



THE LONDON SCHOOL  
OF ECONOMICS AND  
POLITICAL SCIENCE ■

## The Suntory and Toyota International Centres for Economics and Related Disciplines

---

The Economic Aspects of Copyright in Books

Author(s): Arnold Plant

Reviewed work(s):

Source: *Economica*, New Series, Vol. 1, No. 2 (May, 1934), pp. 167-195

Published by: [Wiley-Blackwell](#) on behalf of [The London School of Economics and Political Science](#) and [The Suntory and Toyota International Centres for Economics and Related Disciplines](#)

Stable URL: <http://www.jstor.org/stable/2548748>

Accessed: 21/10/2012 20:09

---

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at

<http://www.jstor.org/page/info/about/policies/terms.jsp>

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.



Wiley-Blackwell, The London School of Economics and Political Science, The Suntory and Toyota International Centres for Economics and Related Disciplines are collaborating with JSTOR to digitize, preserve and extend access to *Economica*.

<http://www.jstor.org>

# The Economic Aspects of Copyright in Books<sup>1</sup>

By ARNOLD PLANT

(*Sir Ernest Cassel Professor of Commerce in the University of London*)

1. IF an economist needed encouragement or justification for devoting time to the consideration of the effects of copyright legislation on the output of literature, he might find it in the stimulating introduction which Professor Frank H. Knight has contributed to the reissue of his *Risk, Uncertainty and Profit*. "Having started out by insisting on the necessity, for economics, of some kind of relevance to social policy—unless economists are to make their living by providing pure entertainment or teaching individuals to take advantage of each other," he discusses the conditions of relevance of economics to social policy, and his "first and main suggestion" is that an "inquiry into motives might well, like charity, begin at home, with a glance at the reasons why economists write books and articles."<sup>2</sup> Direct monetary profit from the sale of what they write does not figure in Professor Knight's suggestive discussion of the motivation of economist-authors; although for three, if not four, centuries the advocates of property in the right to copy have argued as though book production were the conditioned response of authors, publishers and printers to the impulse of copyright legislation. An inquiry into the rationale of copyright seems therefore both worth while in itself and likely to prove of general interest among students of economics.

There is, of course, a special difficulty in discussing the subject of copyright, in that a writer has an unavoidable bias. How many of us approach the topic in the spirit evinced by H. C. Carey in his *Letters on International Copyright*? "The writer of these Letters had no personal interest in the question

<sup>1</sup> Presidential Address to the London Economic Club, March 13th, 1934.

<sup>2</sup> London School of Economics Series of Reprints, No. 16, pp. xxv-xxvi.

therein discussed. Himself an author, he has since gladly witnessed the translation and republication of his works in various countries of Europe, his sole reason for writing them having been found in a desire for strengthening the many against the few by whom the former have so long, to a greater or less extent, been enslaved. To that end it is that he now writes, fully believing that the *right* is on the side of the consumer of books, and not with their producers, whether authors or publishers.”<sup>1</sup> T. H. Farrer, at that time Permanent Secretary to the Board of Trade, found it necessary to observe, when reviewing the proceedings of the Royal Commission on Copyright in the *Fortnightly Review* (December 1878), that authors, who were the principal witnesses, are interested witnesses: “printed controversy is therefore, on the whole, one-sided.” It is rather like relying on articles in the daily newspapers for views on the waste involved in Press advertising. Bias, and fear of bias, make an author’s judgment on copyright a little unreliable. His readers must exercise particular vigilance.

## 2. *Book production without copyright*

A convenient approach to the whole subject is to try to visualise the organisation of production of books, which we select as a typical commodity for the purpose of this inquiry, in the absence of any sort of copyright provisions. We may define “the absence of copyright provisions” as the circumstances in which the buyer of a literary product is free, if he so desires, to multiply copies of it for sale, just as he may in the case of ordinary commodities. Would books be written in such circumstances, and would they be published? Would firstly authors, and secondly publishers, find it possible to make arrangements of a sufficiently remunerative kind to induce them to continue in the business of book production?

## 3. *The unpaid author*

It should be observed at the outset that part of the output of literature is written without thought of direct remuneration at all. There are authors—scholars as well as poets—who are prepared to pay good money to have their books published.

<sup>1</sup> H. C. Carey: *Letters on International Copyright* (Preface to 2nd Edition. New York, 1868) and *The International Copyright Question Considered* (Philadelphia, 1872). Carey was at one time a publisher himself.

It is conceivable that their output is in some cases quite unaffected by demand conditions: so long as they can go on paying they will go on writing and distributing their books. There is secondly an important group of authors who desire simply free publication; they may welcome, but they certainly do not live in expectation of, direct monetary reward. Some of the most valuable literature that we possess has seen the light in this way. The writings of scientific and other academic authors have always bulked large in this class. Economists are relatively fortunate in serving a market which so frequently provides a margin above costs of publication for the remuneration of the author; their colleagues in other faculties are usually only too pleased to secure publicity for their contributions to our literary heritage without financial subsidy from themselves. Publications are, of course, in varying degree essential for their careers, in professions other than that of authorship. They seek recognition of their claims as scholars; and published work they must have, even at the cost of paying for it. Speak to them on the subject of direct immediate return, and they reply in terms of numbers of off-prints or "separates." In just that way were authors quite generally paid in this country in the sixteenth century: they sold their manuscript outright to the publisher for perhaps at most one or two hundred copies: on occasion a little money might also pass.

For such writers copyright has few charms. Like public speakers who hope for a good Press, they welcome the spread of their ideas. Erasmus went to Basle in 1522, not apparently to expostulate with Frobenius for daring to print his manuscript writings, but to assist the printer in the good work. The wider the circulation, the more universal the recognition the author would receive.

#### 4. *The payment of authors without copyright*

What, however, of a third group of authors—the professional scribes, who write for their living? Whether they sell their writings to publishers, who buy them because they hope to sell copies, or whether they publish them direct, their living depends on the direct proceeds from their writing, and in both cases their receipts depend on the number of copies sold. Clearly, they—both author and publisher—would gain directly from the restraint of all reprinting that resulted in a diminished sale of their own copies. If the purchase of a copy ceased to carry with it the right to make further copies from it

for sale, the author and original publisher might contrive to do much better for themselves, by the simple monopoly device of restricting the number of copies offered on the market. They would do still better if they were given the power to control also the supply of directly competing books, as early publishers had in this country. It goes without saying, of course, that that undoubted fact is not an adequate reason why the general public should give them either degree of monopoly power.

