

# User Right in Pre Legislative Copyright Era

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## ABSTRACT:

*Evolution of limitations appended to copyright monopoly was also designed to serve some vested and solid social, economic and political aspirations of the contemporary sovereign heads. Consequently it was really interesting that the scope and span of these innate and instinct attributes underwent gradual and enduring changes with the changing aspirations of the sovereign.*

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Even though the birth of copyright as a legal and technical phenomenon owes to the invention of printing,<sup>1</sup> the philosophical and pragmatic tenets of the concept originated much prior to it. The noble task of knowledge and literature in the personal and social life of individual was recognized even before the classical era. Even Quran, Geeta and Bible the earliest known literary works in human history acknowledges the importance of knowledge and the role of knowledge in the progress of civilization. Thus literature was solely related to religion and knowledge was considered as divine. The individualistic and commercial nature of knowledge was ignored and knowledge was considered as a public good and its noble function of enlightenment and development was acknowledged. This establishes the fact that the first principle of copyright law was always the advancement of learning and progress of science rather than rewarding and remunerating the author.<sup>2</sup> An exploration into the history of literature, science and education in the ancient, medieval and early modern period also authenticates it.

The concept of nobility and divinity of knowledge continued in the ancient period also.<sup>3</sup> Knowledge and literature was considered as public domain goods and as the property of the King and nation and the rulers were privileged to acquire and admire literature and art. Christopher May and Susan K sell corroborates this by pointing out the instance of Sophists of ancient Greece, who considered their freelance teaching activities and

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<sup>1</sup> Garnett, K., James, R. J. and Davies, G. (1999) *Copinger and Scone James on Copyright*, 14th edition, Sweet and Maxwell, London, p.32. Before the invention of printing, there was little practical need for legal protection of authors against the copying of their works. To start with, bulk of the population was illiterate and had no use for their books. Moreover the copying of manuscripts was a painstaking and time consuming occupation mainly done by monks and limited to the copying of religious works for religious orders and royal courts of Europe. The possibility of printing multiple copies of books cheaply resulted in a new market for books for a public which had not previously had access to the manuscripts which, in the past, had been available only to the most privileged member of the society.

<sup>2</sup> It should be remembered that this religious influence on literature continued even after renaissance and reformation. Even in seventeenth century, we can see the printing privileges in the UK, the US, Germany, and France was solely related to religious teachings.

<sup>3</sup> Very early examples of this literature are: Indian Sruthis, Vedas and epics; Egyptian Book of Dead, Epic of Gilgamesh of Sumer, The New Testament And City Of God in Latin and Roman literature etc. for details see history of literature available at - [http://en.wikipedia.org/wiki/History\\_of\\_literature](http://en.wikipedia.org/wiki/History_of_literature)

their content free from any form of ownership.<sup>4</sup> The authors or the holders of knowledge received rich patronage from the rulers<sup>5</sup> and the King accumulated the knowledge for the good of the nation. Every novel literary and artistic excellence was viewed as an offering to the monarch and as the property of the nation. But the class and caste system reigning in the contemporary society confined the enjoyment and learning to certain privileged section of the society.<sup>6</sup> However it was not the economic interest that the knowledge holders enjoyed at that time, on the other hand they enjoyed a superior position in the social strata and knowledge was never considered as a commodity for sale in the market. Thus apart from the social stratification, literary and artistic creation was considered as the most resourceful and potent weapon of the sovereign for the larger social and political development and was made available to the subjects for their social, ethical and moral well being. This concern for knowledge, literature and education as instruments of social and individual elevation is acknowledgeable from the existence of mammoth educational institutions<sup>7</sup> and colossal libraries<sup>8</sup> of the ancient period.

In the medieval era also the influence of religion on literature continued as before.<sup>9</sup> However secular works also began to sprang up.<sup>10</sup> During this period also the romantic authorship was not acknowledged and consequently the need for a safety outlet to the monopoly was hardly felt. Any literary and artistic creativity was solely the property of the nation or the sovereign and apart from the religious and caste or class principles there was no restriction on access to information.<sup>11</sup> However with the invention of printing press the aristocratic and theological nature of knowledge and literature was crashed out. It was not the result of a deliberate public

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<sup>4</sup> May, C. and Sell, S.K. (2005) *Intellectual Property Rights: A Critical History*, Lynne Rienner Publishers, London, p.45.

<sup>5</sup> The Mauryan and Gupta dynasties in India are a classic example for this. Their court was adorned with poets, artists and scholars from all fields.

<sup>6</sup> Prager, F. (1944) 'A History of Intellectual Property from 1545 to 1789', *J Pat. Off. Soc.*, 26 (6), 711.

