CHAPTER: 2

COPYRIGHT: HISTORICAL RETROSPECT
Anticipation and effort of human civilization to pin down the certainty that life may offer is an irony to the inherently uncertain character of life. Amidst this engulfing uncertainty is but one real attribute of humankind and any other life form, to mimic itself in varying environments whereby he brings to fore a plethora of responses, those which we, as an evolved species have come to classify as knowledge, tradition, custom, culture etc. The issue of copying and its ethics has always been of much concern to the academia. The present era of rapid extension of human capabilities in frontiers hitherto unmapped and unrealized has come to alter the very sense of perception that man has lived with. It has been rightly termed as the age of information, an age where information decides the triumphant; it has correspondingly brought along with it a deep insecurity and fear within men, to protect all that is precious to him, learning apparently has fallen prey to this ardent zeal of man and his society to seek his own self-preservation.

Copyright has its root in the privileges, laws and regulations associated with the advent of printing in the fifteenth century; these mainly protect the printer rather than author. The issue of copyrights has until recently been in the foray for both its use and abuse since the dawn of the renaissance period, a time in history when the world marveled at the birth of new inventions, philosophies in science, arts and industry; inventions that redefined the limits of our capabilities at achieving hitherto what had been considered unachievable. The most remarkable feature worthy of appreciation would be the analysis of the development and evolution of copyright law in parlance with the development
of legal theory. A systematic compilation of thought aimed at bringing about reforms, regulations, restrictions and punishments to certain identified behaviour considered detestable by a collective group of people called society. Although there are competing claims in defining the eternal question, what is law? Yet it is undeniable that Natural law theory affords a qualified understanding to copyright law, inherently an aspiration to secure individuality in realization of our right to liberty and property. In this context it can be said that Gutenberg and Caxton changed the possibilities of copying a work with the introduction of mechanical printing, and the subsequent viability of commercial publishing. Half a millennium later, the Internet has further revolutionised matters, because it permits virtually unlimited duplication of documents at a single key-stroke.

I DEVELOPMENT OF LAW OF COPYRIGHT:

One of the earliest copyright disputes reputedly took place in 557 A.D. between Abbot Finnian of Moville and St. Columba over St. Columba's copying of a Psalter belonging to an Abbot. The dispute over ownership of the copy led to the Battle of Čul Dreimhne (also known as Battle of Cooldrumman), in which 3,000 men were killed.41

The Copyright law was first introduced in the United Kingdom in response to the need to protect the new printing trade against the unauthorized copying of books (piracy). Ever since, it has developed to keep pace with the introduction of new technologies. As copyright law developed in the eighteenth and nineteenth centuries it was mainly concerned with the field of literature and the arts but, following the advancement in technology of the twentieth century, the protection given by copyright law has been considerably expanded over the years, both with respect to the subject-matter of protection and also to the

classes of acts which constitute infringement. Thus, today protection is not only
given to literary, dramatic, musical and artistic works, but also to sound
recordings, films, broadcasts, and the typographical arrangements of published
editions. Infringement of copyright was originally limited to copying but the
acts restricted by copyright now cover the issue of copies to the public, the
rental or lending of works to the public, the performance, showing or playing
the work in public, communicating the work to the public and making
adaptation of the work or doing of the above in relation to an adaptation.

It is helpful to an understanding of the modern law of copyright to study its
history i.e. to see how it has developed from its origins to the present day
position.

Copyright is a comparatively modern concept, born in the late fifteenth
century, following the invention of printing, which for the first time made it
possible to produce multiple copies of books quickly and comparatively
cheaply. The classical world did not recognize as such; there is no mention of
much concept in Justinian era although there is plenty of evidence that Greek
and Roman authors were greatly concerned to be identified as the author of
their works and that their authorship should be recognized.\footnote{A. Birell, the
S.M. Stewart, International Copyright and Neighbouring Rights, 2\textsuperscript{nd}
ed., The Knicker Bocker Press, New York, 1896, p.19.} The word
plagiarism, the practice of copying the work of another and passing it off as the
copier’s own, derives from the Latin \textit{plagiarius}, an abductor or kidnaper, and
has been condemned as an immoral and contemptible practice from the earliest
historical times, but in those days there was no law against it. In today’s terms,
classical authors were concerned that their moral rights be respected, but they
enjoyed no economic rights. The earliest copyright case of which there is any
record is an Irish sixth century case involving \textit{St. Columbia}, who while on a
visit to the monastery of his former teacher, Abbot Finnian, copied the latter's Psalter; Finnian demanded the return of the copy and getting no satisfaction referred the dispute to the King, who ruled in his favour; “to every cow her calf and consequently to every book its copy.”

Before the invention of printing, there was little practical need for legal protection of authors against the copying of their works. To start with, the bulk of the population was illiterate and had no use for books. Moreover, the copying of manuscripts was a meticulous and time consuming occupation mainly done by monks and limited to the copying of religious works for religious orders and the royal courts of Europe. The possibility of printing multiple copies of books cheaply resulted in a new market for books for a public which has not previously has access to the manuscripts which, in the past, had been available only to the most privileged members of society.

2.1.1 GUTENBURG INVENTION OF PRINTING PRESS AND EARLY CONTROL OF PRINTING:

Prior to Johannes Gutenberg's invention of the printing press in 1440, copying manuscripts was a painstaking task requiring weeks, sometimes months of labour. As such, the task was traditionally left to monks, and few people considered it worth their time to copy manuscripts for mass distribution. However, with the development of Gutenberg's revolutionary machine, copying became much less time-intensive, and making multiple copies of a work was no harder than making one.

Throughout its history copyright law has been closely linked to development in technology. It was only after the introduction of printing that any serious question as to the copyright in literary works could be expected to arise. An early statute of Richard III in 1483 encouraged the printing of books, and permitted their importation, but this statute was repealed 50 years later on

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4) R.R. Bowker, Copyright, its history and its law, Houghton Mifflin, 1912, p. 3.
protectionist grounds, it being alleged, in the preamble of the repealing statute in 1533, that such a marvelous number of printed book were imported into the realm to the prejudice of the King's natural subjects who have given themselves so diligently to learn and exercise the said craft of printing that at this day there be within this realm a great number cunning and expert in the said science or craft of printing as able to exercise the said craft in all points as any stranger in any other realm or country. A similar plea was urged on behalf of the bookbinders who having no other faculty wherewith to get their living, be destitute of work and likely to be undone, except some reformation herein he had.

As the member of printers increased in England, the King assumed a prerogative of granting printing privileges, and the earliest copyright protection took the form of printers' licenses granted by the sovereign to regulate the book trade and to protect printers against piracy. These privileges became a source of considerable profit to the Crown and used as an instrument of censorship by the authorities.

2.1.2 CENSORSHIP AND PRIVILEGES:

Within a few years after the introduction of printing, European states began to adopt legal measures to deal with consequences of this development. The simplest way to control the distribution of printed material, and protest local printing industries against piracy and foreign impost, was to introduce control of the printing presses, so that the state authority would know what was being printed and by whom.

The state authority took unto itself the sole right of printing, and the authority to grant permissions to print. The control was exercised through general regulations providing that nothing could be printed without state's (or academic

44 An Act of Henry-VIII (Cum privilegio regali as imprimendum solum) set up the system of privileges for the printing of books in England in 1529.
or ecclesiastical) authority, and by issuing decrees or ordinances authority
to particular persons to print and sell books of certain classes, or copies of
particular works. These instruments are generally described as “privileges”, in
the sense of legislative instrument referring to a particular person as distinct
from the community at large. The turning point in the history of copyright was
reached when authors in general, as opposed to particular individuals named in
privileges, were granted rights to reproduce their works. The first printing
privileges were apparently the Decrees issued by the State Councillors of
Venice in the fifteenth century. The first Venetian privileges in this area was
granted to a printer (Johannes of Speyer, by Decree of September 18, 1469),
conferring an exclusive right to carry on the art of printing. The second of these
privileges was granted to an author (Marc Antony Sabellico, by Decree of
September 1, 1486), conferring the exclusive right of author in printing of one
of the author’s named works. The 1486 Decree is the first recorded instance of
the formal grant of an author’s right to an author. The distinction between the
first two recorded privileges is of much importance, the beneficiary of the 1469
privilege was a printer, given a monopoly to exercise a certain production
method and may be likened to a patent. The beneficiary of the 1486 privilege
was the author himself.

