

# 'Infohighwaymen'

## By Nicholson Baker

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*Nicholson Baker, the bestselling author, graciously granted permission to reprint his classic 1994 New York Times op-ed essay – in my view, still the most lucid explanation of the issue.*

**INTELLECTUAL PROPERTY HAS BECOME AN** opulent, sophisticated, even somewhat debauched region of the law. Individuals and corporations have staked legal claims to slogans, facial and vocal likenesses, melodic snippets, genetic sequences, bits of mathematical reasoning, unpublished letters and the look and feel of software programs. It's a little startling, then, to discover that something as traditional as a printed page can still routinely fall prey to acts of verbatim for-profit theft.

Yet in the supposedly cutting-edge world of the electronic data base, thousands of surprisingly old-fashioned, Brooklyn Bridge-style recyclings and resellings are in progress. Data base companies are using their status as "indexes" to shield themselves from the legal obligations that the rest of the publishing industry has developed over several hundred years.

The Magazine Index (and others such as the Electronic Newsstand and UnCover) are playing on the confusion that reigns in the area of electronic-document delivery, and on the fears of some magazine editors that if they don't go online somehow fast they will be left twirling twigs to make fire in the imminent hypertextual bouleversement. This isn't going to happen, but in the interim a few companies have found that there is money to be made off of open-ended deals with fretful editorial departments.

The National Writers Union is now questioning the right of one text-poacher to furnish magazine articles to buyers without the authors' consent. Articles, essays and book excerpts of mine that first appeared in *The Atlantic Monthly*, *The New Yorker* and *Playboy* are among the many thousands of offerings available by fax (at \$8 per retrieval) or electronically (at \$3 per retrieval) from the Magazine Index, a service of Ziff Communications that is distributed on the Internet by the CARL Corporation.

Some of these pieces will appear in a forthcoming collection; others are excerpts from books currently in print. (I own the copyright to all of them.) I was never asked by the Magazine Index

whether I wanted my work faxed or downloaded to credit-card buyers on demand, and I would not have given the company permission if I had been asked.

Out of curiosity, I ordered several of my own pieces from the company. The service is expensive (a single faxed article for the price of a paperback), it is troubled by typos (one piece of mine is listed under "Nicholas Baker"), it is not dependable (I was charged for pieces I never received), and, most important, it was built on piracy – that is, on the republication of materials for financial gain without their creators' consent.

It is not unlike the sort of piracy that flourished in the industry in the 18th and early 19th centuries, when unscrupulous American publishers would hastily, and without obtaining the assignment of any right, bring out editions of books legally printed in England.

What about the magazines that printed the articles in the first place? In my experience, most magazines have little interest in subsidizing or helping to build data bases by selling rights to things they don't own. They are in some cases unaware of the secondary commercial uses to which their publication is being put.

One solution to the problem, now proposed by the National Writers Union, is to create a royalty-sharing plan modeled on the music industry's ASCAP system. (Call it MADCAP, for Magazine and Document Choice and Profit.) Whenever a magazine data base "plays a single" (downloads or faxes an article to a consumer), some percentage of the fee charged would trickle down to the person who wrote the piece.

It's interesting to speculate what the hit singles might be in this proposed arrangement. They wouldn't necessarily be big cover stories in general interest magazines, since those already have a wide distribution.

Rather they might be obscure genealogical treatises, how-to tips for the beginning designer of flume rides or sell-your-satellite-dish-and-lease-it-back money-making schemes that appear in specialized periodicals with narrower newsstand penetration. Whoever the new database stars are, they deserve some dignified fraction of the money being charged for their prose.

A writer should have a say in determining who will sell his or her words, in what format and at what price. I write for magazines, not (yet anyway) for expensive intermediaries who are interested in using our fax machines or inkjet cartridges as their printing press.

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