The belief has been widely held that professional authorship depends for its continued existence upon this copyright monopoly; or upon an alternative which is considered worse, viz. patronage. Even if that were true, it would still be necessary to show beyond reasonable doubt that professional authors were worth retaining at such a price as copyright. The output which monopoly alone can evoke is not normally regarded as preferable to the alternative products which free competition would allow to emerge. Patronage itself may not be wholly an evil. There seems to be no reason why a person who wants certain things written and published should not be at liberty to offer payment to suitable people to do the necessary work. If the task is uncongenial, some authors will need high remuneration, and others will no doubt decline any terms; but many a builder has been willing in the past to erect even monstrous dwellings for rich men who had their own ideas about architecture. Patronage has in the past provided us with some magnificent literature, music, pictures, buildings, and furniture. There have been patrons who have given artists a very free hand in their work. Civil servants, secretaries of commissions, lawyers and others have conceived it their normal duty to express in imperishable language the views of their employers, with whom they may personally have been in disagreement. To Macaulay, nevertheless, speaking in the House of Commons at the second reading of Serjeant Talfourd's Copyright Bill in 1841 (February 5th, *Hansard*, Vol. LVI), patronage was the only alternative to copyright; and it was so objectionable that it justified copyright. "I can conceive no system more fatal to the integrity and independence of literary men, than one under which they should be taught to look for their daily bread to the favour of ministers and nobles." . . . "It is desirable that we should have a supply of good books; we cannot have such a supply unless men of letters are liberally remunerated, and the least

objectionable way of remunerating them is by means of copyright." . . . "The system of copyright has great advantages, and great disadvantages." . . . "Copyright is monopoly, and produces all the effects which the general voice of mankind attributes to monopoly." . . . "Monopoly is an evil." . . . "For the sake of the good we must submit to the evil; but the evil ought not to last a day longer than is necessary for the purpose of securing the good." . . . "The principle of copyright is this. It is a tax on readers for the purpose of giving a bounty to writers. The tax is an exceedingly bad one; it is a tax on one of the most innocent and most salutary of human pleasures; and never let us forget that a tax on innocent pleasures is a premium on vicious pleasures." But Macaulay nevertheless preferred copyright to patronage.

Is there no other alternative, in the absence of copyright? For the moment it will be sufficient to remark that professional writers *have* contrived in the past to secure a price for their product, in such circumstances, provided always that a market exists for it at all. And it must be borne in mind that copyright in a particular work cannot itself *create* a demand for the kind of satisfaction which that work and similar works may give, it can only make it possible to *monopolise* such demand as already exists. Ultimately there must be patrons among the public, whom the author must serve if he is to sell his product. In the early days, authors were sometimes curiously employed. Italian paper-makers in the fifteenth century integrated forward, and organised staffs of writers to work on their paper, in the hope of thereby making the market for their product more secure.<sup>1</sup> We are reminded of the present-day integrations of paper manufacturers and newspapers employing journalists. In the days of manuscripts there was never, so far as we know, any thought of author's copyright. Manuscripts were sold outright, the author knowing that the buyer might have copies made for sale; and the first buyer knew that every copy he sold was a potential source of additional competing copies. In selling copies, he would therefore exploit with all his skill the advantage he possessed in the initial time-lag in making competing copies. Moreover, copies of copies naturally fetched lower prices, for errors in transcription are cumulative; and the owners of original manuscripts could sell first-hand copies at special prices. They therefore received a more permanent margin from which authors could be paid. It was

<sup>1</sup> See Putnam : *Books and Their Makers*.

all very like the present-day trade in new fashion creations—the leading twenty firms in the *haute couture* of Paris take elaborate precautions twice each year to prevent piracy; but most respectable “houses” throughout the world are quick in the market with their copies (not all made from a purchased original), and “Berwick Street” follows hot on their heels with copies a stage farther removed. And yet the Paris creators can and do secure special prices for their authentic reproductions of the original—for their “signed artist’s copies,” as it were. Augustin-Charles Renouard, the writer a century ago of two important books on patents and copyright, quotes in his treatise *Des Droits d’Auteurs* (1838) an estimate that there were 10,000 manuscript copyists in Paris and Orleans alone at the time of the invention of printing. Book-sellers were then middlemen between the buyers of copies and the copyists: it was in part a “bespoke” trade. Copying was not by any means confined to the existing stock of classical works by dead authors, for despite the copyists the age has left a legacy of literature of its own. Unprotected by copyright, publishers were able to pay their authors then, just as dress creators can pay their designers to-day.

Was this all altered by the invention of printing? In fact, the making of copies was regulated almost at once; but we know beyond any doubt that the reason was not to ensure that authors were better remunerated. The early history of book production in this country is most illuminating on this whole question, and it will be touched upon in a moment. For the present, it will suffice to observe that four centuries after the days of Caxton, many English authors were regularly receiving payment from publishers in a country which had no copyright law for foreign books. During the nineteenth century anyone was free in the United States to reprint a foreign publication, and yet American publishers found it profitable to make arrangements with English authors. Evidence before the 1876-8 Commission shows that English authors sometimes received more from the sale of their books by American publishers, where they had no copyright, than from their royalties in this country. From the economic standpoint it is highly significant that, although there was no legislative restraint on the copying of books published abroad, competition remained sufficiently removed from that abstract condition of “perfection,” in which there could exist no margin between receipts and costs for the remuneration of

authors, for "handsome sums" in fact to be paid. In the first place, there was the advantage, well worth paying for, which a publisher secured by being first in the field with a new book. To secure priority American publishers regularly paid lump sums to English authors for "advance sheets."<sup>1</sup> Secondly, there was a "tacit understanding among the larger publishers in America that the books published by one should not be pirated by another."<sup>2</sup> Each notified the other of arrangements he had made.<sup>3</sup> What of other publishers who might be tempted? It was explained, thirdly, to the Royal Commission of 1876-8 "that the practice of all the great houses in America (there are some three or four large publishing houses with very great capital), if anybody publishes one of their books, is to publish a largely cheaper edition at any cost, and they would make any pecuniary sacrifice rather than not cut out a rival."<sup>4</sup> "Fighting editions" in the book-publishing trade served the same purpose as "fighting brands" in the cigarette business, "fighting ships" on the shipping conference routes, and "fighting buses" in post-war London passenger transport. Yet, fourthly, perhaps the most important check on the rival publisher, whose competing edition would in any case be late in the field, was the low-price policy which the American publishers adopted. American editions might cost one-half as much as the English issue; one quarter or even one-eighth of the English price was very frequent. In such circumstances, the American public enjoyed cheap books, the American publishers found their business profitable, and the English authors received lump sums for their advance sheets and royalties on American sales.<sup>5</sup>

<sup>1</sup> E.g. Evidence of G. H. Putnam.