In the main, the Venetian privileges of the fifteenth and sixteenth century were
related to particular works, or to works in a particular language (e.g. Greek,
Arabic), or to particular typefaces, or methods of reproducing drawings (such
as the chiaroscuro process). Of particular note in this respect are the privileges
granted to Ariosto for his poetry and Aldus for his typeface. The privileges
were often for a term of years, but were sometimes for life, or for an indefinite
period. Like modern copyrights, they were territorial in nature, having effect
solely in the jurisdiction of the issuing authority. Other Italian States also
adopted the privilege system, as did those in northern Europe.
Generally the privileges systems were of two classes:

(1) Those issued by the sovereign, as part of the royal prerogative, and

(2) Those issued by legislative and official bodies under the general powers of the state.\textsuperscript{45}

2.1.3 DECREES OF THE STAR CHAMBER:

In the year 1556, by a decree of the Star Chamber, it was forbidden, amongst other things, to print contrary to any ordinance, prohibition or commandant in any of the statutes or laws of the realm, or any injunction, letters patent, or ordinance set forth, or to be set forth by queen's grant, commission or authority. By a later decree, this time in the reign of Mary's Protestant sister, Elizabeth I, dated June 23, 1585, every book was required to be licensed and all persons were prohibited from printing any book, work, or copy against the form or meaning of any injunction made by Her Majesty or her Privy Council or against the true intent and meaning of any letters patent commissions or prohibitions under the great seal or contrary to any allowed ordinance set down for the good government of the Stationers' Company.\textsuperscript{46}

In 1623, a proclamation was issued to enforce this decree reciting that it had been evaded amongst other ways by printing beyond the sea such allowed books, works or writings, as have been imprinted within the realm by such person to whom the sole printing authority thereof by letters patent or lawful ordinance or authority doth appertain.

In 1637, the Star Chamber codified its law on book licensing and printing and again decreed that:

"no person is to print or import (if printed abroad) a book or copy which the Company of Stationers, or any person, hath or shall, by any letters

\textsuperscript{45} J.A.L Sterling, World Copyright Law, 3\textsuperscript{rd} edn., London, Sweet and Maxwell, 2008, p. 8

\textsuperscript{46} Latter decree of Elisabeth dated 23.06.1585
patent, order or entrance in their register book, or otherwise, have the right, privilege, authority, or allowance, solely to print.\footnote{47}

2.1.4 STATIONER'S COPYRIGHT:

From 1557 to 1641, the English Crown exercised authority over printing and the Stationers' Company through the Star Chamber. After the abolition of the Star Chamber in 1641, the English Parliament continued to extend the Stationers' Company's censorship/monopoly arrangement through a series of ordinances and Licensing Acts between 1643 and 1692. During its time, the Stationers' Company developed a private system for handling disputes between its members. Under this system, specific Guild members held monopoly rights in a particular work that were treated as being perpetual. Although Guild members could purchase a manuscript from an author, authors could not become members of the Guild and were not entitled to any royalties or additional payments after purchase. Members were allowed to buy and sell rights over particular works to each other. As a method to keep track of which members claimed rights in what works, the Guild required that copyrights be recorded in a registration book at the Guild's Hall. The Licensing Act of 1662 also required printers to deposit a copy of each work with the Guild to prevent changes to the work after it was reviewed by censors. Many aspects of the Stationers' system were later incorporated into modern copyright laws.

2.1.5 COPYRIGHT AND PUBLIC PERFORMANCE:

There was another area which concerned the state in the literary field, namely the public presentation of plays and other dramatic works. Throughout Europe theaters were subject to rigorous control by the state authorities, but the dramatist's remuneration was generally earned under contract with the theatre

\footnote{4 Burr, 2312.}
managers rather than by exercise of any right of performance of published work. 48

2.1.6 ORIGINAL CHARTER OF THE STATIONERS' COMPANY:

In 1556, the original charter of Stationers' Company was granted by the Catholic Queen Mary and her consort, Philip II of Spain.49 It was the declared object of the Crown at that time to prevent the propagation of the reformed religion, and it seems to have been thought that this could be brought about most effectively by imposing several restrictions on the publishing trade and press to prevent the publishing of seditious and heretical books and pamphlets. Until 1640, the Crown, using the Star Chamber as its instrument, rigorously enforced several decrees and ordinance of that Chamber regulating the manner of printing, the number of presses permitted to operate throughout the Kingdom, and prohibiting all printing against the force and meaning of any of the statutes or laws of the realm. This restrictive jurisdiction was enforced by the use of summary powers of search, confiscation and imprisonment, free of any obstruction from parliament.

2.1.7 EMERGENCE OF AUTHOR'S RIGHT:

In the seventeenth century, there had been discussions and learned writing in England, France, Germany and other countries on the principle that authors of works were entitled to the rights of controlling, the copying and public performance of their works, but with no positive results in the fork of legislation.50

49 Confirmed by Queen Elizabeth-I in 1559.
2.1.8 FIRST LICENSING ACT:

In 1640, however, the Star Chamber was abolished with the Cromwellian revolution, the King's authority was set at naught; all the regulations of the press and restraints previously imposed upon unlicensed printers by proclamations, decrees of the Star Chamber and charter powers given to the Stationers' Company were deemed and certainly were illegal. The scandalous nature of some libelous publications induced Parliament to pass an ordinance in 1643 which prohibited printing unless the book was first lawfully licensed and entered in the register of the Stationers' Company. The ordinance prohibited printing of any such licensed book without the consent of the owner, or importing it (if printed abroad), upon pain of forfeiting the same to the owner or owners of the copies of the said books and such further punishment as shall be thought fit. The provision necessarily presupposed the property to exist; it would have been of no effect if there had been no admitted owner. An owner could not at that time have existed otherwise than by common law. In 1647, 1649 and 1652 further ordinances were passed in similar terms. Finally in 1662, the Licensing Act was passed which likewise prohibited the printing of any book unless first licensed and entered in the register of the Stationers' Company. It ordered that no person should presume to print any heretical, seditious, schismatical, or offensive books or pamphlets, wherein any doctrine or opinion shall be asserted or maintained which contrary to the Christian faith, or the doctrine or discipline of the church of England or which shall or may tend to be the scandal of religion or the church or the government or governors of the church, state or commonwealth or of any corporation or particular person or persons whatever. It further prohibited the publications of unlicensed books, prescribed regulations as to printing and empowered the Kings' messengers and the master and wardens of the Stationers' Company to seize books suspected of containing matters hostile to the Church or Government. It was necessary to print at the beginning of every licensed book the certificate of the
licenser to the effect that the books contained nothing contrary to the Christian faith, or the doctrine or discipline of the Church of England, or against the state and government of this realm or contrary to good life or good manners, or otherwise, as the nature and subject of the work shall require. To prevent fraudulent changes in a book after it had been licensed a copy was required to be submitted with the licenser when application was made for a licence.

The Act further prohibited any person from printing or importing, without the consent of the owner, any book which any person had the sole right to print by virtue of letters patent or by force or virtue of any entry or entries thereof duly made or to be made in the register book of the said Stationers' Company or in the register book of other universities. The penalty for piracy was forfeiture of the books and six-shilling and eight pence for each copy of which half to go to the King and half to the owner. The sole property of the owner is here acknowledged in express terms as a common law right and so the legislature which passed that Act must have recognized the concept that the productions of the brain could be the subject-matter of property. To support an action on this statute the ownership of the book had to be proved or the plaintiff could not have recovered because the action was to be brought by the owner who was to have a half share of the penalty. The various provisions of this Act in effect prevented piracy, without actions of law or Bills in equity. Cases of disputed property did, however, arise. Some of them were between different patentees of the Crown and in some the point was whether the property belonged to the author from his invention and labour or the King, from the subject-matter.

2.1.9 END OF THE LICENSING ACT:

The Licensing Act 1662 was continued by several Acts of Parliament for almost 19 years, but expired in May 1679. The system had fallen into disrepute because the power of members of the Stationers’ Company to claim copyright in perpetuity had led to high prices and a lack of availability of books.
Powerful arguments were also being heard in favour of freedom of the press. The control of the book trade exercised by the Stationers’ Company was broken with the result that piracy flourished. Soon thereafter, a case was reported in Lilly’s Entries of Hilary Term,\textsuperscript{51} in which action was brought for printing 4000 copies of the Pilgrim’s Progress, of which the plaintiff was the true proprietor, as a result of which he had lost the profit and benefit of his copy.

