The Statute of Anne as an American Legal Transplant

• The Statute of Anne as a Legal Transplant
• Unlikelihood of (successful) transplant?
• Translation Process
  – Adaptation
  – Accommodation and path dependence
Whereas piracies, booksteals, and other persons, habit of late frequented the liberty of printing, reprinting, and publishing or causing to be printed, reprinting, and publishing books and other writings without the consent of the authors or proprietors of such books and writings, to the great detriment and injury of the King of this Realm and his household for preserving therein such praetices; to the hurt and prejudice of the encouragement of learning, just to compose and write, the full books, and it may please your Most Majestic Majesty be granted, and be it enacted by the Queen Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same that from and after the tenth day of April One Thousand Seven Hundred and Four the Author of  

Primary Sources on Copyright (1450-1900)
The Statute of Anne as an American Legal Transplant

- Argument in favor of creating protection to authors (on the state and federal level).
- Direct doctrinal template
  - State statutes 1783-1786
  - The 1790 Copyright Act
Hartford 10th Jan 1783

Sir,

After having been honored by a slight acquaintance with your Excellency in your private capacity, & receiving marks of attention which I bear in mind with gratitude, I take the liberty of addressing you on a subject in which I conceive the interest & honor of the Public is very much concerned. I mean the embarrassment which arises from the interest of literature & works of genius in the United States. This embarrassment is natural to every free Government; it is one of the evils of society, which requires to be removed by positive statutes securing the copyrights of authors; in that way protecting a species of property which is otherwise often to every man liable. It is a subject which, during the more important affairs of the present revolution, we could not expect to be attended to by any of the legislatures, but it now much thought of by many; & hope cannot be too early propagated, that its importance cannot be too early propagated.
... most of the civilized nations have removed the natural obstructions which lie in the way of literary emulation, & given the consequent encouragement to every species of laudable ambition...

In England, your Excellency is sensible that the copy-right of any book or pamphlet is holden by the Author & his assigns for the term of fourteen years from the time of its publication; & if he is then alive, for fourteen years longer. If the passing of statutes similar to this were recommended by Congress to the several States, the measure would be undoubtedly adopted, & the consequences would be extensively happy upon the spirit of the nation, by giving a laudable direction to that enterprising ardor of genius which is natural to our stage of society, & for which the Americans are remarkable.
State Statutes

• 1783 Connecticut Statute
  – Legislated as a reaction to ad-hoc privilege petitions
• 1783 recommendation of the Continental Congress
• 1783-1786 Twelve states legislate copyright statutes
• Despite variance all are miniature versions of the Statute of Anne
• Significance more symbolic and precedential than practical
This Excellency the Governor and the Honorable
the General Assembly of the State of Connecticut

The Memorial of John Leopold humbly
bewith that in the month of March 1775 the Memorialist left New York in a Merchant Ship in which
he sailed to Falmouth in Great Britain but finding the situation unprofitable unpleasant in the
Ship to which he then belonged he proceeded to the city of Bristol hoping to mend it; he was
however so unfortunate there as to be apprehended
by a kind of Police in that city who obliged him either
to Ship himself for the coast of Guinea or to enter

Primary Sources on Copyright (1450-1900)
An Act for the Encouragement of Literature and Genius.

WHEREAS it is perfectly agreeable to the Principles of natural Equity and Justice, that every Author should be secured in receiving the Profits that may arise from the Sale of his Works, and such Security may encourage Men of Learning and Genius to publish their Writings, which may do Honour to their Country, and Service to Mankind.

