All Change for the Digital Economy: Copyright and Business Models in the Eighteenth Century

In his recent book, *Moral Panics and the Copyright Wars*, William Patry advances the thesis is that the debates over copyright (or ‘copyright wars’, as he evocatively calls them) are essentially the product of outdated business models being threatened by innovators. The success of these innovators, he argues, is resented by the established copyright industries, which then turn to the courts and the legislature to seek protection against the newcomers. Patry asserts that ‘litigation is a poor long-term strategy, serving only to delay the inevitable failure of the old business model’.¹ They also call on legislatures to pass stronger copyright laws, favouring the old models.

While Patry notes that the Copyright Wars began in the UK with the Battle of the Booksellers in the 1730s, finishing in 1774 (presumably with *Donaldson v Becket*), his central concern is with the most recent 50 or so years, and, without explicitly saying so, the underlying assumption is that this is a new, or at least a much more serious problem, today. Citing Lord Macaulay in 1841, he calls for a return to the ‘correct’ and fundamental purpose of copyright law which is to further the interests of the public. The purpose of my paper is to argue that, in fact, this struggle between competing economic interests and different business models has existed since before the Statute of Anne was passed. By taking a small slice of copyright’s history, I want to examine some of the ways that these ‘battles’ were conducted at the birth of copyright and in its infant years.

The particular aspect examined is the booksellers’ approach to partial and altered copying of books. Abridgments and adaptations had long been popular as an easy means of gaining or retaining a foothold in the trade, but the leading booksellers were aware that they could have an adverse effect on sales of the originals. The Statute of Anne did not address how partial copying was to be treated; it was concerned solely with entire reprints. This led the powerful booksellers of the day to pursue strategies which would outlaw such practices. This paper looks at the first two court cases to be brought against partial copies in 1739, *Hitch v Langley* and *Austen v Cave*, and seeks to position them as early examples of “copyright wars”.

¹ Patry, p.2