\*\*\* \textbf{ORDINANCES OF THE STATIONERS’ COMPANY:}

In 1681, all legislative protection having ceased, the Stationers’ Company adopted an ordinance or bylaw of its own which recited that several members of the company had great part of their estates in copies that by ancient usage of the company when any book or copy was duly entered in their register to any member, such person has always been reputed and taken to be the proprietor of such book or copy and ought to have the sole printing thereof. The ordinance further recited that this privilege and interest had of late been often violated and abused and it then provided a penalty against such violation by any member or members of the company where the copy had been duly entered in their register. This ordinance was an attempt by the members of the Stationers’ Company who on finding their property in copies of books (their estates in copies, which belonged to them by the common law) no longer under the protection of the Licensing Act to provide for the failure of legislation and to regulate the printing trade themselves although the ordinance was, of course, only applicable to their own members. The ordinance, however, shows what the common law right was then deemed to be. The situation was much the same as if an association of persons were to agree that any one of their number should pay a penalty for violating the acknowledged rights of property of any other person in the association, provided such rights were duly entered in their

\textsuperscript{51} Ponder Vs Brady, Lilly’s Entries, 67, 31 Car. 2, B.R.
common records. It would not be an attempt to create the right but it would justly be regarded as acknowledgement of the existence of such a right. 52

In another byelaw, passed in 1694, it was stated that copies were constantly bargained and sold amongst the members of the company as their property bequeathed to their children and others for legacies and to their widows for maintenance; and it was provided that if any member should, without the consent of the member by whom the entry was made, print or sell the same, he should pay a fine of 12 pence for every copy.

2.1.1.1 NEW LAW DEMANDED:

Parliament was regularly petitioned for a new Licensing Act. The booksellers argued that failure to continue exclusive rights of printing had resulted in disincentives to writers. Without some form of protection to encourage authors, the public interest would be harmed by the decreased flow of works 53

The submissions of the members of the Stationers' Company were added in 1690, the plea of the philosophers, John Locke who although opposed to licensing as leading to unreasonable monopolies injuries to learning, demanded a copyright for authors which he justified by the time and effort expended in the writing of the work which should be rewarded like any other work. 54 In one of the petitions presented to the House of Commons in support of applications to parliament in 1709 for a Bill to protect copyright, the last clause or paragraph was as follows:

"The liberty now set on foot of breaking through this ancient and reasonable usage is no way to be effectually restrained by an Act of

52 George Ticknor Curtis, A treatise on the law of copyright in books, dramatic and musical compositions, letters and other manuscripts, engravings and sculpture : as enacted and administered by England and America : with some notices of the history of literary property, New Jersey, The Lawbook Exchange, 2005, p. 38
53 L. Patterson, Copyright in Historical Perspective, Vanderbilt University Press, Nashville, 1968, p. 142
54 Supra F.N. 3, para. 27, p. (revised in 1690).
Parliament. For, by common law, a bookseller, can recover no more costs than he can prove damage, but it is impossible for him to prove the tenth, nay, perhaps, the hundredth part of the damage he suffers; because a thousand counterfeit copies may be dispersed into a many hands over the kingdom, and he not be able to prove the sale of them. Besides, the defendant is always a pauper, and so the plaintiff must lose his costs of suit. Therefore, the only remedy by the common law is to confine a beggar to the rules of the King's Bench of Fleet, and there he will continue the evil practice with impunity. We therefore pay that confiscation of counterfeit copies be one of the penalties to be inflicted on offenders".55

2.1.1.2 THE STATUTE OF ANNE 1709:

In 1709, the first copyright Act was passed and came into force on April 10, 1710.56 The Statue of Anne was the first copyright law in the world and it is the foundation on which the modern concept of copyright was built.57 Two of the principles established by the statute of Anne were revolutionary at that time: firstly, recognition of the author as the fountainhead of protection and secondly, adoption of the principle of a limited term of protection of published works.58 It was not the first English statute to deal with copyright but the first to be adopted by Parliament as opposed to royal decree and the first to be unconnected with censorship. According to its Preamble, the Act responded to several objectives like the encouragement of learning, the prevention of the practice of piracy for the future and the encouragement of learned men to compose and write useful books. The Act gave authors of books already

55 4 Burr. 2318
56 8 Anne, c. 19.
printed the sole right and liberty of printing them for a term of 21 years from the date of entry into force of the Act and of books not then printed, the sole right of printing for 14 years with a proviso that, after the expiration of the said term of 14 years, the sole right of printing or disposing of copies should return to the authors thereof, if they were then living, for another term of 14 years. Thus, the statutory copyright was not to be limited to the members of the Guild and it was not to exist in perpetuity. The title to the copy of a book had to be registered before publication with the Stationers’ Company and nine copies had to be delivered to certain libraries. Penalties for infringement were severe i.e. 

**infringing books were subject to forfeiture and a fine of a penny for every sheet copied.** This resulted in a steep fine when many copies of a substantial book were pirated. The fine was divided equally between the Crown and the complainant. It is of interest to note that the Act also expressly provided that the importation and sale of books in Greek and other foreign languages printed beyond the seats should remain unaffected by its provisions. The idea that foreign authors also merited protection was not ripe.

### 2.2 DEVELOPMENT OF CONCEPT OF ‘COPYRIGHT’:

Resonance understanding of the problem of Copyright as it relates to modern concepts of the rights of authors requires an understanding of the origin of the right and what the right was designed to protect. Before entering to the main discourse on the history of the copyright the researcher wish to clarify the meaning of the word ‘copyright’. The common assumption is that it means ‘right to copy’. The unfortunate historical incident that gave rise to this understanding has done much to the muddy modern thinking on the subject. The actual meaning of the term ‘Copyright’ is much closer to the term ‘Copyhold’. Under the common law a number of rights could be derived from inscription (copying) on a register. Thus, one might obtain the right to farm a particular piece of land by virtue of having his name inscribed on a register of tenants; this is a copyhold interest in land. In the case of publishing, the
publisher inscribed his name and the title of the work that he would be publishing on a register of Stationer's Company, giving him a copy of the work. The rights attendant to the copy constitutes the 'copyright'. Copyright begins with Censorship or more properly, the relationship between the desire of the Crown to censor and the technology available to circumvent the Crown's wishes. Before the development of the printing press it was relatively easy for the Crown to maintain control over the publication of ideas within the realm. Since publications had to be hand copied the books were few and expensive.

In a political move, England enacted its first official 'copyright' in 1556. In an effort to control printing of heretical or seditious material which might undermine the authority of the crown, Mary-I awarded the Stationers' Company (a printer's guild), the exclusive right to print manuscripts. In return for the economic success she guaranteed the Stationers' Company, she also exercised substantial control over what was and was not allowed to be printed. Until the law's expiration in 1694, the Stationers' Company held complete control over both the publishing and sale of printed works, establishing a publishing monopoly of sorts. The most significant thing to note about this 'copyright law' is that it bears little resemblance to most copyright law today. Mary-I granted exclusive rights to printers not to the creators of the works printed. The Charter continues to give the individuals the exclusive right to own a printing press and the implementation of printing and also the exclusive right to practice the art of printing. It also gives the Stationers Company the right to enforce its monopoly by burning the books and presses of its competition and imprisoning any one owning a press or found engaged in printing without the consent of the authority. The grant allows the Stationers to conduct search and destroy missions on their own outside of other legal processes. It appears that frequently such proceedings were instituted in conjunction with the Star Chamber and the Privy Council under whose order at least one publisher of illegal material was publicly disemboweled.
2.2.1 STATUTE OF ANNE AND 'COPYRIGHT':

Following the English Civil War, which was partly fought over the Crown's abuse of monopolies the Stationers' power was threatened when the last Licensing Act expired in 1694. Without their monopolies London's booksellers faced an unregulated influx of cheap texts printed outside Britain and in Scotland that began flooding the English market. After years of lobbying by authors and members of the Conger the world's first modern Copyright Statute was enacted by the British Parliament.59

The Statute of Anne was introduced by English Parliament in 1710. In a shift away from the former publishing monopoly of the past, the Statute of Anne granted authors fourteen years of exclusive rights to their work (accompanied by the option of another fourteen years under the renewal policy.) To obtain these rights, authors were required to complete a series of registrations, notices and deposits. A publisher could purchase the right to a work, edit the text, typeset and promote a work. He would, of course, have set a price that would allow him to make back what he laid out plus a profit for himself plus a reserve for those works that did not sell well enough to pay for themselves. Now let us suppose this work was successful. Without the copyright protection, another publisher could take the work, retype it and sell it at a lower price because he doesn't have to pay the author nor the editor. He doesn't have to pay for promotion and he doesn't have to worry that the book won't sell. Since, anyone foolish enough to print a new work would, if the work were successful, be immediately undercut on the market. Suddenly no publisher was willing to print new works and there was no market for new ideas.

