

# Copyright

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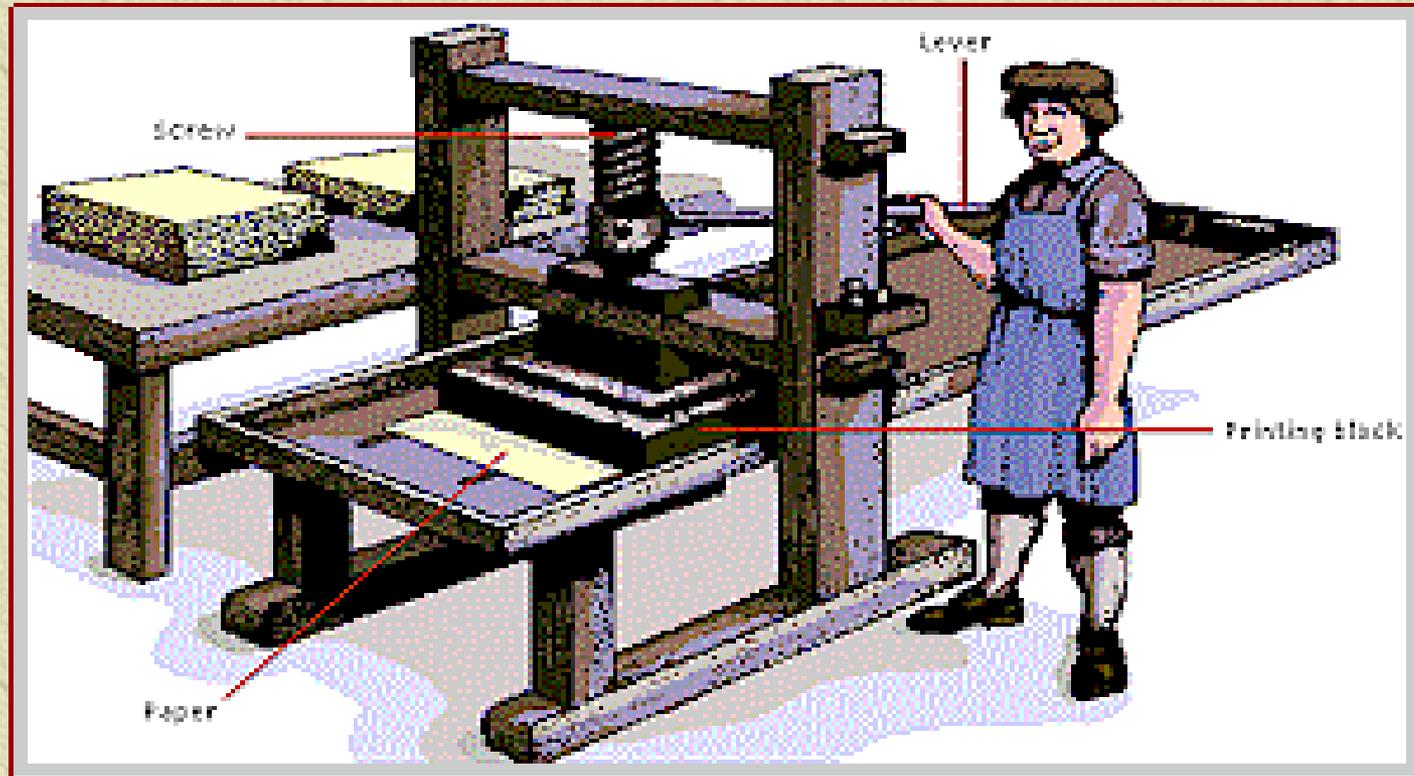
✦ Prior to invention of printing press, manual copying was a noble art necessary for propagation of knowledge. No need for author's permission to make a copy.

# Reproduction Technology

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- ✦ Invented by Johann Gutenberg in 1450.
- ✦ Derived from the presses farmers used to make olive oil, the first printing press used a heavy screw to force a printing block against the paper below.
- ✦ An operator worked a lever to increase and decrease the pressure of the block against the paper.
- ✦ The German printing pioneer Johann Gutenberg solved the problem of molding movable type. Once developed, printing spread rapidly and began to replace hand-printed texts for a wider audience.

# The Printing Press



See also <http://www.gutenberg.net/>

# English Printing Privilege

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- ✦ The printing business went through a brief period of unregulated development.
- ✦ During the Reformation, however, political and religious authorities perceived a threat from publication of “subversive” ideas.
- ✦ European monarchs began to regulate the publishing industry. In exchange for monopoly rights, publishers agreed to publish only books approved by the political authorities.

# Early English Copyright

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- ✦ In England, the monopoly on printing was conferred on a guild called the Stationers' Company.
- ✦ In addition to granting the privilege to print, the Crown had empowered the stationers (booksellers, who later became publishers) to find and destroy all books that were determined “seditious, heretical, and schismatical.”

# Guild Copyright

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- ✦ Among themselves, the members of the Stationers Company allocated rights to publish specific texts.
- ✦ The right to publish was known as the “copy right” and was registered in a book kept by the Stationers.
- ✦ The right to publish belonged to the printer, not the author.

