combinations, and effects, of his predecessors; to arrange and apply them in a new manner'.⁴³ In addition to benefiting from the musical material of others, Burney explains what Marshall distils in her Handel biography: that self-borrowing also provides musical ideas from which to enrich a new work – 'to add, from his own source, whatever he can draw, that is grand, graceful, gay, pathetic, or, in any other way, pleasing'.⁴⁴ In other words, taking that existing material and recrafting in a variety of

³⁷ EC Harriss, *Johann Mattheson's Der Vollkommene Capellmeister: A Revised Translation with Critical Commentary* (UMI Research Press, 1981) 298.

³⁸ *ibid.*

³⁹ *ibid.*

⁴⁰ *ibid.*

⁴¹ Details of Handel's borrowing is discussed in the next section.

⁴² C Burney, *An Account of the Musical Performances in Westminster Abbey, and the Patheon in Commemoration of Handel* (London, 1785) 39.

⁴³ *ibid.* 39.

⁴⁴ *ibid.* 'I know it has been said that Handel was not the original and immediate inventor of several species of Music for which his name has been celebrated; but, with respect to ORIGINALITY, it is a term to which proper limits should be set, before it is applied to the productions of any artist. Every *invention* is clumsy in its beginning, and Shakespeare was not the first writer of *Plays*, or Corelli the first composer of *violin Solos, Sonata, and Concertos*, though those which he produced are the best of his time; nor was Milton the inventor of Epic Poetry. The scale, harmony, and cadence of Music, being settled, it is impossible for any composer to invent a GENUS of composition that is *wholly and rigorously new*, any more than for a poet for form a *language, idiom and phraseology*, for himself. All that the greatest and boldest musical inventor can do, is avail himself of the best effusions, combinations, and effects, of his predecessors; to arrange and apply them in a new manner; and to add, from his own source, whatever he can draw, that is grand, graceful, gay, pathetic, or, in any other way, pleasing.'

ways, transforming within a new context. Still, as Winemiller highlights, some early eighteenth-century pedagogical texts instruct students to avoid 'uncritical copying' of material.⁴⁵ It would not be until the nineteenth century that allegations of 'musical felonies' were levelled against Handel,⁴⁶ although Johann Joachim Quantz (1697–1773) opines in his *Versuch einer Anweisung die Flöte traversiere zu spielen* (1752) that 'young and untutored' Italian opera composers tended to be less ethical in their borrowing as they

imitate each other, copy each other's works, or even present another's work as their own, as experience will show, especially if such instinctive composers find it necessary to seek their fortune in foreign lands. They bring along their inventions not in their heads but in their luggage.⁴⁷

All these viewpoints have a common perspective when it comes to using existing material in literature, art and music: that it was an accepted (and often encouraged) practice, and that borrowing was considered an aspect of a writer's, artist's or composer's tool kit in crafting new works – a practice whose focus, however, is not a direct or uncritical copy of borrowed ideas and structures, but a transformed imitation of style and expression within a new context. Imitation is the impetus for the creative process that feeds originality.

III. *Ex Nihilo Nihil Fit*:⁴⁸ Exemplars of Borrowing in Eighteenth-Century Music

The previous section contextualised the uses of existing material by eighteenth-century writers, poets, painters and musicians as a common means to seed innovation and creativity. Drawing upon Burkholder's approach to developing a typology of procedures, this section explores the types of uses of existing music commonly employed by eighteenth-century composers. With no claim that this is anything near an exhaustive exploration of the topic, this snapshot will illustrate the variety of approaches by composers of the period.⁴⁹ Some exemplars are well known, while others are more recent discoveries; overarching categories that appear to be accepted norms in the uses and reuses of existing music: Efficiency, Education and Homage/Influence.

One composer closely associated with the reuse of existing music is George Frederic Handel (1685–1759). Not only have scholars over the last several decades forensically studied Handel's practice of reworking, revising and reimagining existing musical material of his own music and that of others, but so had contemporaries such as Burney, Scheibe, Mattheson and some of his fellow composers.⁵⁰ Friedrich Zachow (1663–1712), Handel's teacher, encouraged

⁴⁵ Winemiller (n 7) 449.

⁴⁶ FW Horncastle, 'Plagiarism' (1822) IV *Quarterly Musical Magazine and Review* 142. Horncastle accuses Handel of plagiarising from an array of composers and himself and declares that he should be 'brought up to the *Harmonic Old Bailey*, where [he is] to receive the reward of [his] crimes by *verdict* of a jury of critics'. Horncastle's intention was to advise young composers on what 'shallows' they must avoid in a 'moral world'.

⁴⁷ JJ Quantz, *On Playing the Flute*, trans. Edward R Reilly, Second edition (Boston: Northeastern University Press, 1985) 20.

⁴⁸ 'Nothing comes of nothing.' Reynolds (n 9) 158.

⁴⁹ Winemiller (n 7) 454.