<sup>2</sup> Evidence, Professor John Tyndall, Question 5795.

<sup>3</sup> E.g. Evidence of G. H. Putnam.

<sup>4</sup> Evidence, Professor T. H. Huxley, Question 5610.

<sup>5</sup> E.g. Evidence of T. H. Huxley, Question 5610. "I myself am paid upon books which are published there: my American publisher remits me a certain percentage upon the selling price of the books there, and that without any copyright which can protect him." Also John Tyndall, Question 5775: "... I make an arrangement with my publishers . . . in New York, and they every year send me an account of their sales and allow me a certain percentage on the retail price of my books." Asked (Question 5791) if the percentage were as large as it would have been if he had had copyright in America, his answer was: "I cannot say, but I should be inclined to think so, because I am in the hands of a most high-minded publisher. I believe that I should gain no advantage by the copyright in America that I do not possess at present. But though I should be unaffected, on public grounds I hold that a copyright ought to exist."

Cf. also Herbert Spencer in a letter to *The Times*, September 21st, 1895, reprinted in *Various Fragments* (1900): "For a period of thirty years, during which English



The significance of priority in the market, coupled with a suitable size of edition and a corresponding price policy, as a deterrent to competition is emphasised by an illustration. In an appendix to his book on *The Marketing of Literary Property*, published in 1933, Mr. G. H. Thring gives a number of accounts of the costs of book production. Taking his figures for a crown octavo volume of 288 pages, eleven point, twenty-nine lines per page, an edition of 1,500 copies would involve approximately £300 to cover all publishing costs, pay 10 per cent. to the author and leave a profit of 16 $\frac{2}{3}$  per cent. to the publisher on all the costs, including royalty. That would mean an average wholesale price of 4s. per copy, and a retail price of say, 6s. If the book were a success, and there were no copyright law, a rival publisher might very probably come into the market with a larger and therefore cheaper edition which would deprive the author and first publisher of at least part of their anticipated receipts. They might, of course, lower the price as soon as success showed itself to them, and reprint at once on a larger scale, before competitors could formulate plans. A publisher who was more skilful in judging public taste might, however, have embarked in the first instance on an edition of, say, 3,000 copies, and if he calculated on receiving the same total amount of profit himself from the venture and on paying twice the previous total royalty to the author, the total sum involved might be about £382, or 2s. 9d. per copy wholesale, corresponding to (say) 4s. retail.<sup>1</sup> A price as low as that would surely make competitors hesitate before issuing,

works had no copyright in America, arrangements initiated about 1860 gave to English authors who published with Messrs. — profits comparable to, if not identical with, those of American authors."

<sup>1</sup> The relevant detail of the costs, based on figures of Mr. Thring, is :

				<i>Edition of 1,500 copies.</i>				<i>Edition of 3,000 copies.</i>			
				£	s.	d.		£	s.	d.	
Composition	...	...	...	46	2	6		46	2	6	
Machining	...	...	...	15	10	6		22	19	0	
Paper	...	...	...	18	18	0		37	16	0	
Binding	...	...	...	36	0	0		54	0	0	
Brasses for cases	...	...	...	1	12	0		1	12	0	
Jacket	...	...	...	12	11	0		13	3	0	
Author's Corrections	...	...	...	6	0	0		6	0	0	
Advertising	...	...	...	60	0	0		60	0	0	
Postage, etc.	...	...	...	10	0	0		10	0	0	
Royalties	...	...	...	40	0	0		80	0	0	
Profit	...	...	...	50	0	0		50	0	0	
				<hr/>				<hr/>			
				£296	14	0		£381	12	6	
				<hr/>				<hr/>			

late in the day, the still much larger rival edition which would be necessary to make possible an appreciable *further* cut in price. If a competing edition were issued much more cheaply on poorer-quality paper and possibly unbound, it would more probably tap a new market than divert the old. The abolition of copyright need not therefore result in the complete abandonment of the business of book production either by publishers or by professional authors.

### 5. *The early days of copyright*

Our speculations will be made more fruitful if we pause to inquire for a few moments into the nature and effects of copyright regulations in this country.

The earliest records are hardly less enlightening than those of our own generation. Regulation began in Tudor times with the usual system of royal patents, conferring upon certain persons the monopoly of the right to print particular books or classes of books. The patent system was of course applied by a series of impecunious monarchs to all sorts of enterprise, but printing was a special case, in due time expressly exempted (together with the manufacture of armaments) from the Statute of Monopolies (21 James I, c. 3) of 1623. The printers did not fail to turn to their own advantage the determination of the Crown to control the output of the printing press. Many of the early patent grants were, in their prime, profitable monopolies; one, for example, comprehending all grammars in the Latin tongue, another the Bible, a third covering all dictionaries, a fourth all books on law, and so on. A specialist writer, confronted by a buyer's monopoly for his class of work, had little hope of early publication, still less of a profitable sale of his manuscript, if the monopolist had on his hands a large stock of a competing book already printed. After 1557, when the general control of the industry was entrusted to the Stationers' Company,<sup>1</sup> a comprehensive attempt was made at rationalisation in the interest of its members. Each printer's rights to print were registered by the Company, and rights were assignable by one member to another. Whenever exceptional profits attracted interlopers, the case against unregulated competition was argued by the

<sup>1</sup> On the Stationers' Company see *A Transcript of the registers of the Company of Stationers of London, 1554-1640 A.D.*, edited by Edward Arber, 1875. I am indebted for many of the references concerning this period to the researches of Miss M. Plant. I have modernised the spelling in quotations.

Company with a skill which our present-day trade associations hardly excel. Already in 1583 the report of Christopher Barker went to show that the patent monopolies were not what they had been. For instance, the "most profitable copy" in the country, a Latin grammar for children, carried fixed charges which left the printers little more than prime costs; "the printer with some greater charge at the first for furniture of letters, hath the most part of it always ready set: otherwise it would not yield the annuity which is paid therefor." Monopolies cut into each other: Barker himself had the patent for the Book of Common Prayer, but Master Seres had one for a psalter comprising the most-used parts—"where I sell one book of common prayer, which few or none do buy except the minister, he furnisheth ye whole parishes throughout the realm, which are commonly a hundred for one." Master Seres skimmed the cream. The industry already suffered from serious surplus capacity: "there are 22 printing houses in London, where 8 or 10 at the most would suffice for all England, yea and Scotland too." There were too many printers with narrowly specialised skill: "who do both know and confess that if privileges were dissolved they were utterly undone, having no other quality to get their living." And there were the interlopers, challenging the patent monopolies and making public collections for legal expenses: "of which company being five in number, one John Wolfe, now prisoner in the Clink, is the chief."