B E it enacted by the Governor, Council, and Representatives, in General Court assembled, and by the Authority of the same, That the Author of any Book or Pamphlet not yet printed, or of any Map or Chart, being an Inhabitant or Resident in these United States, and his Heirs and Assigns, shall have the sole Liberty of printing, publishing and vending the same within this State, for the Term of fourteen Years, to commence from the Day of its first Publication in this State. And if any Person or Persons within said Term of fourteen Years as aforesaid, shall presume to print or re-print any such Book, Pamphlet, Map or Chart within this State, or to import or introduce into this State for Sale, any Copies thereof, re-printed beyond the Limits of this State, or shall knowingly publish, vend and utter, or distribute the same without the Consent of the Proprietor thereof in Writing, signed in the Presence of two credible Witnesses, every such Person or Persons shall forfeit and pay to the Proprietor of such Book, Pamphlet, Map or Chart double the Value of all the Copies thereof, so printed, imported, distributed, vended, or exposèd for Sale; to be recovered by such Proprietor in any Court of Law in this State, proper to try the same.

Provided nevertheless, That no Author, Assignee, or Proprietor of any such Book, Pamphlet, Map or Chart shall be entitled to take the Benefit of this Statute, until he shall duly register his Name as Author, Assignee, or Proprietor, with the Title thereof, in the Office of the Secretary of this State, who is hereby impowered and directed to enter the same on Record.

And be it further enacted by the Authority aforesaid, That at the Expiration of said Term of fourteen Years, in the Cases above mentioned, the sole Right
CHAP. CXXV.

An ACT for the Encouragement and Promotion of Learning by vesting a Right to the Copies of printed Books in the Authors or Purchasers of such Copies, during the time therein mentioned.

Preamble.

SECT. I. WHEREAS the Honorable the Congress of the United States by their resolution of the second day of May, one thousand seven hundred and eighty three, have recommended to the several States to secure to the authors or publishers of any new books not hitherto printed, being citizens of the United States, and to their Executors, Administrators and Assigns, the copy right of such books for a certain time.

SECT. II. AND WHEREAS printers, booksellers and other persons have heretofore frequently taken the liberty of printing, reprinting and publishing, or causing to be reprinted and published books and other writings, without the consent of the author or proprietors of such books and writings to their very great detriment and the damage of their families; for preventing therefore such practices for the future, and for the encouragement
Preambles

Statute of Anne
Whereas printers, Booksellers and other persons have of late frequently taken the liberty of printing, reprinting and publishing or causing to be printed, reprinted and published Books and other writings without the consent of the authors or proprietors of such books and writings to their very great detriment and too often to the Ruin of them and their families; For preventing therefore such practices for the future and for the encouragement of learned men to compose and write useful books.

Pennsylvania Copyright Statute 1784
AND WHEREAS printers, booksellers and other persons have heretofore frequently taken the liberty of printing, reprinting and publishing, or causing to be reprinted and published books and other writings, without the consent of the author or proprietors of such books and writings to their very great detriment and the damage of their families; for preventing therefore such practices for the future, and for the Encouragement of learned men to compose and write useful books;
1790 Copyright Act

• Legislated in response to ad hoc privileges petitions
• Early joint copyright-patent Bill H.R. 10.
• Close resemblance to the Statute of Anne
  – Title
  – Subject matter & beneficiaries
  – Entitlements & duration
  – Renewal
  – Infringement
  – Remedies
  – Registration
  – Deposit

• Minor differences
  – Absence of price control procedure
  – Removal of registration alternative
  – Explicit recognition of statutory rights in manuscripts (codification of Pope v. Curl [1741]?)
Chap. XV.—An Act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned. (a)

