Revisiting the Historical 'Copy-wrongs' of 'Copy-rights'! Are we resurrecting the Licensing era?

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Abstract: This article examines the historical underpinnings of copyright from the century's old Pre Gutenberg times when print did not exist and traces a timeline as to how the bricks of the first copyright legislation in the world - The Statute of Anne, 1710 were legislated into existence. One would discover that the very origin of copyright law at the time when it was not codified was diametrically contrary to the present understanding of the codified copyright law, which originally protected the publisher as against the author. Copyright law was a tool for the State to exercise censorship over writings hostile to the Church or Government. The protection of intellectual works was influenced by the economics of publication rather than the economics of authorship. This form of an intellectual property right has its historical foundations tainted with all such objectives which would humour today's intellectual creator.

1. Once upon a time…

When the copyright law took off formally, it was only with the forward technological leap with the invention of the printing press. Since Gutenberg's invention of the Printing Press, a classic invention of the bygone era, mankind has entered into a much higher form of technology marked by the advent of personal computers. Indeed, a lot of water has flown beneath the bridges since then. The law of copyright which commenced with the protection of literary property has witnessed rapid strides in technological developments and with the changing socio economic dynamics of the society, the worth and value of information as a 'knowledge commodity' and the societal outlook towards it has witnessed a progressive change.

However, few would be aware of the startling facts which lead to the emergence of copyright as a discipline of law. Without revealing the suspense or the substance, let us odyssey in exploring the historical origins of this law and discover a historical road which is less travelled by.

1.1. A historical insight of the pre Gutenberg era

Centuries ago, when copyright for the protection of intellectual works did not exist, the owners did not have any control over their works. The works were produced with no profit motive and everyone was free to use a creative work for learning or enjoyment purposes.

During those times, reproducing a text could only be done by hand copying. This was mostly done by monks and did not enjoy much 'audience' as most of the populace was illiterate. However, apart from the monks, the information was passed on in a 'Chinese whisper' fashion, from mouth to ear and the version was likely to change when it was transmitted from one person to another to another. Indeed there was little credibility.

Due to the immense labour and time involved in reproducing a work, devising a system of copyright was neither practically feasible nor economically viable. In other words, history reflects that information was virtually "free" at one point of time. The concept of 'value' to information was alien. In this regard, relevant to quote would be the views of Richard Stallman, an American software freedom activist who has aptly commented:

> "The idea of copyright did not exist in ancient times, when authors frequently copied other authors at length in works of non-fiction. This practice was useful, and is the only way many authors' works have survived even in part."

Indeed, there was no protection of intellectual works yet works were produced as social reward which came in the form of recognition was most important. Irwin writes that the first form of protection for intellectual literary creation took place in ancient Egypt and notes that recording of human communication was at the hands of the priest or holy man who was considered to be the first to lay claim to knowledge (as cited in Mendis, 2003). If persons other than the members of the priesthood were overheard reciting the sacred rituals, they were liable to immediate execution. (Ploman & Hamilton, 1980, as cited in Mendis, 2003, p. 6)

1.2. The first 'copycat' dispute

It may be interesting to note that one of the earliest known disputes in relation to matters concerning reprographic tactics and copyright is as old as the fourth century which was adjudicated upon by the High King of Ireland (Anonymous, n.d.). It was in the King Diarmed's royal court that a dispute between St. Abbot Finnian and his former pupil St. Columba was agreed to be decided upon by the parties.

The facts of the matter reveal that St. Columba had fraudulently copied the work owned by St. Finnian and made unauthorized copies to distribute it for free to the local churches. King Diarmed saw the book as Finnian's property, the ownership of which entitled Finnian to its product, the copy. The king concluded that both the original and the copy belonged to Finnian, observing, "To every cow her calf, and accordingly to every book its copy" (Wittenberg, 1978, p.7). Columba was fined 40 head of cattle for making an unauthorized copy (Anonymous, n.d.). The king's ruling thus pointed in the direction of the future development of copyright law (Stearns, 1992).

The king based his understanding on the very thumb rule that a calf belonged to the cow wherever the cow was kept which was based on the Brehon Laws relating to the ownership of animals found wandering. The other reason for such a dictum was the fact that paper as well as printing had not been invented then and the books were manually copied onto Vellum which was manufactured from calf hide or were bound in calf skin. St. Columba never obeyed the decree.