The era of the Star Chamber's decrees and censorship was a happy time for the members of the Stationers' Company. Compared therewith, confusion reigned as soon as the backing of the Star Chamber was removed by the Long Parliament in 1641, and the Company's petition of 1643 to Parliament for greater powers of regulation<sup>1</sup> was cunningly designed to make the flesh of an uncertain authority creep. "Too great multitudes of presses" set up by "Drapers, Carmen and others," were alleged to be in work, indiscriminately printing "odious opprobrious pamphlets of incendiaries." The ear of government thus attuned, the petition proceeds to business. Even members of the Company were ignoring property in copies, and if one complain he "shall be sure to have his copy reprinted out of spite." The copyright monopoly is "a necessary right to stationers; without which they cannot at all subsist." . . . "Property in copies is a thing many ways

<sup>1</sup> See Edward Arber, *op. cit.*, Vol. I.

beneficial to the State, and different in nature from the engrossing, or monopolising some other commodities into the hands [of] a few, to the producing of scarcity and dearth, amongst the generality." The stationers then pass to a statement of the case for copyright which would not discredit an "economic adviser" to a modern publishers' association. The first consideration is that books are luxuries, the demand for which is elastic, and therefore monopoly cannot harm the public.

Books (except the sacred Bible) are not of such general use and necessity, as some staple commodities are, which feed and clothe us, nor are they so perishable, or require change in keeping, some of them being once bought, remain to children's children, and many of them are rarities only and useful only to a very few, and of no necessity to any, few men bestow more in Books than what they can spare out of their superfluities. . . . And therefore property in Books maintained among stationers cannot have the same effect, in order to the public, as it has in other Commodities of more public use and necessity.

The second consideration is that copyright monopoly would result in more and cheaper books.

A well-regulated property of copies amongst stationers, makes printing flourish, and books more plentiful and cheap ; whereas Community (though it seems not so, at first, to such as look less seriously, and intently upon it) brings in confusion, and many other disorders both to the damage of the State and the Company of Stationers also ; and this will many ways be evidenced.

Their reasons recall the oscillation theory of modern specialists in the mysteries of perfect competition. Over-production would result from an absence of copyright:

For first, if it be lawful for all men to print all copies, at the same time several men will either enviously or ignorantly print the same thing, and so perhaps undo one another, and bring in a great waste of the commodities . . .

and under-production also:

Secondly, the fear of this confusion will hinder many men from printing at all, to the great obstruction of learning, and suppression of many excellent and worthy pieces.

Booksellers' risks and costs would increase:

Thirdly, Confusion or Community of Copies destroys that Commerce amongst stationers, whereby by way of Barter and Exchange they furnish books without money one to another, and are enabled thereby to print with less hazard, and to sell to other men for less profit.

Even professional authors come in for consideration :

Fourthly, Community as it discourages stationers, so it is a great discouragement to the authors of books also ; many men's studies carry no other profit or recompense with them, but the benefit of their copies; and if this be taken away, many pieces of great worth and excellence will be strangled in the womb, or never conceived at all for the future.

Copyright should pass to heirs and assigns without term :

Fifthly . . . many families have now their livelihoods by assignment of copies . . . and there is no reason apparent why the production of the brain should not be as assignable . . . as the right of any goods or chattels whatsoever.

And finally, in view of the foregoing :

'Tis obvious to all, that (if we will establish a just regulation) foreign books must be subjected to examination, as well as our own, and that all such importation of foreign books ought to be restrained as tends to the disadvantage of our native stationers.

The case for copyright has rarely been stated as comprehensively as in this early petition. Parliament responded promptly with the requisite Ordinance of 1643 (virtually a re-enactment of an old Star Chamber decree), to which we owe at least the inspiration of John Milton's *Areopagitica* of the following year. Under the Commonwealth, political censorship was continued, and after the Restoration the office of Licenser was revived by an Act of 1662 (13 and 14 Car. II, c. 33) which was little more than a new version of the former ordinances. The Act expired in 1679, was renewed in 1685, continued again till 1692, and then re-enacted for two more years. It lapsed finally in 1694. Until then, the control of the Stationers' Company continued over all copyright, which had to be registered in its books; but thereafter its authority to restrain reprinting ceased.

## 6. *Competition, and the first Copyright Statute*

As we have seen, authors could expect little benefit to themselves from the patent system. The printer who enjoyed the patent right for a particular class of book had a buying monopoly for all manuscript books in that class, and authors were in his hands. Under the control of the Stationers' Company, as members began to compete among themselves for the right to issue new books, authors were gradually enabled to bargain with more success. In the seventeenth

century some of them were in a position to sell the rights to publish only one edition of a stated number of copies; and cash payments, in addition to the delivery of the authors' copies, became more general. The bulk of the publishing business came into the hands of the London booksellers, who were, of course, members of the Stationers' Company. Their contact with the market made them good judges of books which would sell, and they could therefore offer better terms. On occasion they shared the risks in expensive publications by taking over stock from each other by exchange or purchase. It was at the end of the seventeenth century that competition from publishers and printers outside the Stationers' Company became really severe. The era of political and religious censorship was passing, and the Company could no longer interest the Government in the control of the new printing presses springing up throughout the country. The doctrine of perpetual copyright which the Company had endeavoured to establish, on the evidence of assignments registered in its books, began to be flouted on all sides by the country booksellers, particularly after the Licensing Act lapsed in 1694. The London booksellers made a series of unsuccessful attempts to secure new legislation, and it was not until the eighth year of Queen Anne that they secured the passage of the first Copyright Statute.