⁵⁰ Harriss (n 37); C Burney, *A General History of Music: From the Earliest Ages to the Present Period* (1789), vol 2 (F Mercer ed, Harcourt, Brace & Co, 1935); W Crotch, *Substance of Several Courses of Lectures on Music* (London, 1831) 93–94, 121–22; Roberts (n 33) 83; Payne, 'Another Händel Borrowing' (n 7) 33–42.

the young composer to feed his creativity by imitating, modelling and drawing on musical ideas of other composers, past and present, as a means to crafting his own style (similar to Reynolds's advice to young painters on developing their own style drawing upon others' works), a compositional strategy the composer continued to employ throughout his career.⁵¹ Several years after Mattheson's notable points in his *Kern melodischer Wissenschaft* on how a composer might utilise existing musical ideas, music critic and theorist Johann Adolph Scheibe (1708–76) wrote explicitly on Handel's (and Johann Adolph Hasse's) use of existing music by other composers, and specifically that of the highly regarded opera composer Reinhard Keiser (1674–1739):

Our Reinhard Keiser was in his time an outstanding composer, and inexhaustible in the invention of musical ideas. Handel and Hasse, those famous men who gave honour to Germany in Italy and England, have – especially the former – often used his ideas, and in doing so fare well. They understood so well how to apply their art to these ideas that under their hands they are changed to new and original thoughts. Mattheson and Telemann have corroborated this more than once, and I cannot doubt it from other available reports I have had.⁵²

An example of Handel's borrowing from Keiser is found in Polyphemus's aria 'O Ruddier than the Cherry', from *Acis and Galatea* (1718), HWV 49. In this aria, Handel draws from Keiser's aria 'Wann ich dich noch einst erblicke', sung by Agrippina from his opera *Janus* (1698),⁵³ along with several other works by Keiser borrowed by Handel in *Acis and Galatea*, employing Keiser's musical ideas in an 'innovative fashion'.⁵⁴ Handel's use of this borrowed music is far from the simple modelling of one melody to another: instead of borrowing the vocal melody of 'Wann ich dich noch einst erblicke', Handel instead takes Keiser's jagged ostinato bass line and recrafts it into the all-familiar lively melody of 'O Ruddier than the Cherry'.⁵⁵ As Winemiller argues, Handel's recontextualising of Keiser's ostinato figure 'significantly alters and expands the original musical function of the borrowed material' from accompaniment to the main musical idea.⁵⁶

A well-known set of examples of Handel's self-borrowing are from the oratorio *Messiah* (1741). The choruses 'And He Shall Purify', 'His Yoke is Easy' and 'For unto Us a Child Is Born' are all modelled on musical ideas drawn from the Italian cantatas *Quel fior che all'alba ride*, HWV 192 (c1739) and *No, di voi non vo'fidarmi*, HWV 189 (1741), which were produced just prior to *Messiah*. However, as with the composer's use of Keiser's musical material, these are not straightforward cases of note-to-note self-borrowing as there is a considered recrafting of the music from the cantatas for two singers into the four-part, multi-voiced *Messiah* choruses. For example, the first movement of *Quel fior che all'alba ride* is the basis for 'His Yoke is Easy',⁵⁷ with the duet

⁵¹ Buelow, 'The Case for Handel's Borrowings' (n 7) 62. '[B]orrowing (the use of existing material) played an immensely important role in Handel's creativity': D Hunter, *The Lives of George Frederic Handel* (Boydell Press, 2015) 223.

⁵² J Scheibe's *Über die musikalische Composition* (1773) quoted in Buelow, 'The Case for Handel's Borrowings' (n 7) 64.

⁵³ Winemiller (n 7) 455; D Dugaw, 'Parody, Gender, and Transformation in Gay and Handel's "Acis and Galatea"' (1996) 29 *Eighteenth-Century Studies* 353.

⁵⁴ Winemiller (n 7) 454.

⁵⁵ GF Handel, 'O Ruddier than the Cherry' *Acis and Galatea*, HWV 49 (1718), 47, http://vmirror.imslp.org/files/imglnks/usimg/9/9f/IMSLP318860-PMLP44359-handel_acis_and_galatea.pdf.

⁵⁶ Winemiller (n 7) 457–58.

⁵⁷ However, as now established by Cummings, the origins of the tune for some of these iterations is a Buxtehude organ work, Praeludium in G minor, BuxWV 163, which was composed between 1675 and 1685. G Cummings, 'Lübeck to London: A Much Travelled Fugue Subject' (2007) 53 *Händel-Jahrbuch* 331. Hunter posits that Handel may have learned the theme either from a manuscript copy or hearing the work performed when he was in Lübeck in 1703. Hunter, *The Lives of George Frederic Handel* (n 51) 222–23.

material reworked for the four-part chorus, weaving the original two-part exchange into a layered contrapuntal text for large chorus with orchestra, with melodic and rhythmic adjustments made to follow the English text.⁵⁸ Handel also models 'And He Shall Purify' on the final movement ('Loccaso ha nell'aurora') of the same cantata. Much of the existing material of 'Loccaso' – the melody, countermelody and bass line, and the imitative exchange between the vocal parts – is retained; Handel, however, alters and expands the borrowed material, such as finessing the existing contour of the melody to create the rapid passagework familiar to many choruses and solos in *Messiah*.⁵⁹ The composer also adapts the rhythm and melodic contour at points, especially at the cadences, to reflect the different text settings.⁶⁰

With the second Italian cantata, *No, di voi non vo'fidarmi*, Handel takes the opening movement's theme, with its spirited dialogue between the two vocal parts, and the bass line for the chorus 'For unto Us a Child Is Born'.⁶¹ Besides making use of the existing music, Handel maintains the dialogic structure of the duet by pairing different voices of the four-part chorus throughout the opening section (one of the upper vocal parts and a lower one with the borrowed music, for example). However, there is always a transformative element as part of the creative process: in this instance, new musical material is integrated with the unison section 'And his name shall be called, Wonderful, Counsellor, the mighty God, the everlasting Father, the Prince of Peace'.⁶²