<sup>7</sup> Nalanda, Takshashila University, Ujjain, & Vikramshila Universities in India is classical example. For a detailed study see: [http://en.wikipedia.org/wiki/History\\_of\\_education#cite\\_ref-17](http://en.wikipedia.org/wiki/History_of_education#cite_ref-17) [Accessed on August 2010].

<sup>8</sup> The libraries of Ugarit (in modern Syria), c. 1200 BC, Library of Ashurbanipal, 7th century BC, in Nineveh (near modern Mosul, Iraq), The Library of Pergamum at Pergamum (in what is now Turkey), also in the 3rd century BC, , fl. 3rd century BC (c. 295 BC) are good examples for this. Private libraries of Ancient Rome were also considerable: Roman aristocracy saw the library as a point of prestige and many of these were transferred to the monasteries of the medieval years. The great seats of learning in ancient India, namely Takshashila, Nalanda, Vikramshila, Kanchipuram and other universities, also maintained vast libraries of palm leaf manuscripts on various subjects, ranging from theology to astronomy. See for details: [http://en.wikipedia.org/w/index.php?title=Great\\_libraries\\_of\\_the\\_ancient\\_world&redirect=no](http://en.wikipedia.org/w/index.php?title=Great_libraries_of_the_ancient_world&redirect=no) [Accessed on August 2010].

<sup>9</sup> Theological works were the dominant form of literature typically found in libraries during the Middle Ages. Catholic clerics were the intellectual center of society in the Middle Ages, and it is their literature that was produced in the greatest quantity.

<sup>10</sup> Secular literature in this period was not produced in equal quantity as religious literature, but much has survived and we possess today a rich corpus. The subject of "courtly love" became important in the 11th century, especially in the Romance languages (in the French, Spanish, Provençal, Galician-Portuguese and Catalan languages, most notably) and Greek, where the traveling singers—troubadours—made a living from their songs. Political poetry was written also, especially towards the end of this period, and the goliardic form saw use by secular writers as well as clerics. Travel literature was highly popular in the Middle Ages, as fantastic accounts of far-off lands (frequently embellished or entirely false) entertained a society that, in most cases, limited people to the area in which they were born. (But note the importance of pilgrimages, especially to Santiago de Compostela, in medieval times, also witnessed by the prominence of Geoffrey Chaucer's *Canterbury Tales*.) See for details: [http://en.wikipedia.org/wiki/Medieval\\_literature](http://en.wikipedia.org/wiki/Medieval_literature) [Accessed on August 2010].

<sup>11</sup> See: Kostylo, J. (2008) 'Commentary on Johannes of Speyer's Venetian monopoly (1469)', *Primary Sources on Copyright (1450-1900)*, eds L. Bently & M. Kretschmer [online]. Available at [www.copyrighthistory.org](http://www.copyrighthistory.org) [Accessed on June 2010].

policy measure of the sovereign to make knowledge easily and affordably access to the public, but an unintended and unforeseen product of the new technology. Any way this period immediately following the invention of printing press was the golden era in the history of book trade from the public interest perspective.<sup>12</sup> The position was not different in France, Britain, Italy or Germany.<sup>13</sup>

In this early hours of printing privileges, the major issue to be addressed was the religious adulteration faced by clergy, political destabilization on the King and finally the complex economic insecurity caused to the printers and publishers.<sup>14</sup> So deliberately the printing privileges came with sharp tools to address these issues. These tools were the primary instances of intrinsic mechanisms designed by copyright law to achieve the goals of the system. Though these mechanisms remained much primordial, it laid the platform and pedestal for the future refined set of limitations and exceptions within the copyright system.

The first known printing privilege in history was the privilege granted to Johannes of Speyer's<sup>15</sup> issued by the Italian government in 1469. It was an exclusive right to print the epistles of Cicero and Pliny for a period of five years within the territory of Venice. Thus even in the very first known instance of a privilege, the monopoly was limited both in time and geographical extent. It is really questionable that at the time of imposing this limited monopoly the authorities were aware of the potential impact of an uncontrolled monopoly. Answer to the question is in affirmative. The uncontrolled printing era which immediately preceded the establishment of print technology had logistically and rationally established the adverse impacts of the free trade regime. Since then onwards this limitation on duration and extent remained a typical feature of the copyright system. The privilege granted by the Imperial Senate of Germany to Sodalitas Celtica,<sup>16</sup> Prince-Bishop of Wurzburg,<sup>17</sup>

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<sup>12</sup> Eisenstein, E. (1979) *The Printing Press as an Agent of Change: Communications and Cultural Transformation in Early Modern Europe*, Cambridge University Press, London; H, J. Chaytor, (1945) *From Script to Print: an Introduction to Medieval Literature*, Cambridge University Press, London, pp.115-37; Febvre, L. and Martin, H.J.(1976) *The Coming of the Book: The Impact of printing, 1450-1800*, New Left Books, London. These books are available at books.google.com.

