
1. Introduction

Isabella Alexander and H. Tomás Gómez-Arostegui

The study of copyright's history dates back almost to the birth of copyright as a statutory construct. First emerging during the common law copyright debates of the eighteenth century, and featuring prominently in the lawyer's texts of the nineteenth century, historical narratives of copyright moved outside the legal academy in the twentieth century to capture the interest of book historians, literary scholars and economic historians. Over the last three decades the interest has grown to the extent that copyright history is clearly a discrete and popular field of academic inquiry, and the tercentenary of the Statute of Anne was celebrated with gusto around the globe in 2009 and 2010 (depending on dating preference). Another key indicator of this flourishing field was the launch, in March 2008, of the *Primary Sources on Copyright (1450–1900)* digital archive, funded by the UK Arts and Humanities Research Council. For seven years, this collection has proven a boon without peer for those already working in the area, and more so for those seeking insight into copyright history but without the time or resources to immerse themselves in the physical archives.

It is therefore an opportune moment to take stock of the field of copyright history, as it stands today, and how it might develop in the future. The Oxford English Dictionary Online defines 'handbook' as follows:

Originally: a book small enough to be easily portable and intended to be kept close to hand, typically one containing a collection of passages important for reference or a compendium of information on a particular subject, *esp.* a book of religious instruction (now *hist.*). Later also more generally: any book (usually but not necessarily concise) giving information such as facts on a particular subject, guidance in some art or occupation, instructions for operating a machine, or information for tourists.¹

In compiling this Handbook of Copyright History we have taken this definition seriously. Our brief to contributors was to provide an overview of their particular field of expertise within copyright history, as well as suggestions for future research. The outcome is a book which will, we hope, appeal to 'tourists' in the field – those seeking an accessible summary of the current state of knowledge in the chosen topics – as well as to those seeking reminders and highlighting of key developments, as well as updates of the most recent scholarship.

As historical research of copyright has grown in popularity, it has become subject to some of the inevitable 'turf wars'. In *Piracy*, Adrian Johns is critical of the historical focus on intellectual property law, positing the offence of piracy as being the proper object of historical inquiry, logically prior to the law that is supposed to constitute it.²

¹ OED Online (3rd edn, OUP 2015) <<http://www.oed.com/view/Entry/83815>>.

² Adrian Johns, *Piracy* (U Chicago Press 2009) 7.

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Richard Sher also considers that an ‘overemphasis’ on the legal regime of copyright mistakenly treats the history of copyright law as synonymous with the history of authorship and authors’ rights, and places copyright at the heart of book history, displacing evidence of extra-legal practices and relations.³ By compiling this handbook we do not seek to exaggerate the role of copyright law in broader social, economic and cultural practices of the book, music and art trades, or the sphere of literary, musical and artistic endeavours, nor do we wish to displace the important role of historical work in adjacent and related fields, all of which add immeasurably to our understanding of these historical periods and cultures. This book is a work of legal history; a work which seeks self-consciously to place the history of law at the centre of its inquiry and to excavate its operation in different fields.

Part I opens with a historiographical perspective on copyright history. Barbara Lauriat examines the ways in which copyright history has been employed in making descriptive arguments about copyright’s past with normative force for copyright’s future. Copyright history is important, she avers, because it allows us to gain a fuller understanding of how copyright works; moreover, it is just as important to be aware of how copyright history has been *used* because it alerts us to its status as a rhetorical device and allows a critical perspective to be trained on historically founded claims. Kathy Bowrey’s contribution takes us beyond the implications that historical interpretations or manipulations may have for lawyers and policy-makers. Using two of the seminal texts in copyright’s historiography – Mark Rose’s *Authors and Owners*⁴ and Martha Woodmansee’s *The Author, Art and the Market*⁵ – Bowrey’s aim is to interrogate critically the disciplinary boundaries of copyright historiography and identify some of the inadequacies and omissions which flow from the lack of interdisciplinary inquiry in the field. Following Bowrey, Martha Woodmansee’s chapter draws on her own earlier work to call similarly for greater interdisciplinary reflection on the nature of authorship and how it operates in copyright law. Woodmansee ties the eighteenth century absorption of Romantic ideology into copyright law to two more recent legal disputes of the late twentieth century, arguing that this ideology continues to hold sway today.

Part II of the book examines various perspectives on copyright history in the United Kingdom. Ian Gadd begins by discussing the history of printing rights in England before 1710, which was the year Parliament enacted the Statute of Anne. Principally, he illuminates the key role played by the Company of Stationers in laying the foundations for what would become the statutory law of copyright. Among other things, Gadd traces the beginnings of the Company, the awarding of printing privileges granted by patent and placard, and the role and prominence of the Company’s registration system. Alastair Mann and Hector MacQueen next provide a Scottish perspective on developments before and after the watershed date of 1710. Despite the union of the Crowns in 1603 and of the kingdoms themselves in 1707, the approach taken to printing rights in Scotland often differed from that in England. Mann and MacQueen offer a perspective and comparison of the influential Scottish book trade.