Handel was by far not the only composer to recycle or borrow musical ideas. One of Handel's lifelong friends, Georg Philip Telemann (1681–1767), often self-borrowed as well as reworking material from other composers, including Biber, Rameau and JS Bach, as well as Handel.⁶³ Conversely, Bach and Handel also borrowed from Telemann – according to Payne, Telemann's and Bach's borrowings from each other were a means of exploring and learning new compositional techniques and genres.⁶⁴

One genre that was particularly ripe for emulation – and was all the rage at the time – was the nascent Italian solo concerto of the early eighteenth century as defined by Torelli, Corelli and Vivaldi.⁶⁵ JS Bach was one of Antonio Vivaldi's best students, even though Bach never travelled to Italy (in fact, he never left Germany) nor ever met Vivaldi. Vivaldi's concertos were widely published during the period,⁶⁶ and Bach had access to copies, particularly Vivaldi's Op 3 and 4 sets,⁶⁷ and transcribed at least nine of the concertos: three for solo organ (BWV 593, 594 and 596) and six for solos for harpsichord (BWV 972, 975, 976, 978, 980 and 1065), the latter six transcribed

⁵⁸ GF Handel, *Quel fior che all'alba ride*, HWV 192 (c1739) https://s9.imslp.org/files/imglnks/usimg/9/95/IMSLP237355-WIMA.7c10-hwv_192.pdf; GF Handel, *Messiah* (1741) part I, https://s9.imslp.org/files/imglnks/usimg/4/4d/IMSLP10705-Part_1a.pdf.

⁵⁹ Handel, *Quel fior che all'alba ride* (n 58).

⁶⁰ *ibid*; Handel, *Messiah*, part I (n 58).

⁶¹ Hunter, *The Lives of George Frideric Handel*, 231. GF Handel, *No, di voi non vo'fidarmi*, HWV 189 (1741) https://s9.imslp.org/files/imglnks/usimg/0/0f/IMSLP202910-WIMA.b124-hwv_189.pdf; Handel, *Messiah*, part I (n 58).

⁶² Handel, *Quel fior che all'alba ride* (n 58); Handel, *Messiah*, part I (n 58).

⁶³ Payne, 'Another Händel Borrowing' (n 7) 33; Payne, 'Telemann's Musical Style' (n 7) 43–44.

⁶⁴ 'Bach reworked Telemann's material ... Bach deliberately borrowed material from Telemann, which he then subjected to his own compositional processes': Payne, 'Telemann's Musical Style' (n 7) 63; S Zohn and I Payne, 'Bach, Telemann, and the Process of Transformative Imitation in BWV 1056/2 (156/1)' (1999) 17 *Journal of Musicology* 571.

⁶⁵ A Hutchings et al, 'Concerto' (Grove Music Online, 2001) doi.org/10.1093/gmo/9781561592630.article.40737.

⁶⁶ Vivaldi's concertos were published in Amsterdam by Estienne Roger in 1711. R Rasch, 'Roger, Bach and Walther: Musical Relations between Amsterdam and Weimar' (2019) 69 *Tijdschrift van de Koninklijke Vereniging Voor Nederlandse Muziekgeschiedenis* 88.

⁶⁷ M Boyd, *Bach, Master Musician*, 3rd edn (Oxford University Press, 1994) 74.

from Vivaldi's well-known collections *L'estro armónico*, Op 3 (1711) and *La stravaganza*, Op 4 (1716).⁶⁸ While it is now thought that Bach's transcriptions may not have been solely for self-education,⁶⁹ it was in Vivaldi's Op 3 set that Bach encountered a new compositional concept and 'musical thinking'.⁷⁰

To focus on a single example, Bach's Concerto in F major for Harpsichord, BWV 978 (1713–14) is a transcription of Vivaldi's Violin Concerto in G major, Op 3, No 3, RV 310 (1711). Here Bach follows Vivaldi's score fairly closely, retaining some of the features of the original concerto, including the ritornello form, the well-defined melodic contours and the solo-tutti opposition (in thematic contrast, harmonic schemes and scoring) that articulate the form and produce dramatic effects.⁷¹ However, Bach's transcription is far from a direct note-for-note transfer from violin concerto to keyboard concerto – we can see Bach 'returning the thing borrowed with interest'⁷² as he adapted Vivaldi's work to his own compositional processes, including integrating contrapuntal textures as well as transposing the key of Vivaldi's original to one more suited to the range of keyboards Bach used.⁷³ The opening ritornello alone provides a sampling of Bach's transformative invention of Vivaldi's material.

Bach tried to match Vivaldi's virtuosic violin solos with equally flashy keyboard solos, even if the idiomatic differences and techniques and often limited keyboard range required Bach to change the original figuration. Vivaldi's Op 3, No 3 opens with the solo violin and the ripieno's upper strings playing the ritornello's first motive in unison in bar 1, while the lower strings (violas, cello and bass) join in in bar 2, providing harmonic support in the form of repeated quavers. In his transcription, Bach has the harpsichord's right hand play the original ritornello's first motive alone. However, instead of emulating Vivaldi's simple accompaniment pattern, which started in the second bar, Bach adds a new line that is an imitation of the right hand's opening motive at the octave, with the newly composed contrapuntal approach demonstrating Bach's 'take' on the original piece. Throughout the concerto, Bach often rewrites passages to enrich the texture, particularly the bass lines, which were more simple and less contrapuntal in Vivaldi's version. In BWV 978, Bach transforms Vivaldi's simple repetitive quaver bass line in bars 7–11

⁶⁸ Bach's concertos that are transcriptions of Vivaldi's: BWV 593 (organ concerto after Vivaldi's Op 3, No 8 = RV 522); BWV 596 (organ concerto after Vivaldi's Op 3, No 11 = RV 565); BWV 972 (harpsichord concerto after Vivaldi's Op 3, No 9 = RV 230); BWV 975 (harpsichord concerto after Vivaldi's Op 4, No 6, RV 316); BWV 976 (harpsichord concerto after Vivaldi's Op 3, No 12 = RV 265); BWV 978 (harpsichord concerto after Vivaldi's Op 3, No 3 = RV 310); BWV 1065 (concerto for four harpsichords after Vivaldi's Op 3, No 10 = RV 580). C Wolff and W Emery, 'Bach, Johann Sebastian' (Grove Music Online, 2001) doi.org/10.1093/gmo/9781561592630.article.6002278195.