Section 1. Be it enacted by the Senate and House of Representative of the United States of America in Congress assembled, That from and after the passing of this act, the author and authors of any map, chart, book or books already printed within these United States, being a citizen or citizens thereof, or resident within the same, his or their executors, administrators or assigns, who hath or have not transferred to any other person the copyright of such map, chart, book or books, share or shares thereof; and any other person or persons, being a citizen or citizens of these United States, or residents therein, his or their executors, administrators or assigns, who hath or have purchased or legally acquired the copyright of any such map, chart, book or books, in order to print, reprint, publish or vend the same, shall have the sole right and liberty of printing, reprinting, publishing and vending such map, chart, book or books, for the term of fourteen years from the recording the title thereof in the clerk’s office, as is herein after directed: And that the author and authors of any map, chart, book or books already made and composed, and not printed or published, or that shall hereafter be made and composed, being a citizen or citizens of these United States, or resident therein, and his or their executors, administrators or assigns, shall have the sole right and liberty of printing, reprinting, publishing and vending such map, chart, book or books, for the like term of fourteen years from the time of recording the title thereof in the clerk’s office as aforesaid. And if, at the expiration of the said term, the author or authors, or any of them, be living, and a citizen or citizens of these United States, or resident therein, the same exclusive right shall be continued to him or them, his or their executors, administrators or assigns, for the further term of fourteen years: Provided, he or they shall cause the title thereof to be a second time recorded and published in the same manner as is herein after directed, and that within six months before the expiration of the first term of fourteen years aforesaid.

Statute 11.
May 31, 1790.

Repealed.

Authors of maps, charts and books;
and purchasers from them, to have the sole right of publication &c. for 14 years;

also, if living at the end of that term, to have the further term of 14 years;

recording the title, &c.
To his Excellency The President and the Honorable The members of the Senate of the United States

The Petition of the Subscriber humbly sheweth

That your Petitioners having devoted a number of years to an investigation of the principles of the late Revolution and to the collection of information and materials for writing the History of the same have at a great expense of time and money published a Book entitled "The History of the Revolution of South Carolina from a British province to an Independent State" and that with great labour he has prepared a general History of the late war with Great Britain which he proposes to publish in a short time under the title of "The History of the American Revolution" and your Petitioners humbly conceiving that in reason and justice he ought to be entitled to any Emoluments arising from the sale of the aforesaid works as a compensation for his labour and expense and finding the same principle expressly recognized in the new Constitution your Petitioners therefore prays that a law may pass securing to your Petitioners his rights accordingly.
1790 Copyright Act

- Legislated in response to ad hoc privileges petitions
- Early joint copyright-patent Bill H.R. 10.
- Close resemblance to the Statute of Anne
  - Title
The 1790 Copyright Act and the Statute of Anne: Title

*Statute of Anne*

An Act 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

*1790 Copyright Act*

An Act for the encouragement of learning, by securing the copies of maps, Charts, And books, to the authors and proprietors of such copies, during the times therein mentioned
1790 Copyright Act

- Legislated in response to ad hoc privileges petitions
- Early joint copyright-patent Bill H.R. 10.
- Close resemblance to the Statute of Anne
  - Title
  - Subject matter & beneficiaries
The 1790 Copyright Act and the Statute of Anne: Subject Matter & Beneficiaries

Statute of Anne
the Author of any Book or books already printed who hath not transferred to any other the copy or copies of such Book or Books share or shares thereof or the Bookseller or Booksellers printer or printers or other person or persons who hath or have purchased or acquired the copy or copies of any Book or Books in order to print or reprint the same ... And that the Author of any Book or Books already composed and not printed and published or that shall hereafter be composed and his assignee or assignes...

1790 Copyright Act
the author and authors of any map, chart, book or books already printed within these United States, being a citizen or citizens thereof, or resident within the same, his or their executors, administrators or assigns, who hath or have not transferred to any other person the copyright of such map, chart, book or books, share or shares thereof; and any other person or persons, being a citizen or citizens of these United States, or residents therein, his or their executors, administrators or assigns, who hath or have purchased or legally acquired the copyright of any such map, chart, book or books, in order to print, reprint, publish or vend the same, ... And that the author and authors of any map, chart, book or books already made and composed, and not printed or published, or that shall hereafter be made and composed, being a citizen or citizens of these United States, or resident therein, and his or their executors, administrators or assigns...
1790 Copyright Act

• Legislated in response to ad hoc privileges petitions
• Early joint copyright-patent Bill H.R. 10.
• Close resemblance to the Statute of Anne
  – Title
  – Subject matter & beneficiaries
  – Entitlements & duration
The 1790 Copyright Act and the Statute of Anne: Entitlements & Duration

Statute of Anne
shall have the sole right and liberty of printing such Book and Books for the term of One and twenty years...
shall have the sole liberty of printing and reprinting such Book and Books for the term of fourteen years...