### 7. *The "perpetual copyright" question*

In view of the claims which the Stationers' Company had hitherto made, the terms of the Copyright Act of 1709-10 are significant. In the case of existing books, the Act gave the authors, or if they had transferred their rights (which, of course, they almost invariably had) the then proprietors, the sole right of printing them for twenty-one years and no longer. In the case of new books, the author was given the sole right of printing them for fourteen years from the date of publication, and, if then still living, for one further term of fourteen years. The penalty for pirating was forfeiture and a fine of one penny per sheet, the protection extending only to books registered at the Stationers' Company. It will be noticed how closely the Act followed the patent system for inventions, as preserved in the Statute of Monopolies of 1623. The London booksellers, who must by then have despaired of ever securing the perpetual copyright which at one time they had claimed, had no reason to oppose the grant, enforceable in the Courts, of

fourteen years of monopoly power for every new book they bought outright, although some of them subsequently protested when they realised that the second period of fourteen years granted to authors who were still living was the author's property to sell again.<sup>1</sup>

Authors themselves were placed in a much better bargaining position. Their success depended upon individual popularity and reputation. As regards "bargaining power," they needed only to avoid committing themselves far ahead in any one contract, for if their books sold well they could rely on booksellers to bid up each other. The career of David Hume as an author well illustrates the position.<sup>2</sup> In 1739 at the age of twenty-eight he sold the rights to the first edition in two volumes of his first book, *A Treatise of Human Nature*, 1,000 copies to be printed, to John Noon, bookseller, for fifty guineas and twelve bound copies. A year later, the third volume, *A Discourse Concerning Morals*, was ready, and although Noon was very willing to take it Hume found it more profitable to contract with Thomas Longman, to whom Francis Hutcheson had referred him.<sup>3</sup> In subsequent years he issued several editions of his *Essays* through Kincaid, Donaldson, and ultimately the very astute London publisher, Andrew Millar. In 1754 we find him engaging with Edinburgh booksellers to publish 2,000 copies of the first volume of his *History of Great Britain* for £400; but Andrew Millar paid him £700 for the rights to one edition of the second volume, and the same for the subsequent section (in two volumes) on the Tudors. In 1759, twenty years after selling his first book, Hume contracted with Millar to write the early section of the *History*,

<sup>1</sup> For an entertaining and informative account of this period see Augustine Birrell : *Seven Lectures on the Law and History of Copyright in Books*. (Casell, 1899.)

<sup>2</sup> See *The Letters of David Hume*, edited by J. Y. T. Greig.

<sup>3</sup> Letter, March 4th, 1740, to Francis Hutcheson : The same bookseller "is very willing to engage for this, and he tells me that the sale of the first volumes, though not very quick, yet it improves. I have no acquaintance among these folks, and very little skill in making bargains. . . . There are two favours, therefore, I must ask of you, viz. to tell me what copy money I may reasonably expect for one edition of a thousand of this volume, which will make a four shillings book : and, if you know any honest man in this trade, to send me a letter of recommendation to him that I may have the choice of more than one man to bargain with."

And again, letter, March 16th, 1740, to the same : "I must trouble you to write that letter you was so kind as to offer to Longman, the bookseller. I concluded somewhat of a hasty bargain with my bookseller from indolence and an aversion to bargaining, as also because I was told that few or no bookseller would engage for one edition with a new author. . . . I . . . also engaged myself heedlessly in a clause, which may prove troublesome, viz. that upon printing a second edition I shall take all the copies remaining upon hand at the bookseller's price at the time."

"from the beginning to the accession of Henry VII," for £1,400, "the first previous agreement ever I made with a bookseller." Millar apparently also bought the "full property" in the first two volumes of the *History* for another eight hundred guineas. Nevertheless, David Hume had reason to protest frequently against the sharp practices of Andrew Millar, who deceived him continually concerning the size of editions and their rate of sale, and reprinted an edition without giving the author the agreed opportunity to correct the text.

Andrew Millar took a leading part in the renewed attempt which the London booksellers made in the middle of the eighteenth century, despite the Copyright Act of 1709, to establish their claim to perpetual copyright.<sup>1</sup> The traffic in "copyrights" of existing books was continued, as though that Act had not been passed; the London booksellers probably depending on each other to respect assignments recorded in the registers of the Stationers' Company. Millar had in 1729 bought *The Seasons* from James Thomson, and duly registered his property in it. In 1763, fifteen years after Thomson's death, another bookseller, Robert Taylor, republished *The Seasons*, and Millar brought an action three years later in the Court of King's Bench. By a curious majority decision, the Court found in 1769, after Millar's death, that the 1709 Act did not take away the author's perpetual copyright which, the Court declared, had existed at common law, and which in this case the author had assigned to Andrew Millar. On the basis of that decision, perpetual copyright was for five years thereafter the law of England. The country booksellers were not prepared to let the matter rest there; Donaldson, the Edinburgh bookseller, republished *The Seasons* once again. Becket, who had purchased the Thomson copyrights at the sale of Millar's effects, secured an injunction against him in the Court of Chancery, and Donaldson in 1774 appealed to the House of Lords. The House invited eleven judges to answer a number of questions on the effect of the Act of Queen Anne, and by six to five they declared that it took away the perpetual rights of authors. The House of Lords, with the lay peers taking an active part (Lord Camden wiped the floor with the London booksellers), voted twenty-two for Donaldson and

<sup>1</sup> The three famous cases of *Tonson v. Collins*, 1760; *Millar v. Taylor*, 1766; and *Donaldson v. Becket*, 1774. For a convenient account, see Birrell, *op. cit.*



eleven for Becket.<sup>1</sup> "Thus for ever," says Birrell, "perished perpetual copyright in this realm." The London booksellers, as David Hume advised them to do, made earnest attempts to secure another law, but their prosperity was against them, and opinion was too strong. They did better when they emphasised in those days the interests of authors, just as a century and a half before they found it most profitable to profess anxiety for the safety of the realm. Statutes of 1801 and 1814 extended the period of copyright to the life of the author or for twenty-eight years, whichever period was the longer. Putting on one side the ethics of the question, it seems unlikely that the extension of the term enabled authors to *sell* their copyrights outright to publishers for much greater prices, or had any considerable effect on the output of new literature.

#### 8. *The Copyright Act of 1842*

This rapid survey of the early history of copyright in this country will have served its purpose if it makes more clear the interests concerned in the important changes introduced into the law by the Act of 1842 (5 and 6 Vic., c. 45), which remained in force right through the remainder of the nineteenth century and was only superseded by the present Copyright Act of 1911. The Copyright Act of 1842 had the effect in general of adding another fourteen years to the monopoly period. Copyright was made to extend for the life of the author plus seven years, or forty-two years from the date of publication, whichever period was the greater. There may be doubt whether the volume of authorship was thereby increased, but it certainly increased the profits to be made from the sale of successful books. The immediate occasion for the passing of this important measure is of interest; if the evidence of a publisher of the time is to be accepted,<sup>2</sup> the Bill found favour in the House of Commons "because it was understood to be for the special benefit of the family of Sir Walter Scott, whose copyright was about to expire under the old law." More specific and less far-reaching means of achieving that particular end might well have been devised.