<sup>13</sup> For a detailed study on history of copyright, see: [www.copyrighthistory.org](http://www.copyrighthistory.org). [Accessed on June 2010]

<sup>14</sup> See: Kostylo, J. (2008) 'Commentary on Johannes of Speyer's Venetian monopoly (1469)', *Primary Sources on Copyright (1450-1900)*, eds L. Bently & M. Kretschmer [online]. Available at [www.copyrighthistory.org](http://www.copyrighthistory.org) [Accessed on June 2010]; Kawohl, F. (2008) 'Commentary on the privilege granted by the Bishop of Würzburg (1479)', *Primary Sources on Copyright (1450-1900)*, eds L. Bently & M. Kretschmer [online]. Available at [www.copyrighthistory.org](http://www.copyrighthistory.org) [Accessed on June 2010] and Deazley, R. (2008) 'Commentary on Henrician Proclamation 1538', *Primary Sources on Copyright (1450-1900)*, eds L. Bently & M. Kretschmer [online]. Available at [www.copyrighthistory.org](http://www.copyrighthistory.org) [Accessed on June 2010]; Rideau, F. (2008) 'Commentary on Eloy d'Amerval's privilege (1507)', *Primary Sources on Copyright (1450-1900)*, eds L. Bently & M. Kretschmer [online]. Available at [www.copyrighthistory.org](http://www.copyrighthistory.org) [online]. [Accessed on June 2010]; Kawohl, F. (2008) 'Commentary on the privilege granted by the Bishop of Würzburg (1479)', *Primary Sources on Copyright (1450-1900)*, eds L. Bently & M. Kretschmer [online]. Available at [www.copyrighthistory.org](http://www.copyrighthistory.org) [Accessed on June 2010].

<sup>15</sup> On 18 September 1469, a German inventor master Johannes of Speyer began printing books in Venice, and received a privilege to publish the letters of Tullio [Cicero], and Pliny", Marino Sanudo recorded in his *Vite dei dogi*. It seems that the diligent Venetian diarist, leafing through the acts of the register of the Venetian Collegio, thought it important to bring to the attention of his readers the record of a five year monopoly awarded to a German immigrant from Mainz, Johannes of Spyer (d. 1469), for printing in Venice. See Kostylo, J. (2008) 'Commentary on Johannes of Speyer's Venetian monopoly (1469)', *Primary Sources on Copyright (1450-1900)*, eds L. Bently & M. Kretschmer [online]. Available at [www.copyrighthistory.org](http://www.copyrighthistory.org) [Accessed on June 2010].

<sup>16</sup> Imperial Senate privilege to the Sodalitas Celtica (1501), *Primary Sources on Copyright (1450-1900)*, eds L. Bently & M. Kretschmer [online]. Available at [www.copyrighthistory.org](http://www.copyrighthistory.org) [Accessed on June 2010].

Arnold Schlick,<sup>18</sup> Albrecht Durer<sup>19</sup> and Eucharius Rösslin<sup>20</sup> also displayed the same limitations. All those privileges were for a period of ten years and their application were limited to certain definite areas even within the territory of Germany.

However in contemporary France the situation was different. There the printing privileges were granted as an economic right considering the inventive effort of the author.<sup>21</sup> The privileges were exercised without any control till the French Censorship Act of 1547.<sup>22</sup> Since then they established a regime of pre-publication censorship and permissions. The subsequent privileges therefore resembled Italian or German model with limitations on duration and extent in addition to the censorships and imperial sanctions.<sup>23</sup>

The British history of printing privileges for a period of two centuries preceding the enactment of statute of Anne should be considered as the stage setter of the modern copyright system. All the fundamental principles of copyright law got a concrete footing here. During this period we can see a continuous attempt of authorities to balance and rationalize the conflicting and ever changing perceptions of public interest, with that of individualistic and commercial interests of the copyright system. Apart from the limitations on duration and extent, the requirement of library deposit and compulsory licensing the golden principles of limitation to copyright for ensuring access and flow of information got a solid footing in this adhoc privilege system. Within a short span after the establishment of the printers a strong economic, religious and political control was established on printing privileges. *Magna Carta* may have guaranteed freedom of trade to all merchants within the realm, but it was nevertheless accepted that, so long as the Crown was acting in the general public good, then it had the power, as part of the prerogative, to grant privileges promoting economic and industrial development by restricting competition. By the Trade Acts of 1484, 1513 and 1531 a strong economic control was exercised on the books by regulating the nature of the books to be printed and quantity to be printed.<sup>24</sup> By the *Act of Supremacy* which established Henry's authority as Head of the Church of England, as well as by the

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<sup>17</sup> Privilege of the Prince-Bishop of Würzburg (1479), *Primary Sources on Copyright (1450-1900)*, eds L. Bently & M. Kretschmer [online]. Available at [www.copyrighthistory.org](http://www.copyrighthistory.org) [Accessed on June 2010].

