

History of copyright: a chronology in relation to music

(as applicable in Britain, unless otherwise stated)

Copyright is not a new idea. Even scholars in Ancient Greece and Rome had to insist upon their right to be recognised as the authors of their works (the 'right of paternity') in an era when plagiarism was no crime. However, these Classical scholars certainly had no automatic, legal right to income from their works (the 'economic right'). In the Middle Ages – a time when most of the population was illiterate, and manuscripts laboriously copied by hand and available only to the privileged few – copyright was not a major issue. Gutenberg and Caxton changed all that with the introduction of mechanical printing, and the subsequent viability of commercial publishing.

Yet even by the eighteenth century, the transfer of copyrights for economic gain was still primarily made through outright sale of a manuscript (with no royalties payable for subsequent commercial 'exploitation'). Only in the nineteenth century did the law grant 'lifetime' copyright protection to composers, who were becoming more economically independent. Royalty contracts emerged as standard, ensuring payment was due for repeat performances. Then, in the twentieth century, rights were broadened, and 'multi-channel' exploitation of musical works became possible – with structures developing to cope with collecting monies from multifarious sources (whether from any format of recorded music, or from films, advertising, and 'broadcasts' of all types).

Half a millennium after Gutenberg, the Internet (and digital technology) have further revolutionised and added complexity to the situation, because they permit virtually unlimited duplication of documents, often at a single key-stroke. In the 1990's, Jim Griffin, former Director of Technology at Geffen Records, characterised the digital age as the era of the "friction-free Gutenberg". (Timeline compiled by **Jonathan Little**.)

- **1455** - Johannes Gutenberg is the first in the Western world to print using movable type. In about 1455, in Mainz, he produces his famous Bible, the first complete typeset book extant in the West. (If Gutenberg's process revolutionises the dissemination of the printed word, the Internet will go a vital step further at the end of the 20th century.)
- **1476** - William Caxton introduces the printing press into England, establishing himself at Westminster after returning from several years working on the Continent. Between 1477 and his death (ca.1492) he is said to have issued around 96 different printed books in various quantities.
- **1557** - Queen Mary I gives control of all printing and bookselling to a single guild, the *Stationer's Company*.
- **1662** - The *Licensing Act* establishes a register of licensed books, as well as requiring a copy of a licensed book to be deposited with the *Stationer's Company*, who are given powers to seize books suspected of being hostile to Church or Government.

- **1681** - The *Licensing Act* is repealed, but the *Stationer's Company* has now passed a by-law establishing rights of ownership for books registered to its members, so the Company is able to continue regulating the printing trade.
- **1707** - Following the political union between Scotland and England on 1st May 1707, laws passed by the London Parliament now became generally applicable throughout Great Britain.
- **1709/10** - The *Statute of Anne* is enacted in 1709, which becomes effective on 10th April, 1710. Copyright in books and other writings now has the protection of an Act of Parliament. Prior to this, disputes over the rights to the publishing of books could be enforced by common law. The *Statute of Anne* (being a law passed during the reign of Queen Anne) is the first modern copyright law in England, and the first in the English-speaking world. Writers are given control of their works for a limited period of 14 years (with the option of renewing for another 14 years).
- **1765** - Influential English jurist William Blackstone provides a definition of literary property which draws a close analogy between it and real property, the right to such “*property*” being claimed “*in total exclusion of the right of any other individual in the universe*”.
- **1774** - The House of Lords declares that authors and publishers have no *absolute* property rights over their works – meaning they must still seek confirmation of rights of ownership by recourse to law, and enforce such rights through the powers of the state.
- **1777** - Music (in the form of printed notation – as ‘sheet music’ – and not necessarily that solely published or included in ‘book’ form) is confirmed as copyrightable subject matter embraced by the *Statute of Anne*.
- **1787** - The United States Constitution recognises the concept of Intellectual Property.
- **1790** - Like the *Statute of Anne* in Britain, the *US Copyright Act* of 1790 gives writers of books, maps, and charts a 14-year copyright, with the option of renewing for a similar period. Major revisions to the Act are undertaken in 1831, 1870, 1909 and 1976.
- **1791/93** - French revolutionary governments pass author laws which emphasise *post mortem auctoris* terms (see later). The laws specify that works may not be performed in public without the consent of a living author or composer (and, importantly, these laws also conferred such rights on the heirs of authors and composers for a period of five years after their death). In 1791 – inspired by these new laws – the dramatist (and musician) Beaumarchais founds the first copyright collecting society for composers, but the venture is not a success.
- **1831** - Any “*musical compositions in traditional notation*” are affirmed as protected under revised U.S. copyright laws.

