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From Maimonides to Microsoft: The Jewish Law of Copyright since the Birth of Print. By Neil Weinstock Netanel. New York: Oxford University Press, 2018. Pp. 336. $29.95 (paper). ISBN 9780190868772.

Neil Netanel's *From Maimonides to Microsoft* takes us on an exciting journey from the beginnings of Jewish legal experts' coping with copyright issues, a few decades after the birth of print, to nineteenth-century European Humanism. Modern ethics of copyright find expression in the discovery, eventually also within the Jewish book world, of the author as an autonomous individual and of his work as his own intellectual property. But prior to this, for hundreds of years, Netanel tells us, rabbis all over Europe used the tool of "reprinting bans" on rabbinical writings, prayer books, or Talmud editions. That is, the rabbis safeguarded copyrights by prohibiting the reprinting and the purchase of reprinted books for up to twenty-five years, on penalty of the exclusion of the transgressor from Jewish communal services. Only in 1860, in what Netanel calls a "striking innovation," did Rabbi Joseph Saul Nathanson introduce into Jewish legal thought the idea of universal, perpetual, and exclusive author rights, fully assignable to publishers. This is the climax of the book, but even here the truly striking aspect is that Rabbi Nathanson did not see it necessary to refer to a Talmudic precedent for his innovation. While all orthodox Jewish law is traditionally supposed to be based on the rulings of the Talmud, Nathanson believed that it was "obvious" that authors possessed those rights. There is probably no better illustration of how Immanuel Kant's Copernican revolution—putting man in the middle of the universe—found entrance into nineteenth-century Judaism.

After an introductory chapter discussing both the non-Jewish context against which Jewish copyright regulations developed and the emerging modern publishing industry (where ever so often Jews and non-Jews worked together on the printing of Hebrew books), the journey starts in 1518 in Rome, where the first of those many reprinting bans was issued by a rabbinical court. Some intermediate stops follow, such as the sixteenth-century Italian rivalry over the printing of Maimonides's great legal code *Mishneh Torah* (chapter 4), and the establishment of Rabbinic reprinting bans in seventeenth- and eighteenth-century Poland (chapter 5). In the sixth chapter, Netanel arrives at what is arguably the most fascinating part of the story he tells: the account of the legal debates around the unauthorized reprintings of the well-known Rödelheim[1] *Mahzor* (festival prayer book) called *Sefer Krovot*. It is here that the book suddenly reads like a genuine crime story—and one of great interest not only to the legal expert but also to the historian of Judaism.

This multivolume prayer book, typeset and published for the first time from 1800 to 1805 by the illustrious scholar Wolf Heidenheim (1757–1832), the owner of the Rödelheim press, was reprinted several times without Heidenheim's consent and to his substantial financial loss. This, despite the fact that Heidenheim had obtained the relevant reprinting bans, issued by several leading rabbinical authorities of his era. Ironically, as Netanel points out, one of the illegal republications of *Sefer Krovot* (Vienna, 1806) was authorized by the chief rabbi of Moravia, Mordechai Banet, although only under heavy pressure from the Austrian emperor Joseph II, whose policy it was to promote the Austrian book trade by reprinting foreign works without explicit permission. To add a little spice to the situation, the Viennese printer of this unauthorized edition was a Christian who had established a Hebrew press in the Austrian capital. Thus, provoked by Rabbi Banet's written support, the

1 The book has serious problems with the German *Umlaut*. See the title of Kant's work referred to on page 45, but especially the use of *Rodelheim* instead of *Rödelheim*, or *Roedelheim*. Since the Germans are *Rodel* (luge) world champions, the difference is decisive, and one might expect Oxford University Press to be able to print *Umlaute*.

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infighting about copyrights between German and Austro-imperial rabbis turned into an opportunity for financial profiting of the non-Jew off the Jew.

Continuing the thrilling history of Jewish copyright law after the Rödelheim incident toward the present, the highly instructive seventh chapter discusses the fierce East-European battles around the printing of competing Talmud editions in Vilna and in Slavuta (today Ukraine) during the early nineteenth century. Here as well, the trilateral historical context makes the account very helpful for a better understanding of modern Jewish history far beyond the narrower issue of copyright regulations: the competing Jewish printing presses are portrayed as battling for the right to exclusively publish this all-time classic of Jewish learning, a battle that even includes turning to Gentile courts—because printing the Talmud was financially lucrative. In 1836 the owners of the Slavuta press were found guilty by the courts of killing a non-Jewish worker who had reportedly denounced his bosses for printing books without permission of the state censor. As a consequence, and while the copyright dispute was still ongoing, the Russian government shut down all Jewish printing in the empire.

All these incidents are indicative also of a drastically declining rabbinical confidence in the doctrinal foundations, effectiveness, and universal applicability of the reprinting ban as a tool for protecting copyrights, as Netanel explains. This declining confidence in reprinting bans paved the way for Rabbi Nathanson's abovementioned adoption of the humanistic approach to perpetual and exclusive author rights. The Heidenheim debate had already shown that the territorial scope of reprinting bans was often limited, as the rabbis were subject to the political rulers of their respective countries of living and had to respect those ruler's economic interests—clashing with the interests of the neighboring state. As Netanel demonstrates convincingly, with the decline of rabbinic political autonomy over the Jewish community itself, the rabbis' authority to enforce these bans diminished during the nineteenth century throughout Europe.

