

CIRANO note written by Ejan Mackaay, June 2011

Copyright, and indeed all intellectual property, reflects a compromise between the need for reward on creations we see – by reserving them to the creator – and the need to let information freely flow so as to permit further creations to emerge with as few encumbrances as possible. Over the past quarter century or so, all parameters of copyright have been moved towards more protection, disturbing the underlying compromise. The term of protection extends well beyond what is practically useful for the vast majority of creators, much as it may serve the needs of a small number of large players who hold important older copyrights still producing revenue. The term of copyright has been extended in many jurisdictions for authors who are individuals from life + 50 years to life + 70 years. The term looks rather generous against the backdrop of the 14-year term granted in the first formal copyright legislation, the Statute of Anne, whose three-hundredth anniversary we have just celebrated.¹ This invites a reflection upon what justifies the term of copyright and its recent extension.

This paradoxical situation results from a few founding principles considered untouchable in the countries members of the Berne Convention: it is automatically obtained, without formality and for a uniform and rather lengthy term. If we want to redress the balance underlying copyright, we may have to call these principles into question and lead creators individually to reveal the value they attach to their right by renewing it, allowing it to lapse into the public domain when they no longer value it. Whilst this would reintroduce formalities into the structure of copyright, technological advances may make these less of a burden than they were at the time of their abolition. Alternatively, one might consider an interpretation of equitable exceptions to copyright (such as fair use and fair dealing) so as to expand them gradually as the copyright in question ages. Such approaches would have the fortunate effect of avoiding that lobbying by the happy few needlessly locks up culture for most of us.

A report on this subject has been published by the author on the CIRANO website and is available at the following address:

<http://www.cirano.qc.ca/pdf/publication/2011s-38.pdf>

¹ Bently, Lionel, Uma Suthersanen and Paul Torremans (eds), *Global Copyright - Three Hundred Years Since the Statute of Anne, from 1709 to Cyberspace*, Cheltenham, UK, Edward Elgar, 2010. The text of the Act is reproduced at pp. 501-506.