<sup>18</sup> Imperial Privilege for Arnolt Schlick (1511), *Primary Sources on Copyright (1450-1900)*, eds L. Bently & M. Kretschmer [online]. Available at [www.copyrighthistory.org](http://www.copyrighthistory.org). [Accessed on June 2010]

<sup>19</sup> Imperial Privilege for Albrecht Dürer (1511), *Primary Sources on Copyright (1450-1900)*, eds L. Bently & M. Kretschmer [online]. Available at [www.copyrighthistory.org](http://www.copyrighthistory.org). [Accessed on June 2010]

<sup>20</sup> Imperial privilege for Eucharius Rösslin (1513), *Primary Sources on Copyright (1450-1900)*, eds L. Bently & M. Kretschmer [online]. Available at [www.copyrighthistory.org](http://www.copyrighthistory.org) [Accessed on June 2010]

<sup>21</sup> Eloy d'Amerval's privilege (1507), *Primary Sources on Copyright (1450-1900)*, eds L. Bently & M. Kretschmer [online]. Available at [www.copyrighthistory.org](http://www.copyrighthistory.org). [Accessed on June 2010]

<sup>22</sup> Rideau, F. (2008) 'Commentary on Galliot Du Pré's privilege (1515)', *Primary Sources on Copyright (1450-1900)*, eds L. Bently & M. Kretschmer [online]. Available at [www.copyrighthistory.org](http://www.copyrighthistory.org) [Accessed on 7 June 2010].

<sup>23</sup> Rideau, F. (2010) 'Commentary on the French Censorship Act of 1547', *Primary Sources on Copyright (1450-1900)*, eds L. Bently & M. Kretschmer [online]. Available at [www.copyrighthistory.org](http://www.copyrighthistory.org) [Accessed on June 2010].

<sup>24</sup> Deazley, R. (2008) 'Commentary on early Tudor printing privileges 1553', *Primary Sources on Copyright (1450-1900)*, eds L. Bently & M. Kretschmer [online]. Available at [www.copyrighthistory.org](http://www.copyrighthistory.org) [Accessed on June 2010].

*Treason Act*<sup>25</sup> a strong religious and political control was exercised on the contents of printing. So the concepts of free flow of information or access to knowledge and even the notions of creativity was absent at this point in time. The restrictions to the monopoly were addressed to the contemporarily social and political crisis. Thus even though the privileges were regulated it was not for the sake of public interest but for the achievement of certain vested interest of the rulers. However it should be emphasized that individual monopoly never remained uncontrolled and was tuned to the larger interests of the society inspite of the democratic or representative nature of those interests.

This disgraceful status of knowledge and literature continued till the expiry of the licensing act in 1662.<sup>26</sup> Printing was always under the control of the Crown, and it remained a fact that the published books continued to be religious works.<sup>27</sup> Thus even though the Statute of Monopolies was enacted in 1624 to cure the anomalies and incongruities of the privilege system, the statute exempted printing privileges from its ambit.<sup>28</sup> Certain

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<sup>25</sup> It provided that anyone who might "slandrously and maliciously publish and pronounce, by express writing or words, that the King our Sovereign Lord should be Heretick, Schismatick, Tyrant, Infidel, or Usurper of the Crown" was to be adjudged a traitor, guilty of high treason, and subject to pain of death". See for details: Deazley, R. (2008) 'Commentary on early Tudor printing privileges 1553', *Primary Sources on Copyright (1450-1900)*, eds L. Bently & M. Kretschmer [online] Available at [www.copyrighthistory.org](http://www.copyrighthistory.org) [ Accessed on June 2010].