Eventually Netanel brings the reader to the present era. And here the irony of the book's title is striking. Netanel does so much more than his book's title pretends to do—and much less than the title promises. On one hand, Maimonides (1137–1204) lived three hundred years before the birth of print; the reference in the title is, in fact, to the first printing of his works. Even more misleading is the modern side of the title's alliteration. Since Netanel limits "Jewish Law of copyright" to Orthodox Jewish law, he consequently ends up on the modern end of the book in the Ultraorthodox town of Bnei-Brak, neighboring Tel Aviv. Today, this quarter is one of the last resorts of a partial rabbinic legal autonomy. Here, in 1998 the local rabbis issued an official copyright infringement warning in favor of the software giant Microsoft. This rabbinic ruling clearly showed, as Netanel demonstrates, that the Ultraorthodox legalists had no idea what the (virtual) nature of software was. Here it might have been preferable to end the book with some non-Orthodox views, especially those of the Conservative stream of Judaism, which are especially interesting for their sophisticated combination of references to traditional Jewish sources and more modern legal and ethical requirements regarding copyright regulations.[2]

Exciting as these well-researched developments are, Netanel is a little weak on the historical background of the stories about Jewish copyright issues. This becomes specifically manifest in the abovementioned account of the controversy about Heidenheim's *Mahzor*, where, for example, the Jewish Reform- and the (earlier) Haskalah-movement are frequently confused. If the students of the philosopher in "Mendelsohn's circle" were "proto-*maskilim*" (157), what was Mendelsohn himself then? In addition, even though the Austrian emperor had already issued his celebrated *Toleranzpatent* (which

2 See, for example, the responsum by Rabbi Barry Leff, "Intellectual Property: Can You Steal It if You Can't Touch It," http://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/20052010/leff_IP.pdf.

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guaranteed greater religious freedom to the Jews) in 1782, curiously enough Netanel is under the impression that Vienna was a city where, at the end of the eighteenth century, Jews were "forbidden to reside" (159). One also misses a clearer explanation of the rabbinical tool of the ban (*cherem*) as a means of inner-Jewish punishment (to be used as leverage) in general, especially as opposed to the Christian tool of excommunication, which Netanel frequently confuses with the ban.

But the more important question that came to the mind of this reviewer was this: Had those reprinting bans ever been an exclusively Jewish and universally effective tool to prevent copyright infringement inside the Jewish world? Netanel clearly seems to think yes, although most of his arguments point to the opposite answer. Traditional Jewish law is case-law, built entirely on precedent, from which the practical regulation is learned in a broad and sometimes almost absurd generalization. The difficulty is that there are no precedents regarding copyright in the Talmud. Traditional Jewish law does not presume the hierarchical authority of a central lawgiving institution (after the Sanhedrin), but rather, depends (bottom up) on the acceptance by the community. This is especially true of the Jewish laws of economics and finance (*mamon*), which is therefore local and cannot apply to international markets. In many cases, Jewish law subordinates itself to existing non-Jewish regional law, according to the Talmudic rule *dina de malchuta dina*, that is: the law of the state is valid law also for inner-Jewish matters.

Most importantly, although the Talmud accords to itself, the "oral" law, the same authority that "divine" biblical law possessed in Judaism for theological reasons—Talmudic precedent always remained a kind of legal fiction: rabbinical will generally found a halachic way to solve any problem. This solution was often much less influenced by inner-halachic formal constraints than it pretends to be, and much more by the general social, moral, and even economic concerns of the rabbis. Therefore, what Netanel at first sees as the decisive difference between "Jewish" and non-Jewish copyright law in the early modern period, he later has to effectively retract. First, he saw rabbinic reprinting bans as being "far from an exercise of personal prerogative" compared to Gentile privileges on the book market (54). Later, when he describes the Nathanson innovation, which was so innovative because it "sought to transform Jewish copyright law from a prerogative derived from rabbinic regulation" (222) to a natural right independent of rabbinical regulation, the earlier similarity to non-Jewish reasoning is clearly admitted. After Nathanson—that is, after the modern humanizing of copyright—no difference in conception between Jewish and Gentile world remains.

Thus, it seems, the great underlying message of the book, although never expressly stated, is as follows: There is no specifically "Jewish" copyright law. The legal regulations of rabbinical Jewish decisors regarding this issue are heavily influenced by the non-Jewish world surrounding them; actually, form, meaning, intention, and doctrinal background are more or less taken over from Gentile precedent. It is for this reason that Netanel's book is so valuable: it proves, sometimes even slightly against the author's will, that Jewish copyright regulations emerged from a shared cultural context with the societies in which Jews lived for many centuries—such that the adoption of Gentile ideas concerning copyright are just another telling example why the pejorative connotation of the concept of Jewish *acculturation* can no longer be maintained. For centuries, Jews shared morals, music, philosophy, and folk customs with their non-Jewish neighbors, neither imitating them, nor hiding behind any elitist form of Jewish "authenticity." A shared concept of copyright between them seems thus to be an unexpected yet therefore even more convincing proof for this historical observation.

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