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THE LIFE OF AN AUTHOR: SAMUEL EGERTON BRYDGES AND THE *COPYRIGHT ACT* 1814

Ronan Deazley

INTRODUCTION ¹

The House Judiciary Committee report on the 1976 *Copyright Act* observed that “[t]he debate over how long a copyright should last is as old as the oldest copyright statute and will doubtless continue as long as there is a copyright law.”² When one thinks of notable debates upon the copyright term in the twentieth and twenty-first centuries, the names of Sonny Bono and Eric Eldred come to mind. When one thinks of comparable debates on the copyright term in the nineteenth century, one thinks of Sergeant Talfourd, Thomas Babington Macaulay, and the parliamentary wrangles surrounding the *Copyright Amendment Act* 1842. In convincing the House of Commons to reject Talfourd’s proposals for a copyright term that would last for the life of the author plus sixty years post mortem, Macaulay famously declared: “The principle of copyright is this. It is a tax on readers for the purpose of giving a bounty to writers.”³ He continued:

At present the holder of copyright has the public feeling on his side. Those who invade copyright are regarded as knaves who take the bread out of mouths of deserving men. Everybody is well pleased to see them restrained by the law, and compelled to refund their ill-gotten gains. No tradesmen of good repute will have anything to do with such disgraceful transactions. Pass this

1. This article is based upon work carried out for an AHRC-funded project: *Primary Sources on Copyright (1450-1900)*; for further information see www.copyrighthistory.org. I would like to thank Dr. Claire McIvor for her comments on earlier drafts of the paper. Any errors or omissions are, naturally, the responsibility of the author.

2. H.R. REP. NO. 94-1476, at 133 (1976).

3. Thomas Babington Macaulay, First Speech on Copyright Delivered to the House of Commons (Feb. 5, 1841), in *MACAULAY’S SPEECHES ON COPYRIGHT AND LINCOLN’S ADDRESS AT COOPER UNION* 3, 11 (James Fleming Hosic ed., 1915).

law: and that feeling is at an end. Men very different from the present race of piratical booksellers will soon infringe this intolerable monopoly. Great masses of capital will be constantly employed in the violation of the law. Every art will be employed to evade legal pursuit; and the whole nation will be in the plot.⁴

One hundred and fifty years ahead of his time, Macaulay could have been speaking directly to the Napster and the YouTube generation. In any event, in 1842, what was finally steered through Parliament by Philip Henry Stanhope (Lord Mahon), was a copyright term that would last for the life of the author and seven years after his or her death, or forty-two years, whichever was longer.⁵

This, however, was not the first time, in Britain at least, that the legislature had granted a lifetime interest in a copyright work. That first occurred with the passing of the *Copyright Act* 1814, which provided that copyright in a literary work would last for twenty eight years from the time of publication, and “if the author shall be living” at the end of that period, then the work was to be protected “for the residue of his natural life.”⁶ The *Copyright Act* 1814 represents something of a blind-spot in accounts of Anglo-American copyright law,⁷ overshadowed somewhat by the protracted and rhetorically beguiling debates concerning the 1842 Act. Even Catherine Seville is liable to unintentionally mislead when she writes in her most recent work, *The Internationalisation of Copyright Law*, that the 1842 Act “did extend [the] copyright term somewhat, if not so much as its

4. *Id.* at 19-20.

5. An Act to Amend the Law of Copyright, 1842, 5 & 6 Vict., c. 45, § 3 (Eng.).

6. Copyright Act, 1814, 54 Geo. 3, c. 156, § 4 (Eng.). Nor was this the first time that a lifetime interest had been suggested by the legislature—that first occurred in 1737; for details see RONAN DEAZLEY, ON THE ORIGIN OF THE RIGHT TO COPY: CHARTING THE MOVEMENT OF COPYRIGHT LAW IN EIGHTEENTH-CENTURY BRITAIN (1695-1775) 103-108 (2004).

7. For commentaries upon the 1814 Act, see John Feather, *Publishers and Politicians: The Remaking of the Law of Copyright in Britain 1775-1842, Part I: Legal Deposit and the Battle of the Library Tax*, 24 PUBLISHING HIST. 49 (1988); D.J. MCKITTERICK, CAMBRIDGE UNIVERSITY LIBRARY, A HISTORY: THE EIGHTEENTH AND NINETEENTH CENTURIES 394-445 (1986); J.C.T. Oates, *Cambridge University and the Reform of the Copyright Act, 1805-1813*, s5-XXVII THE LIBRARY 275 (1972).

sponsors requested”⁸, explaining that “[t]he term had been twenty-eight years under the 1814 Copyright Act,” but with no mention of the residuary lifetime interest.⁹

The aim of this article is simply to throw a spotlight back on the 1814 Act, and to bring into focus the various discussions and debates which led to its enactment, in pursuit of an answer to the question as to why and upon what basis the legislature decided to introduce the lifetime term at this point in time. The poet Robert Southey, writing in the *Quarterly Review* in January 1819, notably pleaded the authors’ case for perpetual copyright.¹⁰ Seven years before Southey, however, in 1812, Isaac D’Israeli, father to Benjamin, published a collection of essays entitled the *Calamities of Authors*, in which (aside from his telling observation that “Authors continue poor, and Booksellers become opulent; an extraordinary result!”) he too called for “justice” in relation to the copyright term:

The cause we are pleading is not the calamities of indifferent writers; but of those whose utility, or whose genius, long survives that limited term which has been so hardly wrenched

8. CATHERINE SEVILLE, *THE INTERNATIONALISATION OF COPYRIGHT LAW: BOOKS, BUCCANEERS AND THE BLACK FLAG IN THE NINETEENTH CENTURY* 9 (2006).

9. *Id.* at 9, n.8. Elsewhere Seville does write:

The 1842 Act was the product of five years of heated public and Parliamentary debate. It resulted in an extension of term: copyright was to last for the author’s lifetime plus seven years, or for a minimum of 42 years from the date of publication. The 1814 Copyright Act had provided for a 28 year term, or the author’s lifetime if this was longer, so the change is now regarded as of little real significance.

Catherine Seville, *Talfourd and His Contemporaries: The Making of the 1842 Copyright Act*, in *THE PREHISTORY AND DEVELOPMENT OF INTELLECTUAL PROPERTY SYSTEMS* 47, 49 (Alison Firth ed., 1997).

10. Southey wrote as follows:

The question is simply this: upon what principle, with what justice, or under what pretext of public good, are men of letters deprived of a perpetual property in the produce of their own labours, when all other persons enjoy it as their indefeasible right – a right beyond the power of any earthly authority to take away? Is it because their labour is so light, - the endowments which it requires so common, - the attainments so cheaply and easily acquired, and the present remuneration so adequate, so ample, and so certain? . . . The decision which time pronounces upon the reputation of authors, and upon the permanent rank which they are to hold, is unerring and final. Restore to them that perpetuity in the copyright of their works, of which the law has deprived them, and the reward of literary labour will ultimately be in just proportion to its deserts.

Robert Southey, *Inquiry into the Copyright Act*, Q. REV. 196, 211-13 (1819).

from the penurious hand of verbal lawyers. Every lover of literature, and every votary of humanity, has long felt indignant at that sordid state and all those secret sorrows to which men of the finest genius, or of sublime industry, are reduced and degraded in society.

Secure authors their “natural right”, he continued, and “[l]iterature would acquire a permanent and a nobler reward”:

Where then is the Author to look ... for a provision for his family, or for his future existence? It would naturally arise from the work itself, were Authors not the most ill-treated and oppressed class of the community. The daughter of Milton need not have excited the alms of the admirers of her father, if the right of Authors had been better protected; his own *Paradise Lost* had then been her better portion, and her most honourable inheritance. The children of Burns would have required no subscriptions; that annual tribute which the public pay to the genius of their parent, was their due, and would have been their fortune.¹¹

This was the time of Wordsworth and Coleridge, Byron and Shelley, when the English Romantic tradition was in full bloom, and it was Wordsworth, of course, who would later support Talfourd in taking up the copyright question in 1837.¹²

In introducing a copyright term that would last for the life of an author in 1814, was the legislature similarly responding to D’Israeli’s earlier plea that the situation of authors be addressed? This article sets out to explore that question. But more than that, in investing the 1814 legislation with renewed attention and better understanding the context and reason behind the recognition of the lifetime term in 1814, we may find a useful prism through which to look afresh at the

11. ISAAC D’ISRAELI, *CALAMITIES OF AUTHORS*, VOL. I 25, 41-43 (1812).

12. Seville, *supra* note 9, at 57; see also Richard G. Swartz, *Wordsworth, Copyright and the Commodities of Genius*, 89 *MOD. PHILOLOGY* 482 (1992).

current copyright debate, and in particular, the rationale behind the length of the current copyright term.

I. THE AFTERMATH OF *BECKFORD V. HOOD* (1798)

Any meaningful discussion of the origins of the *Copyright Act* 1814 must begin with the decision of the King's Bench in *Beckford v. Hood* (1798).¹³ *Beckford* concerned the unauthorized reproduction of a literary work that fell squarely within the copyright term provided by the *Statute of Anne*,¹⁴ but one which the plaintiff had not registered in accordance with the provisions of the Act.¹⁵ Unable to state a claim under the statutory remedies provided therein, Beckford argued instead for the common law remedy of damages by an action on the case. The question for the court was whether such an action could be sustained. In *Millar v. Taylor* (1769) the King's Bench under Lord Mansfield had decided that an author enjoyed a perpetual right at common law in his literary productions.¹⁶ That decision, however, was not unanimous, with Justice Yates dissenting on the point, and it was subsequently overturned by the House of Lords in *Donaldson v. Becket* (1774).¹⁷ The King's Bench in *Beckford* now

13. *Beckford v. Hood*, 101 Eng. Rep. 1164 (K.B. 1798).

14. The copyright term for works published after the *Statute of Anne* came into force, was fourteen years (s.1); if the author was still living at the end of that period, then he or she received an additional fourteen year period of protection (s.11).

15. An Act for the Encouragement of Learning by Vesting the Copies of Printed Books in the Authors or Purchasers of Such Copies (*Statute of Anne*), 1709, 8 Ann., c. 19, § 2 (Eng.) [hereinafter *Statute of Anne*].