<sup>26</sup> When Henry VIII (1491-1547) began to grant privileges concerning the right to print and publish certain types of books, he did so under the aegis of the royal prerogative, through which he also sought to regulate and administer national economic policy and trade. In 1557 Queen Mary granted a Royal Charter providing the Company of Stationers with corporate legal status within the City of London, and conferring on them exclusive control over printing within England. The grant of the Charter by Mary is often understood as the point at which the monarchy established an effective regulatory institution to control and censure the press, in the guise of the Stationers' Company, in exchange for an absolute monopoly over the production of printed works. During Elizabeth's (1533-1603) reign the consistent use of these privileges took on the shape of strategic national policy, while the privileges themselves took on the character of monopolistic grants. During Elizabeth's reign, parliament passed no less than eleven statutes concerning treason and sedition, statutes that included committing such offences in print. In 1581, for example, parliament mandated the death penalty for anyone guilty of devising, writing, printing, or setting forth any work "containing any false, seditious, and slanderous matter to the defamation of the Queens' Majesty, that now is, or to the encouraging, stirring or moving of any insurrection or rebellion". In addition to these treason statutes, Elizabeth also issued eleven separate royal proclamations concerning works she considered to be seditious, heretical or libellous in some regard; the majority of texts actually censored in Elizabethan England were specifically addressed by way of these royal proclamations. The very multiplicity of both the treason statutes and these various royal proclamations serves to underline the point as to the nature of censorship throughout the latter half of the sixteenth century. Namely, that despite the existence of a regulatory institution in the guise of the Stationers' Company, the censoring of printed texts was essentially an *ad hoc* and *reactive* phenomenon, and one that was by and large managed outside of the company itself. For details see: Deazley, R. (2008) 'Commentary on the Stationers' Royal Charter 1557', *Primary Sources on Copyright (1450-1900)*, eds L. Bently & M. Kretschmer [online]. Available at [www.copyrighthistory.org](http://www.copyrighthistory.org) [Accessed on June 2010]; Deazley, R. (2008) 'Commentary on Star Chamber Decree 1566', *Primary Sources on Copyright (1450-1900)*, eds L. Bently & M. Kretschmer [online]. Available at [www.copyrighthistory.org](http://www.copyrighthistory.org) [Accessed on June 2010]; Deazley, R. (2008) 'Commentary on Star Chamber Decree 1586', *Primary Sources on Copyright (1450-1900)*, eds L. Bently & M. Kretschmer [online]. Available at [www.copyrighthistory.org](http://www.copyrighthistory.org) [Accessed on June 2010].

<sup>27</sup> Deazley, R. (2008) 'Commentary on the Elizabethan Injunctions 1559', *Primary Sources on Copyright (1450-1900)*, eds L. Bently & M. Kretschmer [online]. Available at [www.copyrighthistory.org](http://www.copyrighthistory.org) [Accesses on July 2010]

<sup>28</sup> Deazley, R. (2008) 'Commentary on the Statute of Monopolies 1624', *Primary Sources on Copyright (1450-1900)*, eds L. Bently & M. Kretschmer [online]. Available at [www.copyrighthistory.org](http://www.copyrighthistory.org). [Accessed on July 2010]. The 1624 Act included a proviso preserving any existing or future grants "concerning printing"; in relation to such grants it was to be "as if this act had never been had nor made Just as patents "concerning the digging, making or compounding of saltpetre or gunpowder, or the casting or making of ordnance, or shot for ordnance" were exempt from the provisions of the legislation so as not to interfere with the manner in which the Crown managed the defence of the realm, so too the security of the state was to be secure against ideological attack in the guise of critical political speculation and commentary in print.

privileges were subject to the grant to University of London to print books for its purposes.<sup>29</sup> It refers to a concern of public interest for the advancement of education. But how far this notion of public interest was practically enforced in the context of social, economic and political turmoil existed at that time was really a doubtful matter. But in this barbarous era of knowledge and literature, this concern and recognition for education and spread of information – the noblest objectives of the copyright system are really commendable and highly regarded. This also shows that just as in the modern era, the universities acted as the centre of knowledge and they usually might have demanded for copyrighted works the store house of knowledge, for education and spread of learning.

With the lapse of the Licensing Act, an embryonic independent fourth estate began to spring up.<sup>30</sup> From the political perspective the glorious revolution and from a philosophical angle the Lockean teachings contributed to this development. Adding fuel to the fire, the situation was made worst by the hike in price of books, cheap quality of printed materials, deteriorating standards of reprints with complete mistakes,<sup>31</sup> the theological nature of knowledge,<sup>32</sup> and above all the neglect of labor and creativity of the genuine authors on one hand and the authentic need of access to knowledge for future creativity and development of learning on the other edge culminated in wide public outcry. Thus the Statute of Anne was enacted with the terrific task of balancing the competing and at the same time converging individual interest and private interest. It was the epitome legislation in copyright history which legalized the author's rights and user's right in a uniform and consistent manner.

The Statute of Anne, 1709 considered as the progenitor of all modern copyright statutes started itself with the stated overarching objective of encouragement of learning. A radical and sweeping change in the objective of the copyright system began to manifest from this point in time. This is reflected in the title describing it as “An Act for the Encouragement of Learning, by vesting the Copies of Printed Book in the Authors or purchasers of

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<sup>29</sup> In the grants from Henry VIII (1491-1547) this condition was common.

