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THE HISTORY OF US COPYRIGHT LAW

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

The Copyright Law of the United States tries to encourage the creation of art and culture by rewarding authors and artists with a set of exclusive rights. Copyright law grants authors and artists the exclusive right to make and sell copies of their works, the right to create derivative works, and the right to perform or display their works publicly. These exclusive rights are subject to a time limit, and generally expire 70 years after the author's death.

Copyright law in the U.S. is governed by federal statute, namely the Copyright Act of 1976. The Copyright Act prevents the unauthorized copying of a work of authorship. However, only the copying of the work is prohibited--anyone may copy the ideas contained within a work. For example, a copyright could cover a written description of a machine, but the actual machine itself is not covered. Thus, no one could copy the written description, while anyone could use the description to build the described machine.

The United States Copyright Office handles copyright registration, recording of copyright transfers, and other administrative aspects of copyright law.

Copyrights can be registered in the Copyright Office in the Library of Congress, but newly created works do not need to be registered. In fact, it is no longer necessary to even place a copyright notice on a work for it to be protected by copyright law. However, the Copyright Act does provide additional benefits to those who register with the Copyright Office. Consequently, copyright registration and the use of a copyright notice is recommended.

The copyright law of the United States has a long an complicated history, dating back to colonial times. It was established as federal law with the Copyright Act of 1790. This act was updated many times, including a major revision in 1976.

The history of American copyright law originated with the introduction of the printing press to England in the late fifteenth century. As the number of

presses grew, authorities sought to control the publication of books by granting printers a near monopoly on publishing in England. The Licensing Act of 1662 confirmed that monopoly and established a register of licensed books to be administered by the Stationers' Company, a group of printers with the authority to censor publications. The 1662 act lapsed in 1695 leading to a relaxation of government censorship, and in 1710 Parliament enacted the Statute of Anne to address the concerns of English booksellers and printers. The 1710 act established the principles of authors' ownership of copyright and a fixed term of protection of copyrighted works (fourteen years, and renewable for fourteen more if the author was alive upon expiration). The statute prevented a monopoly on the part of the booksellers and created a "public domain" for literature by limiting terms of copyright and by ensuring that once a work was purchased the copyright owner no longer had control over its use. While the statute did provide for an author's copyright, the benefit was minimal because in order to be paid for a work an author had to assign it to a bookseller or publisher.

The British Statute of Anne did not apply to the American colonies. The colonies' economy was largely agrarian, and copyright law was not a priority. As a result, only three private copyright acts were passed prior to 1783. Two of the acts were limited to seven years, the other to five years. In 1783 several authors' petitions persuaded the Continental Congress "that nothing is more properly a man's own than the fruit of his study, and that the protection and security of literary property would greatly tend to encourage genius and to promote useful discoveries." However, under the Articles of Confederation, the Continental Congress had no authority to issue a copyright.

Instead it passed a resolution encouraging the States to "secure to the authors or publishers of any new book not hitherto printed... the copy right of such books for a certain time not less than fourteen years from the first publication; and to secure to the said authors, if they shall survive the term first mentioned,... the copy right of such books for another term of time no less than fourteen years" [1].

Three states had already enacted copyright statutes in 1783 prior to the Continental Congress resolution, and in the subsequent three years all of the remaining states except Delaware passed a copyright statute [2]. Seven of the States followed the Statute of Anne and the Continental Congress' resolution by providing two fourteen-year terms. The five remaining States granted copyright for single terms of fourteen, twenty and twenty one years, with no right of renewal [3].

At the Constitutional Convention of 1787 both James Madison of Virginia and Charles C. Pinckney of South Carolina submitted proposals that would allow Congress the power to grant copyright for a limited time [4]. These proposals are the origin of the Copyright Clause in the United States Constitution.

The United States Constitution grants Congress the power to enact copyright laws in Article I, Section 8, Clause 8 (the Copyright Clause). The Copyright Clause states that congress shall have the power:

“To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”

The Copyright Clause forms the basis for both U.S. copyright law ("Science", "Authors", "Writings") and patent law ("useful Arts", "Inventors", "Discoveries"), and requires that these exclusive rights expire ("for limited Times").

The Congress first exercised its copyright powers with the Copyright Act of 1790. This act granted authors the exclusive right to publish and vend "maps, charts and books" for a term of 14 years. This 14-year term was renewable for one additional 14-year term, if the author was alive at the end of the first time. With exception of the provision on maps and charts the Copyright Act of 1790 is copied almost verbatim from the Statute of Anne.

The 1790 Act did not regulate other kinds of writings, such as musical compositions or newspapers and specifically noted that it did not prohibit copying the works of foreign authors. The vast majority of writings were never registered. Between 1790 and 1799, of approximately 13,000 titles published in the United States, only 556 works were registered.

Under the 1790 Act, federal copyright protection was only granted if the author met certain "statutory formalities." For example, authors were required to include a proper copyright notice. If formalities were not met, the work immediately entered into the public domain.