16. *Millar v. Taylor*, 4 Burr 2303, 98 Eng. Rep. 201 (K.B. 1769).

17. *Donaldson v. Becket*, 4 Burr. 2408, 98 Eng. Rep. 257 (K.B. 1774). See also 17 PARL. HIST. ENG. 953-1003; ANON., THE PLEADINGS OF THE COUNSEL BEFORE THE HOUSE OF LORDS IN THE GREAT CASE CONCERNING LITERARY PROPERTY (1774); ANON., THE CASES OF THE APPELLANTS AND THE RESPONDENTS IN THE CAUSE OF LITERARY PROPERTY, BEFORE THE HOUSE OF LORDS (1774). While *Donaldson* confirmed that the duration of copyright protection an author enjoyed in his published literary works was solely determined by the *Statute of Anne*, the wider meaning and significance of the case remains contested. A traditional interpretation of the decision suggests that the House of Lords affirmed the existence of copyright at common law while at the same time holding that that natural right was nevertheless circumscribed by the statute. Recent research however, has demonstrated that this reading is based on misreporting of the true opinions of the judges and law lords. In the light of the corrected record, it can be cogently argued that the House of Lords actually rejected the arguments in favour of common law copyright. In the context of the broader contemporary debate as to whether copyright as a phenomenon is best understood as a natural authorial property right or no more than an

consisted of Chief Justice Lord Kenyon and Justice Ashurst, who had spoken in favor of the common law right in *Donaldson*, as well as Justices Grose and Lawrence. In this case, the court would act with unanimity.

In presenting his client's case, Reader, counsel for Beckford, adopted two rhetorical strategies. First, he continuously stressed that the decision in *Donaldson* concerned the nature of the common law right *post-publication* only. Second, he pressed the comments of those judges who had previously rejected the existence of the common law right, such as Justice Yates and Baron Eyre,¹⁸ into service in support of his client's position. As to the first, Reader observed:

Mr Justice *Yates*, who in the case of *Millar v. Taylor* in this Court was alone of opinion that an author had not a right of property at common law in his works when published, was yet decidedly of opinion that by the first clause of the Statute of Anne, an exclusive right was vested in the author during the terms therein limited; and that notwithstanding the penalties and confiscation given by the same Act the author had *all the common law remedies* for the enjoyment of that right¹⁹

As to the second, he argued that, while Baron Eyre might have given his opinion against the common law right after publication, he "was yet of [the] opinion that there might be a remedy in equity, upon the foundation of the statute independently of the terms and conditions

institutional mechanism evidencing the existence of a state sanctioned privilege, the general argument from history, and from *Donaldson* in particular, allows for no definitive conclusions. See, e.g., LYMAN RAY PATTERSON, COPYRIGHT IN HISTORICAL PERSPECTIVE (1968); Mark Rose, AUTHORS AND OWNERS: THE INVENTION OF COPYRIGHT (1993); Howard B. Abrams, *The Historic Foundation of American Copyright Law: Exploding the Myth of Common Law Copyright*, 29 WAYNE L. REV. 1119 (1983); Deazley, *supra* note 6, at 191-210; John F. Whicher, *The Ghost of Donaldson v Beckett: An Inquiry into the Constitutional Distribution of Powers over the Law of Literary Property in the United States—Part 1*, 9 BULL. COPYRIGHT SOC'Y 102 (1962).

18. For Eyre B's comments upon the common law right, see 17 PARL. HIST. ENG. 971-75.

19. Beckford, 101 Eng. Rep. at 1165 (emphasis added).

thereby prescribed in respect of the penalties given”.²⁰ Marryat, counsel for the defendant, countered that when a statute was “merely confirmatory of a pre-existing right,” then any penalties contained therein might indeed be considered to be simply accumulative to those already existing at common law; this however was not the case for works protected by copyright. In support, he drew a parallel between engravers and authors and suggested that, as was evident from the legislative provisions preventing the reproduction and sale of protected engravings,²¹ “. . . the Legislature thought that no such remedy as this now attempted lay by virtue of the statutes”²²

Chief Justice Kenyon’s opening statement made clear his opinion on the common law right:

All arguments in support of the rights of learned men in their works, must ever be heard with great favour by men of liberal minds to whom they are addressed. It was probably on that account that when the great question of literary property was discussed some Judges of enlightened understanding went the length of maintaining that the right of publication rested exclusively in the authors and those who claimed under them for all time.²³

While he was sure that the Lords in *Donaldson* were correct to confine the right to the period of time set out within the 1709 Act, he was equally certain that “the common law gives the remedy by action on the case for the violation of it” within those times.²⁴ Justice

20. *Id.* at 1166.

21. See the various Engravers’ Acts: 1735, 8 Geo. 3, c.13; 1766, 7 Geo. 3, c. 38; 1777, 17 Geo. 3, c. 57.

22. Beckford, 101 Eng. Rep. at 1166.

23. *Id.* at 1167.

24. *Id.* A number of subsequent writers and judges have taken Kenyon CJ’s observations to indicate that he was “against the common law right” in the sense that he did not consider a copyright to exist at common law; see for example the comments of Parke B and Lord Brougham in *Jeffreys v. Boosey* (1854) 4 HLC 815, and W.A. COPINGER, THE LAW OF COPYRIGHT IN WORKS OF LITERATURE AND ART 17 (1870). However, that Kenyon considered the decision in *Donaldson* was the correct one does not necessarily mean that he considered no common law copyright to exist. Rather given the overall tenor of his commentary, as well as those of the judges sitting with him, it is suggested that he did consider the

Ashurst, not surprisingly, was of the same mind, and when Justice Lawrence spoke to the issue, he allowed Lord Mansfield the final word on the matter:

I entirely concur with the opinions delivered by my brethren, upon the principal point, and the case of *Tonson v. Collins*, 1 Blac. Rep. 330, is an additional authority in support of it; for there Lord Mansfield said that it had been always holden that the entry in Stationers' Hall was only necessary to enable the party to bring his action for the penalty, but that the property was given absolutely to the author, at least during the term.²⁵

The decision in *Beckford* had two significant impacts upon the history and the development of British copyright law. The first concerned the influence which the case exerted over the manner in which the decision of the House Lords in *Donaldson* was subsequently interpreted and understood throughout the nineteenth century.²⁶

The second, however, was of a more immediate nature. In deciding as it did, the court ensured that booksellers no longer needed to register their works with the Stationers' Company in order to hold copyright infringers financially liable for their unauthorised actions. It had never been the case that all publications were registered with the Company, but in the wake of *Beckford*, registration declined significantly. For example, in the five years before *Beckford*, the average number of books registered with the Company each year was around 620. In the five years that followed, registrations dropped to around 370.²⁷ The corollary to this drop in registration was that fewer and fewer works were being deposited with the Company for the

common law right to exist, but also thought the House of Lords correct to consider it circumscribed by the Statute of Anne.

25. *Beckford*, 101 Eng. Rep. at 1168.

26. For a further discussion of this issue, see RONAN DEAZLEY, *RETHINKING COPYRIGHT: HISTORY, THEORY, LANGUAGE* 26-55 (2006).

27. R.C. BARRINGTON PARTRIDGE, *THE HISTORY OF THE LEGAL DEPOSIT OF BOOKS THROUGHOUT THE BRITISH EMPIRE* 315 (1938).

benefit of the libraries.²⁸ This situation wasn't helped by the wording of the *Copyright Act* 1801, which, unlike the *Statute of Anne*, seemed to suggest that unless a book was registered with the Company, there was no need to deposit a copy of the same.²⁹ However, it was not until Basil Montagu, a barrister and author,³⁰ sent to the Cambridge University library for the seventh volume of the Term Reports (which volume, ironically, contained a report of the decision in *Beckford*) that the library deposit requirement in the *Statute of Anne* became a live issue. The library responded that they did not have a copy of the book he had requested and Montagu decided to investigate the matter further. Of all the works published in 1803 (which he underestimated at 391), he could only find twenty-two in the university's library. Fearful that "the intention of the legislature, to assist in the regular augmentation of the library, was likely to be defeated,"³¹ he published a short commentary on the matter in 1805, arguing that the deposit obligation did not depend upon whether the work was registered with the Stationers' Company. Registration, he suggested, only impacted upon an owner's ability to pursue for the statutory

28. *Statute of Anne*, *supra* note 15, § 5. Feather writes that dissatisfaction with non delivery of library copies began to manifest in the mid-eighteenth century, a situation that was not helped however by the decision in *Beckford*; by the end of the eighteenth century, he continues, "[t]he deposit clause became a dead letter." Feather, *supra* note 7, at 52. See also Barnes who notes that, after *Beckford*, "[i]t was not long before publishers and authors realized that they could avoid delivering a copy of each new book to the copyright libraries by merely neglecting to register new titles." J.J. BARNES, *FREE TRADE IN BOOKS: A STUDY OF THE LONDON BOOK TRADE SINCE 1800* 2 (1964).

29. Copyright Act, 1801, 41 Geo. 3, c. 107. Section 4 of the 1801 Act set out that Clerk of the Stationers' Company was to prepare a bi-annual list of books registered with the Company "and shall upon demand deliver the said lists or cause the same to be delivered to any person or persons duly authorized to receive the same for and on behalf of [Trinity] College." Section 6 provided as follows: "That from and after the passing of this Act, in Addition to the nine Copies now required by Law to be delivered to the Warehouse-Keeper of the said Company of Stationers, of each and every Book and Books which shall be entered in the Register Book of the said Company, one other Copy shall be in like Manner delivered for the Use of the Library of the said College of the Holy Trinity of Dublin, and also one other Copy for the use of the Library of the Society of the King's Inns, Dublin, by the Printer or Printers of all and every such Book and Books as shall hereafter be printed and published". *Id.*

30. Montagu, who was admitted to Gray's Inn in 1789, graduated from Cambridge University in 1790 (BA) and 1793 (MA), and after graduation continued to live in Cambridge with his wife, Caroline Matilda Want; V.M. LESTER, *Montagu, Basil (1770–1851)*, in *OXFORD DICTIONARY OF NATIONAL BIOGRAPHY* (2004), available at <http://www.oxforddnb.com/view/article/19003>.