The Statute of Anne was the first real copyright Act and gave the author rights for a fixed period after which the copyright expired. Unlike previous laws that gave broad monopoly power to the Stationers' Company who would then

59 Statute of Anne, 8 Anne, Ch. 19 (1710).
administer a private system of copyright between Guild members, the Statute of Anne directly outlined a public copyright system that applied to the public in general. Secondly, the Statute recognized a copyright as originating in the author rather than a Guild member. Lastly, it placed a time limitation on the monopoly enjoyed by holders of a copyright. Specifically, the Act provided that an owner of the copyright in any book already printed should have the exclusive right of publishing it for twenty-one years. For works not yet published, the act provided an exclusive right to publish for fourteen years from the time of first publication with the stipulation that the right could be extended by an author for another 14 years. However, printers argued that the texts were property owned by the authors and therefore, could be sold as such to the printers who would then own the rights.

An act for the encouragement of learning by vesting the copies of printed books in the author's or purchasers of such copies during the times therein mentioned (1710, but commonly referred to as the Copyright Act of 1709, 8 Ann. c. 19) carries many similarities to the Anti-monopoly Act of 1624. It is the world's first true copyright Act (as opposed to censorship Act) and is the model for most of the succeeding legislation on the subject. This Act recited the problems associated with the intervening years.

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. For preventing, therefore, such practices for the future and for the encouragement of learned men to compose and write useful books, new law was passed.
2.2.2 LICENSING ACT OF 1662 AND 'COPYRIGHT':

Historically, in the period of beginning of second half of seventeenth century the governments issued monopoly rights to the publishers for sale of printed works. Copyright was not invented until after the advent of the printing press and with wider public literacy. As a legal concept its origins in Britain were from a reaction to printers' monopolies at the beginning of the eighteenth century. In Britain the King was concerned by the unfair copying of books and used the royal prerogative to pass the Licensing Act 1662 which established a register of licensed books and required a copy to be deposited with the Stationers Company essentially continuing the licensing of material that had long been in effect. These provisions were strengthened under Queen Elizabeth in 1586. The Printers who were designated as members of this monopoly, of course, were not stupid. Very quickly, they determined the best means of maximizing their own profits was to agree not to compete with each other as the agreements in restraint of trade were quite legal at this time.

It is no longer the purpose of the law to provide the Crown with a method for regulating the press but rather, it is intended to provide regulation under which the printing industry could grow and prosper. Further, the rational for wanting the printing industry to grow and prosper was not because the crown, legislature and people had pity on the plight of the publisher but they suffered the monopoly because it was a necessary evil to promote the free exchange of ideas. Again, we need to note that the protection was specifically designed for the printing industry as the technology existed in the early 1700's. The nature of the printing and publishing industry requires that publishers speculate a certain amount of money on the success of a particular work. When a publisher purchases the rights to a work from the author, he puts out money. While it is
unclear when editors came into the picture, the cost of editorial revisions became an expense. The cost of putting a work in type must be advanced by the publisher. The cost of promoting the work to the booksellers and public is a significant cost. All of these costs come before a publisher really knows whether the work will sell well enough for him to recoup his investment. Regardless how good the publisher is some of the things that he chooses will be poor sellers. Consider the situation immediately before the Copyright Act of 1710.

The basic provisions of the Act involved the fine and imprisonment of authors, publishers, sellers, and buyers of scandalous or libelous materials or inaccurate accounts of Parliamentary sessions. All printed materials needed to be licensed by Parliament and published by a member of the Stationer's Company. All presses outside of London, Oxford and Cambridge were banned. Every item printing needed to have a title page giving the author, publisher and place of publication. Most significantly for this discussion the Act specifically affirmed the rights of individual publishers to their copies and forbade other publishers to counterfeit the works belonging to other publishers. This last provision was necessary because Parliament had done away with the Star Chamber under whose provision the copyright system had developed. The restoration naturally did little to change the status quo. A law for preventing the frequent abuses in printing seditious treasonable and unlicensed Books and Pamphlets and for regulating of Printing and Printing Presses was quickly adopted in keeping with the prior laws and was renewed regularly under Charles-II, James-II and the early years of William & Mary. The Golden Age of the Stationer's Company ends with the expiration of the censorship laws in 1694 and, with it,

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60 14 Car. 2. c. 33 (1662),
copyright. There passed a period of sixteen impoverishing years for the Stationers wherein it was discovered the extent to which the industry had become dependent upon the monopoly. There were a number of attempts to restore the old system during the late 1690's and early 1700's but it was not until 1710 that a watered down version of the old system was enacted.

2.2.3 COPYRIGHT AND DEVELOPMENT OF PERIOD OF ITS PROTECTION:

The Act provided that books already in publication would be protected from unauthorized republication for 21 years and future works would be protected for 14 years. At the end of 14 years the right reverted to the author (if living) to sell publication rights for an additional 14 years. The penalty for violation of this right was turning all unauthorized copies of the work in the possession of the violator into 'waste paper' and a fine of one penny per sheet in civil court. It further provided for registration of works with the Stationer's Company to prevent accidental publication of protected works however, anyone could make such a registration not just the members of the Company (The act set fines in the event the clerk refused or 'neglected' to register such works and allowed publishers to utilize other means of notice in the event they were refused by the clerk). To prevent publishers from price scoring as a result of the monopoly they had been given a number of public officials including the Archbishop of Canterbury, the Lord Chancellor and the Chief Baron of Exchequer who were also given the authority to fix the price of sale.

2.2.4 'COPYRIGHT' IN MAINSTREAM:

The Copyright Act served to create a market, but it was not designed to protect the publishers or authors but rather society's interest in new ideas. While the Copyright Act of 1709 restored profitability to the printers it did not restore their previous status. Specifically, anyone could print not just the members of the company. More importantly, the copyright did not exist in perpetuity. The
Act provided for a renewable 14 year term for the copyright. Of course, during the period of statutory copyright the publishers were quite willing to bring enforcement under its provisions. However, once the copyrights started to expire the publishers began to conspire as to how they might regain their lost right to hold copies in perpetuity.

A number of cases were brought during the 1750’s to enforce a common law copyright independent of the statutory copyright but most were uncontested. In 1761, the case of Tonson Vs Collins⁶¹ brought the matter to a heard. Plaintiffs argued that an author is entitled to enjoy the work of his labour. Property right may be acquired either by physical labour or by mental labour. It would be wrong not to secure the value of an author’s work to another but rather to allow others to profit from his industry without compensation. A publisher is merely an assignee of the rights of the author by which the author might obtain his value. Therefore, since the author’s rights exist in perpetuity independent of statute so also does the publisher’s. It appears that the publisher’s might have won with this argument but for the fact that it was suspected that the defendant was in collusion with the plaintiff to throw the case in order to create a precedent. The judges did not render a decision on the matter. The issue came up again in Miller Vs Taylor⁶² in 1769 wherein one of the most extensive treatments of the history of English printing was found. This case was found in favor of the publishers on the same arguments. However, five years later it was overturned by the House of Lords in Donaldson Vs Becket⁶³ in 1774. This case in 1774 brought disagreements on the length of copyright to an end. The outcome of the case resulted in the decision that Parliament could and had put a limit on copyright length. This decision reflected a shift in English ideas of copyright. The English Lords who made the decision in 1774 decided that it

⁶³ 7 Parl. Hist. Eng. 953 [H.L., 1774]
was not in the public's best interest to have London publishers control books in perpetuity, particularly as English publishers commonly kept prices high. There were some notions that this was a cultural or class issue. Works in perpetual copyright were seen to have limited access by some citizens to the cultural history of their own land.

Concepts of the roles of the author and publisher of copyright law and of general Enlightenment notions interacted in this period. Authors had been previously seen to be divinely inspired. Patronage was a legitimate way to support authors in part. Authors who were paid rather than entering into patron-relationships were often regarded as hacks and looked down upon. However, the notion of individual genius was becoming more common during the 1770s (the generation after Donaldson v Beckett\(^{64}\)) and being a paid author, therefore, became more accepted.

