

The Copyright Wars: Three Centuries of Trans-Atlantic Battle

Peter Baldwin

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Intellectual property rights (IPRs) play a pivotal role in modern society but remain strongly contested and controversial. Indeed, the issue of 'copyright' has created a "clash of civilizations" between the Anglophone world and Continental Europe. This fight over different ideas of copyright has raged across the channel and across the Atlantic since the late eighteenth century. This book discusses these struggles over IPRs chronologically beginning with early history and taking the story to the modern day.

In Chapter 1, the author highlights two competing views of 'copyright': the Anglo-American approach (centred on "copyright") and the Continental European view (based on "authors' rights"). The concept of "copyright" has been focused on ensuring that the public domain benefits from content creation via an emphasis on use without violation or infringement. While, on the other hand, the concept of "authors' rights" targets creators and aims to ensure the 'authenticity' of their works. The Continental principle which follows the statutory system assumes that the authors' and audience's interests do not contradict one another. The rights provided to the author are significant and it is held that this will benefit the public in the longer-term. It is argued that without rewarding authors, they would decrease their productivity. The existence or non-existence of 'moral rights' to the content even after the

death of the creator is also indicated. In the Anglophone tradition, based on the common law system, the concept of copyright was approached in order to promote author's creativity in order to principally benefit the public domain. Also, in this tradition, legal protections exist only during the period of the author's life, while Continental nations recognize rights as extending even after the death of the creator.

The early journey of copyright from the eighteenth century onwards is covered in Chapter 2. In that century, in Britain, the United States of America, France, and Germany, legislators were seeking to curb publisher's privileges and vest rights to works instead in their authors. The concept of copyright was one response and was supported by the ideas of the theorist John Locke who favoured a limited copyright, believing that a perpetual property right in books could harm the spread of learning. Thus, the Common law copyright was based on the idea of property founded on natural rights. On the other hand, statutory copyright was the legal monopoly that gave the author a limited control of his work after it had been published.

The subsequent evolution of copyright continued throughout the nineteenth century (Chapter 3). The main question that would arise was over what the status of literary rights are. Are they considered to be another form of property? Eventually the initiation of a negotiation between authors and publishers which brought a concrete understanding in several nations ranging from the United Kingdom, United States, France and Germany that literary works are a form of property which remains with the authors. Nevertheless, to protect the public domain, long lasting ownership by the authors or the disseminators was not possible, rather it was kept to a limited period of time. The debate did not end only for literary

works but also continued for painting, music and architecture including, translating, abridging, and excerpting performing.

Given the prominence of the United States in pushing for contemporary intellectual property protections, it is interesting to learn that the US was slow in acknowledging the right of the foreign works. Indeed, the US federal patent statute in 1790 did not allow foreigners to hold US patents and therefore foreign inventions were declared to be a common property. Likewise the same limitation also appeared for the case of copyright where the right of foreign creations were not recognized by the statute. Indeed, at that time the United States was known to be a 'pirate' nation.

Chapter 4 discusses the issue of abridgment where the book, for example, has been shortened or condensed but the source is still maintained. Also, the discussion of fair use also appears in this chapter: a concept that began in the nineteenth century. Fair use was first seen in *Folsom v. Marsh* (1841) in the United States. Similarly, this concept is known as "fair dealing" in Britain. Nevertheless, it is pertinent to note that the principle of fair use was more generous in the Anglosphere than in the Continent. The chapter also covers "compulsory licensing" where the eventual benefit is aimed to serve to the public but also the author would be rewarded with the royalties set by the authorities.

While the principle of fair use and copyright were developed mainly in Anglophone world rather than in Continental Europe, the concept of moral rights was developed first in the Continental. The moral rights principle is broadly the same to the author's rights. The book explains the origin and rationale behind the framing of the concept of moral rights. The ideology of moral right was initially developed in French and German jurisprudence and then subsequently in Italy as well. Though the historical background and the heritages were different in Germany as well as other jurisdictions such as Italy, the intention to balance the interest of creator and community was common.

The value and significance of author's rights became well established in the post-war period (Chapter 6). The post-war discussion in the Berne Convention was focused on moral rights. Nevertheless, the author also points out that the contradictory opinions regarding moral rights also existed during that era. Arguments also arose over whether the moral right should be mentioned in Berne Convention where the prevailing emphasis was on economic rights. The chapter also covers the differences in the evolution of moral rights in France and Germany after the war, highlighting both differences and similarities.

The post-war period saw a strengthening of intellectual property (IP) protection (Chapter 7). The United States was one of the countries which sought the protection of IP rights not only within the nation but also outside its jurisdiction. Advances in technology, which make copying and distribution easier, however, are posing new challenges to IP protection. In Chapter 8 the author discusses copyright in the digital era. Copyrighted works are now accessible via various mediums and by a large group of people around the world. However, realizing the significance of intellectual property rights including copyright, there has been an increase in international cooperation to fight against piracy as well as other kinds of violations. However, certain rules and international instruments such as the Anti-Counterfeiting Trade Agreement (ACTA) remain controversial. But greater international cooperation seems inevitable as countries grapple with the challenges of copyright in the twenty-first century.

Reviewed by Pooja Tripathi, Ph.D., in Law candidate, National Law School of India University and Research Assistant in the Trade Policy and Analysis Division, United Nations ESCAP.

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