31. BASIL MONTAGU, *ENQUIRIES AND OBSERVATIONS RESPECTING THE UNIVERSITY LIBRARY* (1805).

penalties; regardless of whether a work was registered, he continued, the obligation to deposit copies for the benefit of the libraries remained.

Two years later, Edward Christian, the Downing Professor of the Laws of England at Cambridge and brother to Fletcher Christian of *Bounty* fame, published a second pamphlet in 1807, *A Vindication of the Right of the Universities*,³² which made its way into the hands of John Villiers, the M.P. for Queenborough.³³ Villiers, speaking before a House of Commons Select Committee in 1818, explained his interest in the subject as follows:

Having lived a great deal in the University, I had a very strong sense of the importance of that right, which the University supposed they were possessed of; it was at that time in litigation, and an idea was entertained, that it might be evaded by not entering the books at Stationers Hall; the sense I entertained of the value of that right to the University, which, I believe to be of the utmost importance; and presentation of new books constantly before the eyes of the University, particularly to that part of the University which is either occupied in the giving or receiving lectures, was, that it was a very valuable privilege; this I state as the motive which led me to interfere in the matter³⁴

32. EDWARD CHRISTIAN, A VINDICATION OF THE RIGHT OF THE UNIVERSITIES OF GREAT BRITAIN TO A COPY OF EVERY NEW PUBLICATION (1807).

33. Christian recalled the incident as follows:

I examined the subject for many days and weeks, and drew up all I could find on the subject on both sides, and my conclusion was, that we were entitled to the privilege under the statute of Anne, though the books were not entered at Stationers Hall; I printed this, though not for sale; I gave it away among my friends. The Honourable Mr. Villiers happened to be at Cambridge, and I gave one to him; he wrote to me in a few days, that he was glad I had paid attention to so important a subject, that he considered it of great importance, and he would bring it before Parliament, and try to have it amiably settled; I communicated that to the University of Cambridge, and all the friends of the University and libraries were glad of it.

Select Committee on the Copyright Acts, Minutes of Evidence, 1818, H.C. 280, at 84 [hereinafter Minutes of Evidence 1818].

34. *Id.* at 93.

II. THE COPYRIGHT BILL 1808

On June 16, 1808, leave was given in the House of Commons to bring in a *Bill for the further encouragement of Learning in the United Kingdom of Great Britain and Ireland, by securing to the Libraries of the Universities, and other public libraries, copies of all newly-printed books, and books reprinted with additions, and by further securing the copies and copyright of printed Books to the authors of such books, or their assigns, for a time to be limited.*³⁵ The bill itself was relatively short. It set out that eleven copies of every work published should “in all cases be delivered by the Printer or Printers thereof, to the Warehouse-keeper of the Company of Stationers” *before* publication and *regardless* of whether the book was registered with the Company.³⁶

Second, the bill proposed to do away with the interest set out in the *Statute of Anne* that was contingent upon the life of the author.³⁷ Instead, as was the case with designers and engravers under the *Engravers Copyright Act* 1766,³⁸ any works published after the commencement of the bill would enjoy a single period of protection lasting twenty-eight years.³⁹

Third, it set out that the authors of any book published within an undefined period of time prior to the passing of the bill, or their personal representatives (if deceased), were to have the sole liberty of printing their works “either with or without any new notes, additions, or alterations,” for the term of presumably twenty-eight years,⁴⁰ or what remained thereof, from the time of first publication of the work. Moreover, this was to be the case notwithstanding “any general words in any former agreement or assignment to the contrary.”⁴¹

35. Copyright Bill, 1808, H.C. Bill [314]. *See also* 63 H.C. JOUR. 441, 446, 461, 463.

36. Copyright Bill Draft, June 16, 1808, H.C. Bill, cl. 1.

37. Statute of Anne, *supra* note 15, § 11.

38. Engravers Copyright Act, 1766, 7 Geo. 3, c. 38, § 7.

39. Copyright Bill Draft, June 16 and 22, 1808, H.C. Bill [314], cl. 2.

40. The first printed version of draft bill, dated June 16, leaves the period of time unspecified.

41. Copyright Bill Draft, June 16, 1808, H.C. Bill [314], cl. 3.

When the bill came on for discussion in a Committee of the Whole House, it provoked considerable debate. One might have suspected that the third clause, which proposed to render null and void many existing contractual arrangements between bookseller and author, to the author's advantage, would prove particularly controversial, but not so. That provision was dropped during the committee stage. The most heated discussions in the Commons concerned the library deposit requirement. Samuel Romilly, for one, agreed that it was expedient that the university libraries should be provided with books, but he considered it quite unacceptable that "it should be proposed to lay a tax upon authors for that purpose."⁴² Charles Williams-Wynn objected as well, noting that the booksellers "felt it would be so injurious to their interests that they had prepared a petition against that part of [the bill]."⁴³ Presumably this came as something of a surprise to Villiers, given that he had spent a considerable amount of time meeting with representatives of the London book trade in the hope of having the matter resolved. Villiers recounts the nature of those discussions in the following manner:

I was very desirous not to interfere in any manner to the prejudice of authors, or the purchasers of copyrights; I therefore took some pains in looking over the whole of the question, to see whether anything occurred which might be a beneficial arrangement for them, as well as facilitate the enjoyment of the right belonging to the University, whether the enlargement of the copyright, which stood at that time upon a very inconvenient and very unjust footing, might not induce the persons engaged in publications to acquiesce without further hesitation in the claim of the University to their books. I really cannot state with precision, whether that idea occurred to myself, or it was suggested to me; but in consequence of that there were several

42. 11 PARL. DEB., H.C. (1st ser.) (1808) 990.

43. *Id.* at 989. The extent of the disagreement upon the deposit requirement in the Commons even resulted in the suggestion that the extension of the copyright term and the deposit provision might best be addressed in two separate Acts. *Id.*, 63 H.C. JOUR 461.

meetings, some at my own home, and at the house of Mr. Butterworth, of the persons who I understood to represent generally the trade in London, and in consequence of that meeting a bill was prepared, which certainly met with the concurrence of all those gentlemen⁴⁴

Christian, who claimed to have first suggested the idea of unifying the copyright term as a means of addressing the interests of the booksellers,⁴⁵ must have been equally taken aback: “I attended several of their meetings at the London Coffee-house, and Mr. Villiers’ house, and Mr. Villiers undertook to bring in a bill, that it should be amiably settled; we were all then agreed, if the Universities could induce the House by the influence of their members and their representatives, to get an increase of copyright; the booksellers undertook never to disturb us again.”⁴⁶ It may be that Villiers and Christian were overstating the nature of the agreement they had negotiated with the booksellers, or simply misunderstood the extent to which John Butterworth spoke for the general interests of the London book trade.⁴⁷ As it turned out, Butterworth was one of the booksellers who signed the petition on June 24, 1808, requesting that the bill be put off until the following parliamentary session “in order

44. Minutes of Evidence 1818, *supra* note 33, 93.

45. “I suggested this; ‘if there is any difficulty upon this, or if you consider it any hardship, increase the extent of copyright, let it be twenty-eight years certain’ they were all delighted with it; Mr Butterworth and others were highly pleased with it.” Minutes of Evidence 1818, *supra* note 33, at 84.

46. *Id.*

47. When the publisher Thomas Longman gave evidence before the Select Committee in 1813 he was asked about the meetings between Villiers and the booksellers:

[Davies Giddy]: Were you concerned in some meetings which were held between the booksellers some years ago, in reference to a Bill which Mr. Villiers brought into Parliament on this subject?

[Thomas Longman]: I was present at those meetings.

[DG]: As a principal bookseller, and a great purchaser of copyright, did you not consider an extension in the term of copyright, quite equivalent for the loss which they would sustain by the delivery of the eleven copies?

[TL]: I did not consider that.

[DG]: Was that not generally thought?

[TL]: I do not think it was; there were some persons of that opinion.

Select Committee on the Acts for the Encouragement, Minutes of Evidence, 1813, H.C. 177, at 11-12 [hereinafter Minutes of Evidence 1813].

to give time for a full consideration of [the] subject, in which such a variety of persons, and so large a property are materially concerned.”⁴⁸ Villiers, although by no means clear on the sequence of events, recounted in 1818 that it was on account of the booksellers’ petition that he dropped the bill.⁴⁹ It was never brought before the House again. Soon afterwards, Villiers was appointed as the British envoy to the Portuguese court, where he spent the next two years. As a result, Christian and the University of Cambridge had lost their sponsor.

III. *UNIVERSITY OF CAMBRIDGE V. BRYER* (1812)

Following the loss of the 1808 bill in the Commons, Christian persuaded the University to take matters into its own hands.⁵⁰ In 1811, they began proceedings against Henry Bryer, the printer of Samuel Heywood’s *A Vindication of Mr. Fox’s History of the early Part of the Reign of James the Second*, for failing to deliver a copy of the work for the use of the University library.

The London booksellers, sparing no expense in sponsoring Bryer’s defense, engaged the formidable Henry Brougham as counsel. Brougham’s star had risen considerably the previous year when he defended Leigh Hunt and his brother against an accusation of libel levelled at them by the Crown over an article they published in their paper, the *Examiner*, which was critical of the army’s use of flogging to discipline and punish recruits.⁵¹ Brougham, against popular expectation, triumphed. Lord Ellenborough claimed it was his duty to

48. Minutes of Evidence 1818, *supra* note 33, at 93-94.

49. He observed as follows: “I am quite confident that, in opposition to all those persons, I should not have gone on with the bill; I should think it most probable, that it was in consequence of this suggestion that the bill was dropped for the time; I should also think, that amongst those there were many persons who had attended the meeting, and had approved of the principle of the bill, but on hearing objections stated by different people, they wished, exactly what those resolutions purport, that the bill should be postponed, so as to allow an opportunity of discussing the different interests.” Minutes of Evidence 1818, *supra* note 33, at 94.

50. Feather, *supra* note 7, at 54. For details of the steps which the University took in the lead up to the litigation see Oates, *supra* note 7, at 281-82.