- **1833** - In the reign of William IV, the *Dramatic Copyright Act* is enacted. It is commonly known as '*Bulwer Lytton's Act*' – after the prolific writer, poet and dramatist, Edward George Bulwer-Lytton, who promoted this seminal statute concerned with stage works. This is effectively the first British Act to protect performing rights in dramatic works, though only for a limited number of years. (The performing right is defined as the "*sole right of representation or performance*"). After this Act, many other copyright measures are passed, most of which are repealed on the passing of the great codifying Act of 1911.
- **1837** - The most comprehensive and advanced copyright law of its time, the *Prussian Act* (11th June) emphasises *post mortem auctoris* terms. It is fully titled, "*Gesetz zum Schutze des Eigenthums an Werken der Wissenschaft und Kunst in Nachdruck und Nachbildung*" ("*Law to protect ownership of scientific and artistic works against reproduction and copying*").
- **1842** - The *Literary Copyright Act* of 1842 in the UK ('*Talfourd's Act*' – subsequent to the 1833 *Dramatic Copyright Act*), authors are granted 'lifetime' property rights in their own work. This Act grants copyright for 42 years from the date of publication, or the life of the author plus 7 years, whichever is the greater. But the Act fails to cover performances of dramatisation of non-dramatic works. Unless an author dramatises his own literary works, stage productions are not copyright protected. Further, if a play is published before being produced, the performing right is usually lost. As a consequence, some authors employ actors to give a single "*copyright performance*" – of a stage dramatisation of one of their works (a novel, or narrative poem, for instance) – "*in a place of public entertainment*", in order to establish dramatic copyright.
- **1842** - Copyright legislation is extended to protect music produced overseas, though at this stage is aimed mainly at publishers of sheet music in France and in some German states.
- **1847** - The Paris Concert Café Ambassadeurs is successfully sued by popular music composers Ernest Bourget, Victor Parizot and Paul Henrion. The exclusive right of the author to approve public performances – although established in France in 1791– did not thus become a reality until over 50 years after the law's enactment.
- **1849** - Following the Ambassadeurs Case (1847), the Cour d'Appel de Paris on 26th April orders the owner of Ambassadeurs Café to pay 'compensation' (effectively 'royalties') to composer Ernest Bourget for unauthorised use of his music. This, in turn, leads to publisher Jules Colombier joining forces with the three composers involved in the case, and setting up an 'Agence Centrale' (the predecessor of SACEM), for the administration of performing rights in their musical works.
- **1851** - On 28th February, SACEM – the world's first copyright collecting society for musical works (specifically for performing rights) – is established in France (Société des Auteurs et Compositeurs et Editeurs de Musique).

- **1873** - The need for international protection of intellectual creations becomes clear when many foreign exhibitors boycott *The International Exhibition of Inventions* in Vienna. They fear, as has previously occurred, that their ideas will be stolen and commercially exploited in other countries.
- **1875** - A Royal Commission in Britain suggests that present copyright-related Acts be improved and codified, and recommends that the government enter a bilateral copyright agreement with the United States of America.
- **1883/84** - The *Paris Convention for the Protection of Industrial Property* is signed by 14 European member states, and enters force in 1884.
- **1884** - The Society of Authors is founded for “*the maintenance, definition, and defence of Literary Property*”. The Society's first objective is to obtain copyright protection for English authors in the United States. Among its other aims, it also lobbies for a *Bill for the Registration of Titles*.
- **1886/87** - The seminal *Berne Convention for the Protection of Literary and Artistic Works* is signed (in Berne, Switzerland). It intends to give international copyright protection to the creative works of the citizens of European member state signatories. Works protected include: *novels, short stories, poems and plays; songs, operas, musicals, sonatas and symphonies; drawings, paintings, sculptures and architectural works*. In the *International Copyright Act* of 1886, Great Britain gives assent to the obligations of the *Berne Convention*. This Act abolishes the requirement to register foreign works, and introduces an exclusive right to import or produce translations. The UK ratifies the *Berne Convention* with effect from 5th December, 1887. The US, however, remains governed by its 1790 *Copyright Act*, and is not subject to the *Berne Convention*. Longstanding US literary and musical piracy of works by European authors and composers (and vice-versa) continues to be an accepted way of life for publishers, until finally brought to an end by the establishment of separate bilateral copyright agreements with the US. The *Berne Convention* is revised in 1908 and 1928. The *Berlin Act* of 1908 extends the duration of copyright to the life of the author plus 50 years, takes account of new technologies, and declares that formal registration is unnecessary in order to hold a copyright. The *Rome Act* of 1928 is the first to codify the moral rights of authors and artists.
- **1908** - The *Berlin Convention* adds *photography, film and sound recordings* to the list of works protected under the *Berne Convention*.
- **1909** - A major third revision to the *US Copyright Act* is completed. More categories of protected works are included than ever before (effectively, *all* works of authorship). The renewal term is also extended from 14 years to 28, taking the total possible period of protection to 56 years. With respect to music, Congress declares: “*The main object to be desired in expanding copyright protection afforded to music has been to give the composer an adequate return for the value of his composition ...*” The law also prohibits “*unauthorized mechanical reproduction of musical compositions*”.

