The Geographic Scope of Copyright From the Statute of Anne to Today

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Statute of Anne (1710)

- Sec. 1 granted to “the author of any book or books” and his assignees “the sole liberty of printing and reprinting such book and books” for the specified term
- If any person “shall print, reprint, or import, or cause to be printed, reprinted, or imported, any such book or books, without the consent of the proprietor,” remedies.
Statute of Anne (1710)

• Sec. 7: Provided, that 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 foreign language printed beyond the seas; any thing in this act contained to the contrary notwithstanding.
12 Geo. II c. 36 (1739)

• Sec. 1: “from and after [Sept. 29, 1739] it shall not be lawful for any person or persons whatsoever to import or bring into this kingdom for sale any book or books first composed or written and printed or published in this kingdom and reprinted in any other place or country whatsoever”
1 & 2 Vict. c. 59 (1838)

• Sec. 1: “it shall be lawful for her Majesty . . . to direct that the authors of books which shall . . . be published in any foreign country to be specified in such order . . . shall have the sole liberty of printing and reprinting such books within the United Kingdom . . .”
1790 Copyright Act

Section 1: “the author or authors of any map, chart, book or books …, being a citizen or citizens of these United States, or resident therein, … shall have the sole right and liberty of printing, reprinting, publishing and vending such map, chart, book or books …
Section 5: “[N]othing in this act shall be construed … 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.”
1891 Amendment

Section 13: “That this act shall only apply to a citizen or subject of a foreign state or nation when such foreign state or nation permits to [U.S.] citizens … the benefit of copyright [by national treatment], or when such foreign state or nation is a party to an international agreement which provides for reciprocity in the granting of copyright [to which the U.S. is also a party].”
Berne Convention (1886)

• Art. 2: “Authors who are subjects or citizens of any of the countries of the Union . . . shall enjoy in the other countries for their works . . . the rights which the respective laws do now or may hereafter grant to natives. . . .”
1896 Additional Act to Berne

- Art. I(II): “Authors not being subjects or citizens of one of the countries of the Union, who first publish . . . their literary or artistic works in one of those countries, shall enjoy, in respect of such works, the protection granted by the Berne Convention . . .”
Berne Convention (1971)

- Art. 3(1): The protection of this Convention shall apply to:
  - (a) authors who are nationals of one of the countries of the Union for their works whether published or not;
  - (b) authors who are not nationals of one of the countries of the Union for their works first published in one of those countries, or simultaneously in a country outside the Union and in a country of the Union.
Berne Convention (1971)

• Art. 5(4): The country of origin shall be considered to be:
  – (a) in the case of works first published in a country of the Union, that country;
  – in the case of works published simultaneously in several countries of the Union which grant different terms of protection, the country whose legislation grants the shortest term of protection;
  – (b) in the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country;
Moberg v. 33T LLC

666 F. Supp. 2d 415
(D. Del. 2009)
• 411(a): Except for [106A, moral rights], no civil action for infringement of the copyright in any United States work shall be instituted until ... registration of the copyright claim has been made in accordance with this title [or until registration has been refused by the Copyright Office].
Moberg v. 33T LLC

101: For purposes of section 411, a work is a “United States work” only if –
(1) in the case of a published work, the work is first published
   (A) in the United States
   (B) simultaneously in the United States and another treaty party or parties
Moberg v. 33T LLC

- Swedish photographer Håkan Moberg
- Photographs created in 1993
- Photographs first published on German website in 2004; copies available for sale
- In 2007, two French citizens posted copies of the photos on U.S. websites owned and operated by defendant 33T
101: “Publication” is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication.
Google Book Settlement 2.0

• Para. 1.19: “Book” means a written or printed work that as of January 5, 2009
  – (a) had been published or distributed to the public or made available for public access as a set of written or printed sheets of paper bound together in hard copy form under the authorization of the work’s U.S. copyright owner
Para. 1.19: “Book” means a written or printed work that as of January 5, 2009

- (c) (1) if a “United States work,” . . . was registered with the United States Copyright Office, and

- (2) if not a United States work, either (x) was registered with the United States Copyright Office, or (y) had a place of publication in Canada, the United Kingdom or Australia, as evidenced by information printed in or on a hard copy of the work. . . .
Jacobs v. Carnival Corp.

2009 U.S. Dist. LEXIS 31374
2009 WL 856637 (S.D.N.Y. 2009)
Jacobs v. Carnival Corp.

- To meet pleading requirements under Rule 8 in a copyright infringement case, complaint must allege
  - (1) the specific original works at issue
  - (2) that plaintiff owns the copyright(s)
  - (3) that the copyrights have been registered
  - (4) by what acts and during what time the defendant infringed the copyright(s)
Jacobs v. Carnival Corp.

- In this case, must also allege where the allegedly infringing acts took place.
- If the allegedly infringing performances took place within the territorial waters of the United States, ... this Court would have subject matter jurisdiction.
- If the allegedly infringing performances took place in international waters ... (?)