⁶⁹ H Schulze, 'JS Bach's Concerto-Arrangements for Organ: Studies or Commissioned Works?' (1972) 3 *Organ Yearbook* 4.

⁷⁰ C Wolff, *Bach: Essays on His Life and Music* (Harvard University Press, 1991) 74–75.

⁷¹ A Vivaldi, *L'estro armonico*, Op 3, 52–73, https://s9.imslp.org/files/imglnks/usimg/d/d6/IMSLP272378-PMLP06105-L'Estro_Armonico_-_Libro_Primo.pdf; JS Bach, Concerto in F major, BWV 978 (1713–14) 101–07, https://s9.imslp.org/files/imglnks/usimg/8/85/IMSLP05917-Bach_-_BGA_-_BWV_978.pdf.

⁷² Harriss (n 37) 298.

⁷³ Bach transposed the original key of Vivaldi's concerto down a tone from G major to F major for his transcription; he did this with several of his transcription of Vivaldi concertos. This was primarily to address the issue of the restricted range of the keyboards Bach used. In the first movement of Bach's transcription (BWV 978), the harpsichord used by the composer did not extend to d^{''}, an essential note in Vivaldi's Op 3, No 3, for example. In bars 3 and 4 (and later bars 18 and 19) of Op 3, No 3's first movement, d^{''} appears often; transposing it down a tone to F major shifts the dominant to C, a note within the range of Bach's keyboard. Bach also employed transposition to clarify parts that were often in the same register in the original. In the opening section of the first movement of BWV 978, Bach takes the reiterated quaver bass line notes (as found in bars 3–6 and throughout the movement) and places every other note an octave higher. This more clearly defines the bass line function within the sonority of the harpsichord. See scores for Vivaldi Op 3, No 3 and Bach's Concerto in F major, BWV 979 listed above; H Shanet, 'Why Did JS Bach Transpose His Arrangements?' (1950) 36 *Musical Quarterly* 186.

of the Allegro's opening ritornello by arpeggiating the harmony, creating a driving contrapuntal texture with the primary melodic material. With the first solo section starting in bar 12, this shifts back to the original quaver rhythm while still maintaining the arpeggio pattern. Bach later integrated and expanded the ideas and principles learned from transcribing Vivaldian concertos to his own distinctly original instrumental concertos, most notably the six Brandenburg Concertos BWV 1046–51.

So far, I have explored using existing music as a means of learning a new compositional aesthetic or generating new works based on material from oneself or others to further develop one's craftsmanship or musical thinking as an artist. There are, however, also composers who made use of existing music to reflect a level of influence or homage, or as an element of novelty within their works.

Handel's borrowings from Keiser (mentioned earlier) may well also be Handel tipping his hat to Keiser, who was a well-respected composer at this early point in Handel's career.⁷⁴ Another composer significantly influenced by a senior coeval was Wolfgang Amadeus Mozart (1756–91), who developed a lifelong friendship with, and admiration for, Johann Christian Bach (1735–82) during the Mozart family's 15-month stay in London (1764–65) when Mozart was only eight years old. During this period, JC Bach became a central influence on Mozart's musical development, and it is thought that Mozart produced his earliest symphonies under the guidance of Bach at the time.⁷⁵ In fact, Bach had a lasting impact on Mozart that can be traced into his mature works.

JC Bach's compositional style reflected the Italian *galant* style that was the fashionable musical trend of the time,⁷⁶ a compositional style that Mozart's father, Leopold, was keen to have his young son develop.⁷⁷ Bach's direct influence can be seen in several genres, including a set of Mozart's early piano concertos K 107, Nos 1–3 (1772), the aria 'Marten aller Arten' from Act II of *Die Entführung aus dem Serail* (1782) and the andante from Mozart's Piano Concerto No 12 in A major, K 414/385p (1782).

As a young composer advancing his compositional techniques and skills, Mozart looked to JC Bach as a model for composing concertos. Among his earliest endeavours in this genre, Mozart transcribed three of Bach's Opus 5 solo keyboard sonatas (Op 5, Nos 2–4) into the keyboard concertos, K 107 (Nos 1–3). In each of his three concertos, Mozart copied Bach's solo sonatas note for note, mastering the way Bach crafted lyrical themes, tasteful embellishments and harmonic schemes, as well as how Bach employed contrasting themes in sonata-form movements. Essentially, with Bach's keyboard sonatas, the 16-year-old Mozart already had a basic structure that followed the sonata principle,⁷⁸ which he could transform into concertos by adding new instrumental ritornellos or tutti sections (here scored for a modest ensemble consisting of first and second violins and cello) and adding light string accompaniment to the existing keyboard sonata material, creating the familiar alternation between the solo and tutti sections of an instrumental concerto. The ritornellos crafted by

⁷⁴Hicks (n 7).