- **1911/12** - The great codifying *Copyright Act, 1911*, comes into force in Britain on 1st July, 1912. For the first time, all provisions on copyright are unified in one Act. The Act adds to the composer's rights that of controlling reproductions of his work by *any mechanical means*, and his right to authorise performances. Sound recordings are now protected (as are works of architecture). The Act abolishes the requirement to register copyright with *Stationer's Hall*, and abolishes common law copyright protection in unpublished works, apart from unpublished drawings and photographs. Copyright duration is extended: it is granted for the life of the holder plus fifty years after his death. This new Act gives the copyright holder three principal rights:

(1) to print and sell copies of his work [largely via publishers]

(2) to reproduce his work by means of mechanical contrivances, such as gramophone records and perforated piano rolls [thus the necessity of establishing what became the MCPS (see: 1924)]

(3) to perform works in public, and to authorise these acts [thus the necessity of establishing the PRS (see: 1914)]

Each of these rights can be separately exercised.

- **1914** - First meeting of the UK's newly-formed Performing Right Society (PRS), on 1st April. The US equivalent – the American Society of Composers, Authors and Publishers (ASCAP) – is founded in the same year (13th February).
- **1924** - Founding of the Mechanical-Copyright Protection Society (MCPS).
- **1934** - Following a test case brought by the Gramophone Company against a coffee shop [Gramophone Company Ltd. v. Stephen Cawardine & Co.], the British courts now recognised that owners of sound recordings should be paid for the broadcasting and public performance of their copyrights (songwriters were already being remunerated for these activities by virtue of their membership of the Performing Right Society). This acknowledgement of a separate right (from songwriters' rights), led to the establishment of a new collection society – *PPL (Phonographic Performance Limited)* – with a specific remit to collect and distribute broadcasting and public performance royalties on behalf of UK sound recording owners.
- **1956/57** - The *Copyright Act, 1956*, comes into force on 1st June, 1957. It takes into account further amendments to the *Berne Convention*, and also the *Universal Copyright Convention*, to which the UK is a signatory. Films and broadcasts are now protected in their own right. The Performing Right Tribunal, predecessor of the Copyright Tribunal, is established.
- **1961** - The *Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations* is signed. This proves important to the recording industry, and assists in the prevention of recorded music piracy (further strengthened by the later *Geneva Convention* – see: 1971).

- **1967/70** - The United Nations Convention establishing the World Intellectual Property Organisation is signed (of which the international bureaus set up to administer the *Paris* and *Berne Conventions*, almost a century earlier, were forerunners). (WIPO, as an international copyright umbrella organisation, commences operations in 1970.)
- **1971** - The *Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms* is adopted in Geneva on 29th October (sometimes referred to as the *Geneva Convention*).
- **1976** - In the fourth major revision of the *US Copyright Act*, fair use and first sale doctrines are codified for the first time, and copyright is extended to unpublished works. In anticipation of becoming a Berne signatory, this statute is framed to bring the US more into line with international copyright law.
- **1982** - The introduction of MIDI technology (Musical Instrument Digital Interface) begins to revolutionise music production.
- **1982** - The introduction of the CD (Compact Disc) constitutes the first mass consumer product (or sound carrier) which holds music in digitised form.
- **1984** - Richard Stallman, working at MIT, founds the Free Software Foundation, which is believed to be the first anti-copyright organisation of the digital era.
- **1988** - The United States finally becomes a signatory to the *Berne Convention*.
- **1988/89** - The *Copyright, Designs and Patents Act (CDPA), 1988*, supersedes the various amendments to the *Copyright Act, 1956*. The 1988 Act comes into force on 1st August, 1989. In addition to *economic rights*, this Act introduces the concept of *moral rights* for the first time (The Right of Paternity and The Right of Integrity). (This present Act continues to be amended, and now incorporates various European Directives.)
- **1990** - The *US Copyright Act* is amended in order to prohibit the commercial lending of computer software.
- **1993** - Issue of United Nations Report on the *Study of the Protection of the Cultural and Intellectual Property of Indigenous Peoples*. (Final report issued in 1995.)
- **1994** - The WTO (World Trade Organisation) *TRIPS Agreement* (Agreement on Trade Related Aspects of Intellectual Property) extends the principles established by the 1886 *Berne Convention* to all countries in the global free trade area. While reinforcing creator's rights ('author's life' terms), it also emphasises the concept of transferable property rights – in order to give economic stimulus to the exchange of 'cultural productions'.
- **1994** - Emergence of the MP3 compression standard for music.

