

History of Copyright

Opening Up Copyright Instructional Module

Learning Objectives

- Recall key events in the history of copyright
- Understand how copyright has evolved, in particular from a means of encouraging learning to an economic policy
- Understand how copyright's history is shaped by the interplay of domestic and international factors

Transcript

Hello, and welcome to the University of Alberta's Opening Up Copyright instructional module on the history of copyright.

Where it All Began

Copyright is increasingly important in our modern economy, but for much of copyright's 300-plus year history it has been relatively unimportant for the overwhelming majority of people. So how did things end up this way?

Copyright effectively began in 1710 with the *Statute of Anne* in Great Britain. While the Statute of Anne was passed to deal with concerns of publishers over book reprinting, the preamble of the Act is notable. The Statute was intended as: "An act for the encouragement of learning, by vesting the copies of printed books in the authors or purchasers of such copies, during the times therein mentioned."

Wait a minute... that can't be right. Copyright is to encourage learning? Isn't it supposed to be about an incentive to create and promote economic prosperity?

What Happened?

So how did copyright go from an act for the encouragement of learning to a modern economic policy? For starters, copyright has expanded from covering just printed books to covering all forms of creative expression. It has also expanded in relation to the term, or length, of copyright protection. We can't pack the entirety of copyright's expansionary history into this module, so we will focus on ten key events to help explain its changing purpose and role in society, both for Canada and for the rest of the world.

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Statute of Anne

First Key Event – the *Statute of Anne*. As noted earlier, the scope of copyright was initially narrow – it only covered printed books. The term of protection in the Statute is also notable. Books published before the Statute gained copyright protection for 21 years after they were written, while new books would be protected for 14 years, with the option of an additional 14 years of protection if the author was still alive at the end of the first term.

The US Constitution

Second Key Event – the US Constitution. The 1787 US Constitution included a clause empowering Congress to protect authors and inventors. Just three years later, in 1790, the newly independent United States would pass its first *Copyright Act*. Like the *Statute of Anne*, the term of protection was 14 years, with the right of renewal for a second 14-year period if the author was still alive. And notably, this too was explicitly an act to promote the encouragement of learning.

The Berne Convention

Third Key Event – the Berne Convention. Throughout the 19th century, copyright protection became more common, and concerns about international copyright protection became an issue. This culminated in the 1886 crafting of the Berne Convention. The Berne Convention has been revised several times with numerous parties joining along the way. One notable change was the 1908 revision that stipulated member countries would provide copyright protection for a minimum term of life of the author plus 50 years. The move to a life + 50 year term of protection was driven by the desire from various governments to harmonize the term of protection.

The Copyright Act

Fourth Key Event – a Copyright Act for Canada. Canada passed its first domestic *Copyright Act* in 1921, modelled directly off of the 1911 UK Act. A few years later, in 1928, Canada joined the Berne Convention as a party in its own right, though had previously been part of the Convention through its dominion relationship with the UK.

TRIPS

Fifth Key Event – TRIPS. The 1980s saw intellectual property protection and free trade become linked, reflecting in part the growth of information and service-based industries. This led to the 1994 agreement on Trade-Related Aspects of Intellectual Property Rights, or “TRIPS.” This World Trade Organization agreement introduced a considerably stronger level of international protection to copyright holders than had previously been the case under Berne.

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US Copyright Term Extension Act

Sixth Key Event – US Copyright Term Extension Act. In 1998, US musician turned Congressman Sonny Bono led the crafting of the Copyright Term Extension Act that expanded the term of protection in the US from life plus 50 to life plus 70 years. The Act is sometimes called the Mickey Mouse Copyright Term Extension Act, because it ensured that Steamboat Willie, an animated short film from 1928 that first depicted Disney’s iconic rodent, would not enter the public domain for an additional 20 years.

Théberge v. Galerie d’Art...

Seventh Key Event – *Théberge*. As copyright rose in importance over the decades, it was also taking on more visibility in Canadian courts. 2002 marked the first major Canadian Supreme Court case on copyright – the *Théberge* decision. The high court’s 2002 ruling notably explicated that the purpose of copyright was to balance the rewarding of creators with encouraging the dissemination of works, and it even cautioned against protecting creators’ rights excessively.

CCH v. LSUC

Eighth Key Event – the 2004 CCH case. Although fair dealing had been part of Canada’s Copyright Act since the 1920s, it was only during the CCH case that the Supreme Court of Canada outlined how to *apply* fair dealing. CCH laid the groundwork for making determinations about whether a specific dealing with a copyright-protected work is fair and thus not an infringement of copyright.

Copyright Pentalogy

Ninth Key Event – Pentalogy. 2012 marked another milestone in Supreme Court jurisprudence with the court releasing five decisions on copyright in the summer of that year. The five cases, known as the pentalogy, dealt with a variety of issues, but the SOCAN and Alberta (Education) cases were particularly notable for their application of the CCH six factor test for determining if a dealing is fair.

Copyright Act Review

Tenth Key Event – Copyright Act Review. In 2017, Canada began a lengthy statutorily-mandated review of the *Copyright Act*, with issues such as educational fair dealing being hotly contested by various parties. Both the Industry and Heritage Committees of the House of Commons delivered contrasting reports on how the *Copyright Act* might be revised.

Conclusion

Regardless of what new issues emerge, such as copyright for AI generated content, the history of copyright shows how it has been transformed from a very limited set of protections designed

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to encourage learning, to a large and complicated set of creator and user rights with an increasingly economic nature.

Learning Objectives

You should now be able to:

- Recall key events in the history of copyright
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- Understand how copyright's history is shaped by the interplay of domestic and international factors

This has been the University of Alberta's Opening Up Copyright Instructional Module on the History of Copyright. Thank you for your attention.

Questions

1. Copyright as we know it effectively began with:
 - a. A Statue of Anne of Green Gables
 - b. The Statute of Anne**
 - c. The Berne Convention
 - d. The first cave painting circa 38 000 B.C.E
2. The US Copyright Term Extension Act is also known as:
 - a. The Sonny and Cher-Dealing Act
 - b. The Mickey Mouse Copyright Term Extension Act**
 - c. The Steamboat Willie Act
 - d. The Walt Disney Act
3. Copyright was originally thought of as a means of encouraging:
 - a. Learning**
 - b. Harmony between governments
 - c. The dissemination of works
 - d. Compensation for creators

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4. As intellectual property protection and trade became linked, the 1994 TRIPS agreement brought about greater international protection for copyright holders.
 - a. **True**
 - b. False

5. In Canada the future of copyright is:
 - a. Hotly contested
 - b. Subject to international factors
 - c. Something that will impact the way we all use creative works
 - d. **All of the above**