<sup>30</sup> As to why the Commons decided to let the Act lapse, much of the substance of its attitude to the legislation in early 1695 had its genesis in the life-long friendship that existed between Edward Clarke and the philosopher John Locke (1632-1704). Locke complained about the monopoly which the stationers exercised over the "ancient Latin authors", the poor quality and high cost of their publications, and the deleterious impact this was having upon the work of scholars. Much of his criticism was picked up and expanded in a highly critical commentary on the 1662 Act and its impact on the printing trade in England which he wrote in 1694. In this commentary Locke did make reference to the importance of securing the "liberty to print"; however, as with the earlier correspondence with Clarke, most of his vitriol was reserved for the "lazy, ignorant Company of Stationers", those "dull wretches" who abused the registration process for their own gain, and whose "monopoly of all the Clasick Authers" resulted in the production of books which were "scandalously ill printed both for letter paper and correctness", for which they charged "excessive rates". For details see: Deazley, R. (2008) 'Commentary on the Licensing Act 1662', *Primary Sources on Copyright (1450-1900)*, eds L. Bently & M. Kretschmer [online]. Available at [www.copyrighthistory.org](http://www.copyrighthistory.org); [ Accessed on 5 June 2010].

<sup>31</sup> See : “Reasons Humbly Offer'd to the Consideration of the Honourable House of Commons (1709)”, *Primary Sources on Copyright (1450-1900)*, eds L. Bently & M. Kretschmer [online]. Available at [www.copyrighthistory.org](http://www.copyrighthistory.org) [Accessed on June 2010].

<sup>32</sup> See: “More Reasons Humbly Offered for the Bill for the Encouragement of Learning (1709)”, *Primary Sources on Copyright (1450-1900)*, eds L. Bently & M. Kretschmer [online]. Available at [www.copyrighthistory.org](http://www.copyrighthistory.org) [Accessed on June 2010]

such Copies, during the Times therein mentioned".<sup>33</sup> In order to achieve the stated goal of encouragement of learning the statute has to address two issues: first the injury caused by infringers who pirated the books and secondly the anticompetitive monopolies caused by printers and publishers. The statute addresses the first of these problems in its introductory lines itself.<sup>34</sup> To prevent piracy the statute took a philosophical shift from the prior stationers copyright to the statutory authors copyright by vesting a fourteen or twenty one year of absolute economic monopoly on the author or the publisher.<sup>35</sup> The second problem that of bookseller's monopoly, was addressed by the statute in several ways. First, it opened up ownership and registration of copyrights to non members of the company.<sup>36</sup> Second, it required access to the Company's register book by any person with a legitimate purpose.<sup>37</sup> Third, it allowed challenge to unreasonably high prices for books and permitted specified authorities to reform or redress the price according to the best of their judgment.<sup>38</sup> Fourth, it required the deposit of nine copies of each work for use in specified national libraries.<sup>39</sup> Fifth, it expressly stated that the

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<sup>33</sup> For Statute of Anne visit: [http://en.wikipedia.org/wiki/Statute\\_of\\_Anne#cite\\_note-Rimmer-3](http://en.wikipedia.org/wiki/Statute_of_Anne#cite_note-Rimmer-3) [Accessed on June 2010].

<sup>34</sup> Section 1 of Statute of Anne: "Whereas printers, booksellers, and other persons have of late frequently taken the liberty of printing, reprinting and publishing, or causing to be printed, reprinted and published, books and other writings, without the consent of the authors or proprietors of such books and writings, to their very great detriment, and too often to the ruin of them and their families or preventing therefore such practices for the future, and for the encouragement of learned men to compose and write useful books; may it please your majesty, that it may be enacted". Available at [http://avalon.law.yale.edu/18th\\_century/anne\\_1710.asp](http://avalon.law.yale.edu/18th_century/anne_1710.asp) [ Accessed on June 2010].