2.2.5 DEVELOPMENT OF COPYRIGHT LAW IN COLONIES:

In Great Britain's North American colonies, reprinting British copyright works without permission had long happened episodically but only became a major feature of colonial life after 1760. It became more commonplace to reprint British works in the colonies (mostly in the 13 American colonies). The impetus for this shift came from Irish and Scottish master printers and booksellers who had moved to the North American colonies in the mid 18th century. They were already familiar with the practice of reprinting and selling British copyrighted works and continued American printing and publishing trade. Robert Bell was an example. He was originally Scottish and had spent almost a decade in Dublin before he moved to British North America in 1768. His operations and those of many other colonial printers and booksellers ensured that the practice of reprinting was well-established by the time of the American Declaration of Independence in 1776. Weakened American ties to

\(^{64}\) 7 Parl. Hist. Eng. 953 [H.L., 1774]
Britain coincided with the increase of reprinting outside British Copyright controls.

The Irish also made a flourishing business of shipping reprints to North America in the 18th century. Ireland’s ability to reprint freely ended in 1801 when Ireland’s Parliament merged with Great Britain and the Irish became subject to British Copyright laws.

The printing of uncopyrighted English works for the English-language market also occurred in other European countries. The British government responded to this problem in two ways: (1) it amended its own copyright statutes in 1842 explicitly forbidding import of any foreign reprint of British copyrighted work into the UK or its colonies; and (2) it began the process of reciprocal agreements with other countries. The first reciprocal agreement was with Prussia in 1846. The US remained outside this arrangement for some decades. Such authors as Charles Dickens and Mark Twain objected to this.65

The development of copyright gradually became the subject matter of the whole world because a common medium of protection for the creative work throughout the globe was highly needed for protecting the know-how globally. The copyright law has its root in Britain started developing in international field. Apart from the Statue of Anne of England in the year 1710 many international laws contributed the protective movement of the copyright throughout the globe.

2.2.5.1 DENMARK’S ORDINANCE OF 1741:

The Danish Ordinance of January 7, 1741 forbade the unauthorised printing of published books, the title which had lawfully been acquired, without the permission of the author or first publisher. The Danish Ordinance thus has

some claim to be the second legislative provision recognising a general statutory right for authors, albeit with the publisher's right also recognised.\textsuperscript{66}

\textbf{2.2.5.2 FRANCE (LAWS OF 1791 AND 1793)}

Before the French Revolution, authors had no specific statutory rights in France permitting them to control the printing or performance of their works. As in other countries, uses of authors' works were controlled by the State through the system of privileges. These had, since the sixteenth century, been claims for an author's right but printing rights were generally granted to the publishers and performance rights to the theatre directors, the authors had to obtain their remuneration by contract with these right holders.

Here as in so many other fields, the French Revolution brought fundamental changes. Privileges were abolished on August 4, 1789; the Declaration of the Rights of Man and the Citizen was adopted on August 26, 1789. These measures effectively destroyed the previous systems of privileges and licensing for the printing and performance of authors' works. Two laws of the Constituent Assembly laid down the foundation of the French laws on author's right—that of January 13/19, 1791 (completed by a Decree of July 19/ August 6, 1791) on the right of performance and that the July 19/24, 1793 on the right of what would be called reproduction or copying. Briefly summarized, the law of 1791 dealt with theatres and performance rights and provided, among other things, that:

(a) Works of living authors could only be publicly performed with the written consent of the author; and

(b) The term of the right was for the life of the author and five years after his death.

\textsuperscript{66} J.A.L Sterling, World Copyright Law, 3\textsuperscript{rd} ed., London, Sweet and Maxwell, 2008, p. 16.
The Law of 1793 provided that:

(a) Authors, composers, painters and engravers enjoyed the exclusive right to sell and distribute their works in France; and

(b) The term of the right was for the author's life and 10 years after his death.

During the nineteenth century, two categories of rights of authors were developed in French jurisprudence: economic rights that is, rights to control commercial or other exploitation of works and moral rights which is rights associated with the author's personality and enabling him to ensure, among other things, recognition of his authorship and maintenance of the integrity of his work.

The economic rights were derived from the Laws of 1791 and 1793. The right developed respectively was: (a) the right of representation (performance) and (b) the right of reproduction (copying). The moral rights developed from case laws and the writings of learned authors during the nineteenth century. The French law of author's right is still based on these two fundamental economic rights, together with the moral rights.

2.2.5.3 GERMANY:

The German States adopted legislation for the regulation of the printing trade in the eighteenth and early nineteenth centuries, but it was the Prussian Law of June 11, 1837 which presented the form of what would today be recognised as a comprehensive text.

The Prussian Law of 1837 influence the basis of the Law of June 11, 1870, adopted throughout the German Empire from the beginning of 1871. During the nineteenth century other European States also adopted statutes giving statements and Statutes giving specific rights to authors to control the printing and performance of their works.
2.2.5.4 CHINA:

Copyright law made its first appearance in the wake of the invention of the printing in China necessitating official copyright protection as early as 1068 when the emperor of the north song dynasty issued an order forbidding the reproduction without authorization of the ‘Nine Books’ published by the official publisher, *Guo Zi Jian*, in 932.\(^\text{67}\) The first official copyright legislation in China came about in 1991, with the approval of the State Council. The State Administration issued the Implementing Regulations for the Copyright Law of the Peoples Republic of China, also in 1991. China has also a mechanism set out for the Regulation of Computer Software. It became a party to the Berne Convention and the Universal Copyright Convention in 1962. In pursuance of its international commitment to protect works from infringement, China came to promulgate measures on computer software copyright registration. In 1994 the Decision of the Standing Committee of the National People’s Congress concerning punishment of the crime of copyright infringement was incorporated. Copyright protection in China is constitutionally accorded in its Article 47.\(^\text{68}\)

2.2.5.5 JAPAN:

Copyright law in Japan owes its origin to the Meiji Revolution\(^\text{69}\) which proved responsible in giving the country its rudimentary copyright law, the Publishing

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\(^\text{68}\) It elicits the freedom of the people to engage in scientific research literary and artistic creation and other cultural pursuits. The corresponding provisions that aid in constructing a constitutional safeguard, and guarantee for the protection of copyright are to be found also in Articles 19-24. Article 94 of The General Principles of Civil Law of China acknowledge ownership of the author in his work and also provide for a transmission of such right to another. The enforcement mechanism is to be found in Article 118 of the General principles.

\(^\text{69}\) The Revolution marks an important phase in the transition of Japanese society from isolation to open up to global development in the fields of industry, trade and commerce. The revolution can be said to be the reformation period in Japanese history.
Ordinance of 1869. The Ordinance soon paved the way to the passing of Copyright Act, 1887. Japan acceded to the Berne Convention in 1899 and in compliance with the provisions of the convention the Copyright Ordinance came to be overhauled in the Act of 1899 which can be truly referred to reflect the modern copyright law of Japan. The Act witnessed its expansion to include architectural works in 1910. In 1920, musical works too came under the expanding umbrella of protected works. In the following decades Japan along with the rest of the international community has come to expand the scope of copyright and neighboring rights protection to include moral rights of authors, the right to broadcasting, the protection of cinematographic works and the right of publication. In 1939 Japan enacted the law on Intermediary Business Concerning Copyright which provided for regulations on collective administration of musical, literary and dramatic works for the benefit of copyright owners and users aiming at a fair exploitation of works. The present governing law is the Copyright Act, 1971.

2.2.6 DEVELOPMENT OF MODERN COPYRIGHT:

Modern copyright has been influenced by an array of older legal rights that have been recognized throughout history, including the moral rights of the author who have created a work, the economic rights of a benefactor who paid to have a copy made, the property rights of the individual owner of a copy and a sovereign's right to censor and to regulate the printing industry. Prior to the invention of movable type in the west in the mid-fifteenth century texts were copied by hand and the small number of texts generated few occasions for these rights to be tested. Even during a period of a prospering book trade during the Roman Empire when no copyright or similar regulations existed copying by those other than professional booksellers was rare. This is because books were typically copied by literate slaves who were expensive to

buy and maintain. Thus, any copier would have had to pay much the same expense as a professional publisher. Roman book sellers would sometimes pay a well regarded author for first access to a text for copying but they had no exclusive rights to a work and authors were not normally paid anything for their work.

During the centuries following the destruction of the Roman Empire, European literary undertakings were confined almost entirely to the monasteries. The Roman usage under which authors could dispose of their works to booksellers and the latter could be secure of some commercial control of the property purchased was entirely forgotten. (In Ken Follet's novel *The Pillars of the Earth*, a character is astonished to meet a woman who actually owns books, which were normally owned only by churches and monasteries.)