<sup>1</sup> It is of interest to note that David Hume at once wrote to Wm. Strahan, the successor to Millar's business, suggesting the transference afresh to him of Hume's property in his most recent alterations to his works. "If nobody can reprint these passages during fourteen years after the first publication, it would effectually secure you so long from any pirated edition." (Letter, March 1st, 1774, in *The Letters of David Hume*.)

<sup>2</sup> Cf. Evidence of John Henry Parker, a retired publisher, before the Royal Commission on Copyright of 1876-8.

For seventy years the Copyright Act of 1842 exercised a far-reaching influence on the output and prices of English books in the United Kingdom. Even before it was passed, critics of the copyright system were calling attention to the high prices which resulted. In 1837, for instance, the Keeper of Printed Books at the British Museum, Thomas Watts by name, advocated in the *Mechanics' Magazine* the adoption of the "compulsory licence" or "royalty" system, by which, since any person who paid to the author a fixed percentage of the selling price would be free to print any book, competition between publishers could be allowed while securing remuneration for authors.<sup>1</sup> During the nineteenth century, the differences between the prices of books in England and the United States were enormous. T. H. Farrer (afterwards Lord Farrer), Secretary to the Board of Trade, presented long schedules of comparative prices as evidence to the Copyright Commission of 1876-8.

#### 9. *The defence of high prices*

The defence of high prices in England which the publishers then advanced was the same as was employed in 1643. "Four books out of five which are published do not pay their expenses. . . . The most experienced person can do no more than guess whether a book by an unknown author will succeed or fail."<sup>2</sup> It was argued that copyright is essential in order that the monopoly profits from successful books might cover the losses. The question is worth a little consideration. Without copyright, publishers no doubt would not issue all of the books which copyright elicits, for competition would reduce the receipts from those which succeed. The higher the profits from the copyright monopoly, the greater the willingness to publish the doubtful successes. The odds in the gamble are made more attractive. Given copyright, therefore, a larger proportion of available manuscripts will be accepted by one publisher or another, and more people will continue to write who in competition would abandon hope of seeing their manuscripts in print and would turn to other occupations. Monopoly is, of course, a common enough

<sup>1</sup> Cf. Evidence of R. A. Macfie, before the same Commission, and see also A.-C. Renouard: *Traité des Droits d'Auteurs*, Paris, 1838.

<sup>2</sup> *Edinburgh Review*, October 1878; article on the Report and Evidence of the Royal Commission on Copyright. Cf. also The Humble Remonstrance of the Company of Stationers, London, to the High Court of Parliament, April 1643: "Scarce one book in three sells well, or proves gainfull to the publisher."

device for securing in this way the diversion of scarce resources to particular uses. It is involved in the patent system for inventions, in the chartered-company method of opening up "new" territories, in the "public utility corporation" for the provision of services, and so on. What is generally overlooked by the more enthusiastic advocates of these schemes is the alternative output which the resources would have yielded in other employment. T. H. Farrer, giving evidence before the 1876-8 Commission, no doubt had these considerations more or less clearly in his mind when discussing the weaknesses of copyright. "What we want, I believe, is more good books and cheaper good books; but we do not want more books; we have too many books at present. Some persons, whose opinions are deserving of much consideration, wish to do away with copyright in order to diminish the number of books, and to reduce the number of those who make authorship a trade. They think that to do so would be a gain to the public in providing better books, and that it would not discourage those who write for the sake of reputation or for the sake of truth, and less for the sake of money. I do not say that I agree with these persons, but I think they are right in thinking that we have, under the present system, too many books."<sup>1</sup>

The fact is, of course, that the eminent publishers who have called attention to the inevitable element of risk in the conduct of their affairs have been prone to exaggerate the unreliability of their judgment in selecting manuscripts for publication at their own risk. Suppose it to be true that four books out of five fail to pay: are they *all*—were they *ever* *all*—issued at the risk of the publisher? Faced with really risky propositions, do they not suggest to the luckless author that he should share the risk with them, or bear the whole costs, or secure a subsidy from elsewhere? Would it indeed be sound business for a publisher to subsidise definitely hazardous enterprises out of the monopoly profits gained through copyright? Insurance companies select the risks they bear, and publishers do likewise, notwithstanding the fact that the funds *they* risk arise in part from monopoly profits. Where guess-work is a fair description of the publishing business, copyright no doubt increases the amount of risk-bearing by lengthening the odds receivable on the winners. It fails, however, to describe a great part of the book-publishing trade. The fortunes of

<sup>1</sup> Evidence of T. H. Farrer, the Secretary to the Board of Trade, March 13th, 1877, Question 5080.

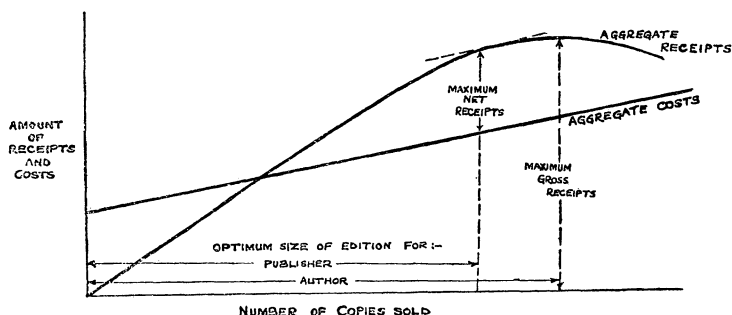
publishers vary enormously, but the differences are not by any means attributable to luck alone. The authors who (it is of interest to observe) were included on the 1876-8 Royal Commission had had experience with publishers of widely varying success. To Dr. Wm. Smith, for instance, "only one book in four is a very moderate calculation of the books which are successful, of the books which pay their expenses." Anthony Trollope on the other hand had "learned from two publishers within a short period that not one book in nine has paid its expenses, and that still they have been able to carry on the trade." The comment of the Secretary to the Board of Trade was that "the public and the successful author must have to pay handsomely for the publishers' unsuccessful speculations."<sup>1</sup> To the extent that publishers are successful in selecting books which sell, for issue at their own risk, and in requiring the authors to finance the publication of the remainder, copyright legislation does not have the effect of inducing them to undertake more risk-bearing. If the intention be to secure the publication of books for which in a free market authors would have to pay, more certain methods of achieving that end could certainly be devised. And if it could be assumed that there are public reasons for subsidising the production of such books, students of public finance will probably agree that more equitable means could be found of distributing the cost. It is not, however, to be expected that many people would support the principle of indiscriminate encouragement of all books which publishers regard as unlikely to sell in sufficient volume to cover their cost. And this is precisely the result which copyright may secure.