<sup>35</sup> Section 2 of Statute of Anne: "That from and after the tenth day of April, one thousand seven hundred and ten, the author of any book or books already printed, who hath not transferred to any other the copy or copies of such book or books, share or shares thereof, or the bookseller or booksellers, printer or printers, or other person or persons, who hath or have purchased or acquired the copy or copies of any book or books, in order to print or reprint the same, shall have the sole right and liberty of printing such book and books for the term of one and twenty years, to commence from the said tenth day of April, and no longer; and That the author of any book or books already composed, and not printed and published, or that shall hereafter be composed, and his assignee or assigns, shall have the sole liberty of printing and reprinting such book and books for the term of fourteen years, to commence from the day of the first publishing the same, and no longer;"

<sup>36</sup> Para 2 to Section 2 of Statute of Anne: "That nothing in this act contained shall be construed to extend to subject any bookseller, printer, or other person whatsoever, to the forfeitures or penalties therein mentioned, for or by reason of the printing or reprinting of any book or books without such consent, as aforesaid, unless the title to the copy of such book or books hereafter published shall, before such publication, be entered in the register book of the company of stationers, in such manner as hath been usual, which register book shall at all times be kept at the hall of the said company, and unless such consent of the proprietor or proprietors be in like manner entered as aforesaid, for every of which several entries, six pence shall be paid, and no more; which said register book may, at all seasonable and convenient time, be resorted to, and inspected by any bookseller, printer, or other person, for the purposes before-mentioned, without any fee or reward; and the clerk of the said company of stationers shall, when and as often as thereunto required, give a certificate under his hand of such entry or entries, and for every such certificate may take a fee not exceeding six pence."

<sup>37</sup> Section IV of Statute of Anne: "Provided nevertheless, and it is hereby further enacted by the authority aforesaid, That if any bookseller or booksellers, printer or printers, shall, after the said five and twentieth day of March, one thousand seven hundred and ten, set a price upon, or sell, or expose to sale, any book or books at such a price or rate as shall be conceived by any person or persons to be too high and unreasonable; it shall and may be lawful for any person or persons, to make complaint thereof....."

<sup>38</sup> Authorities under the statute include "the lord chancellor, or lord keeper of the great seal of Great Britain for the time being, the lord bishop of London for the time being, the lord chief justice of the court of Queen's Bench, the lord chief justice of the court of Common Pleas, the lord chief baron of the court of Exchequer for the time being, the vice chancellors of the two universities for the time being, in that part of Great Britain called England; the lord president of the sessions for the time being, the lord chief justice general for the time being, the lord chief baron of the Exchequer for the time being and the rector of the college of Edinburgh for the time being, in that part of Great Britain called Scotland;". See Section IV of Statute of Anne.

<sup>39</sup> The list of libraries specified under the statute are: "the royal library of London, the libraries of the universities of Oxford and Cambridge, the libraries of the four universities in Scotland, the library of Sion College in London, and the library commonly called the library belonging to the faculty of advocates at Edinburgh". See Section V of Statute of Anne.

statute did not prohibit the importation of books in Greek, Latin, or other foreign languages published abroad.<sup>40</sup> The statute also attacked the monopolies by limiting the term of copyrights to twenty one and fourteen.<sup>41</sup> The statute intended ultimately to end existing perpetual copyrights and to establish a rich public domain. Thus the Statute of Anne created both copyright *proprement dit* (that is exclusive rights arising out of the creations of authors rather than compensating or encouraging printers' investments) and the concomitant public domain.<sup>42</sup>

In its eagerness to reward authors for stimulating creativity, the statute declared any 'use' of the copyrighted works without the 'consent' of the author during the assured monopolistic period as an offence subject to fine and forfeiture.<sup>43</sup> It was quite perplexing and at the same time confusing that while the statute clarified the concept of 'consent' in objective and subjective standards making the position of the right holder more safe and secure, it left extensive ambiguity on the concept of 'use'. This left much confusion as to the nature and ambit of permissible and non-permissible uses. Thus, when in legal history the author's right got an ingenuous recognition, the users were confused as to the nature, scope and extent of their rights. In spite of the stated objective of spread of knowledge and information, the statute failed to make a comprehensible set of user rights to make this protected knowledge available to public for progress and development. This neglect of user rights might never be considered as a deliberate parliamentary attempt.

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<sup>40</sup> "That nothing in this act contained, do extend, or shall be construed to extend to prohibit the importation, vending, or selling of any books in Greek, Latin, or any other foreign language printed beyond the seas; any thing in this act contained to the contrary notwithstanding" - Section 7 of the Statute of Anne.

<sup>41</sup> Section 2 of Statute of Anne: "That from and after the tenth day of April, one thousand seven hundred and ten, the author of any book or books already printed, who hath not transferred to any other the copy or copies of such book or books, share or shares thereof, or the bookseller or booksellers, printer or printers, or other person or persons, who hath or have purchased or acquired the copy or copies of any book or books, in order to print or reprint the same, shall have the sole right and liberty of printing such book and books for the term of one and twenty years, to commence from the said tenth day of April, and no longer; and That the author of any book or books already composed, and not printed and published, or that shall hereafter be composed, and his assignee or assigns, shall have the sole liberty of printing and reprinting such book and books for the term of fourteen years, to commence from the day of the first publishing the same, and no longer".