That notwithstanding, it has been said that St. Finnian didn't write the psalter in question, which [was] a book full of psalms, he just owned it (see Menzies, 1992, p.22 cited in Dallon,, 2004, p.376). The issue decided by Diarmed was about allowing the wealthy and powerful to control the flow of knowledge, and allowing the commoditization of information. Finnian was by no means the "author" of the work. Another view expressed by the Count de Montalembert notes that, "Columbia had a passion for fine manuscripts . . . He went everywhere in search of volumes, which he could borrow or copy, often experiencing refusals which he resented bitterly." (See Menzies, 1992, p.23) Thus, the oldest record where any dispute as regards what we refer to as 'copyright' today exhibit, that the scales of justice was inclined to benefit the owner of the title to the "property" and not the creator or "author" of the work who is the owner in the true sense or the 'first owner of copyright'.

It was only following the invention of the printing press of moveable type in 1436 by a German - Johannes Guttenberg that the art of printing spread rapidly throughout Europe. The printing press was a mixed blessing. On one hand where it became easy to produce works in print that is to duplicate and to distribute, the other end of the 'new technology' was open to abuse. As a consequence the author was out of protection as soon as the work got into print which necessitated the need for a copyright regime.

The development of copyright is thus traceable to rise of a mass market for printed books primarily brought about as a result of Gutenberg's contribution to the literary world.

2. The English Crown Copyright - A Chronicled Development

When Gutenberg's invention reached England, the then King Richard III, in 1483, lifted any restriction on foreigners importing manuscripts and books into England and printing them there. As a result there was a proliferation of books as foreigners enjoyed a royal 'license'. Due to all these developments, England surfaced as a major printing centre throughout the length and breadth of Europe (Thomas, 2001, p.26).

In 1529, the then King of Britain, Henry VIII constituted a 'system of privileges' for the printing of books as a result of which the printing business became a monopoly of the Crown. It was around that time in 1533 (See Stewart, 1983, p.20) that the King prohibited importation of books placing it on the lame justification the England boasted of a number of publishers, printers and bookbinders and hence there was no requirement of 'importation' (Thomas, 2001, p.26).

Even France witnessed a similar system of privileges constituted a Printer's Guild Monopoly with the Government's intent to exercise censorship in 'quid pro quo' for the guaranteed market exclusivity (Seignette, 1994, p.9). It was in 1618 that the French Government forced the Parisian booksellers and printers to form a guild which would serve as an instrument of the Government to avail the advantages of the printing press and at the same time exercise censorship in promise for such market exclusivity.

2.1. The Stationer's Company is Born – Pirates protected by Law

In 1556, during the reign of Queen Mary I of England, stationer's guild comprising of 97 London publishers was constituted into a company which came to be known as the Stationer's Company. This company, more specifically, the registered members of the company had the sole and an exclusive right to reprint works in perpetuity and in the name of some particular member of that company, who forever after had the sole right to publish that work. (Cambridge Research Institute, 1973 cited in Nasri, 1976, p.1). These registered members of the

Shakespearian era [1] had the monopolistic right of not only printing but publishing books that is sell copies to the public.

It was more in the nature of a license than a right. Company membership consisted of printers, bookbinders, booksellers, suppliers of paper, and a few others associated with the book trade, but did not include authors (see Blagden, 1960). In some cases 'printers' doubled up as 'booksellers', and were in that sense forerunners of modern publishers.

A year later in 1557, Queen Mary I granted the privilege of regulating the book trade to the Stationer's company of London. (Seignette, 1994, p.13). From the stationers' point of view, the Company was necessary for three reasons: First, to protect their trade from poor workmanship; Second, to minimize unprofessional practices; and third, notwithstanding the protestations to the contrary, limit competition. Finally, the stationers expressed concern that non-members of the Company were unqualified, ill trained, and likely to produce poor quality work.