### 2.2.6.1 UNITED KINGDOM:

In United Kingdom Copyright started as a licence granted to publishers as an exercise of the Royal Prerogative. Initially Copyright existed as a property right that existed only at the level of common law and it lasted in perpetuity. Statutory Copyright was introduced for published works by the Copyright Act 1709 and unpublished works received Copyright protection by virtue of common law. For the next two centuries Copyright law advanced by means of piecemeal legislation which gradually increased the types of works protected as the need arose. The Copyright Act 1911 attempted to unify all the divergent branches of the existing laws into one coherent system and along with this objective the existence of common law Copyright was also abolished. In 1956, a further Act was passed in order to bring the United Kingdom in line with further developments both on an international scale and from the point of view of technology. The most recent Act was passed in 1988, and encompassed the area of patents and registered designs as well as the traditional view of
Copyright. The initial idea of Copyright as a property law consisted of it being a ‘chose in action’ that is an intangible property.

The 1709 Act (commonly referred to as the ‘Statute of Anne’) stated that the author of a new book had the sole printing right on that book for 14 years, when this period had expired, the book could be freely printed. If the author was still alive at the end of this period, a further extension of 14 years was granted. Authors whose books were already in publication had a 21 year sole publication right granted to them from April 10th 1710. It was also a requirement that all books were registered with the Stationers Company. A House of Lords decision in the Donaldson Vs Beckett\(^71\) case had the effect of destroying common law copyright in unpublished works but common law remained in position until 1911 and could now only exist in statute.

Copyright Act, 1814 by Sec. 4 provided sole right to author to print a work for 28 years from the first day of publication and again if the author was still alive at the end of this period his sole right of publication was increased to last the rest of his natural life. The duration of Copyright was increased yet again by the time the 1842 Act was passed and was placed this time at the life of the author plus 7 years or 42 years from the first date of publication whichever was longer. If the work was published posthumously, the period it was covered by Copyright was for 42 years. Another change was also that the requirement of registering at Stationers Hall was no longer remain compulsory, it was however, still a precondition before any action of infringement could be taken.

The decision of Donaldson Vs Beckett\(^72\) had a fundamental influence in determining the development of Copyright law in succeeding centuries, because it blatantly highlighted the conflict between common law and statutory law.

\(^{71}\) 1 E.R. 837 (1774); 2 Brown's Parl. Cases 129, 1 Eng. Rep. 837; (1774) 4 Burr 2408

The Copyright Act 1842 provided similar protection for the performance of musical works and the period granted was extended to bring it into line with the protection offered to literary works. The range of works protected was greatly increased. However, many different statutes were passed with no consideration to creating a unified system. A Royal Commission was formed in 1875 to solve the problems of the disjointed laws, the report of which was published in 1878.

In 1886 the first international treaty on Copyright law was introduced. The Berne Convention which was a multinational agreement that enabled reciprocal Copyright protection to be secured in all member states so long as the author is connected with a member state or the work was first published in a member state. The United Kingdom was a signatory to this convention and the international Copyright Act was passed in Great Britain in 1886 in order to fulfill obligations to foreign authors that arose upon the UK ratifying the Berne Convention on September 8, 1887. To cope with the revision of the Berne Convention in 1908 (in Berne again) the existing Act was revised in 1911 and an Act was passed that repealed all previous copyright legislation that had been in force in the UK. The 1911 Copyright Act came into force on July 1 1912, the most significant measure it introduced was the abolition of common law copyright and the protection could now only be conferred by statute. Copyright also existed in both published and unpublished works as the Act stated that copyright arose in the act of creation not the act of publishing. Literary, dramatic and musical works could be infringed by the making of a film or other mechanical performance incorporating the above vessels of creation (section 1(2)(d)).

Another international agreement called the Universal Copyright Convention (UCC) and was signed in Geneva in 1952. The United Kingdom was also a founding signatory of the UCC and so another parliamentary committee was

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73 Gramophone Co. Ltd. Vs Stephen Cawardine [1934] 1 Ch. 450.
appointed to consider whether or not any changes were needed in the existing domestic legislation to comply with increasing international obligations. The committee also considered the effect of new technology on Copyright works, it was known as the Gregory Committee after its chairman, and reported to Parliament. The report was published in 1952 and as a result the 1956 Copyright Act was passed. This Act came into force on June 1 1957 which repealed the few remaining Acts of copyright that remained despite the 1911 Act.

The principle change in the Copyright Act 1956 was brought about by the Design Act 1968, this was intended to deal with the position of Copyright in design drawings for is mass produced items. Protection was offered by the Dramatic and Musical Performers Protection Act, 1925 which offered some limited sanctions to these creative groups further strengthened by the Dramatic and Musical Performers Protection Act 1958, Performers Protection Act 1963 and Performers Protection Act 1972. The recording industry complained that none of these provided sufficient protection and this was indeed one of the major commercial pressures that led to the repeal of the Copyright Act 1956. Other issues that needed consideration were computers and the software and databases that accompany them along with major advances in audio and visual reproduction and transmission. 1973 saw another committee appointment which also considered recent international developments. The Committee submitted its report in 1977 and is known as the Whitford Report after the Judge who presided over its preparation. There were two important papers presented to Parliament before the full report was presented: - i) The Reform of Law Relating to Copyright, Designs and Performers Protection, 1981 and ii) Intellectual Property Innovation, 1986.

As a result of both the papers and the ‘Whitford Report’, the 1988 Copyright, Designs and Patents Act was passed. This forms the current framework for today's legislation and repealed the 1956 Copyright Act, the Copyright
Computer Software Act 1985 and the Performers Protection Acts 1988. The new provisions provided by this Act came into force on August 1 1989. The 1988 Act introduced a number of new rights, such as rental rights in respect of sound recordings, films and computer programmes [section 18(3)]. The issue of Industrial Designs which had troubled both the courts and parliament for many years resulted in the creation of a new property right called the Design right. Although this is now the principal legislation covering Copyright, it is not the sole source to be consulted, and certain areas have been amended by the Broadcasting Act 1990. Intellectual Property issues continue to arise within the European Union and the International market, the United Kingdom for example, officially revised the Berne Convention (Paris 1971) with effect from January 2nd 1990.

The European Union is continually struggling to cope with the wishes of its member states, as well as remaining in line with international thinking and the new technological state society is finding itself and it is widely accepted that Copyright as a law will never be fully complete and can only ever exist as a continually evolving law adapting to the new challenges faced by it and the governments that create the legislation. The Copyright Directive has been accepted by the EU and is due to become UK law at the end of this year.

2.2.6.2 UNITED STATES OF AMERICA:

Copyright law has been modified many times since to encompass new technologies such as music recording to extend the duration of protection and to make other changes. U.S. courts have interpreted this clause of the Constitution to say that the ultimate purpose of copyrights is to encourage the production of creative works for the public benefit and that therefore the interests of the public are primary over the interests of the author when the two conflict. These rulings have since been formalized into fair use laws and decisions. Certain attempts by copyright owners to restrict uses beyond the
rights provided for by copyright law may also subject them to the copyright misuse doctrine preventing enforcement against infringers.

The U.S. Congress first exercised its power to enact copyright legislation with the Copyright Act of 1790. The Act secured an author the exclusive right to publish and vend maps, charts and books for a term of 14 years with the right of renewal for one additional 14 year term if the author was still alive. The 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 Copyright Act of 1831 extended the term to 28 years with 14 year renewal. The Copyright Act of 1909 extended term to 28 years with 28 year renewal and Universal Copyright Convention ratified by the U.S. in 1954 and again in 1971 this treaty was developed by UNESCO as an alternative to the Berne Convention. The Copyright Act of 1976 extended term to either 75 years or life of author plus 50 years, extended federal copyright to unpublished works, preempted state copyright laws, codified much copyright doctrine that had originated in case law. The Berne Convention Implementation Act of 1988 established copyrights of U.S. works in Berne Convention countries. The Uruguay Round Agreements Act (URAA) of 1994 restored U.S. copyright for certain foreign works then the Sonny Bono Copyright Term Extension Act of 1998 extended terms to 95-120 years or life plus 70 years. The Digital Millennium Copyright Act of 1998 which criminalized some cases of copyright infringement was landmark to deal with the electronic challenges to the field of copyright. The Family Entertainment and Copyright Act of 2005 criminalized more cases of copyright infringement and permitted technology to 'sanitize' works. The statutory provisions relating to copyright currently in effect are codified in Title 17 of the United States Code. Key international agreements affecting U.S. copyright law includes Berne Convention for the Protection of

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74 A History of Copyright in the US, at http://eon.law.harvard.edu/property99/history.html
Literary and Artistic Works, The Universal Copyright Convention and Agreement on Trade-Related Aspects of Intellectual Property Rights.