51. In fact, the piece, written by John Scott, had been first published in the *Stanford News*. ROBERT STEWART, HENRY BROUGHAM 1778-1868: HIS PUBLIC CAREER 74 (1985).

direct the jury that he considered the two brothers guilty of intending to raise sedition in the forces. The jury, nevertheless, acquitted them both; a decision attributable to Brougham's eloquence upon the liberty of the individual and the importance of maintaining a free press.⁵²

In defending Bryer, Brougham once again stood before Ellenborough, but this time his oratorical flair would not prevail. Ellenborough, a one time fellow of Peterhouse College, and the fourth son of Edmund Law, who had held the position of *Protobibliothecarius* (the librarian) at Cambridge between 1760 and 1769,⁵³ held for the University. In doing so, he observed that the *Statute of Anne* had two main goals: "the object of protecting the copyright, and that of the advancement of learning."⁵⁴ The library deposit provision, he considered, was designed "to make learning easy of access."⁵⁵ In that light, he continued, regardless of the fact that Bryer had not registered the work with the Company, he was nevertheless required to comply with the library deposit provision, and the University was entitled to recover the statutory penalties for non-delivery. Le Blanc J put the decision in the following manner:

[I]t appears to me that notwithstanding the title of the book has not been entered with the Clerk of the Stationers' Company, yet

52. Brougham spoke as follows:

If there is a difference in the importance of different subjects—if one person naturally feels more strongly than another upon the same matter—if there are some subjects on which all men who, in point of animation are above the level of a stock or a stone, do feel warmly;— have they not a right to express themselves in proportion to the interest which the question naturally possesses, and to the strength of the feeling it excites in them? If they have no such power as this, to what, I demand, amounts the boasted privilege of free speech? It is the privilege of a fettered discussion; it is the unrestrained choice of topics which another selects; it is the liberty of an enslaved press; it is the native vigour of impotent argument. The grant is not qualified, but resumed by the conditions. The rule is eaten up with the exceptions.

For an account of the trial see Stewart, *supra* note 52, at 74-77.

53. MCKITTERICK, *supra* note 7, at 403; see also B.W. YOUNG, *Law, Edmund (1703–1787)*, in OXFORD DICTIONARY OF NATIONAL BIOGRAPHY (2004), available at <http://www.oxforddnb.com/view/article/16141>.

54. *Univ. of Cambridge v. Bryer* (1812) 16 East 317, 321.

55. *Id.*

inasmuch as the author of this book is, according to the decision of this Court in *Beckford v. Hood*, entitled to all the privileges granted by the statute of *Anne*, and secured by a much more effectual remedy than the penalties which are given by the first section of the act, namely, by action to recover damages against any person who shall infringe his right, this privilege to the different libraries is also given by the fifth section of this act, notwithstanding there may not have been any such entry as is required by the second section⁵⁶

IV. THE RESPONSE OF THE BOOK TRADE AND THE SELECT COMMITTEE REPORT 1813

The decision of the court provoked an almost immediate response from the London booksellers. Within three weeks, a petition was presented to the Commons on their behalf by Davies Giddy (a.k.a. Davies Gilbert), mathematician and M.P. for Bodmin, claiming that the decision in *Bryer* would subject them “to great expence [*sic*], and operate very seriously to discourage literature.” The petitioners continued that “many of those works are now printed by authors at their own expence [*sic*],” and that to enforce delivery of eleven copies of all books would “in the cases in which, from the nature of the works, and limited sale, a small number only is printed, operate as a great discouragement to the undertaking of such works.”⁵⁷

This petition was joined by another one from the printing community on March 11, 1813, which also stressed the impact that the decision would have upon the production of books of “learning and science”. These works were very often “expensive publications”, subject to small print runs, “of great importance in the eyes of other countries, and form, in peaceable times, objects of national commerce and reputation”.⁵⁸

56. *Id.* at 333.

57. 24 PARL. DEB., H.C. (1st ser.) (1813) 310.

58. 25 PARL. DEB., H.C. (1st ser.) (1813) 11. A third petition was laid before the House, on 9 April, this time from the Edinburgh booksellers. They too, like the previous petitioners stressed the impact

The book trade's concerns were also played out in the press in that a pamphlet war ensued.⁵⁹ Those condemning the decision invoked the conceit of an author's copyright existing at common law and, as with Romilly in 1808, portrayed the deposit requirement as a tax upon this natural property right.⁶⁰ Samuel Egerton Brydges, author and publisher,⁶¹ antiquarian, and the M.P. for Maidstone,⁶² wrote that

which the deposit requirement would have upon 'the publication of large and valuable works,' as well as the impact upon individual authors who they suggested often published their own works "at a considerable expence [*sic*], and with only the prospect of a slow and uncertain sale." *Id.* at 762-63.

59. See, e.g., E. BRYDGES, A SUMMARY STATEMENT OF THE GREAT GRIEVANCE IMPOSED ON AUTHORS AND PUBLISHERS (1813); J.G. COCHRANE, THE CASE STATED BETWEEN THE PUBLIC LIBRARIES AND THE BOOKSELLERS (1813); J. COUPER, MEMORIAL AND REPRESENTATION OF THE UNIVERSITY OF GLASGOW, AGAINST A PETITION OF "SEVERAL BOOKSELLERS IN LONDON AND WESTMINSTER", PRESENTED TO THE HOUSE OF COMMONS ON THE 16TH DECEMBER 1812 (1813); R. DUPPA, AN ADDRESS TO THE PARLIAMENT OF GREAT BRITAIN ON THE CLAIMS OF AUTHORS TO THEIR OWN COPYRIGHT (1813); B. MONTAGU, ENQUIRIES RESPECTING THE PROPOSED ALTERATION OF THE LAW OF COPYRIGHT, AS IT AFFECTS AUTHORS AND THE UNIVERSITIES (1813); SHARON TURNER, REASONS FOR A MODIFICATION OF THE ACT OF ANNE RESPECTING THE DELIVERY OF BOOKS, AND COPYRIGHT (1813); JOHN BRITTON, THE RIGHTS OF LITERATURE; OR AN INQUIRY INTO THE POLICY AND JUSTICE OF THE CLAIMS OF CERTAIN PUBLIC LIBRARIES ON ALL THE PUBLISHERS AND AUTHORS OF THE UNITED KINGDOM, FOR ELEVEN COPIES, ON THE BEST PAPER, OF EVERY NEW PUBLICATION (1814); E. CHRISTIAN, A VINDICATION OF THE RIGHT OF THE UNIVERSITIES OF GREAT BRITAIN TO A COPY OF EVERY NEW PUBLICATION (2d. ed., 1814); R. TAYLOR, A SHORT PLEA ON BEHALF OF LEARNING, AGAINST THE CLAIMS OF THE UNIVERSITIES AND CERTAIN LIBRARIES TO COPIES OF ALL NEW BOOKS (1814).

60. Sharon Turner, for example, wrote that "authors before [the Statute of Anne] had the same perpetual right of property in their works as in their money", and that "no one ought to lose sight of the important principle, that the rights of private property are sacred, and ought never to be intruded upon without the last necessity". "[I]n taking eleven copies of every work compulsorily from its author or proprietor" he continued "his right of property is directly invaded; it is invaded as completely as if it were to be enacted, that a silversmith should give to these public bodies eleven silver candlesticks". TURNER, *supra* note 59, at 24, 38-39.

John Britton, antiquarian, topographer and author, castigated the deposit requirement as "arbitrary, unjust and impolitic". He continued:

I think it is plainly proved that the tax on authors and publishers, as pointed out by the act of Queen Anne, and rendered imperious by the recent decision of the judges, is cruel, oppressive, and unjust; that if enforced, and fully acted upon, it must materially harass and distress every author, and must also levy a contribution on all purchasers of books ... It will sound oddly to posterity, that in a polite nation, in an enlightened age, under the direction of the most wise, the most learned, the most generous encouragers of knowledge in the world, the property of a mechanic is better secured than that of a scholar! That the poorest manual operations should be more valued than the noblest products of the brain! That it should be a felony to rob a cobbler of a pair of shoes, and no crime to deprive the best author of his whole subsistence.

BRITTON, *supra* note 59, at 66-67.

61. Brydges owned the Lee Priory Press, a private press based in Kent, which published just over one hundred works between July 1813 and January 1823; for details of the Lee Priory Press catalogue see <http://www.presscom.co.uk/leepriory1.html>.

"[t]he Legislature has long acknowledged (and the Common Law seems from early ages to have acknowledged) the principle of property in the productions of a man's mind." He continued: "This tax then is a blight to production. It nips the most valuable fruits of Literature in their very bud."⁶³ Immediately after the printers' petition had been received in the Commons, Giddy moved that a Select Committee be appointed to look into the matter.⁶⁴

Those called before the Committee to give evidence were almost exclusively drawn from the community of booksellers and printers.⁶⁵ As might be expected, much of the evidence presented concerned the economics of book publishing (which in itself makes fascinating reading), the financial burden which the deposit provision imposed upon the book trade, as well as anecdotal evidence about works that might be abandoned should the provision be insisted upon. For example, Joseph Mawman reported that "[a]n author has declared, though he has a work already in press, and which he prints with a view to profit, if this legislative regulation should take place for the eleven copies, he will destroy what he has already printed, and

62. Brydges proved to be a vocal opponent to the deposit requirement during the debates in the House of Commons leading up to the Copyright Act 1814. About his involvement, Woodworth writes: "From the reports of the proceedings of the House of Commons it appears that Brydges took a conspicuous part in the debates. But he spoke with insufficient eloquence and his impetuous temperament frequently antagonized many of the honourable members". As to his general reputation she observes: "In London literary circles he was esteemed for his collections of old literature, for his private press, his essays on retirement, his good work in behalf of the Copyright Act. Lord Byron referred to him as a 'strange but able old man.'" M.K. WOODWORTH, *THE LITERARY CAREER OF SIR SAMUEL EGERTON BRYDGES* (1935), 21, 152.

63. BRYDGES, *supra* note 59, at 12. See also George Cochrane, a bookseller, who wrote that "[f]rom the first introduction of printing into England . . . there had been no legislative enactment on the subject, but it had always been understood and acted upon, that the copyright of every author or proprietor was vested in him *in perpetuity*." COCHRANE, *supra* note 59, at 3.

64. 25 PARL. DEB., H.C. (1st ser.) (1813) 12-14.