⁷⁵Wyzewa and Saint-Foix posit that Mozart ... felt [JC Bach] influence soon after the family arrived in London. It was at first combined with other influences, but "increasingly, until 1768 and beyond, it replaced the influence of the father and of Schubert, so that John Christian Bach became the only, the true teacher of Mozart": H Gärtner, *Johann Christian Bach: Mozart's Friend and Mentor* (RG Pauly trans, Amadeus Press, 1994) 211.

⁷⁶D Heartz, *Music in European Capitals: The Galant Style 1720–1780* (WW Norton, 2003) 904–20.

⁷⁷'He [Leopold] gave Wolfgang free rein, even encouraging him to return to John Christian Bach, the one person to whom the boy was strongly attracted as a musician and a human being': Gärtner (n 75) 214.

⁷⁸C Rosen, *Sonata Forms* (Norton, 1988).

Mozart consist of repeating Bach's music, introducing the main melodic ideas, which are then played by the solo.⁷⁹

An example of influence and indirect borrowing can be seen in two mature works by Mozart. Mozart models his aria 'Marten aller Arten' from Act II of *Die Entführung aus den Serail* (1782) on JC Bach's aria 'Infelice! In van m'affanno' from Act II of *La clemenza di Scipione* (1778), a powerhouse soprano aria with elaborate concertante parts for flute, oboe, violin and cello, and bravura vocal writing. However, Mozart does not borrow actual existing music from the aria; instead, he imitates the structure, unique scoring and orchestration, texture and virtuosity of 'Infelice!'. Mozart employs the instrumental sections – enlisting the same wind instrument as in Bach's aria – in a manner similar to Bach, having them function as a ritornello that is juxtaposed to the vocal line throughout the aria.⁸⁰ Instead of directly quoting or embellishing existing music, Mozart uses Bach's material as a point of departure from which to craft his tour de force aria.

Mozart's Piano Concerto No 12 in A major, K 414/385p (1782), also reflects Bach's continued influence. The central theme of the concerto's second movement directly – but not identically – quotes the theme from the second movement of Bach's opera overture *La calamita de' cuori* (before 1763). The theme is transformed with nuanced changes to the rhythm and harmony of the viola and cello parts, although Bach's original orchestration is retained and the borrowed melody is distinctly recognisable from the start of the movement.⁸¹ The inclusion of this theme could also have been Mozart memorialising Bach, who had died on 1 January 1782, shortly before Mozart's work was composed.⁸² Mattheson notes 'That this practice [of quotation] is of no disadvantage to the composer of the original idea, but rather a special honour when a famous person comes upon his ideas and makes from them a true basis of his own music.'⁸³

IV. 'Musical Felonies': Piracy and Copyright

I have explored various uses of existing music by composers, how this strategy was an accepted part of the creative paradigm and the important distinction between uses of existing material for transformative imitation and the unacceptable *untransformative* imitation of work to garner benefit that was due to the writer, artist or composer. But where were the bounds of acceptable usage? And where did composers draw the line?

⁷⁹JC Bach, Keyboard Sonatas Op 5 (1766) [https://s9.imslp.org/files/imglnks/usimg/6/6a/IMSLP284471-PMLP09626-JC_Bach_-_Six_Sonatas_Opera_5_\(Welcker\).pdf](https://s9.imslp.org/files/imglnks/usimg/6/6a/IMSLP284471-PMLP09626-JC_Bach_-_Six_Sonatas_Opera_5_(Welcker).pdf); WA Mozart, Concerto in E-flat, K107, No 3 (1772), https://imslp.hk/files/imglnks/euimg/2/2f/IMSLP26420-PMLP58730-Mozart_KV_107-3_Piano_concerto_in_E_flat_after_JC_Bach.pdf; Mozart, Concerto in G, K 107, No 2 (1772), https://imslp.hk/files/imglnks/euimg/a/ae/IMSLP26419-PMLP58730-Mozart_KV_107-2_Piano_concerto_in_G_after_JC_Bach.pdf; Mozart, Concerto in D, K 107, No 1 (1772), https://imslp.eu/files/imglnks/euimg/2/2a/IMSLP26418-PMLP58730-Mozart_KV_107_3_Piano_concertos_after_JC_Bach.pdf.

⁸⁰JC Bach 'Infelice! In van m'affanno, Act II, *La clemenza di Scipione* (1778) 111–28, https://s9.imslp.org/files/imglnks/usimg/c/c0/IMSLP338428-PMLP546132-jc_bach_clemenza_scipione_2.pdf; WA Mozart, 'Marten aller Arten; Act II, *Die Entführung aus den Serail* (1782) 123–59, https://s9.imslp.org/files/imglnks/usimg/6/66/IMSLP365237-PMLP15322-WAMozart_Die_Entführung_aus_dem_Serail_K384_WAMWS5B7N15.pdf.

⁸¹JC Bach, *Six Favourite Overtures in 8 Parts for Violins, Hoboys, French Horns, with a Bass for the Harpsicord and Violoncello Compos'd by Sigr Bach, London. Printed for I Walsh in Catharine Street in ye Strand* (1763) https://s9.imslp.org/files/imglnks/usimg/b/b0/IMSLP370640-PMLP598620-jcb_6_fave_overtures00pugn_parts.pdf; W A Mozart, Concerto in A, K 414/385p (1782), https://imslp.hk/files/imglnks/euimg/2/26/IMSLP534109-PMLP15367-Mozart_Wofgang_Amadeus-NMA_05_15_3_01_KV_414_scan.pdf.