#### 10. *The fixing of prices : author v. publisher*

It may be useful at this stage to set out the interests of authors and publishers respectively in the prices to be charged for books under copyright monopoly. It is not to be supposed that both parties are necessarily best served by a price which restricts the supply of a book to the point of maximum net profit to the publisher. The author's interest will depend rather on the terms of his contract with the publisher, and generally he will be better served by a larger edition and lower selling price than will pay the publisher best. Where the publisher is the entrepreneur, he is concerned to maximise the surplus of aggregate receipts over aggregate costs. The

<sup>1</sup> Evidence, March 16th, 1877, Questions 5191-2-3.

author on the other hand, if paid a fixed sum per copy or a percentage of the published price, has no concern with costs. If paid a fixed sum per copy, the author's receipts will be greater, the lower the final price and the greater the number of copies sold; if he receives a percentage of the published price, his receipts will be greatest when the *gross* receipts from sales are maximised, not (like the publisher) when *net* receipts after deduction of costs are greatest. Since every additional copy printed adds something to the *aggregate* costs of an edition, *net* receipts and the publisher's profit are maximised at a smaller output and higher price than would result in the greatest *gross* receipts and author's income. The divergence of interest is shown clearly in a diagram exhibiting aggregate receipt and cost curves.



The author is therefore usually interested in securing a price and output nearer to the competitive figures than those which pay the publisher best. Only when the author becomes a joint entrepreneur, and shares the net profits with the publisher after the deduction of costs, do their interests in monopoly restriction coincide; and only in the case in which the author takes the whole risk and pays the publisher a commission based on costs or gross receipts is the author concerned to issue a smaller edition at a higher price than the publisher would wish for.

### 11. *Price discrimination at home and abroad*

In the nineteenth century the extremely high prices which English publishers exacted for books, behind the copy-right law, led to the emergence of the circulating libraries, which became in due course a powerful vested interest standing in the way of a lower-price policy. As the most important

buyers of new books, particularly novels and biography, and dependent upon high book prices for public support, the circulating libraries attained to a position in which they could insist upon the publishers maintaining high prices to the public for a term of years while supplying the libraries at less than wholesale rates.<sup>1</sup> By issuing first an expensive and later a cheaper edition, the publishers practised a very profitable form of price discrimination in the home market; but the libraries enforced a longer delay than some of them desired.

A discriminating price policy for the overseas markets has long been a regular feature of the publishing trade. Circulating libraries may pay less than booksellers for their supplies, but "colonial editions" usually sell at still lower prices. In the nineteenth century the reasons were diverse: the colonial communities were poorer, less interested in books and more cheaply supplied from other countries, particularly the United States and even the Continent, despite the difference of language. Notwithstanding dumping, the prices charged by English publishers for export were too high to meet the requirements of British colonial policy. In 1835, apparently, the India Council decided to admit the cheap American reprints of English books into India: the taste for the English language and literature could not be cultivated widely enough at the prices ruling for English editions.

## 12. *The "compulsory licence" or "royalty" proposal*

In such circumstances it is not surprising that increasing attention came to be paid to proposals for encouraging competition between English publishers by the introduction of the compulsory licence or "royalty" system. As has been said, the Keeper of Printed Books at the British Museum advocated the system as early as 1837. R. A. Macfie, who had for years pressed the same proposal in the case of patents for inventions (the "licence of right" system was eventually introduced on a voluntary basis in 1919), gave evidence before the Copyright Commission of 1876-8 in which he outlined a scheme under which any publisher might issue an edition of any book on payment, during the term of the copyright period, of a percentage of the published price to the author or his

<sup>1</sup> See evidence to the 1876-8 Commission, e.g. George Routledge: "... In the case of novels published for the circulating libraries, you must give the trade a certain time [before lowering the price], or else they will not take them." Sir Charles E. Trevelyan: "... No doubt if the monopoly were abolished the circulating libraries would collapse."

assigns. Thereby the supply of successful books, and quite possibly the remuneration of authors, would be increased. In Italy the law already provided for this system, at the end of a long term of ordinary copyright. The Canadian Government had just passed a law, as a measure of protection against pirated editions from the United States, permitting Canadian publishers to reprint English books on payment of royalty to English authors. Sir Charles Trevelyan and many others favoured the adoption of the system in England; but the Secretary to the Board of Trade, though personally sympathetic and strongly in favour of the free importation of cheap Canadian reprints into England, advised the Commissioners that the proposal was scarcely a practical question at the moment.<sup>1</sup> Only one of the fifteen Commissioners ultimately viewed it with favour; the rest, including the authors, feared that if publishers' profits were reduced, unproven books would not be so willingly published. Herbert Spencer gave evidence against the proposal, citing his own experience as an author of philosophical works. According to his figures, it was twenty-four years after the publication of his first book before the losses on his works had been recouped. It should, however, be said that he included in the costs of publication his own "cost of economical living" during the period, that despite the copyright law he apparently had to issue the books at his own expense and risk, and that his receipts from sales in America (where he had no copyright to keep up prices) were apparently greater than from those in England. He estimated his net profits on sales in 1876, twenty-six years after publishing his first book, at  $41\frac{3}{4}$  per cent., and he naturally feared that a law which allowed any publisher to reissue his books on paying him a royalty of 10 per cent. might not yield him the same income. He regarded himself as entitled to a monopoly because in his view the demand for his works was inelastic for a fall in price: the royalty system, he thought, "would be especially injurious to the particular class which of all others needs encouragement," the books described by the chairman

<sup>1</sup> Evidence of T. H. Farrer on January 31st, 1877: "It is, however, at the present moment in this country, scarcely a practical question. . . . Whatever advantages a system of royalty might have, it would require new machinery of an elaborate kind, and it would disturb existing arrangements, and be opposed by existing interests. It is, therefore, not worth while now to discuss it, nor am I prepared to meet the various difficulties of detail which would no doubt arise in considering it. To do so would require a far greater knowledge of the practice of the trade than an outsider can pretend to. But judging from the little I have been able to gather I should not think them insuperable."

of the Commission as "of the graver class which do not appeal to the popular tastes." Students of philosophy were fair game for monopolistic authors.