Further, Printing was subject to the orders of the Star Chamber[2], and all published works had to be entered in the register of the stationer's company vide Licensing Act of 1662 [3] which in effect, was a legal instrument to seize books suspected of containing matters hostile to the Church or Government. Any work which is to be published had to be registered in conformity with the provisions of Licensing Act of 1662. (See Copyright Protection Agency, 2002). The work on the register was known as 'copies.' The members claimed the right to publish those copies in perpetuity and the right was later referred to as copyright. (Stewart, 1983, p.20)

However, the noteworthy feature is that that the Stationer's were only publishers and not owners of the material they published. Nor did they enjoy the right to alter the work. The right conferred by the Government on the Guild was purely a commercial deal and did not confer an ownership status upon them unlike the modern copyright which is the 'copyright' in the true sense and spirit of the legal privilege, and by virtue of which the first owner of copyright is the creator of the work and not the publisher.

Even though, in some cases, an author might be paid a fee for the manuscript, his proprietary rights over his work and the right to claim royalty from the sale of it, were unacknowledged. The printer who doubled up as the seller as well and who was the sole beneficiary from the sale of such works assumed the designation equivalent to the author at least with respect to proprietary rights, thus in a way was the printer as well as the author as well as the seller, enjoying the economic core of copyright up to its crust.

It was the Licensing Act of 1662, which established a register of licensed books, along with the requirement to deposit a copy of the book to be licensed. Deposit was administered by the Stationers' Company who were given powers to seize books suspected of containing matters hostile to the Church or Government. Certain designated members of the said Company were empowered to conduct search and seizure of books which were unlicensed and commit them to the adjudicating body known as the Justices of the Peace. This body was authorized to ordain imprisonment if it found that the book or books or any part therein contained matters contrary to the Doctrine or Discipline of the Church of England or against the State or Government.

It has been understood that the Licensing Act of 1662 was the first act in checking piracy. However, attention is drawn to the fact that it was in actuality, what the authors would describe as 'pirates', a political pressure lobby, who were conferred the legitimacy to print and publish books. The Stationer's Guild was nothing more than 'pirates protected by law' and the powers and functions accorded to them by the statute was promoting what could be best described as a 'licensed theft.'

The very object of the State and Church was preservation of power who colluded to promote a theft encouraged by law. The public interest rationale which exists as a common law principle and independent of statute was not even a consideration. The concept of moral rights of the author such as right to get recognition (at least in name if not any valuable consideration) was completely absent. With the exception of a few authors such as Sabellico, Petro Francesco da Ravenna of Venice and Palsgrave of England (Mendis, 2003), only printers were entitled to the privileges.

The author had to be influential to secure his legitimate returns on his labour. The leading poet and dramatist, Wolfgang von Goethe, in many ways Germany's Shakespeare, had to secure 39 privileges for his publisher which he may not have managed had he not been so eminent a writer as well as a minister of the Court and government of Weimar. (Stewart, 1983, p.18)

Printing was subject to the orders of the Star Chamber so that the government and the church could exercise effective censorship and prevent seditious or heretical works from getting into print. It was intended, in essence, to control the press and not to protect the rights of the authors. (Nasri, 1976, p.1) It was the period of renaissance which was intertwined with the intellectual movement and the nobility, the intellectual climate started to build in, however it was mainly the church which through the decree sought to establish a monopoly over printing and

[1] William Shakespeare, 1564-1616; English poet & dramatist.

[2] As per the Webster's New World and Dictionary Thesaurus (ver. 1.0), Star Chamber means "a royal English court or tribunal abolished in 1641, notorious for its secret sessions without jury, and for its harsh and arbitrary judgments and its use of torture to force confessions."

[3] In 1662, for the first time since the reign of Henry VIII, Parliament passed an Act which specifically related to the book trade.

purported to prevent the spread of protestant reformation to maintain their authority over the populace or the citizenry.

In effect, the licensing act limited the scope of piracy by conferring the right to indulge in 'acts of piracy' to the Stationer's guild and imposing punitive sanctions on those who indulged in the printing and selling business apart from the statutorily protected stationer's men.

2.2. End of the Licensing Era

However in course of time, as the system began to weaken and old licensing acts expired, the ban against unlicensed printing was removed, as a result of which independent printers started to come up and permeate the safe havens of the Stationer's Company. The licensing acts could not withstand the test of time as they were imbued with illegality, arbitrariness and tainted with inequity by conferring rights upon those who mechanically reproduced such works as against those who intellectually produced them.