⁸²Letter to his father dated 10 April 1782. E Anderson (ed), *The Letters of Mozart and His Family*, 3rd rev edn (Macmillan, 1985) 799–800.

⁸³Mattheson's *Grundlage einer Ehren-Pfote* (1740) quoted in Buelow, 'The Case for Handel's Borrowings' (n 7) 63.

The eighteenth century was also a crucial period for the history of music as a commodity, with composers gaining control over how their music was copied, printed and disseminated. So, where composers such as Arne,⁸⁴ Geminiani,⁸⁵ Pyle,⁸⁶ JC Bach,⁸⁷ Abel⁸⁸ and Storace⁸⁹ 'drew the line' was not at borrowing, but at outright piracy: the production or selling of unauthorised copies or arrangements of works by publishers without the consent (or sometimes even the knowledge) of their creators.⁹⁰ The fundamental principle was that borrowing material is acceptable if it is transformed; the untransformative imitation of work in order to reap benefit (pecuniary or otherwise), as noted above, is unacceptable. And so, the composers went to law.

Although use of each other's material for creative purposes was considered acceptable by composers, the wholesale publication of a composer's work by publishers without an agreement was not. Unfortunately, this was a common practice at the time and composers had few legal protections against such predation. A survey of legal suits between c1728 and 1792⁹¹ reveals that the primary concern for both composers and publishers was the printing or importing and selling of unauthorised copies or extracts of musical works; or breach of exclusivity contracts.⁹² For example, the composer Francesco Geminiani launched a legal action in the early 1730s (thought to be one of the earliest)⁹³ against music publisher John Walsh to prevent the production of an unauthorised edition of Geminiani's *Six Concertos ... Opera Seconda* (1732).⁹⁴ In another case, composers JC Bach and Carl Friedrich Abel filed three Bills of Complaint in Chancery against London music publishers and sellers James Longman and Charles Lukey,

⁸⁴ *Arne v Roberts and Johnson* (1741, unreported), The National Archives, UK [hereafter TNA] C11/2260/7; see also Rabin and Zohn (n 5).

⁸⁵ J Hawkins, *A General History of the Science and Practice of Music*, vol 5 (T Payne, 1776) 247, <https://s9.imslp.org/files/imglnks/usimg/a/a9/IMSLP337343-PMLP544570-generalhistoryof05hawk.pdf>. Also noted in Rabin and Zohn (n 5) 112–13.

⁸⁶ *Pyle v Falkener* (1774, unreported), TNA C12/2082/42 and C33/442. This case centres on the executor of printer John Walsh Jr's estate, John Pyle, who sued the bookseller Robert Falkener for producing unauthorised prints of works by Handel, Arne, Maurice Green and Isaac Bickerstaffe. Rabin and Zohn (n 5) 113.

⁸⁷ Transcriptions of core records housed at TNA associated with *Bach v Longman* can be found in van Allen-Russell, 'Documents Relating to Bach vs Longman and Lukey' (n 5).

⁸⁸ *Abel v Longman* (1773, unreported), TNA C12/71/6.

⁸⁹ *Longman v Storace* (1788, unreported), TNA C12/1703/11; *Storace v Longman* [1788] ER 170: 1069 (2 Camp 27), TNA C12/618/12; *Storace v Longman* (1789, unreported), TNA C12/623/35.

⁹⁰ For the definition of 'plagiarize', see n 4.

⁹¹ A sampling of legal actions pursued in the English courts between c1728 and 1792 include *Geminiani v Walsh* (c1731–32, unreported); *Arne v Roberts and Johnson* (n 84); *Bickerstaff v Thorowgood* (1765, unreported), TNA E112/1596/730; *Bickerstaff v Fought* (1769, unreported), TNA C12/1026/2; *Bickerstaff v Roberts* (1769, unreported), TNA C12/1026/3; *Abel v Longman* (1773, unreported) TNA C12/71/6; *Bach v Longman* [March 1773] ER 98: 1274 (2 Cowp 623) (first suit), TNA C12/71/22; *Bach v Longman* (May 1773, unreported) (second suit), TNA C12/71/22; *Pyle v Falkener* (1774, unreported), TNA C12/2082/42; *Thompson v Falkener* (1776, unreported), TNA C33/446; *Longman v Babb* (1784, unreported), TNA E133/82/26; *Clasuss v Longman* (1785, unreported), TNA C217/134; *Rennett v Longman and Rennett v Thompson* (1785, unreported), TNA E133/104/67; *Storace v Longman* [1788] ER 170: 1069 (2 Camp 27); *Storace v Longman* (1789, unreported); *Forster v Longman* (1791, unreported), TNA E133/54/54–55; E133/54/55; E127/1746/4924 E112/1724/4329; *Forster v Longman* (1792, unreported), TNA E133/54/55; *Skillern v Broderip* (1792, unreported), TNA C12/185/34. See also a 'Summary of Legal Cases' in Kassler (n 5) 507–24.

⁹² *Forster v Longman* (1791); see also NA Mace, 'Haydn and the London Music Sellers: Forster v Longman & Broderip' (1996) 77 *Music & Letters* 527.

⁹³ Rabin and Zohn posit that the dispute may have happened in 1731 or 1732. Rabin and Zohn (n 5) 112–13.