1790 Copyright Act
shall have the sole right and liberty of printing, reprinting, publishing and vending such map, chart, book or books, for the term of fourteen years ...
shall have the sole right and liberty of printing, reprinting, publishing and vending such map, chart, book or books, for the like term of fourteen years from the time
1790 Copyright Act

- Legislated in response to ad hoc privileges petitions
- Early joint copyright-patent Bill H.R. 10.
- Close resemblance to the Statute of Anne
  - Title
  - Subject matter & beneficiaries
  - Entitlements & duration
  - Renewal
The 1790 Copyright Act and the Statute of Anne: Renewal

Statute of Anne

Provided always that after the expiration of the said term of fourteen years the sole right of printing or disposing of copies shall return to the Authors thereof if they are then living for another Term of fourteen years.

1790 Copyright Act

And if, at the expiration of the said term, the author or authors, or any of them, be living, and a citizen or citizens of these United States, or resident therein, the same exclusive right shall be continued to him or them, his or their executors, administrators or assigns, for the further term of fourteen years.
1790 Copyright Act

- Legislated in response to ad hoc privileges petitions
- Early joint copyright-patent Bill H.R. 10.
- Close resemblance to the Statute of Anne
  - Title
  - Subject matter & beneficiaries
  - Entitlements & duration
  - Renewal
  - Infringement
The 1790 Copyright Act and the Statute of Anne: Infringement

Statute of Anne
if any other Bookseller printer or other person whatsoever... shall print reprint or import or cause to be printed reprinted or imported any such Book or Books without the consent of the proprietor or proprietors thereof first had and obtained in writing signed in the presence of two or more credible witnesses or knowing the same to be so printed or reprinted without the consent of the proprietors shall sell publish or expose to sale or cause to be sold published or exposed to sale any such Book or Books without such consent first had and obtained as aforesaid

1790 Copyright Act
if any other person or persons... shall print, reprint, publish, or import, or cause to be printed, reprinted, published, or imported from any foreign kingdom or state, any copy or copies of such map, chart, book or books, without the consent of the author or proprietor thereof, first had and obtained in writing, signed in the presence of two or more credible witnesses; or knowing the same to be so printed, reprinted, or imported, shall publish, sell, or expose to sale, or cause to be published, sold, or exposed to sale, any copy of such map, chart, book or books, without such consent first had and obtained in writing as aforesaid
1790 Copyright Act

• Legislated in response to ad hoc privileges petitions
• Early joint copyright-patent Bill H.R. 10.
• Close resemblance to the Statute of Anne
  – Title
  – Subject matter & beneficiaries
  – Entitlements & duration
  – Renewal
  – Infringement
  – Remedies
The 1790 Copyright Act and the Statute of Anne: Remedies

Statute of Anne

Then such offender or offenders shall forfeit such Book or Books and all and every sheet or sheets being part of such Book or Books to the proprietor or proprietors of the copy thereof who shall forthwith damask and make wast paper of them. And further that every such offender or offenders shall forfeit one penny for every sheet which shall be found in his her or their custody either printed or printing published or exposed to sale contrary to the true intent and meaning of this Act, the one Moiety thereof to the Queens Most Excellent Majestie her heirs and successors and the other Moiety thereof to any person or persons that shall sue for the same to be recovered.