65. Those giving evidence included: Henry Parry (bookseller), Thomas Longman (bookseller), Joseph Mawman (bookseller), George Cochrane (bookseller), William Davies (bookseller), John Nichols (printer), Thomas Bensley (printer), and Richard Taylor (printer). The other two individuals to give evidence before the committee were the Rev. Thomas Dibdin, barrister, bibliographer and the author of *Typographical Antiquities: or the history of printing in England Scotland and Ireland: containing memoirs of our ancient printers, and a register of the books printed by them* (London: Miller, 1812), and Sharon Turner, a barrister, and the author of *Reasons for a Modification of the Act of Anne, Respecting the Delivery of Books and Copyright*, a treatise critical of the library deposit provision.

suppress the work altogether.”⁶⁶ Attention was also drawn to the more favorable situation of print sellers who already enjoyed a continuous twenty-eight-year term of copyright protection but without the burden of library deposit.⁶⁷ Toward the end of the Committee hearings Sharon Turner, who along with Brougham had been appointed by the book trade to represent Henry Bryer,⁶⁸ submitted a paper setting out the “modifications desired by the booksellers” with respect to the current legislative regime. In short, it requested that the deposit provision be reduced to five copies,⁶⁹ or if more were required, that the libraries be required to contribute to the cost of the same.⁷⁰ Also included was a long list of works that were to be excluded from the provision entirely, including “books with coloured prints” and those “with prints only, songs and music, newspapers, reprints of foreign works, no works sold above ten guineas,” and those “where the copyright is abandoned.”⁷¹

Even though the university libraries did not give evidence before the Select Committee, it was nevertheless recommended that the deposit system be retained. Despite that “great changes have taken place in the literary systems of this Country,” since the enactment of the *Statute of Anne*, the Committee considered that “continuing the

66. Minutes of Evidence 1813, *supra* note 47, at 17. In a similar fashion, Richard Taylor commented:

There are a great many works with respect to which the burthen of publication falls on the author himself, because the booksellers cannot be induced to undertake them, as they do not hold out any prospect of profit, and that class of works is very large and a very valuable class. Treatises very often upon some single point in any of the branches of science, which are not likely to have a great sale, the booksellers therefore cannot be expected to take upon themselves the expence [*sic*] of publishing, and the publication is either prevented, or they are published at the expence [*sic*] of the author; and I know very well, that very frequently, those works do not pay their expenses; and there are several instances of works of great reputation that have not paid the expence [*sic*] of printing, when printed at the expence [*sic*] of the authors ... I have no doubt, the eleven copies would, with respect to the printing of many works, prevent their being printed at all.

Id. at 29-30.

67. *Id.* at 18.

68. Oates, *supra* note 7, at 282.

69. Minutes of Evidence 1813, *supra* note 47, at 32 (stating, “[O]ne to each of the three Kingdoms, and one to each of the two English Universities.”).

70. *Id.* (“That One-third, or one-forth of the price, as published, be paid for the copies delivered.”).

71. *Id.* In this regard the booksellers suggested that “[a]ll books [were] to be entered, where the copyright is meant to be claimed.” *Id.*

delivery of all new works, and in certain cases subsequent editions, to the Libraries now entitled to receive them, will tend to the advancement of learning, and to the diffusion of knowledge, without imposing any considerable burden on the Authors, Printers, or Publishers of such works.”⁷²

They did however propose that certain changes might be made to the existing system. For example, not all works need be submitted on the finest paper and in the largest size,⁷³ and a system of only supplying books upon request might be introduced. As to the copyright term, they suggested that “a fixed term should be assigned beyond the existing period of fourteen years.”⁷⁴

There is no doubt that Oates is right to suggest that the book trade received the Report with both “anger and amazement.”⁷⁵ The question does of course beg as to why, given the nature of the evidence presented before the Committee, their recommendations were not more favorably disposed to the booksellers. Perhaps it was the presence of Lord Archibald Hamilton who, during the debate on the printers’ petition earlier that year, had astutely observed that while the law had been called a tax on authors “it was the booksellers who now complained . . . and asked for its revision.” Moreover, he continued, the cost of delivery to a bookseller was surely not so great “as to be any balance to the advantage of furnishing the Universities and public bodies with copies of all literary productions.”⁷⁶ Presumably, Sir William Scott, judge of the admiralty court and the parliamentary representative for Oxford University, would also have had something to say on the matter,⁷⁷ or indeed J.H. Smyth or

72. REPORT OF THE SELECT COMMITTEE, 1813, 1.

73. *Id.* That is, with the exception of the copy delivered to the British Museum, which was to be presented “in its most splendid form.” *Id.*

74. *Id.* at 2.

75. Oates, *supra* note 7, at 291.

76. 25 PARL. DEB., H.C. (1st ser.) (1813) 14.

77. Sir William Scott had, in February 1806, been approached by the Trustees of the British Museum for advice concerning “the existing laws respecting the delivery of copies of books at Stationers’ Hall”. He, and William Grant, then Master of the Rolls, reportedly advised then that “the Museum had an evident claim”; G.F. BARWICK, THE READING ROOM OF THE BRITISH LIBRARY 58 (1929).

Viscount Palmerston,⁷⁸ the two Members for the University of Cambridge.⁷⁹ In any event, the Committee's Report remained on the table until the end of that parliamentary session.

V. THE COPYRIGHT BILL 1814 AND THE AUTHOR'S VOICE

On May 10, 1814, Giddy once again raised the question of whether or not to revise the literary copyright statutes before the Commons. "The class of books which the Universities are desirous to get" he explained "were least profitable to booksellers, and it was a hardship on them," whereas "there were other books, such as novels, which could be of no use to the Universities."⁸⁰

The bill he proposed to introduce to remedy this situation was relatively straightforward.⁸¹ It was to repeal the previous deposit provisions, and set out that eleven copies of every book "upon the Paper upon which the largest number or impression of such Book shall be printed for Sale" were to be delivered to the Stationers' Company for the benefit of the libraries, provided that a written request had been made to the printer of the work within six months of first publication.⁸² No subsequent edition of a work was to be

78. MCKITTERICK, *supra* note 7, at 412.

79. The members of the Select Committee are listed as follows: "Mr. Davies Giddy, Sir William Scott, Sir John Nichol, Lord Viscount Palmerston, Mr. Smyth, Mr. William Dundas, Mr. Plunkett, Mr. Finlay, Mr. Rose, Mr. Long, Mr. Marsh, Mr. John William Ward, Lord Archibald Hamilton, the Lord Advocate of Scotland, Mr. Bathurst, Sir Egerton Bridges, Mr. Rashleigh, Sir Charles Edmunstone, Sir John Newport, Mr. Williams Wynn, Mr. Strahan." 63 H.C. JOUR. 301.

80. 27 PARL. DEB., H.C. (1st ser.) (1814) 811. On the progress of the bill through the House of Commons see: 69 H.C. JOUR. 254, 261, 274, 284, 299, 320, 329, 333, 344, 355, 363, 365, 381, 396, 397, 419, 438, 455, 470, 471, 476, 482, 513, 514, 517.

81. The preamble to the bill provided as follows:

[W]hereas Claims have been made, on behalf of one or more of the Libraries . . . that Copies of all Books whatever which shall be printed or published, should be delivered for the use of the Libraries, upon the best Paper, although the Copyright of such Books should not be entered in the Register Book of the said Company of Stationers, and although the number of Copies printed on the best Paper may be much smaller than the number printed for general Sale; which would be, in many cases, a very heavy expense to the Authors or Proprietors of such Books, and a discouragement to Literature.

82. Copyright Bill Draft, May 18, 1814, H.C. Bill, cl. 1, 2. This was subject to the proviso that the copy delivered to the British Museum was to be printed "on the best paper." *Id.* at cl. 3.

requested unless it contained “material additions.”⁸³ The copyright term for works published after the commencement of the Act was to be twenty-eight years.⁸⁴ Finally, an amnesty was provided for those booksellers who had not deposited books in accordance with the existing legislation.⁸⁵

When the bill was committed a number of additional clauses were added. The first required that every work published after the Act was to be registered within one month of publication subject to a forty shilling penalty, “in order to ascertain what books shall be from time to time published.”⁸⁶ The rest all decidedly favored the interests of the book trade and, collectively, had their genesis in the suggestions the booksellers had submitted to the Select Committee the previous year. If the owner of a book did not wish to “retain or preserve the exclusive copyright” in the work then there would be no obligation to deposit copies for any libraries other than the British Museum.⁸⁷ All libraries, other than the British Museum, were to contribute one-third of the retail price of any works they requested.⁸⁸ And finally, any copies delivered for the use of the libraries were not to be sold within seven years.⁸⁹

The progress of this bill was not to be straightforward; it was to be re-committed a further three times and several other amendments were made before it passed to the Lords for consideration. During this period, Giddy lost control of the bill. What started with a petition from the book trade against the iniquity of the decision in *Bryer* would result in an Act that further secured the interests of the universities. This turnaround was testament to the strength of the University lobby within the House, but was also due in part to the fact that Giddy, the bill’s sponsor, suffered his third bereavement in a

83. *Id.* at cl. 3.

84. *Id.* at cl. 4.

85. *Id.* at cl. 5 (this provision was dropped in all successive versions of the bill).

86. Failure to register the work however would not “affect any Copyright, but shall only subject the Person making default to the [40 shilling] Penalty.” *Id.* at cl. A.

87. *Id.* at cl. B.

88. Copyright Bill Draft, May 18, 1814, H.C. Bill, cl. C.

89. *Id.* at cl. D.

year, when his fifth child, a son, died in June 1814 in the midst of these committee stages.⁹⁰ About this event, Todd, Giddy's biographer, writes: "Three deaths within a year pulled their pall of depression over him, and sapped still further his reserves of energy. Not until the autumn of 1814, after another convalescence in Cornwall, does he seem finally to have demonstrated his old interest in work and the pleasure he found there."⁹¹

The backlash against the bill began on the day before it was re-committed for the first time, when a petition was received from the "Provost, Fellows and Scholars" of Trinity College in Dublin "taking notice of the [b]ill . . . and praying that they may be heard, by their counsel, against the same."⁹² Other libraries followed suit: the Faculty of Advocates and the University of Edinburgh;⁹³ the Universities of Glasgow and Saint Andrews;⁹⁴ the University of King's College at Aberdeen;⁹⁵ the University of Cambridge;⁹⁶ and finally, the University of Oxford who simply requested that the House "maintain and preserve the privileges of the University with respect to its claim of Copies of Books in such manner as shall seem most fit and reasonable."⁹⁷

Amongst these university submissions, however, three further petitions were laid before the House. The first came from the booksellers of London and Westminster, praying that the bill "may pass into law."⁹⁸ The next two petitions, both presented on the 28

90. Giddy's eldest son died in May 1813, and his father died the following spring. A.C. TODD, *BEYOND THE BLAZE: A BIOGRAPHY OF DAVIES GILBERT* 161 (1967).