# End of Royal Privilege

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- ✦ With the diminution in monarchical power, regulation of the book trade was done by statute.
- ✦ The Licensing Act of 1662 was allowed to lapse in 1694, and the book trade again was made a free market

# Unregulated Competition

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- ✦ New publishing ventures were quickly launched.
- ✦ Books already in print were republished without permission of the prior printer or author and without payment of any royalties.

# Statute of Anne

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- ✦ Publishers, backed by some authors, prevailed upon Parliament to enact the first modern copyright statute – the statute of Anne (1710).
- ✦ But Parliament had become hostile to unregulated economic monopolies. (Think corporate law).

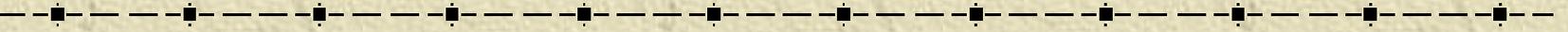
# Statute of Anne (cont'd)

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- ✦ The Statute of Anne introduced two features of modern copyright law.
  - ◆ The statutory right to publish belongs to the author.
  - ◆ The exclusive right to publish is for a limited time.

# U.S. Constitution

## Art. I, 8, cl. 8



✦ The Congress shall have power to . . .

To promote the progress of Science and Useful Arts, by securing for Limited Times to authors and inventors the exclusive right to their respective writings and discoveries

# Features of Copyright Law

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- ✦ Historically, legislation the product of business-to-business arrangements.
- ✦ Copyright law is political.
- ✦ Copyright law is subject to change.

# Copyright Legislation

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- ✦ First copyright statute (1790), provided exclusive right to publish “maps, charts, and books.” Term of protection was 14 years; renewable for another 14.
- ✦ Subsequent acts expanded the subject matter of copyright and the term of protection.

# Copyright Act of 1909

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- ✦ Divided copyright. Perpetual common law copyright prior to “publication.”
- ✦ Federal copyright vested if the work was published with a proper copyright notice.
- ✦ If published without notice, work was deemed to enter the public domain.
- ✦ Term of protection was 28 years; renewable for another 28.

# Copyright Act of 1976

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- ✦ Abolishes common law copyright (with a few exceptions).
- ✦ Federal copyright vests when the “work of authorship” is “fixed in a tangible medium of expression.”
- ✦ Term of copyright was life of the author plus 50 years.

# Copyright Act of 1976 – Term

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- ✦ Now the term is life of the author plus 70 years.
- ✦ Or, if the work is a “work made for hire”, the term is 95 years from publication or 120 years from fixation.

# End of “formalities”

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- ✦ Under the 1909 Act, an author had to take affirmative steps to retain copyright rights.
  - ◆ Make sure published copies had copyright notice.
  - ◆ Make a timely renewal. (Most authors did not renew).

This system made it easy for an author to dedicate her work to the public domain by publishing without notice.

# End of formalities

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- ✦ As amended, the current Act extends protection even if a work is published without notice.
- ✦ However, if the work was created in the U.S., have to register copyright with the Copyright Office before bringing suit for infringement.

# Overview of the 1976 Act

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- ✦ Chapter 1 - Subject Matter of Copyright
- ✦ Chapter 2 – Ownership and Transfer
- ✦ Chapter 3 – Duration of Copyright
- ✦ Chapter 4 – Notice, Deposit, Registration
- ✦ Chapter 5 – Infringement and Remedies

# Overview of 1976 Act cont'd

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- ✦ Chapter 6 – Manufacture and Importation
- ✦ Chapter 7 – Copyright Office
- ✦ Chapter 8 – Copyright Arbitration Panels
- ✦ Chapter 9 – Sui generis semiconductors
- ✦ Chapter 10 – Audio Home Recording Act
- ✦ Chapter 11 – Anti-Bootlegging
- ✦ Chapter 12 – Paracopyright – Digital locks
- ✦ Chapter 13 – Boat hull protection.

# How to Read Statutes

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- ✦ Start with text (check to see if term is defined).
- ✦ Structure of text.
- ✦ Read “in pari materia” (i.e. in conjunction with other related sections).
- ✦ Where statute is ambiguous, can rely on legislative history.

# Legislative history

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- ✦ Hierarchy of sources. Conference Report (if there is one) is most important.
- ✦ Otherwise, Report from the branch whose bill is enacted.
- ✦ Sponsor statements carry some weight.
- ✦ Beware the “friends at a cocktail party” approach.

# Chapter 1 – Exclusive Rights

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- ✦ Section 106 sets forth a set of broad exclusive rights that are granted to authors.
- ✦ Sections 107-122 place limits on the exclusive rights. Many of the limitations are industry-specific and technology-specific.

# Chapter 1 – Exclusive Rights

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✦ Section 106 provides the rights to do and to authorize any of the following:

- ✦ (1) to reproduce the copyrighted work in copies or phonorecords;
- ✦ (2) to prepare derivative works based upon the copyrighted work;
- ✦ (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

# Chapter 1 – Exclusive Rights

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- ◆ (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
- ◆ (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
- ◆ (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.