The United States became a Berne Convention signatory in 1988 and the treaty entered into force with respect to the U.S. on March 1, 1989. The U.S. is also a party to TRIPS which itself requires compliance with Berne provisions and is enforceable under the WTO dispute resolution process. To meet the treaty requirements protections were extended to architecture (where previously only building plans were protected from copying not buildings though currently the law makes exception for reproduction of buildings in photographs or paintings if they are ordinarily visible from a public place) and certain moral rights of visual artists.

2.2.6.3 INDIA:

History and the development of Copyright Law in India closely parallels the history of British Copyright Laws as Administration in British occupied India was streamlined on English principles of justice, liberty and good conscience. As a result British legal framework has been available in India since beginning of copyright concept. Copyright Law began in England when the Crown passed the Statute of Anne in 1710. The Statute of Anne conclusively laid down Copyright as a creature of statute and not a natural law right in perpetuity, thereby curtailing the term of copyright and preventing an absolute monopoly on the part of booksellers. Since, the Statute of Anne, copyright law has been revised to broaden the scope of what is covered by a copyright, to change the term of a copyright and to incorporate new technologies.

Emergence of Indian Copyright was nothing but the idea of Copyright protection which only began to emerge with the invention of printing which made it possible for literary works to be duplicated by mechanical processes.

75 http://www/patent.gov.uk.
instead of being copied by hand. This led to the appearance of a new trade that of printers and booksellers in England called 'Stationers'. These entrepreneurs invested considerable sum in the purchase of paper in buying or building press and in the employment of labour involving an outlay which could be recouped with a reasonable return over a period of time.

The development of copyright law in India was gradual and based on British system. The development of law relating to copyright in India can be studied in the following way:

2.2.6.3.1 COPYRIGHT DEVELOPMENT IN INDIA:

The ever first copyright law applied to Indian Copyright was English Copyright Act, 1842. Tracing the historical graph, it has been discovered that the English Copyright Act, 1842, was held to be applicable to India by the High Court of Bombay in Macmillan Vs Khan Bahadur Shamsul Ulama Zaka,\textsuperscript{77} even when this Act was not expressly made applicable to India.\textsuperscript{78} India had its first copyright law, Indian Copyright Law, 1847 enacted on 18\textsuperscript{th} December 1847 which was based upon the British Copyright Act 1942, much earlier than many other countries.\textsuperscript{79} The historical growth of Indian Copyright can be discussed in the following phase for the better understanding of its development. Modern Copyright law developed in India gradually in what we may identify roughly as three distinct phases spanning more than 150 years. Here the researcher has attempted to briefly navigate through the major changes brought in by each successive wave of copyright amendment which have cumulatively resulted in the way Indian Copyright law stands today.

\textsuperscript{77} ILR (1895) 19 Bom. 557 as referred in Lal's Commentary on the Copyright Act, 1957(Act 14 of 1957) with the copyright rules, 1958 and neighbouring rights 4\textsuperscript{th} ed., Delhi Law House, 2006, p. 5

\textsuperscript{78} Kumari Karnaka Vs Sundarajan, 1972 Ker LR 536. Followed in R. Madhawan Vs S.K. Nayer, AIR 1988 Ker 39(45).

\textsuperscript{79} James, T.C., Copyright Law of India and the Academic Community, Vol. IX, JIPR, May 2004, p. 207.
2.2.6.3.2 PHASE I: East India Company Statute; The Copyright Act, 1847:

The law relating to copyright begins in India when East India Company extended the English Copyright Act of 1847 to the territories under its control.\(^8\) It was the part of common law regarding the recognition and enforcement of copyright as a part of the common law or administration of justice. The law was developed on the basis of 'Justice, equality and good conscience' as regards the application of British statutes to territories then administered by the East India Company. The term of copyright was for the lifetime of the author plus seven years \textit{post mortem auctoris} (PMA). But in no case the total term of copyright was exceeded the period of forty-two years. The government was empowered to licence publication of the book if the owner of copyright upon the death of the author refused to allow its publication. Unauthorized printing of copyright work for (or as a part of attempt of) 'sale or hire or exportation ', or 'for selling, publishing or exposing to sale or hire' constituted suit or action for infringement was to be instituted in the highest local court exercising original civil jurisdiction. The Act provided specifically that under a contract of service copyright in any encyclopedia, review, magazine, periodical work or work published in a series of books or parts shall vest in the proprietor, projecter, publisher or conductor. Infringing copies were deemed to be copies of the proprietor of copyrighted work. Importantly, unlike today, copyright in a work was not automatic. Registration of copyright with the Home Office was mandatory for the enforcement of rights under the Act. However, the proviso to Sec. 14 of the Act also specifically reserved the subsistence of copyright in the author, and his

\(^{80}\) Baxi, Upendra, Copyright Law and Justice in India, Journal of Indian Law Institute, 1986, p. 497-540
right to sue for its infringement to the extent available in law other than the 1847 Act. As we shall see, this reservation of other 'copyright-type' laws was done away with in later legislations.

At the time of its introduction in India, copyright law had already been under development in Britain for over a century and the provisions of the 1847 enactment reflected the learnings from deliberations during this period. Thus, in its very first avatar, copyright had arrived in India as a modern law that was both abstract (encompassing 'all works' of literature and art) and forward looking in the way that it sought to accommodate both existing and new forms of subject matter. As a result, many of the philosophical debates over the nature of 'literary property' that had animated the initial years of copyright development in Britain were conspicuous by their absence in the sub-continent.

On the precise manner that the 1847 enactment operated, very little is known. However, this enactment created the conceptual milieu that eased the passage of succeeding legislations. This statute was made applicable to India during the East India Companies regime and continued to operate till 1911.

An interesting features of British, this phase of copyright protection in the country is that while in Britain, the university of Cambridge and Oxford, the four Universities in Scotland,\(^{81}\) and the several colleges of Eton, Westminister and Winchester as well Trinity college, Dubbling, had the right 'to hold in perpetuity their copyright in books given or bequeathed to them for the advancement of useful learning and other purposes of education', whereas, Universities in India such as Kolkata, Mumbai and Chennai did not have such a right.\(^{82}\)

\(^{81}\) University of St. Andrews, Glassgow, Aberdeen and Edinberg.

\(^{82}\) Supra F.N. 79, p. 212.
2.2.6.3.3 PHASE II: Indian Copyright Law; The Copyright Act, 1914:

In 1914, the then Indian legislature enacted a new Copyright Act which merely extended most portions of the United Kingdom Copyright Act of 1911 to India. It is a replacement of British Copyright Act, 1911 in new form. It, however, make a few minor modifications. Upendra Baxi identifies two of the major changes. First, it introduced criminal sanctions for copyright infringement (sections 7 to 12). Second, it modified the scope of the term of copyright; under Sec. 4 the 'sole right' of the author to 'produce, reproduce, perform or publish a translation of the work shall subsist only for a period of ten years from the date of the first publication of the work'. The author, however, retained his 'sole rights' if within the period of ten years he published or authorised publication of his work or a translation in any language in respect of that language. So far as the first change is concerned it has been criticised that the property rights with criminal remedies can probably be understood as a part of general colonial legal and political policies which sought to protect, generally, right to property over rights to personal freedom. The modification of term of copyright for translation rights had adverse impact and disadvantageous to the authors and boon to publishers. This Act has been elaborated by judicial decision like Macmillan Vs R.C. Cooper.\(^3\) Vesting violations or property rights with criminal sanctions can probably be understood as a part of general colonial legal and political policies which sought to protect the right to property over rights to personal freedom.