⁹⁴ There is no extant copy of this Chancery suit in the National Archives, but this dispute is relayed by John Hawkins in his *A General History of the Science and Practice of Music* (1776). One of the reasons that a record of this legal action was not made is that, according to Hawkins, 'Walsh compounded the matter [settled with Geminiani] and the work was published under the inspection of the author'. Thus, some sort of out-of-court agreement was made, probably before Geminiani filed a Bill of Complaint. Hawkins (n 85) 247.

charging them with the unauthorised publication, arrangements and distribution of several of their compositions.⁹⁵

In short, composers wanted what writers had been progressively gaining throughout the eighteenth century: the right to control and benefit from their creative output, including pecuniary benefit, recognition as the rightful creator of the works and control over dissemination of those works. But what intellectual property rights did composers have in England during Bach's time? As John Small explains rather succinctly in his article on the first Bach lawsuit, there were three legal grounds a composer could use as the basis for a copyright infringement suit: the Copyright Act 1710, the common law or a royal warrant.⁹⁶

A royal warrant or privilege was available only by royal grant or application, giving the holder exclusive rights to print, copy, sell and distribute their work. This allowed rights holders to recoup their initial financial outlay and gain some profit without fear of competition. Being the recipient of a royal privilege could also add prestige; noting the royal connection as Music Master to the Court or as a recipient of a royal privilege on the title page added the implication of the monarch's endorsement, and thus could increase sales and lead to new commissions. But even this protection was limited; most privileges were granted to protect newly written works before first publication and were not intended to protect a composer's entire output.⁹⁷ Privileges were also generally only issued for a limited time and, as a 'gift of the Crown', they could be revoked at any time.⁹⁸ Abel had been granted such a privilege in 1760, as had JC Bach in 1763,⁹⁹ but royal warrants were generally only issued for a limited time – in the case of both Bach and Abel, for a period of 14 years – and the right of the Crown to grant these privileges was itself not on firm legal footing, and thus offered little help to composers.

The Act for the Encouragement of Learning, or the Copyright Act 1710 (also known as the 'Act of Anne'), gave an author, or their assigns, 'of any Book or Books already composed, and not printed and published' exclusive publication rights for 14 years from the time of a book's first publication. If the author was still alive at the end of this period, the copyright would automatically be extended for another term of 14 years, giving an author a total of 28 years of copyright.¹⁰⁰ The key aspects of this Act were that it limited the length of copyright and, most importantly, gave the author the copyright to their own material. Unfortunately for composers and music publishers, the Act made no specific mention of music, only of 'Books and other Writings', and the legal basis for composers was again tenuous.

Before the Act of Anne, copyright was protected by common law and was considered unlimited in time because writings, at this level, were considered the intellectual property of the author, or to whomever they sold the rights. It was left to the courts to decide whether material was copyrighted under common law (in perpetuity) or under the Copyright Act (for 14 or 28 years only).

⁹⁵ Bach brought two of the legal proceedings. His first suit, filed on 18 March 1773, concerned two keyboard sonatas, one in G major for solo keyboard (sold by Longman & Lukey as *A New Lesson for the Harpsichord or Piano Forte ...*) [CW A 10b] and one in F major for keyboard and viola da gamba [CW BN 6b]. The second lawsuit, which concerns the three Op 9 symphonies, was filed two months later, on 6 May 1773. The following day, Abel began his legal proceedings against Longman & Lukey regarding a set of three trios for violin, cello and bass. van Allen-Russell, 'For Instruments Not Intended' (n 5).

⁹⁶ J Small, 'JC Bach Goes to Law' (1985) 126 *The Musical Times* 526.

⁹⁷ Hunter, 'Music Copyright in Britain to 1800' (n 5).

⁹⁸ This information is also noted in A van Allen-Russell, 'Stop Copying My Music!: The Emergence of Musical Copyright in England' (*The Avid Listener* blog, 28 July 2020) theavidlistenerblog.com.wordpress.com/2020/07/28/stop-copying-my-music-the-emergence-of-musical-copyright-in-england/.

⁹⁹ Bach's royal warrant, TNA SP44/375, 98–99; Abel's royal warrant, TNA SP44/374.

¹⁰⁰ ER 1: 837 (2 Bro PC 129).

Unfortunately again for both authors and composers, the courts eventually decided that the Act of Anne superseded common law, and the limited term protection would prevail.¹⁰¹

A more practical option was used by JC Bach, who countered an unauthorised edition already published – in this case by Robert Bremner, in 1766 – by issuing a so-called 'corrected' edition himself and placing an advertisement stating that the other edition was faulty.¹⁰² This was only of limited effectiveness in most instances, however, and meant that the composer would essentially have to spend both their time *and money* producing their own editions to compete with the unauthorised ones on the market, and those producing the unauthorised versions would still profit.¹⁰³

When Bach and Abel filed their Bills of Complaint against Longman and Lukey in 1773, therefore, it was in the context of an environment with very limited options for composers to protect their own material from misuse. Their arguments focused on presenting their compositions as an expenditure of mental labour and intellectual capital (ideas) in creating goods which belonged to them – ie the printed music – and the injury caused by the unauthorised publication and selling of these works since they could not reap the profits from their labour. This can be seen in the language of their complaints: they each emphasise that the specific works listed had been 'with *great study, labour and expense composed*' and that the works are 'solely of your Orator's *composing and writing, and his absolute and exclusive right and property*'¹⁰⁴ and they '*are the composition writing estate and property of your said Orator*'.¹⁰⁵ Thus, by the selling of pirated copies, Longman and Lukey harmed (or 'wounded') the profits of the two composers: a form of intruding on a particular right.¹⁰⁶

Initially, in their legal actions, Bach and Abel relied primarily on their royal warrant or privileges and, tacitly, common law protection of their compositions. When this approach failed¹⁰⁷

¹⁰¹ *Donaldson v Beckett* [1774] ER 1: 83 (2 Bro PC 129), which ruled that the Copyright Act 1710 negated common law.