91. *Id.* at 162.

92. 69 H.C. JOUR. ENG. (1st ser.) (1814) 329. Kinane points out that Trinity had been in contact with Edward Christian "seeking his advice on how best to defend its position", before they submitted their petition to the Commons. Vincent Kinane, *Legal Deposit, 1801-1922*, in *ESSAYS ON THE HISTORY OF TRINITY COLLEGE LIBRARY DUBLIN* 120, 122 (Vincent Kinane & Anne Walsh eds., 2000).

93. 69 H.C. JOUR. ENG. (1st ser.) (1814) 344. They wished to be heard "against" the bill.

94. 69 H.C. JOUR. ENG. (1st ser.) (1814) 355. They wished to be heard "against certain parts" of the bill.

95. 69 H.C. JOUR. ENG. (1st ser.) (1814) 365. They wished to be heard "against certain parts" of the bill.

96. 69 H.C. JOUR. ENG. (1st ser.) (1814) 381. They wished to be heard "against certain parts" of the bill.

97. 69 H.C. JOUR. ENG. (1st ser.) (1814) 419.

98. 69 H.C. JOUR. ENG. (1st ser.) (1814) 363.

June, are the more interesting. The entry in the Journal of the House of Commons reads as follows: “Two petitions – of Authors and Composers of Books, were presented and read; taking notice of the [b]ill . . . And praying, [t]hat the same may pass into a Law.”⁹⁹

Throughout the eighteenth century the book trade had constantly petitioned parliament for copyright legislation on behalf of writers, authors, and learned men. Now, however, for the first time, a group of authors (of which Isaac D’Israeli was one) were petitioning parliament on their own terms and in their own interest—an arguably significant moment in the history of the author as a professional.¹⁰⁰ Also of note is that this occurs in relation to the Act that would ultimately grant every author the first statutorily defined lifetime protection in their published work (albeit not as a direct consequence thereof).

Yet there are perhaps reasons to be sceptical about the extent to which the petitions presented on the June 28 can be relied upon as evidence of authors independently organizing themselves to lobby parliament, absent the backing of the paraphernalia of the book trade. In 1818, for example, when Brydges led what would prove to be an unsuccessful parliamentary campaign to amend the 1814 legislation,¹⁰¹ John Nichols, once Master of the Company of Stationers, wrote to the Rev. Rogers Ruding, the author of *Annals of the Coinage of Great Britain and its Dependencies* (a text which Nichols himself had printed),¹⁰² in the following terms:

Booksellers, Authors, and all persons interested, are making a strong push at present (under the guidance of Sir Egerton Brydges) to endeavour to get redress from the onus of the Copyright Act. Several Petitions will be presented to the House

99. 69 H.C. JOUR. ENG (1st ser.) (1814) 396.

100. See generally VICTOR BONHAM-CARTER, *AUTHORS BY PROFESSION*, VOL. 1 (1978).

101. For details see 73 H.C. JOUR. ENG (1st ser.) 125, 183, 231, 258, 288, 310; For commentary upon the 1818 campaign see MCKITTERICK, *supra* note 6, at 413-30; and Feather, *supra* note 7, at 60-68.

102. ROGERS RUDING, *ANNALS OF THE COINAGE OF BRITAIN AND ITS DEPENDENCIES: FROM THE EARLIEST PERIOD OF AUTHENTICK HISTORY TO THE END OF THE FIFTIETH YEAR OF HIS PRESENT MAJESTY KING GEORGE III* (1817).

of Commons from Authors; among whom your case has occurred to the Booksellers' Committee as a very hard one. If you have no objection to present a Petition to the House, Mr Sharon Turner ... would draw it up under your direction; and save you all the trouble & expense in the business. It might serve the Cause, to which I know you are a well-wisher.¹⁰³

Sharon Turner, who, like Nichols, operated out of Red Lion Square, had of course been retained by the London book trade to represent Henry Bryer.¹⁰⁴ Nichols had published Turner's anonymous tract, *Reasons for a Modification of the Act of Anne respecting the delivery of Books, and Copyright* in 1813, following Ellenborough's decision in favour of the universities. Ruding contacted Turner, and a petition was prepared on his behalf and submitted to the Commons on 8 April 1818.¹⁰⁵ On the same day, a *Petition from Authors on the Copy-Right Act*, printed by Nichols, was also presented to the Commons, this one signed by 65 authors "of the first respectability," the last of which was naturally Turner.¹⁰⁶

Unfortunately, no copies of the authors' petitions from 28 June 1814 appear to have survived, but it seems likely that Turner was responsible for drafting those as well. Moreover, in his tract from 1813, Turner set out that "authors before the [*Statute of Anne*] had the same perpetual right of property in their works as in their money." He continued in this regard, that the 1709 Act "instead of being a boon and a benefit to authors, has operated to their injury, since it has been found to curtail their natural and legal right to their intellectual property. If this Act had not been passed, they would not only have had no copies to deliver, but their Copyright would have been

103. Letter from John Nichols to Rogers Ruding, (Mar. 12, 1818) (on file with the British Library (BL) 515.1.20(4)).

104. Oates, *supra* note 7, at 67.

105. 73 H.C. JOUR. ENG (1st ser.) (1818) 219. For a copy of Ruding's petition see British Library (BL) 515.1.20(4), *supra* note 103.

106. BL 515.1.20, *supra* note 103, section (5)(5); Turner, in addition to carrying on his legal practice, was a historian and an author whose most notable work was *The History of the Anglo-Saxons*, 4 vols (1799-1805).

perpetual.”¹⁰⁷ On the other hand, however, unlike D’Israeli before him, or Southey who was to follow, Turner pressed for no more than “the removal of the contingency which at present interrupts the full enjoyment of the twenty-eight years statute-right.” He continued:

If it has been thought just that the Universities should have their Copyrights, in perpetuity,¹⁰⁸ it cannot be deemed unjust that authors and their assigns should have them for at least the present twenty-eight years, without any clause of contingency. In an age of increased liberality, let Literature receive this additional encouragement ...¹⁰⁹

The removal of the contingent term in the *Statute of Anne* was, naturally, what Villiers and Christian had negotiated with John Butterworth and others in 1808, and had also featured in the bill which Giddy first presented to the Commons on May 12.¹¹⁰ In all of this, one senses the “Booksellers’ Committee” standing over the “Authors and Composers of Books” and pulling the rhetorical strings with which they thought they might best capture the sympathies of the legislature.¹¹¹

VI. THE TRANSFORMATION OF THE 1814 BILL

As previously noted, throughout June and July, the bill was re-committed a further three times. On June 7 the bill emerged from committee with two significant changes to the main deposit clause.¹¹²

107. He continued: “Why should not an author be entitled to his Copyright as free and as permanently as the humblest individual is to his freehold, his furniture, or his money? What right, in reason, distinct from verbal subtleties, can we allege for the one, which is not applicable to the other?”; SHARON TURNER, REASONS FOR A MODIFICATION OF THE ACT OF ANNE RESPECTING THE DELIVERY OF BOOKS, AND COPYRIGHT 24, 26 (1813).

108. Universities Act, 1775, 15 Geo. 3, c. 53 (Eng.).

109. TURNER, *supra* note 107, at 31, 35.

110. 69 H.C. JOUR. ENG (1st ser.) (1814) 261; *see* Draft Bill, 18 May.

111. On the emergence of the various professional organisations and societies established by and on behalf of authors throughout the mid- to late nineteenth century. *See generally* BONHAM-CARTER, *supra* note 100.

112. 69 H.C. JOUR. ENG (1st ser.) (1814) 333.

First, not just books, but books “together with all Maps and Prints belonging thereto” were to be delivered on demand. Second, the individual responsible for delivery was no longer the printer but rather the publisher.¹¹³

A number of other changes had also been made. Second editions were subject to the delivery requirement if they contained any addition, alteration or correction, and not just “materials additions.”¹¹⁴ Registration of the title of a book, as well as the name of the publisher, was to take place within three months, and one copy of the work, upon the best paper, was to be delivered without the need for a prior request to the British Museum.¹¹⁵ In addition, the “warehousekeeper” of the Stationers’ Company was required to submit a list of all the books registered to the libraries at least four times a year.¹¹⁶ Those who didn’t want to retain the copyright in their works, upon registration, were required to make a written declaration. The written entry was to be “deemed and taken to be a full and complete renunciation, by such Proprietor or Proprietors, of all Copyright at common law and otherwise.”¹¹⁷ The contribution that libraries were to make towards the cost of the books requested was reduced to one-fifth,¹¹⁸ and a six month limitation of actions was added.¹¹⁹ Finally, the amnesty for non-deposit of works prior to the coming into force of the bill was dropped.¹²⁰

On July 12, when the bill was printed for the third time, the first notable alteration was evident in the preambulatory justification for legislating at all.¹²¹ Whereas the first two drafts had made mention of the fact that the previous legislation imposed a “very heavy expense to the Authors or Proprietors of such books,”¹²² and “without

113. Copyright Bill Draft, June 7, 1814, H.C. Bill, cl. 2.

114. *Id.* at cl. 3.

115. *Id.* at cl. A.

116. *Id.* at cl. No.1.

117. *Id.* at cl. B.

118. *Id.* at clause D.

119. *Id.* at cl. No.2.

120. Copyright Bill Draft, May 18, 1814, H.C. Bill, cl. 5.

121. 69: H.C. JOUR. ENG (1st ser.) (1814) 455.