By 1681, the Licensing Act, 1662 had been repealed and the Stationers' Company had passed a by-law that established rights of ownership for books registered to a number of its members so as to continue regulating the printing trade themselves. The negative effects of the Stationer's empire were increasing with every passing day including exorbitant prices being charged for the works of great men who were gifted with the 'power of the pen.'

In 1695, the Stationer's got a rude shock when the House of Commons refused to renew their monopolistic status conferred by the Licensing Act, 1662. As a consequence, in the absence of copyright laws, piracy flourished and heavy competition was faced from the Scottish publishers who were not within the copyright jurisdiction of Great Britain.

In order to safeguard their selfish interests, the most powerful group of the monopolistic company – the Booksellers moved the Parliament to create a law to preserve their conferred exclusive status. Inspired by the Lockean theory that every man has a natural right over the fruits of his labor [4][4], the Guild claimed to have an exclusive right ad infinitum with the intention of perpetuating their own monopoly and seeking statutory protection to this effect.

The Stationer's also took the plea in their bid to renew the licensing act that "if their Property should not be provided for ... [the booksellers' livelihood] will be utterly ruined" (see Patterson, 1975, p.1172). It has also been said that John Locke was the first to recommend that the bookseller's property be limited, either to a fixed term defined from the date of printing, or to a certain number of years after the death of the author (Coombe, 1994, p. 402)

The House of Commons rejected the booksellers' plea, in part because the booksellers "[were] empowered to hinder the printing [of] all innocent and useful Books; and have an Opportunity to enter a title to themselves, and their Friends, for what belongs to, and is the Labour and Right of, others" (Patterson, 1975, 139). Other reasons which motivated such refusal included the poor quality and high cost of the booksellers' editions.

3. Statute of Anne, 1710 – A Milestone is achieved

After failing to persuade Parliament to extend its powers, the Stationers shifted their legislative strategy, emphasizing the interests of authors over publishers. The product of their renewed effort was the world's first copyright legislation, the Statute of Anne, entitled "An Act for the Encouragement of Learning, by vesting the Copies of Printed Books in the Authors for the Encouragement of Learning, by vesting the Copies of Printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned."(Goldstein, 2001, p.5) Attempts by the booksellers to gain new protective legislation failed twice, in 1703 and three years later in 1706.

Indeed, the Stationers lobbied for a decade to renew their pact with the Government but better sense and sensibility prevailed on the Government which refused to budge from its stance. After numerous attempts by the Stationers Guild failed, they changed their strategy from asking for licensing renewal to demanding an Act which would protect, what they called "literary property" from inroads by both English and foreign pirates. (See Feather, 1988, p.378)

Thus, it is observed that the origins of copyright law were influenced by the economics of publication rather than economics of authorship and there is not an iota of doubt that the origin of copyright much before the Statute of Anne was not for the "encouragement of learning" but discouragement of "learning", such 'knowledge' which went against the church or the government, by regulating the print and exercising rules of censorship.

It was only the Anne's statute by virtue of which the history of common law on copyright witnessed a paradigm shift from the vice of the monopolistic empire set up under the auspices of the Stationer's guild and accorded the much deserved and a much awaited right to the authors of published works, thus not only removing barriers to knowledge or information uncensored, portraying the naked truth and promising legislative security, but

[4] Also known as John Locke's labor theory. The Parisian guild also invoked Locke's labor theory to defend its monopoly. See Seignette, J. M. B., 1994, p.17.

also achieving the twin objective of serving a larger goal of humanity of enlightening the masses and rewarding the creator under the umbrella of legal framework, in the process 'promoting the engine of free expression.'

It was only when the British Parliament passed the Queen Anne's Statute of 1709 that for the first time in history, the rights of the authors over their work came to be legally recognized, and the concept of 'public domain' was established, though not explicitly.

By this landmark statute, the Parliament sought to regulate the book trade and confer upon the 'legally entitled' beneficiaries and benefactors, their fair economic rewards for their vital contribution to the literature of their country. Statute of Anne 'was designed to destroy the booksellers' monopoly of the book trade and to prevent its recurrence (Patterson, 2000, p.379) and sought to divorce the evil of privileged censorship from free expression, thereby facilitating an equilibrium between the rights of the authors and the rights of the public to have access to print material. The statute conferred upon the authors - the exclusive right to print their works for a limited period of time which was 14 years, in respect of works published after the date of enactment.