1790 Copyright Act

then such offender or offenders shall forfeit all and every copy and copies of such map, chart, book or books, and all and every sheet and sheets, being part of the same, or either of them, to the author or proprietor of such map, chart, book or books, who shall forthwith destroy the same: And every such offender and offenders shall also forfeit and pay the sum of fifty cents for every sheet which shall be found in his or their possession, either printed or printing, published, imported or exposed to sale, contrary to the true intent and meaning of this act, the one moiety thereof to the author or proprietor of such map, chart, book or books who shall sue for the same, and the other moiety thereof to and for the use of the United States,
A BILL to promote the Progress of SCIENCE and USEFUL ARTS, by securing to AUTHORS and INVENTORS the exclusive Right to their respective WRITINGS and INVENTIONS. 1789.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, from and after the day of the author or authors of any book or books, already printed within these United States, being a citizen or citizens of said States, or any of them, or resident within the same, who hath or have not transferred to any other person or persons, the copy or copies of such book or books, share or shares thereof - And the book-seller or book-sellers, printer or printers, or other person or persons who hath or have purchased or acquired the copy or copies of any book or books in order to print or re-print the same, shall have the sole right and liberty of such book or books, or the copy or copies of such book or books, for the term of fourteen years, and no longer. And that the author or authors of any book or books, already composed and not printed or published, or that shall hereafter be composed, and his or their assignee or assignees shall have the sole liberty of printing and re-printing such book or books for the term of fourteen years, to commence from the day of the first publishing of the same, and no longer. And that if any other book-seller or printer, or any other person whatever, from after the day of within the terms granted and limited by this act, as aforesaid, shall print, re-print or import, or cause to be printed,
The 1790 Copyright Act and the Statute of Anne: Remedies

H.R. 10

every such offender or offenders shall forfeit the sum of [blank] for every sheet which shall be found in his or their possession, either printed or printing, published or exposed to sale, contrary to the true intent and meaning of this act; the one moiety thereof to the author or authors of such book or books, or the proprietor or proprietors thereof, and the other moiety to any person or persons who shall sue for the same,
1790 Copyright Act

• Legislated in response to ad hoc privileges petitions

• Early joint copyright-patent Bill H.R. 10.

• Close resemblance to the Statute of Anne
  – Title
  – Subject matter & beneficiaries
  – Entitlements & duration
  – Renewal
  – Infringement
  – Remedies
  – Registration
The 1790 Copyright Act and the Statute of Anne: Registration

Statute of Anne
unless the Title to the Copy of such book or books hereafter published shall before such publication be entered in the Register Book of the Company of Stationers in such manner as hath been usual which Register Book shall at all times be kept at the Hall of the said Company

1790 Copyright Act
unless he shall before publication deposit a printed copy of the title of such map, chart, book or books, in the clerk's office of the district court where the author or proprietor shall reside: And the clerk of such court is hereby directed and required to record the same forthwith, in a book to be kept by him for that purpose
1790 Copyright Act

• Legislated in response to ad hoc privileges petitions
• Early joint copyright-patent Bill H.R. 10.
• Close resemblance to the Statute of Anne
  – Title
  – Subject matter & beneficiaries
  – Entitlements & duration
  – Renewal
  – Infringement
  – Remedies
  – Registration
  – Deposit
The 1790 Copyright Act and the Statute of Anne: Deposit

**Statute of Anne**

nine Copyes of each book or books upon the best paper that from and after the tenth day of April One thousand seven hundred and ten shall be printed and published as aforesaid or Reprinted and published with additions shall by the printer and printers thereof be delivered to the Warehouse Keeper of the said Company of Stationers for the time being at the hall of the said Company before such publication made for the use of the Royal Library the Libraryes of the Universities of Oxford and Cambridge the Librarys of the four Universities in Scotland the Library of Sion College in London and the Library commonly called the Library belonging to the Faculty of Advocates at Edinburgh

**1790 Copyright Act**

the author or proprietor of any such map, chart, book or books, shall, within six months after the publishing thereof, deliver, or cause to be delivered to the Secretary of State a copy of the same, to be preserved in his office.
The 1790 Copyright Act and the Statute of Anne: Foreign Works