122. Copyright Bill Draft, May 18, 1814, H.C. Bill, preamble.

producing any adequate encouragement to learning,”¹²³ now the bill simply provided that “it is expedient that Copies of Books hereafter printed, or published, should be delivered to the Libraries hereinafter mentioned.”¹²⁴ In addition, the deposit obligation was to extend to works published after January 1, 1813, with the libraries now allowed twelve months to request copies thereof.¹²⁵ Second editions with any additions or alterations were subject to delivery,¹²⁶ and the limitation period was, like the request period, extended to twelve months.¹²⁷

That which was dropped from the earlier incarnations of the bill was much more significant, all of which operated in favour of the universities. The option of abandoning one’s copyright and by extension the obligation to deposit was removed, as was the requirement that the libraries make some financial contribution towards the cost of the works they requested, and the prohibition on libraries selling such works within seven years of deposit.

The new color of the bill, as one primarily designed to further the interests of the libraries, was maintained when it emerged from committee for the final time on 18 July with relatively minor changes,¹²⁸ including a new provision enabling booksellers to deliver their deposit copies directly to the requesting libraries.¹²⁹

The life of the bill had certainly been eventful, and its focus had clearly shifted, to the consternation of many who had been involved therewith. What had started as an initiative on behalf of the book trade had resulted in the House re-affirming the library deposit obligation, now coupled with the additional burden of the compulsory registration of all published works so that the deposit provision could be more rigorously enforced.

123. Copyright Bill Draft, June 7, 1814, H.C. Bill, preamble.

124. Copyright Bill Draft, July 12, 1814, H.C. Bill, preamble.

125. *Id.* at cl. 2.

126. *Id.* at cl. 3.

127. *Id.* at cl. 2. In addition, changes were made in relation to the enforcement procedure as well as the statutory penalties. *See* cl. 2, 4, A.

128. 69 H.C. JOUR. ENG (1st ser.) (1814) 471, 476.

129. Copyright Act, 1814, s. 7.

There were of course elements of the bill that were designed to ameliorate the grumbles of the book trade to some extent. The *quid pro quo* which had been suggested in 1808 in the guise of the single twenty-eight year copyright term was there, but the booksellers had made clear before the Select Committee in 1813 (whether disingenuously or not) that the extended term was of little interest or value to them.¹³⁰ The booksellers were also now only obliged to deliver such copies as were requested by the relevant libraries, but as it soon became clear, the libraries rarely exercised any discretion in the demands that they made, often simply requesting all the works on the registration lists sent to them from the Stationers' Company.¹³¹

And so, the Select Committee established a bill that did little other than service the needs and interests of the university libraries, even amidst the arguments of how the deposit obligation injured the printing trade, how it represented a threat to the development of science and learning, and how it operated as an inexcusable tax upon "a body seldom able to meet great exactions – the body of authors."¹³² Giddy no doubt realized the extent to which the substance of the Bill had gotten away from him, and on July 12, suggested that its consideration be postponed to the following session.¹³³ Not surprisingly, those M.P.s representing the universities were not prepared to let the matter drop. After Giddy's suggestion that the Bill be postponed, various members of the House, which members included both William Scott and Palmerston, spoke to the "expediency of the Bill being then re-committed."¹³⁴

When the bill emerged from committee for the final time on July 18, it was clear that it was as contentious as it had been when first introduced to the House. Williams-Wynn, M.P. for

130. See for example the evidence of Thomas Longman before the Select Committee in 1813. Minutes of Evidence 1813, *supra* note 47, at 11-12.

131. See for example McKitterick who writes that the university library at Cambridge expected "to receive everything" registered with the Company, out of which "it could then make its choice in Cambridge"; MCKITTERICK, *supra* note 7, at 414.

132. 25 PARL. DEB., H.C. (1st ser.) (1813) 14.

133. 28 PARL. DEB., H.C. (1st ser.) (1813) 684.

134. *Id.* at 685.

Montgomeryshire, expressed his regret that the provision prohibiting the sale of deposit copies had been removed,¹³⁵ and spoke generally against the principle of the deposit obligation. Better, he continued, to publicly fund the universities so that they might purchase new works, rather than “impose upon publishers the tax proposed in this [b]ill.”¹³⁶ He concluded with the hope that “the discussion of this measure should lead to the adoption of some plan next session, which would be more conducive to the advantage of the Universities, and to the general interests of science and literature, than any [b]ill of this nature was ever likely to do.”¹³⁷ Although Giddy motioned for the Select Committee in March 1813, explaining that “[h]e had undertaken to present the Petition of the Booksellers, on the clear understanding that he was not to stand forth as their champion,”¹³⁸ the extent to which his initial hopes for the bill had been frustrated was revealed in his endorsement of Williams-Wynn’s proposal:

Mr. Giddy expressed his entire concurrence in the general observations of the hon. Gentleman, particularly in the wish and hope that, in the next session some pecuniary provision would be made from the public purse, to supply the public libraries with new books, and thus to relieve the booksellers from the hardship of which they complained.¹³⁹

Others spoke to the “petty advantage” which the universities had secured, and exhorted them to relinquish the same. Charles Marsh, M.P. for East Retford, castigated the bill as “a relic of barbarous times,” and one that was “inconsistent with the liberal spirit of the present age.”¹⁴⁰ Brydges simply pronounced that he was “against the Bill.”¹⁴¹ Despite the protests, the bill was carried, and it was read for

135. *Id.* at 751.

136. *Id.* at 752.

137. *Id.*

138. 25 PARL. DEB., H.C. (1st ser.) (1813) 13.

139. 28 PARL. DEB., H.C. (1st ser.) (1813) 752.

140. *Id.* at 754.

141. *Id.* at 755.

the third time on the following day, July 19, after which Giddy was instructed to carry it before the Lords.¹⁴²

VII. THE LIFE OF AN AUTHOR AND THE BILL IN THE LORDS

The bill that Giddy carried to the Lords on July 19 differed from that which, on the previous day, emerged from the final committee in the Commons in one significant respect. Whereas the bill, throughout its entire life to date, had set out that every book thereafter published was to be protected for “the full term of twenty-eight years . . . and no longer,”¹⁴³ it now provided that “if the author shall be living” at the end of that twenty-eight year period then the work was to be protected “for the residue of his natural life”.¹⁴⁴ Here then we come to the nub of our inquiry – why and how was the residuary lifetime term introduced? The answer, of course, lies with Samuel Egerton Brydges. On July 18, when the committee’s report on the bill was being considered by the House, Brydges, before speaking “against the [b]ill,” also “gave notice of a motion for tomorrow, for an amendment in the [b]ill to extend further the period of Copyright.”¹⁴⁵ There is no further record of what Brydges said in support, but there seems little doubt that when the bill was amended for the last time upon its third reading in the Commons on July 19,¹⁴⁶ it was Brydges who was responsible for the introduction of the residuary lifetime interest. That Hansard records no debate upon the same suggests that there was little, if any, significant discussion on the matter, and it is this very absence of discussion that fascinates.

By this time, of course, the events surrounding the legislation had been heatedly debated both within and outside of parliament for over eighteen months. It may well be that the Commons, and in particular the university lobby therein, was unwilling to let the legislation

142. 69 H.C. JOUR. ENG (1st ser.) (1814) 482.

143. Draft Bill: 15 July, clause 4; 12 July, clause 4; 7 June, clause 4; 18 May, clause 4.

144. Draft Bill, House of Lords Main Papers, HL/PO/JO/10/8/337.

145. 28 PARL. DEB., H.C. (1st ser.) (1813) 751.

146. 69 H.C. JOUR. ENG (1st ser.) (1814) 482.

stumble at this late stage. Alternatively the House may simply have been indifferent to the amendment; we can never know. Here then we have Peer Gynt's onion: one peels away the layers only to find that there is little if any substance at the core.¹⁴⁷

Before concluding, it is appropriate to finish the story of the bill in the Lords. It was read before the House for the first time on July 20,¹⁴⁸ for the second time two days later, and passed through the committee of the house on July 25 without amendment.¹⁴⁹ The following day, upon its third reading, two clauses were added without any significant discussion and the bill was passed.¹⁵⁰ Both clauses concerned the new copyright term.

The first provided that if any author, still living, who had published work with the previous fourteen years, should die after the legislation came into force but before the expiration of the first fourteen year term provided by the *Statute of Anne*, then they (or their personal representatives) were, nevertheless, to enjoy the benefit of the extended twenty-eight year term. This, however, unlike the restructuring of author-publisher relations proposed by the initial drafts of the 1808 Bill, was not deemed to interfere with any existing contractual terms between an author and his assignee.¹⁵¹

The second amendment was a direct response to the lifetime interest introduced by Brydges in the Commons. It provided that if any author of a work already published, was, at the end of the twenty-

147. Peer Gynt's soliloquy on the onion runs as follows:

"Here lies Peer Gynt." A decent chap,
Emperor? (*Chuckles.*) You old fake!
You're no Emperor. You're just an onion.
Now then, little Peer, I'm going to peel you,
And you'll not escape by weeping or praying ...

...
What a terrible lot of layers there are!
Surely I'll soon get down to the heart?...
No – there isn't one! Just a series of shells
All the way through, getting smaller and smaller!

148. 49 H.L. JOUR. ENG (1st ser.) (1814) 1098.

149. *Id.* at 1114, 1128.

150. *Id.* at 1129.

151. 69 H.C. JOUR. ENG (1st ser.) (1814) 514; Copyright Act 1814, s.8.

eight year term, still living, then he or she would also enjoy the copyright in their work for “the remainder of his or her life”.¹⁵²

The Commons accepted the amendments without challenge, and the bill received the Royal Assent on July 29, 1814,¹⁵³ the day before parliament was prorogued.¹⁵⁴

CONCLUSION

The question might legitimately be asked, what place has a reconsideration of the *Copyright Act* 1814, or indeed any flight of historical fancy, when considering the current state of “intellectual property within the global marketplace?” Peter Yu asked this very question four years ago when he convened a symposium entitled “Intellectual Property at a Crossroads: Why History Matters.” As he observed then, both before and after the *Eldred* decision: “All of a sudden, courts, litigants, and commentators seem to have rediscovered the use of history in intellectual property jurisprudence.”¹⁵⁵

152. 69 H.C. JOUR. ENG (1st ser.) (1814) 514; Copyright Act 1814, s.9; again, this was not deemed to interfere with any existing contractual terms between an author and his assignee. This particular provision gave rise to the case of *Brooke v. Clarke*, (1818) 1 B.& Ald. 396, which was coincidentally also presided over by Lord Ellenborough. Francis Hargrave, who had been third counsel for the London booksellers in *Donaldson* and, not given the opportunity to present his arguments before the Lords, published them as *An Argument in Defence of Literary Property* (1774), had first published his edition of the *Institutes of the Laws of England* in 1783, and had executed an assignment to the defendant the following year. In accordance with the provisions in the Statute of Anne (ss.1 and 11) the copyright in the work subsisted for the next 28 years, expiring in 1811. On 12 February 1817, however, Hargrave executed a further assignment of the same work, this time to the plaintiff. When the defendant continued to publish the work, the plaintiff sought an injunction to prevent him from so doing, and the matter was referred by the Lord Chancellor to Ellenborough CJ's court. The plaintiff argued that the new lifetime term extended equally well to those works by living authors in which the copyright had previously expired, as to those works by living authors that were still within their copyright term at the time the 1814 Act was passed. In a unanimous decision Ellenborough CJ and the rest of the court held for the defendant—the act did not operate retrospectively—those copyrights which had previously expired were not to be revived. Hargrave, who in *Donaldson* had sought to establish the existence of a perpetual common law copyright, and had argued so eloquently for the same in his pamphlet of that year, was denied a lifetime interest in his works a second time.