<sup>42</sup> For a detailed analysis of the concept of public domain see: D, Lang. (1981), 'Recognizing the Public Domain', *Law & Contemp. Probs.* 44(2),147 and of J, Litman. (1990). 'The Public Domain', *Emory L.J.*, 39(7), 965. See, e.g., Tyler T, Ochoa. (2002) 'Origins and Meanings of the Public Domain', *U. Dayton L. Rev.* 28(2), 215; J,Boyle. (2003) 'The Second Enclosure Movement and the Construction of the Public Domain', *Law & Contemp. Probs.* 66(1), 68; M, Rose. (2003) 'Nine-Tenths of the Law: The English Copyright Debates and the Rhetoric of the Public Domain', *Law & Contemp. Probs.*, 66(1), 75; P, Samuelson. (2003) 'Mapping the Digital Public Domain: Threats and Opportunities', *Law & Contemp. Probs.*, 66(1), 147 and Y, Benkler. (1999) 'Free as the Air to Common Use: First Amendment Constraints on Enclosure of the Public Domain', *N.Y.U L. Rev.* 74(3), 354, 361-62

<sup>43</sup> Section 2 of Statute of Anne: "That if any other bookseller, printer or other person whatsoever, from and after the tenth day of April, one thousand seven hundred and ten, within the times granted and limited by this act, as aforesaid, shall print, reprint, or import, or cause to be printed, reprinted, or imported, any such book or books, without the consent of the proprietor or proprietors thereof first had and obtained in writing, signed in the presence of two or more credible witnesses; or knowing the same to be so printed or reprinted, without the consent of the proprietors, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, any such book or books, without such consent first had and obtained, as aforesaid: then such offender or offenders shall forfeit such book or books, and all and every sheet or sheets, being part of such book or books, to the proprietor or proprietors of the copy thereof, who shall forthwith damask, and make waste paper of them; and further, That every such offender or offenders shall forfeit one penny for every sheet ....."



On the other hand it should be born in mind that, the statute was successful in addressing the public policy issues of the scenario immediately previous to it.<sup>44</sup> Further the statute begins itself by declaring the objective as advancement of learning and we can see that it envisages only a very limited monopoly and put controls wherever possible. The price control mechanisms, deposit requirements, short duration of monopoly etc., sounds like a well baked policy rather than a half baked one. Apart from all this, we can see that while it penalizes unauthorized uses the statute is very specific that such use is a commercial one.<sup>45</sup> So all non-commercial and innocent uses were outside the scope of infringement. It was when infringements were looked upon and when the author became powerful to exercise his rights there crop up the need for breathing space to the public.<sup>46</sup> Thus a public consciousness and apprehension for user right began to jack up the moment law recognised the author's right. This conflict between the author and user, immediately followed after the Statute clearly established that before the recognition of author's right by the legal system the users and public were having an uncontrolled and liberal use of literature and knowledge. However courts were flooded with a series of cases relating to the determination of rights of both authors and users and in this conflict the judiciary was successful in upholding and safeguarding the public interest values. A robust copyright regime rationally balancing the competing interests began to open out.

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<sup>44</sup> See, Deazley, R. (2008) 'Commentary on the *Statute of Anne 1710*', *Primary Sources on Copyright (1450-1900)*, eds L. Bently & M. Kretschmer [online]. Available at [www.copyrighthistory.org](http://www.copyrighthistory.org) [Accessed on June 2010].

<sup>45</sup> Section 2 of Statute of Anne: ".....without the consent of the proprietors, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, any such book or books, without such consent first had and obtained, as aforesaid....."

<sup>46</sup> This consciousness of rights by authors was manifested in the untold story of *Tonson v Baker* [C9/371/41 (Ch. 1710)], the first lawsuit brought under the statute filed in the Court of Chancery three months after the statute went into effect. *Tonson* pitted the most famous publisher of the day, Jacob Tonson Sr., a strong proponent of copyright and the Statute of Anne, against a gang of notorious book pirates led by John Baker, a publisher known at the time for dealing in books (many of them dangerous) on behalf of outspoken but anonymous authors, including for his most famous client Daniel Defoe. The dispute centered around the right to print the trial proceedings of Henry Sacheverell, Doctor of Divinity, who had been impeached by the House of Commons and tried in the House of Lords for high crimes and misdemeanors. Tonson received the exclusive right to print the trial from the Lords in March 1710, and registered his work pursuant to the statute. But one month after Tonson published his account, Baker published his own book on the whole affair. Baker's edition copied the trial portions directly from Tonson's. The suit was over soon after it started and never led to a decree or judgment.