Statute of Anne
nothing in this Act contained do extend or shall be construed to extend to prohibit the importation vending or selling of any Books in Greek Latin or any other foreign language printed beyond the seas any thing in this Act contained to the contrary notwithstanding

1790 Copyright Act
nothing in this act shall be construed to extend to prohibit the importation or vending, reprinting or publishing within the United States, of any map, chart, book or books, written, printed, or published by any person not a citizen of the United States, in foreign parts or places without the jurisdiction of the United States.
1790 Copyright Act

- Legislated in response to ad hoc privileges petitions
- Early joint copyright-patent Bill H.R. 10.
- Close resemblance to the Statute of Anne
  - Title
  - Subject matter & beneficiaries
  - Entitlements & duration
  - Renewal
  - Infringement
  - Remedies
  - Registration
  - Deposit
- Minor differences
  - Absence of price control procedure
  - Removal of registration alternative
The 1790 Copyright Act and the Statute of Anne

Statute of Anne

if the Clerk of the said Company of Stationers for the time being shall refuse or neglect to Register or make such entry or entries or to give such certificate being thereunto required by the author or proprietor of such Copy or Copyes in the presence of two or more credible witnesses That then such person and persons so refusing notice being first duly given of such refusal by an advertisement in the Gazette shall have the like benefit as if such Entry or Entryes Certificate or Certificates had been duly made and given And that the clerks so refusing shall for any such offence forfeit to the proprietor of such Copy or Copyes the sum of Twenty pounds

H.R. 10

Provided also, that if the said for the time being, shall refuse or neglect to register or make entry, or to give a certificate, enjoined by this act, being thereunto required by the author or proprietor of such book or books, or copy or copies thereof, in the presence of two or more credible witnesses, that then the author or proprietor of such book or books, copy or copies thereof, on giving notice of such refusal or neglect, by advertisement published in for weeks, shall be entitled to and have equal benefit as if such registry, entry and certificate had been obtained in manner before directed by this act. And the said neglecting or refusing, shall forfeit for every neglect or refusal to make entry, register and to give certificate to the author or proprietor of such book or books, copy or copies thereof, the sum of pounds to be recovered in any court of
The 1790 Copyright Act and the Statute of Anne

1790 Copyright Act
And such author or proprietor shall, within two months from the date thereof, cause a copy of the said record to be published in one or more of the newspapers printed in the United States, for the space of four weeks.
1790 Copyright Act

- Legislated in response to ad hoc privileges petitions
- Early joint copyright-patent Bill H.R. 10.
- Close resemblance to the Statute of Anne
  - Title
  - Subject matter & beneficiaries
  - Entitlements & duration
  - Renewal
  - Infringement
  - Remedies
  - Registration
  - Deposit
- Minor differences
  - Absence of price control procedure
  - Removal of registration alternative
  - Explicit recognition of statutory rights in manuscripts (codification of Pope v. Curl [1741]?)
The Statute of Anne as an American Legal Transplant

- Unlikelihood of (successful) transplant
- Why?
  - Because it was there
  - Cultural and ideological prestige
Translation I: Adaptation

• Remedies
  – Equitable and common law remedies (Morse v. Reid [1798])

• Authorship
  – Originality doctrine (beginning in the 1820s and 1830s)

• Scope
  – Decline of reprint concept and rise of the fair use doctrine (1830s and 1840s)
    – The rise of substantial similarity

• Entitlements
  – Statutory expansion beginning in 1856 onward

• Common law copyright debate
  – 1834 Wheaton v. Peters and subsequent interpretation
Translation II:
Accommodation & Path Dependence

• Early shift to general legislative regimes
  – Copyright
  – Patent

• Term
  – 14 years
  – Renewal (and termination)

• Statutory damages

• Formalities
  – Registration, deposit, notice[?]