¹⁰² Bremner, who published three of Bach's symphonies as part of his Periodical Overture series, got off lightly when he issued an unauthorised edition of Bach's overture in D major as No 15 in the series. *To be continued Monthly The Periodical Overture In 8 Parts, Composed by Sigr Giovanni Cristiano Bach Number XV. Price 2sh London Printed and Sold, by R: Bremner, the Harp and Hautboy, Opposite Somerset-House in the Strand.* RISM A/I B253. DW Jones, 'Robert Bremner and The Periodical Overture' (1978) 7 *Soundings* 66, 72. In this case, Bremner advertised the work on 1 July 1766 in the *Public Advertiser*, and by 4 August JC Bach had placed a notice informing the public that '[t]his overture, having been printed as periodical Overture No 15, and not being correct, the Author thought it proper to have it printed right. To be had at Welcker's Music Shop in Gerrard Street ...: An Overture in eight Parts Composed by Sigr Giovanni Cristiano Bach London Printed and Sold at Welcker's Musick Shop in Gerrard Street St Ann's Soho Where may be had all the above Author's Works. RISM A/I B252. Interestingly, neither the Bremner (pirated) nor the Welcker (authorised) edition is error-free; in fact, they are virtually identical. This suggests that Bach was concerned more with Bremner's piracy of the work than with the accuracy of the edition. See also van Allen-Russell, 'For Instruments Not Intended' (n 5) 8.

¹⁰³ van Allen-Russell, 'Stop Copying My Music!' (n 98).

¹⁰⁴ van Allen-Russell, 'Documents Relating to Bach vs Longman and Lukey' (n 5); Charles Frederick Abel's first Bill of Complaint, *Abel v Longman*, TNA C12/71/6.

¹⁰⁵ 'the Defendants ... have lately in the name of your Orator but without you Orator's Licence and consent printed, published and sold for a very large profit divers copies' of the said compositions ... all which actings, [sic] doings and pretences that said James Longman and Charles Lukey and Company are contrary to Equity and good conscience and manifestly tend to your Orator's great wrong and injury': van Allen-Russell, 'Documents Relating to Bach vs Longman and Lukey' (n 5); Charles Frederick Abel's first Bill of Complaint (n 104).

¹⁰⁶ Writing in *An Argument in Defence of Literary Property*, printed on 5 February 1774, Francis Hargrave notes that if pirated or unauthorised copies were being sold, the 'right is wounded [and] affected' because of the fact that 'the profits, which would otherwise arise from the exercise of the right, are diminished; and the intruding on this particular right is as much a trespass, a tort, a fraud, a violence, a damage, as an invasion of any other incorporeal property can be': F Hargrave, *Argument in Defence of Literary Property* (London, 1774) 19; L Bently and M Kretschmer (eds), *Primary Sources on Copyright (1450–1900)*, www.copyrighthistory.org.

¹⁰⁷ One of the reasons for the failure of their initial legal approach was that an aspect of *Millar v Taylor* questioned the Crown's right to grant privileges in which it did not have a vested interest, asserting that it could not grant a privilege that would create a monopoly for printing, interfering with free market trade. Examples of works in which the Crown was said to have an interest included *Statutes* and *The Book of Common Prayer*. ER 98: 201 (4 Burr 2303).

(as did a petition to Parliament), the composers' counsel explicitly introduced the Act of Anne as a *new* basis for granting relief, forcing the Court of Equity to refer the first of JC Bach's two suits to the King's Bench as any legal ruling would establish a key point of law. At long last, in June 1777, the ruling of the King's Bench did establish that music was protected under the 1710 Copyright Act. The ruling declared that:

Music is a science; it may be written; and the mode of conveying the ideas, is by signs and marks. A person may use the copy by playing it; but he has not right to rob the author of the profit, by multiplying copies and disposing of them to his own use. If the narrow interpretation contended for the argument were to hold, it would equally apply to algebra, mathematics, arithmetic, [and] hieroglyphics. All these are conveyed by signs and figures. There is no colour for saying that music is not within the Act ... we are of opinion, that a musical composition is a writing within the Statute of the 8th of Queen Anne ...¹⁰⁸

The change in the legal tack and the language used indicate a deliberate shift in not only the legal approach, but the understanding of the issue of music as intellectual property. The original approach focused on the use of what limited privilege the composers held (or believed they held) as granted to them personally by the Crown. As the arguments became more wedded to the debates concurrently taking place by booksellers, the concept of music as a form of writing – and thus a 'labour of the mind and production of the brain' – became more central to their approach; the suits were no longer just about mere pursuit of compensation for wrongful use of specific pieces of music, but rather about resolving the fundamental legal principle of ownership of both the physical property and the 'labour of the mind,' thus establishing their right to control the use of all their music, for the present and in the future. Bach and Abel may not have been the driving force behind the concept of writing as property, but their efforts established music as both writing *and* property at a time when it was considered to be neither.

The establishment of musical copyright because of the Bach and Abel suits did not mark an end to borrowing of existing material by composers, but it was perhaps the beginning of the end, setting off a long evolution of legal and social consideration of music as intellectual property under the strict control of its creator. Borrowing continued to be a source of innovation to various extents up to the present day, and existing works continue to spur new ones in new and innovative ways (as the current use of sampling demonstrates).

¹⁰⁸ King's Bench Hearing, 10 June 1777. ER 98: 1274–75 (2 Cowp 624).