With the enactment of the Statute of Anne in 1710, Copyright law had now embarked as a codified body of law 1710. This legislative enactment can be thus said to be the first legal articulation of 'copyright'.

The Statute of Anne was a small statute comprising of just 11 parts. The very nature and purpose of the statute was two fold. One, to promote learning and second, to prevent any other person save the author to print or reprint the book/literary work for a limited duration of fourteen years in its retroactive operation. The stationers were accorded the limited and non renewable exclusive right of twenty one years for works published anterior to the enactment of the statute.

The term of copyright conferred upon the authors was designated to last for fourteen years commencing from the date of publication and "no longer" which would return to the author for a fixed duration of another fourteen years if they were living.

An important clause in the statute was the fifth clause which mandated that 'nine' copies of each book upon the best paper, shall be kept in nine libraries (one copy each), of the stated Universities including the Royal Library for the purposes of dissemination of knowledge to the public at large, and a stringent monetary penalty apart from forfeiture of such material was attached, in case of non compliance of the aforementioned clause. At the same time it was expressly provided by means of a 'non obstante' clause that nothing in the statute shall prejudice or confirm any right that the specified universities or any person have or claim the printing or reprinting of any literary material already printed or about to be printed.

Thus, it is observed that at the time when the foundation of the modern copyright law was being laid down, the legislative intent was to further or promote dissemination of knowledge but at the same time the private right of the author was bring respected and protected. In essence it was a fine balancing act in which the author's right was secured and at the same time, the right was not impeding the encouragement of learning.

4. From the 'then' to the 'now' of copyright

However, the law on copyright has witnessed a chequered history. Its origins were tainted with all such events which would stifle free speech and creativity and arbitrarily censor what was not considered 'religiously or politically correct'. More importantly, the understanding of protecting intellectual works was based on the extending the benefits to the marketer of the work with little or no compensation to the creator. However, from the Gutenberg's age, the law on the subject has expanded its boundaries to encompass new kinds of works and technologies. The statutory protection has come to be classified under the generic term of "intellectual property."

Indeed, the term of protection has been increased from 14 years (as it originally commenced) to a global minimum of 50 years post mortem auctoris (i.e. after the death of the author.) Copyrighted creations are now considered as "property" and have given rise to many industrial giants who flourish on 'manufacturing' and 'selling' creations protected by the law of copyright. As a result, Copyright is now transitioning and transforming into a right which shall again protect and serve commercial interests of the copyright industries (in the same manner as it protected the publishers and booksellers in the pre-Anne era). The expanding contour of this right is likely to reduce the scope of public domain as the works shall enter much later than it earlier did. According to T. C. James, "Copyright is now perceived more as an industrial property than as an author's right." (James, 2004, p.210)

A classic illustration in this regard is the increase in the copyright term from the international minimum term of 50 years p.m.a. to a term of 70 years p.m.a. In 1993, a directive was issued by the European Union to implement a term of protection equal to the life of the author plus 70 years. As a result, various European States including Belgium, Denmark, Finland, Germany, Greece, Ireland, Italy, Spain, Sweden, and the United Kingdom have increased the term of protection to 70 years p.m.a.

Not long after the United States enacted Copyright Term Extension Act (CTEA) of 1998 which has extended copyright terms in the United States by 20 years. Prior to the enactment of this statute, the U.S. law maintained the Berne standard of protection which was 50 years post mortem auctoris (after the death of the

author), however with the enactment of this legislation, the duration of not only the prospective but also the term of existing works in the copyright domain has increased by 20 years. Public domain is endangered.

According to the Senate Report, [5]the intent behind passing of the Act was to ensure fair compensation for the American creators whose efforts fuel the intellectual property sector of America's economy by allowing American copyright owners to benefit to the fullest extent from foreign uses and at the same time, ensure that America's trading partners such as the European States do not get a free ride from their use of America's intellectual property. The other reason behind the extension of the term was the increase in life expectancy which thereby reduced the time period for the descendants to enjoy the fruits of their predecessors and that life-plus-50 term is no longer sufficient to protect two generations of an author's heirs as was the legislative intention.