The modification of term of copyright for translation rights however cannot be explained by any reference to dominant characteristics of colonial policy. The language of the Act might suggest a laudable policy objective of promoting wider diffusion of Indian works in one language into other Indian languages, a consideration which might have appeared distinctive to India as compared with

\(^3\) AIR 1924 PC 75
UK. There might also have been the desire to promote the growth of publication industry in numerous Indian languages. But whatever be the intention, the impact was disadvantageous to the authors and a boon to publishers. This can be seen from the following observations in a note of dissent when the continuation of the same provision was urged by the Joint Select Committee of the Indian Parliament in 1956 (a recommendation which did not ultimately prevail). Ram Dhari Singh 'Dinkar' (renowned Hindi poet designated as national poet for his contribution to national literature) argued that this provision has worked to the utter detriment of the authors. Referring to the plight of two distinguished Bengali authors he observed:

"Most of the novels by Sarat Chandra Chatterjee were translated in Hindi, while the author was yet alive. The author's novels, in translation sold thousands of copies, but the author did not get a pie out of the sale proceeds something like this happened in the case of Gurudeva (Tagore). Publishers in Hindi and other languages were making good money out of the translations of his works, but the poet, revered by the nation, was in his extremely old age touring the country for money to support the Shanti-Niketan."

The 1914 Act was continued with minor adaptations and modifications till the 1957 Act was brought into force on 24 January 1958 very shortly after the attainment of independence.

This phase of copyright law generated some important 'classical' decisions on the law of copyright. Simultaneously, however, it also sowed the seeds of a trend that Upendra Baxi terms as 'a juristic dependencia'- the tendency of Indian judicial decisions as well as forensic styles relying excessively on

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United Kingdom (UK) precedents. On the impact of this trend, he notes:

"The heavy hand of UK law still lies on Indian creative works despite the reformulation of the law in 1957. Judicial interpretation is perhaps most heavily influenced by UK precedents in the area of copyright law than in any other. The slavish imitation of foreign precedents has occasionally led intrepid Indian justices to remind the Bar and the Bench that the 1957 Act is made by 'a sovereign legislature of this land' and its interpretation 'must be based upon the object of the legislation and the language used' and that the 'historical roots' of the Indian law in the UK law of copyright should have no higher function than that of providing an 'aid to thinking.'" \(^{85}\)

2.2.6.3.4 PHASE III: First Independent Law; The Copyright Act, 1957:

Independent India accorded high priority to formulation of her own law on copyright. The Indian Copyright Act 1957 ('the 1957 Act') repealed the Indian Copyright Act 1914 ('the 1914 Act') which had virtually incorporated the most of the Imperial Copyright Act 1911. The revision of the 1914 Act occurred within a mere seven years of Independence. In other words, this Act was the nothing but the modifications of the previous Act of 1914 which was affected from 24\(^{th}\) January 1958. This Act was the outcome of Indian aspects only. It did not cover even the Brussels Act of 1948 and Universal Copyright Convention of 1952. It was the introduction of first Indian Copyright law of Independence India with advance method of communications covering modernization of the required law. This Act meted up the social requirement of an independent and self contained law which was highly sought for in terms of the past experience of the Copyright law of 1914. This Act also for the first time fulfilled the growing public consciousness about the rights, duties and obligations of the

\(^{85}\) Supra F.N. 80, p. 501
author. This Act for the first time specifically stated that there shall be no copyright in any work beyond the provisions of this Copyright Act.

This Act was the first in Independence India but it was the replica of English legislative proposals. This Act was not at all able to protect all-round areas of copyright for example it does not protect the right of the performers properly. It was sensibly work for judges and lawyers though not always. The main fact was that the country had first independent law in the field of Copyright. It provided the guidelines and policy advancement to the legislature. Thus, it can be said that this Act was primarily discover the prime features of the law related to the administration of justice in case of copyright related cases and offences since its inception. It is considered as the roadmap to the development of the copyright law in India.

The general discourse of this Act was to deal with the cases of Copyright and its ownership, its infringement and protection, national and international character of the copyrights, registration of copyright and the remedies for its infringement in the provided manner. This Act was originally divided into fifteen chapters and seventy nine sections. A copyright rule was also framed under Sec. 78 of this Act under which government is empowered to make an order directing that any or all the provisions of this Act may apply to foreign copyright works or in international organisations. This Act also recognised certain administrative set up of the implementation and protection of copyright in India. These are The Copyright Office and the Copyright Board. The Ministry of Education and Social Welfare is the administrative body regulating and controlling the Copyright Office. Copyright Board has been given the appellate status.

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86 Supra F.N. 84, pt.-2, Section-2, p. 911.
87 Section 16 of the Copyright Act, 1957
A number of factors, according to Upendra Baxi, impelled this early revision. First, it was clear that continued existence of the 1911 Act through the 1914 Act was unbecoming to 'the changed constitutional status of India.' Second, the 1914 Act did not accord with the 1948 Brussels Act of the Berne Convention and the 1952 Universal Copyright Convention—chiefly in the much longer terms that the Berne Convention mandated. Third, 'new and advanced method of communications' rendered modernisation of the law necessary. Fourth, the need for an 'independent self-contained law' was also felt in the light of the experience of the 'working' of the 1911 Act, and more important, 'the growing public consciousness of the rights and obligations of the authors.'

To aid them in this task of indigenisation, the Indian legislators appointed a 'Select Committee' to propose a model Copyright Act. The Committee appears to have consulted the report of the English Copyright Committee, the models provided by the relevant international conventions; they received evidence from twelve organisations, including the International Confederation of Societies of Authors and Composers (Paris), the Performing Right Society (London), British Copyright Council and the Columbia Gramophone Company Ltd. The Report of the Select Committee, says Baxi 'appears to be among the briefest in the annals of the Indian Parliament but, in many senses, it made major innovations which were ultimately enacted.' One of the key legacies of the Committee's Report, for instance, was the abolition of registration as a precondition for infringement proceedings. Another significant area where the new Indian Copyright Act parted ways from the UK Act was in its omission of sections contained in the latter providing for 'gratuitous' supply of books to designated libraries.

In his evaluation of the new Copyright Act, Upendra Baxi notes:

"it was as not in any sense a replication of the English legislative proposals. In this sense, the 1957 Act was the first truly Indian legislation after well over two centuries of the subjection to the 'imperial
law'. The Act was not sufficiently far-sighted; it, for example, does not protect the right of the performers adequately. In many respects it is drafted in ways which make it meaningful only to judges and lawyers and sometimes not even to them. But the fact remains that the country had its own law of copyright for the first time in contemporary history; and, for weal or woe, it represented the law-policy choices made by its independent legislature.”

Three sets of ancillary amendments succeeded the 1957 Act. In 1983, several new sections were introduced into the Act. Sections 32A and 32B provided for ‘compulsory licence’ for publication of copyrighted foreign works in any Indian language for the purposes of systematic instructional activities at a ‘low price’ with the permission of the Copyright Board on certain conditions. The other crucial change was the insertion of section 19A, relating to the conferral of power in the Copyright Board, upon a due complaint to it, to order revocation of the assigned copyright where either the terms are ‘harsh’ or where the publication of the work is unduly delayed. In addition the 1983 Amendment provides for power in the Copyright Board to publish unpublished Indian works, and for the protection of ‘oral works’. The amendment made it mandatory for the copyright office to publish details of all copyright registrations in the Gazette of India. Lastly, they disallowed the importation of an ‘infringing copy’ of a copyright work for ‘private and domestic use’ which had been permissible prior to the amendment.

Of all the certainty that one can see in life, is undeniably the human attribute of imitating. To imitate nature has been one of man's oldest triumphs, learning through copying is, considered by modern educationists, the best tool to dispense knowledge. However inculcating the thought of respecting a creative contribution, be it to art, science or literature is the intrinsic quality of wisdom.

88 Supra F.N. 80, p. 503.
and needs to be imbibed by the human being in its pursuit of knowledge. Acknowledgement of the source of information is said to inculcate respect, not only to the author of the work, but more so to oneself, to establish ones credibility is much more important than to seek the greatest of all treasures, knowledge. Copyright, is one of the four cornerstones to the establishment of the new world economic order.\textsuperscript{89} John Oswald had opined that, “if creativity is a field, copyright is the fence\textsuperscript{90}, the growth and development of copyright law world over reflects primarily the human endeavor in its colorful variations of creative ingenuity. The efforts to protect originality from plagiarism have traversed a journey of 500 years in human history. To receive the sanctity now made available to it by the international regime that has bonded the understanding to protect works, is but a debt, owed to our turbulent past and a guarantee to a promising future.

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\bibitem{90} John Oswald, Plunderphonics, or Audio Piracy as a Compositional Prerogative, this paper was initially presented by Oswald at the Wired Society Electro-Acoustic Conference in Toronto in 1985. It was published in Musicworks #34, as a booklet by Recommended Quarterly and subsequently revised for the Whole Earth Review #57 as ‘Bettered by the borrower’ in 1986.
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