Congress first revised the copyright laws with the Copyright Act of 1831. This act extended the original copyright term from 14 years to 28 years (with an option to renew), and changed the copyright formality requirements.

In 1834 the Supreme Court ruled in Wheaton v. Peters (a case similar to the British Donaldson v Beckett of 1774) that although the author of an unpublished work had a common law right to control the first publication of that work, the author did not have a common law right to control reproduction following the first publication of the work.

During the American Civil War, the law of the Confederate States of America on copyright was broadly the same as that of the existing Copyright Act of 1831: twenty-eight years with an extension for fourteen, with mandatory registration. This was passed into law by an act in May 1861, shortly after the outbreak of hostilities. A later amendment, in April 1863, provided that any copyright registered in the United States before secession, and held by a current Confederate citizen or resident, was legally valid within the Confederacy. Confederate copyrights were apparently honored after the end of the war; when federal copyright records were transferred to the Library of Congress in 1870.

Before the 1976 Copyright Act, copyright protection was provided by a

dual system under both federal and state laws. Federal law provided "statutory copyright" and the laws of each state provided "common law copyright." Roughly speaking, the old "statutory copyright" protected works that were registered and the old "common-law copyright" protected unregistered works.

With the 1976 Copyright Act, Congress abolished the dual federal-and-state copyright system, replacing it with a single federal copyright system. Federal preemption is codified at 17 U.S.C. § 301(a), which states:

On and after January 1, 1978, all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright... in works of authorship that... come within the subject matter of copyright... are governed exclusively by this title. Thereafter, no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State.

The preemption is complete insofar as works fall within the federal copyright statute. A work that falls generally within the subject matter of copyright (such as a writing) must either qualify to be protected under federal law, or it cannot be protected at all. State law cannot provide protection for a work that federal law does not protect.[6] It covers enforcement too. A person accused of copyright infringement cannot be prosecuted in state courts.

State copyright law is not preempted by non-protected works. For example, those that have "not been fixed in any tangible medium of expression are not covered."[9] "Examples would include choreography that has never been filmed or notated, an extemporaneous speech, original works of authorship communicated solely through conversations or live broadcasts, a dramatic sketch or musical composition improvised or developed from memory and without being recorded or written down."

Major amendments to federal copyright law. Since 1790, Congress has amended federal copyright law numerous times. Major amendments include:

— Copyright Act of 1790 – established U.S. copyright with term of 14 years with 14-year renewal

— Copyright Act of 1831 – extended the term to 28 years with 14-year renewal

— Copyright Act of 1909 – extended term to 28 years with 28-year renewal

— Copyright Act of 1976 – extended term to either 75 years or life of author plus 50 years (prior to this, "[t]he interim renewal acts of 1962 through 1974 ensured that the copyright in any work in its second term as of September 19, 1962, would not expire before Dec. 31, 1976.");[11] extended federal copyright to unpublished works; preempted state copyright laws; codified much copyright doctrine that had originated in case law

— Berne Convention Implementation Act of 1988 – established copyrights of U.S. works in Berne Convention countries

— Copyright Renewal Act of 1992 – removed the requirement for renewal

— Uruguay Round Agreements Act (URAA) of 1994 – restored U.S.

copyright for certain foreign works

— Copyright Term Extension Act of 1998 – extended terms to 95/120 years or life plus 70 years

— Digital Millennium Copyright Act of 1998 (DMCA) – criminalized some cases of copyright infringement

Key international agreements affecting U.S. copyright law include:

— Universal Copyright Convention

— Berne Convention for the Protection of Literary and Artistic Works

— Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

The United States ratified the Universal Copyright Convention in 1954, and again in 1971. This treaty was developed by UNESCO as an alternative to the Berne Convention.

The United States became a Berne Convention signatory in 1988. The Berne Convention entered into force in the U.S. a year later, on March 1, 1989. The U.S. is also a party to TRIPS, which requires compliance with Berne provisions, and is enforceable under the World Trade Organization dispute resolution process.

To meet the treaty requirements, copyright protection was extended to architecture (where previously only building plans were protected, not buildings themselves), and certain moral rights of visual artists.

Every year, millions of Americans create original works - books, music, research and other forms of creative expression. All of these creations are intellectual property, and all of them are protected by copyright. For writers, editors, and publishers, understanding copyright issues is essential, especially now that the production of counterfeit and pirated goods, including written works, has become so prevalent. Indeed, according to the U.S. Chamber of Commerce, more than $650 billion in pirated and counterfeited goods will flood the world market in 2005. Making sure that your publication’s property is not among these pirated goods is critical.

There is no such thing as an "international copyright" that will automatically protect an author’s works in countries around the world. Instead, copyright protection is "territorial" in nature, which means that copyright protection depends on the national laws where protection is sought. However, most countries are members of the Berne Convention on the Protection of Literary and Artistic Works and/or the Universal Copyright Convention, the two leading international copyright agreements, which provide important protections for foreign authors.

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