The Committee gave two reasons for the justification behind the increased term. One, that the increased term shall provide with the promise of additional income which shall serve as an incentive to produce further works and second it shall help the corporate copyright owners such as motion picture studios and publishers to reduce the risk factor. In both cases, the Committee noted that it shall ultimately benefit the public domain, which will be greatly enriched by the added influx of creative works over the long term.

However, the authors do not find favour with the justification given by the Committee. Increasing the term of protection does not motivate the creator to produce more works which shall only benefit the successors. The benefits accruing to the successors are not such a strong motivation so as to reduce the scope of public domain. Moreover, substantial benefits never accrue to the successors which are generally minimal except for works which achieve considerable fame in the market. The second reason given by the Committee that it shall help the corporate copyright owners to subsidize the production of new creations lacks merit for the same reason that an additional protection of twenty years does not add to the profits of today or helps to carry out a cost-benefit analysis over the benefits which may or may not accrue over the lengthening period of time. In effect, it is not the public domain which shall be the beneficiary but the affected as works shall enter the public domain late by twenty years.

The authors find favour in the minority views of Mr. Brown, Senate Judiciary Committee, who referred the extension of the copyright monopoly as "absurd" in a sense, falsifying the first above stated reason "that the monopoly use of copyrights for the creator's life plus 50 years after his death is not an adequate incentive to create" and made a very pertinent observation concerning the public access to works that the additional term will harm public access of works by "academicians, historians, students, musicians, writers, and other creators who are inspired by the great creative works of the past." He observed that the extension shall disturb the delicate balance of copyrights with public access to works.

He also agued that "The real incentive here is for corporate owners that bought copyrights to lobby Congress for another 20 years of revenue—not for creators who will be long dead once this term extension takes hold" and posed a very vital question which is stated verbatim - "Do you know any creator that would fail to create if the monopoly grant ran out at life-plus-50 years of protection rather than life-plus-70 years?"

To that, it must be added that the there is not much rationale behind fixing precise terms for copyright. If the work has market potential and is licensed/assigned to the right marketer, the costs shall be recovered in a short time itself and the remaining duration shall only be for the purposes of reaping profits. The premise that a specific duration of protection shall serve as an incentive to create work does not hold any merit, nor does increasing the term increase the degree of incentive as such.

Citing two U.S. Supreme Court judgments, where it has been held that, 'The immediate effect of our copyright law is to secure a fair return for an 'author's' creative labour. But the ultimate aim is, by this incentive, to stimulate artistic creativity for the general public good' [6] and that 'The sole interest of the United States and the primary object in conferring the monopoly lie in the general benefits derived by the public from the labours of authors'[7], Mr. Brown attempted to portray the twin goal of copyright law and the delicate balance between rewarding creators and disseminating their works for the public benefit.

Indeed, these strong arguments to maintain the delicate balance of copyright did little to influence the decision of the majority who found favour in increasing the copyright term, lobbied by the industrial giants such as Walt Disney, who wanted to encash more on their copyright which were reaching its near completion on its term and were going to enter the public domain. Thus, the "property" element in copyright law transition towards "industrial property" helps those whose "business" is intellectual property to advocate for unnecessary prolonged terms of copyright monopoly which naturally has an adverse impact by limiting the public domain.

In fact, Mr. Brown has sought to highlight this important point by emphasizing that the monopoly grant of life-plus-50 years rather than life-plus-70 years would not be a disincentive sufficient for a creator to not create what otherwise he would have created. It is evident that the political climate prevailing during the period reflects

[5] Senate Report 104-315 - COPYRIGHT TERM EXTENSION ACT OF 1996. Retrieved May 28, 2008, from http://www.copyright.gov/legislation/s-rep104-315.html
[6] Twentieth Century Music Corp. v. Aiken 422 U.S. 151 (1975).
[7] Fox Film Corp. v. Doyal 286 U.S. 123, 128 (1932).

that this excess extended protection of copyright was because of the powerful lobbying by the corporate copyright owners such as Walt Disney Company due to which the act has been popularized by the name, or as opponents would argue, pejoratively, "The Mickey Mouse Protection Act." It is reported that substantial financial investment had been made by Disney in securing additional rights in Winnie the Pooh whose copyrights were going to expire and the investment would not have reaped profits without extending the copyright term through the new legislation. (Pandora, The Independent, 1998)

In the amicus curie brief [8]submitted on behalf of the petitioners in the case of Eldred v. Ashcroft [9]where the constitutional validity of the CTEA was challenged, it was submitted that the expectation of increased compensation of an author who will create a new work is a mere 1% because of the fact that this benefit would accrue to the author somewhere far in the distant future and therefore makes a negligible additional incentive for an author who is economically minded to create. The brief highlighted a contrario that the real gains are to the existing works particularly those whose terms are going to expire but for the new lease of life resulting from the enactment of the CTEA.