³ Richard Sher, *The Enlightenment and the Book* (U Chicago Press 2006) 25.

⁴ Mark Rose, *Authors and Owners* (Harvard UP 1993).

⁵ Martha Woodmansee, *The Author, Art and the Market* (Columbia UP 1994).

The next two chapters address copyrightable subject matter. Nancy Mace first shepherds us through the development of copyright in musical works in the eighteenth and nineteenth centuries. Using *Bach v Longman* (1777) as a pivot point – the case in which the Court of King’s Bench ruled that printed music fell within the ambit of the Statute of Anne – she discusses the state of music as intellectual property before and after the decision, as well as the decision itself. Elena Cooper then turns our focus to artistic copyright, which includes subjects such as engravings, sculptures, paintings and photography. Cooper highlights the ways in which the history of artistic copyright differed from that relating to literature.

Part II closes with chapters written by Isabella Alexander and Tomás Gómez-Arostegui. Both authors examine legal principles arising through the litigation process. Alexander discusses how copyright developed and expanded through the doctrine of infringement. The Statute of Anne was largely silent on what constituted infringement – apart from generally prohibiting ‘printing’, ‘reprinting’ and ‘importing’ of books – and this offered courts a certain flexibility in crafting infringement doctrines that took competing interests into account. Gómez-Arostegui, in turn, addresses the two principal remedies available to copyright and printing-patent holders in the Court of Chancery before the year 1800 – injunctions and a disgorgement of the defendant’s profits – and how they were obtained.

Part III shifts the focus to international law. In her chapter, Jane Ginsburg studies the precursor to copyright that existed in the sixteenth century in the form of Papal printing privileges. Ginsburg argues that these early printing privileges demonstrate that over time a sense of entitlement arose in those who petitioned for them, and that increasingly that entitlement was grounded in the act of creation. Next, Catherine Seville covers the international reach and impact of UK copyright law in the colonies and other dominions. Starting from 1710, and concluding with the 1911 Imperial Copyright Act, Seville explores the efforts that were undertaken to protect British authors and publishers from competition abroad. Sam Ricketson takes up the public international law of copyright. His primary purpose is to survey the range of sources that are available for those researching the subject and to suggest some areas that require further study. In the last chapter to this Part, Jose Bellido offers an intriguing story of the role El Salvador played – through the diplomat Torres Caicedo – in the internationalisation of copyright in El Salvador, particularly through the negotiation of bilateral treaties and in the Berne Convention more broadly.

Part IV concludes this volume and covers national perspectives outside the United Kingdom. We begin with the United States. Oren Bracha treats the development of copyright from 1672 through the period just before the Copyright Act of 1909. Starting with colonial precursors, Bracha takes us through the early grants of *ad hoc* printing privileges, state and federal legislation, and the associated judicial developments of the period. Catherine Bond next addresses copyright in the Australian colonies and focuses in particular on the influence of Imperial law on local statutes. She also offers reflections on colonial copyright as an area for ongoing research. In our penultimate chapter, Frédéric Rideau discusses the development of literary property in France in the eighteenth and nineteenth centuries. Among other things, he describes a marked shift from treating copyright as privilege granted as a matter of grace by the Crown to an entitlement in authors as proprietors in their own right. Lastly, Jose Bellido returns to

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offer another continental example, that of Spain. Bellido describes the circumstances and actions that led to the first Spanish copyright statute in 1847 and how it was influenced by the international market for books.

The huge commercial value and serious implications for cultural policy mean copyright will always be a subject of hot debate, vested interests and ideological contest. Historical interpretation becomes a key rhetorical tool in such debates. A recently published Australian polemical collection on copyright law and the digital world, aimed squarely at the popular market, starkly demonstrates this. Three contributors directly appeal to the Statute of Anne in the course of their arguments about the impact of digitisation on copyright law. Sherman Young, Macquarie University's Pro Vice-Chancellor in Teaching and Learning, whose academic background lies in media and communications, claims that the Statute of Anne 'was devised specifically to balance the competing interests of monopoly rights holders and the wider needs of society.'⁶ By contrast, José Borghino, Policy Director of the International Publishers Association, characterises the Statute of Anne as being 'about the individual's ability to exploit and profit from their individual labour',⁷ while popular author Linda Jaivan asserts it was introduced 'explicitly to protect the rights of authors.'⁸

The inevitability of such rhetorical appeals makes it all the more important that careful and detailed historical work, closely attentive both to the primary sources and to broader historical, social, cultural and economic contexts, continues to be undertaken and published. This handbook emphasises and continues this scholarly tradition. We would like to thank our distinguished contributors for giving their time to this project and for their patience. It has been a privilege to work with all of them. We look forward to reading their future contributions, and the contributions of those they inspire, in this ever-growing field.

⁶ Sherman Young, 'A Hack for the Encouragement of Learning' in Phillipa McGuinness (ed) *Copyfight* (NewSouth Publishing 2015) 35, 46.

⁷ José Borghino, 'Codified Respect: Copyright as Ethics' in *ibid* 174, 180.

⁸ Linda Jaivan, 'Big Content' in *ibid* 191, 201.