153. 69 H.C. JOUR. ENG (1st ser.) (1814) 517.

154. 69 H.C. JOUR. ENG (1st ser.) (1814) 521.

155. Peter Yu, *Intellectual Property at a Crossroads: Why History Matters*, 38 LOY. L.A. L. REV. 1-18 (2004).

It is not the case that in studying the past we can hope to unearth any necessary or essential truths about the nature of the relationship between intellectual property law and information technology, about the intersection between national and international markets and public policy, or indeed about the human condition. In general, history can do little more than provide a lens through which we might better examine and contemplate our current situation and our future decisions. As John Arnold neatly puts it, “[t]o study history is to study ourselves,” and “to think differently about oneself . . . is also to be made aware of the possibility of doing things differently.”¹⁵⁶ The value of re-approaching the present through the viewfinder of the past lies in the fact that it can provide us with both the tools and the vocabulary with which to engage in oppositional ways of thinking, while at the same time reminding us about the potential and possibility for implementing change.

In that light, the period under consideration offers a rich vein to tap; whether in relation to the practice and politics which two powerful interests groups brought to bear upon the issue of library deposit, the nature of the economic arguments which the book trade presented before the Select Committee in 1813 in attempting to influence and determine national copyright policy, or of the fact that that evidence was not considered to be determinative thereof.

As regards the first, it is tempting to read the position which the universities adopted as one grounded in an enlightened sense of civic responsibility and the public good, in the face of a recalcitrant and self-interested publishing industry. And yet, such a portrayal would not merely oversimplify the situation, it would also positively mislead. It should not be forgotten that the universities were widely regarded as bastions of privilege and unwarranted political influence, and not just by booksellers and authors, but by large sections of the public as well. Not until the mid-nineteenth century would the universities of Oxford and Cambridge begin to conceive of their libraries as national repositories for the country’s scientific and

156. JOHN H. ARNOLD, *HISTORY: A VERY SHORT INTRODUCTION* 122 (2000).

literary heritage, serving a similar function to that of the British Museum.¹⁵⁷ At the start of the nineteenth century, there is no doubt that the libraries were acting in their own best financial and scholarly interests. What claims were made at that time about the benefits for “*poor students*”,¹⁵⁸ about the virtues of “the republic of learning,”¹⁵⁹ and about making learning “easy of access,”¹⁶⁰ have to be treated with caution, especially when one considers that undergraduate students at Cambridge had been forbidden to use the library since 1471.¹⁶¹ This prohibition did not begin to come under challenge until the 1830s.¹⁶² In 1814 the main library at Cambridge was the preserve of the senior members of the University, as well as those visiting scholars that might be granted entrance.¹⁶³ And yet, even from the most self-regarding of motives, can beneficial results flow – there is little doubt that the holdings in both Oxford and Cambridge are much richer as a result of the passing of the 1814 Act to the benefit of not just those individual institutions, but also to the national and international community of readers, whether academic or not.¹⁶⁴

In relation to the copyright term in particular, what has been presented here is the story of the passing of the *Copyright Act* 1814, at the end of which we find little if any meaningful insight into the

157. As McKitterick writes about those who engaged in the library deposit debates: “The concept of a university library that was also a national copyright library in the modern sense eluded every participant, whether bookseller, lawyer, independent observer or librarian. It proved to be not difficult to win admission that the British Museum should enjoy the privileges of copyright deposit, since it was self-evidently also the national library. But in the eyes of every party concerned, the two notions of a copyright library, receiving virtually every book or pamphlet issued by the press, and of a university library, were incompatible”; MCKITTERICK, *supra* note 7, at 441.

158. CHRISTIAN, *supra* note 32, at 7.

159. *Id.* at 8.

160. *Univ. of Cambridge v. Bryer* (1812) 16 East 317, 321.

161. MCKITTERICK, *supra* note 7, at 8. Richard Duppa made this point in 1813: “The public library of the University of Cambridge is not open to undergraduates, nor graduates under the degree of M.A. Even those who have taken the degree of Bachelor of Arts, must wait three years . . . before they can derive any benefit from the university library in their own right; and then they have the full use of it as a circulating library”; DUPPA, *supra* note 59, at 19.

162. *See generally* MCKITTERICK, *supra* note 7, at 8-12.

163. MCKITTERICK, *supra* note 7, at 442.

164. This is particularly true in light of the recent announcement concerning the mass-digitization agreement that Google Inc. have negotiated with Oxford, which project will result in making available on the internet more than one million of the printed books currently housed in the Bodleian Library; for more information see www.bodley.ox.ac.uk/google.

decision of parliament to grant the reversionary lifetime interest in literary works. It goes without saying that the decision to do so was by no means inevitable. As regards other contemporary copyright legislation, engravings enjoyed a single twenty-eight year term,¹⁶⁵ works of sculpture were protected for only fourteen years,¹⁶⁶ while fabric designers received no more than three months security.¹⁶⁷ In the six years of debate concerning the library deposit obligation that preceded the 1814 legislation, there had been neither discussion of nor request for a copyright term that would last for the life of an author. When Thomas Longman spoke at length about the operation and the economics of the book trade to the parliamentary Select Committee in 1813,¹⁶⁸ he rejected the idea that even introducing a single twenty-eight year term would hold out any significant benefit for the publishing community over the existing copyright regime.¹⁶⁹

165. Engravers Copyright Act, 1766, 7 Geo. 3, c. 38.

166. Models and Busts Act, 1798, 38 Geo. 3, c. 71; Sculpture Copyright Act, 1814, 54 Geo. 3, c. 56.

167. Designers and Printers Act, 1794, 34 Geo. 3, c. 23.

168. Thomas Longman, Feather writes, was "[b]y far the most important of the trade's witnesses"; Feather, *supra* note 7, at 55.

169.

[Davies Giddy]: Were you concerned in some meetings which were held between the booksellers some years ago, in reference to a Bill which Mr. Villiers brought into Parliament upon this subject?

[Thomas Longman]: I was present at those meetings.

[DG]: As a principal bookseller, and a great purchaser of copy right, did you not consider an extension in the term of copy right, quite equivalent for the loss which they would sustain by the delivery of the eleven copies?

[TL]: I did not consider that.

[DG]: Was that generally thought?

[TL]: I do not think it was; there were some persons of that opinion.

Minutes of Evidence 1813, *supra* note 47, at 11-12.

Longman's position was, no doubt, influenced by the fact that it was usual for booksellers to buy an author's copyright in a work outright, including the contingent fourteen year term set out in the Statute of Anne (s.11), which practice had been validated by the courts in *Carnan v. Bowles* (1786), 1 Cox 283. In lamenting the nature of the relationship between booksellers and authors, Isaac D'Israeli touched upon this very point in 1812:

Booksellers are not agents for Authors, but proprietors of their works; so that the perpetual revenues of literature are solely in the possession of the trade ... On the present principle of Literary Property, it results that an Author disposes of a leasehold property of twenty-eight years, often for less than the price of one year's purchase! How many Authors are the sad witnesses of this fact, who, like Esau, have sold their inheritance for a meal!

D'ISRAELI, *supra* note 11, at 25, 38-39.

In any event, from 1808 onwards, and throughout most of the life of the 1814 Bill itself, it seemed certain that the copyright term would be extended to twenty-eight years and no longer. Only at the eleventh hour did Brydges propose the extended lifetime term.

Brydges naturally had his own reasons for suggesting the same, but they remain opaque to us. His autobiography offers no further insight. Indeed, he somewhat understates his role in our story in simply observing that: "I took an active part in . . . the copyright bill."¹⁷⁰ Moreover, by comparison with the wrangles over the length of the copyright term in the late 1830s and early 1840s, that there appears to have been little if any significant discussion about Brydges' proposed extension is at the same time infuriating and intriguing.

What we can say is that the introduction of the lifetime term had more to do with the opportunistic and timely intervention of one Member of Parliament (albeit an author), than with any principled or considered position adopted on the part of the legislature. The somewhat mischievous or leading suggestion in all of this is that any search for a coherent rationale underpinning the contemporary term of copyright protection may prove equally elusive and frustrating. Bill Patry strikes the right note in this regard when, in *Patry on Copyright*, (a thoroughly welcome addition to the field of US copyright jurisprudence), he writes about the copyright term as follows:

Copyrighted works form a vital part of the cultural fabric, and thus society as a whole has a stake in ensuring, to the extent possible, that the right balance between providing adequate incentives but not impeding individual and cultural progress has been achieved.

With a general term of life of the author plus 70 years, we are well past even the pretence of striking an appropriate balance; when coupled with a lack of formalities that can separate the

170. S.E. BRYDGES, THE AUTOBIOGRAPHY, TIMES, OPINIONS, AND CONTEMPORARIES OF SIR EGERTON BRYDGES, VOL.1 105 (1834).

goats from the sheep, and with extravagantly broad rights and draconian penalties, we are in an era of hyper-protection where copyright can be used for good, but can also be used to choke off innovation, eliminate competition, and suppress criticism.¹⁷¹

171. WILLIAM F. PATRY, PATRY ON COPYRIGHT § 7:2 (2007).