- **1994** - John Perry Barlow (a former lyric writer for The Grateful Dead, and co-founder of the Electronic Frontier Foundation) declares, in a widely read manifesto, that intellectual property law “*cannot be patched, retrofitted, or expanded to contain digitized expression*”.
- **1995/96** - The period of copyright is extended, in Europe and then America, to the life of the author plus 70 years *pma* (*post mortem auctoris*) for most printed works. (Sound recordings remain at 50 years.) (See the actual amendments to the 1988 *CDPA* for various details and exceptions, and dates of applicability. In the UK, works created on/after 1st January 1996 become 70-years *pma*.)
- **1996** - In the US, the *TRIPS Agreement* restores, from 1st January, 1996, copyright protection to many works of foreign origin which are already in the public domain in the United States.
- **1996** - On 1st December, the UK formally adopts European Union Directive 92/100/EEC which was concerned with rental, lending and neighbouring rights matters. This meant that those featured artists and session performers who performed on sound recordings which were broadcast or performed in public after 1st December 1996 in the UK now had a legal right to receive “equitable remuneration” for this use of the copyright. As well as *PPL* (*Phonographic Performance Limited*), the legislation subsequently led to the need for further collection societies in the UK – namely, *PAMRA* (*Performing Artists' Media Rights Association*) and *AURA* (*Association of United Recording Artists*). Fees are paid by the user of the sound recording (e.g., radio station or nightclub, etc.) and are collected at source by PPL. Half of this income is paid by PPL to the owners of the sound recordings (record companies). The remainder is distributed to the featured artists and session performers through their individual membership of either PPL, PAMRA or AURA.
- **1996** – WIPO issues its *Performances and Phonograms Treaty*.
- **1998** - In the US, the *Copyright Term Extension Act* is enacted on 27th October (also known as the *Sonny Bono Copyright Term Extension Act*, and pejoratively as the *Mickey Mouse Protection Act*). This Act extends the period of copyright in the United States by 20 years (from *pma* +50 years to *pma* +70 years). The Act does not revive copyrights that have already expired.
- **1998** - The *Digital Millennium Copyright Act (DMCA)* is enacted in the United States. It is soon criticised as being already out of date in respect of new Internet and other technological developments. The Internet music-file swap site, Napster, when sued by all the major record companies, uses the Act to argue (unsuccessfully) in court that Napster is merely a ‘dumb pipe’ – a conductor of digitised information – and therefore is not liable for users' copyright infringements (which Napster facilitates). Around this time a general concern emerges in the music industry that the potential removal of long-existing copyright ‘intermediary’ structures will reduce or otherwise permanently alter the infrastructure and the bargaining power, or relationship, between creators and

consumers. The concept of ‘disintermediation’ – in relation to music distribution – is increasingly promulgated.

- **2001** - *The European Copyright Directive* (Directive 2001/29/EC) which harmonises certain aspects of copyright across the 15 member states is approved by the European Parliament and the European Council (22 May).
- **2002** - Effective from 1st January, 2002, the German *Bundestag* (Parliament) introduces a new law to provide for collective bargaining between organisations representing creators and exploiters of intellectual property, aimed at encouraging fairer remuneration for creators – including the statutory right for creators to ask for payment reviews and audits of companies involved in such exploitation.
- **2006** - In the UK (in December), the *Gowers Review of Intellectual Property* recommends that the 50-year copyright protection term on sound recordings and performers’ rights is not extended – as many music creators and record companies had wished (having argued for an extension of a further 45 years).

Recommended reading:

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Samuels, Edward (2000). *The Illustrated Story of Copyright*. New York: St. Martin's Press. ISBN 978-0312261764

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Further References:

www.wipo.org

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