

# Copyright and wrong

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## Why the rules on copyright need to return to their roots



WHEN Parliament decided, in 1709, to create a law that would protect books from piracy, the London-based publishers and booksellers who had been pushing for such protection were overjoyed. When Queen Anne gave her assent on April 10th the following year—300 years ago this week—to “An act for the encouragement of learning” they were less enthused. Parliament had given them rights, but it had set a time limit on them: 21 years for books already in print and 14 years for new ones, with an additional 14 years if the author was still alive when the first term ran out. After that, the material would enter the public domain so that anyone could reproduce it. The lawmakers intended thus to balance the incentive to create with the interest that society has in free access to knowledge and art. The Statute of Anne thus helped nurture and channel the spate of inventiveness that Enlightenment society and its successors have since enjoyed.

Over the past 50 years, however, that balance has shifted. Largely thanks to the entertainment industry’s lawyers and lobbyists, copyright’s scope and duration have vastly increased. In America, copyright holders get 95 years’ protection as a result of an extension granted in 1998, derided by critics as the “Mickey Mouse Protection Act”. They are now calling for even greater protection, and there have been efforts to introduce similar terms in Europe. Such arguments should be resisted: it is time to tip the balance back.

## Annie get your gun

Lengthy protection, it is argued, increases the incentive to create. Digital technology seems to strengthen the argument: by making copying easier, it seems to demand greater protection in return. The idea of extending copyright also has a moral appeal. Intellectual property can seem very like real property, especially when it is yours, and not some faceless corporation’s. As a result people feel that once they own it—especially if they have made it—they should go on owning it, much as they would a house that they could pass on to their descendants. On this reading, protection should be perpetual. Ratcheting up the time limit on a regular basis becomes a reasonable way of approximating that perpetuity.

The notion that lengthening copyright increases creativity is questionable, however. Authors and artists do not generally consult the statute books before deciding whether or not to pick up pen or paintbrush. And overlong copyrights often limit, rather than encourage, a work’s dissemination, impact and influence. It can be difficult to locate copyright holders to obtain the rights to reuse old material. As a result, much content ends up in legal limbo (and in the case of old movies and sound recordings, is left to deteriorate—copying them in order to preserve them may constitute an act of infringement). The penalties even for inadvertent infringement are so punishing that creators routinely have to self-censor their work. Nor does the advent of digital technology strengthen the case for extending the period of protection. Copyright protection is needed partly to cover the costs of creating and distributing works in physical form. Digital technology slashes such costs, and thus reduces the argument for protection.

The moral case, although easy to sympathise with, is a way of trying to have one’s cake and eat it. Copyright was originally the grant of a temporary government-supported monopoly on copying a work, not a property right. From 1710 onwards, it has involved a deal in which the creator or publisher gives up any natural and perpetual claim in order to have the state protect an artificial and limited one. So it remains.

The question is how such a deal can be made equitably. At the moment, the terms of trade favour publishers too much. A return to the 28-year copyrights of the Statute of Anne would be in many ways arbitrary, but not unreasonable. If there is a case for longer terms, they should be on a renewal basis, so that content is not locked up automatically. The value society places on creativity means that fair use needs to be expanded and inadvertent infringement should be minimally penalised. None of this should get in the way of the enforcement of copyright, which remains a vital tool in the encouragement of learning. But tools are not ends in themselves.