Under the pretext of protection of intellectual property rights, the economic and social framework is being conditioned to serve the interests of the corporate copyright owners and putting costs on dissemination for prolonged and unnecessary terms. Opponents argue that such protection is necessary to stimulate creativity and serves as an impetus to create more intellectual or creative works. However, it is ultimately the masked designs of the corporate which are being achieved and this surely is not a good trend as most corporate only now how to count their money.

Intellectual monopoly is not only to be adjudged from the point of view of the creator but also the public interest for which the monopoly is justified and a tip in favour of either end is likely to disturb the balance. The economic demands of the copyright industry ought not to shape IP systems to advantage those who possess the economic power to influence the decision making process.

The social objectives of intellectual property jurisprudence would be jeopardized as the rule of shorter term[10] is inducing nations to increase their term of protection for copyrighted works if their authors would desire to enjoy the same term of protection in other countries having longer terms as they do in their own country. This triggers a "me too" reaction as we are moving towards limiting the dissemination of information and making it costlier to access in this information age.

Greater access to more works at a lower cost is lost in introducing laws that increase the term of copyright protection. Societal wealth reflected through the large public domain of works is undermined in conferring over broad protection terms. And the big question is, does the extended term really serve as an incentive to create more works to "enrich the public domain of knowledge." The answer lies in the negative.

Thus, to promote access to copyrighted creations and in the larger concerns of consumer welfare, extension of copyright term should not be encouraged, more so, because the extended terms do not provide any additional incentive to the present creators. The benefit on account of the extended term is too remote in future and not sufficient incentive as an efficiency-enhancing measure. It is only to promote the natural rights argument and benefit the corporate copyright owners eclipsing the utilitarian philosophy of the greatest good of the greatest number.

Somewhere the twin goal of copyright law which is to protect the rights and legitimate interests of the author & copyright industry and equally consequential to serve the domain of intellectual creations is losing its balance. It is evident that under the garb of advocating for expanding the duration of protection so as to benefit authors, it is the copyright industry which wants to maximize its capitalistic interests. In effect, we may be unknowingly resurrecting the historical evils of copyright that we buried three centuries back. It appears that the Stationers are coming again, this time only under a different guise…

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[8] George A. Akerlof, Kenneth J. Arrow, Timothy F. Bresnahan, James M. Buchanan, Ronald H. Coase, Linda R. Cohen, Milton Friedman, Jerry R. Green, Robert W. Hahn, Thomas W. Hazlett, C. Scott Hemphill, Robert E. Litan, Roger G. Noll, Richard Schmalensee, Steven Shavell, Hal R. Varian and Richard J. Zeckhauser, Amicus Curiae in Support of Petitioners before the U.S. Supreme Court in Eldred v. Ashcroft, May 20, 2002 (http://cyber.law.harvard.edu/openlaw/eldredvashcroft/supct/amici/economists.pdf).

[9] Eldred v. Ashcroft 537 U.S. 186 (2003)

[10] As per the "rule of shorter term", a country having a longer term of protection may grant a shorter term of protection to foreign works of another country if the copyright law of such other country provides for a shorter term of protection. All Berne signatories have to grant a minimum of 50 years p.m.a. which is the internationally accepted standard term but a country 'A' may provide for say 70 years p.m.a. copyright term of protection for its nationals. In such a situation, if country 'B' provides for a 50 year p.m.a. for works in its territory, it shall not get a protection exceeding 50 years p.m.a. in country 'A' if the rule of shorter term is applicable in A's jurisdiction. Therefore, foreign works of country 'B' shall enter the public domain earlier by 20 years in terms of enjoying copyright protection in Country 'A'. The "rule of shorter term" derives its legitimacy from the Berne Convention.