13. *The Copyright Act of 1911: the introduction of the "royalty" system*

These considerations, therefore, were responsible in 1878 for the decision of the Commission that "it is not expedient to substitute a right to a royalty defined by statute, or any other right of a similar kind" for copyright as it then existed. It is consequently of particular interest to observe that thirty years later it was largely due to the pressure of a group of publishers, in another field, for the *adoption* of the royalty or compulsory licence system that the present amending and codifying Copyright Act of 1911 (1 and 2 Geo. V, ch. 46) was framed and passed. The publications in question were mechanical reproductions of musical compositions. In 1908 a revised International Copyright Convention was signed in Berlin, and by its thirteenth article ratifying countries were invited to confer on authors and composers the exclusive right of authorising such reproductions. A departmental committee of the Board of Trade was appointed in 1909 to consider the consequential changes that were desirable in the copyright law of this country. Hitherto a large business in mechanical reproduction had been built up by gramophone companies and manufacturers of perforated music rolls and the like; on the assumption that authors and composers had no right to restrain the reproduction of their works by these means. Those who prefer such language might say that the trade coolly pirated musical works. The companies feared a serious disturbance and restriction of their business if the thirteenth article became law in this country: one large concern might secure rights so extensive as practically to exclude the others. They therefore presented important evidence before the departmental committee, unanimously demanding a compulsory licence system for musical compositions, on the lines of an Act of 1909 which had just been passed in the United States, in order that they might retain their existing freedom to reproduce published music, subject only to a new liability to pay remuneration to the composer. Not every musical composition, however, is capable of perfect performance on a barrel-organ; and composers who gave evidence objected strongly to the compulsory licence proposal,



insisting on their right "to control the mode in which their pieces are produced and the character of the instrument which produces them." The Committee with one dissident reported in favour of the thirteenth article and the composers, and against the compulsory licence system. Nevertheless, the 1911 Copyright Act (Section 19) made provision for compulsory licences for "records, perforated rolls, or other contrivances by means of which . . . [musical works] may be mechanically performed."

The method adopted in this country for remunerating the composer differs from that in the United States, where a fixed specific royalty of two cents was made payable on each gramophone record. The gramophone companies favoured the American system, and in their evidence before the departmental committee they opposed a royalty system based on a percentage of the selling price of the record, on the ground that a composer would then be "paid for the value put into it by the interpretation of the great artiste." There was further the problem of deciding one rate of remuneration for all composers. Both difficulties had been anticipated in 1838 by A.-C. Renouard.<sup>1</sup> The basis adopted in the Act was, after the first two years of its operation, 5 per cent. royalty on the retail selling price of the contrivance, with a minimum of one half-penny for each separate musical work in which copyright subsists. The Board of Trade is empowered, after public inquiry, to vary the rate by provisional order, at minimum intervals of fourteen years; and the administration of the system is controlled by the Board by regulation, apparently without insuperable difficulty.

The Act of 1911 again increased the duration of copyright in general, but in the same clause a most important innovation was inserted, at last introducing the royalty system into book publishing for the last twenty-five years of the copyright period. During that time, any person may reproduce a published work,

<sup>1</sup> See his *Traité des Droits d'Auteurs*, Volume I, § IX, p. 463. Of the royalty system, he wrote "Ce qui le rend inadmissible, c'est l'impossibilité d'une fixation régulière, et l'excessive difficulté de la perception. Peut-être, à force de soins, surmonterait-on les obstacles à la perception; mais, quant à la fixation de la redevance, le règlement en est impossible. . . . Demanderait-on à la loi de déterminer une redevance fixe? mais quoi de plus injuste qu'une mesure fixe, rendue commune à des objets essentiellement inégaux? . . . Si votre redevance a pour base une valeur proportionnelle, chaque Télémaque de deux cents francs produira, pour le seul droit de copie, plus que ne vaudra, dans l'autre édition [à vingt sous], chaque exemplaire tout fabriqué; et cependant ce sera toujours le même texte qui n'aura pas plus de valeur intrinsèque dans un cas que dans l'autre."

after giving written notice and on paying royalties of 10 per cent. of the published price to the owner of the copyright on all copies sold. No great difficulty seems to have arisen in administering this clause. The increase in the term of copyright, in accordance with the Berlin convention, to the life of the author and a further period of fifty years is hardly likely to have affected the terms of original publishing contracts and the output of authors' manuscripts; but the new royalty system now makes it possible for at any rate the second generation of readers after the death of an author to enjoy a wider circulation of his books at lower prices, in spite of the increase in the copyright period.

#### 14. *Some conclusions concerning the necessity for copyright*

The conclusions concerning the necessity for copyright which emerge from this survey may now be summarised. The parallelism with the case of patents for inventions is of course very marked. In the first place, expectation of direct reward explains only a part of the total output of literature, just as it fails to account for more than part of the inventions which are made. Secondly, just as professional inventors continue to be paid for their services in fields in which the patent system does not apply, so also have professional authors in modern times been remunerated for their writings, whether by payment of a lump sum or by way of royalty on the sale of copies, in a country in which they were unprotected by copyright law. The publishers of new books are simply a special case of the manufacturers who exploit new but non-patentable inventions for which they pay the inventor. (Where no payments have to be made to authors, and the demand for the book is not in serious doubt, publishers are not of course deterred by fear of competition from issuing an edition. Of that fact the abundance of contemporary editions of standard works selling successfully against each other at different prices and in a variety of formats, affords a continual demonstration.) Thirdly, copyright monopoly, like patent monopoly, enables the privileged producers to increase their receipts from successful products by restricting the supply, and in so far as experience and special skill are unavailing when a publisher tries to gauge the relative chances of success of certain kinds of manuscript books, copyright will, as we have seen, lead to an increased volume of risk-bearing. This consideration applies, however,

over a definitely limited range of books; and it is extremely doubtful on reflection whether there exist any public reasons for the *indiscriminate* encouragement of the literature that falls into this category. Nor is there any reason why the increased volume of risk-bearing which copyright may elicit from certain publishers should materialise in the form of books alone: a prudent business man might well spread the risk more widely to include some racing or a gamble at Lloyd's with his book publishing. The odds might be still more attractive. It is at least doubtful whether book-buyers and successful authors should be specially selected, by the effects of copyright on the price of the books which sell, to provide the fund which increases the element of gambling inherent in the book-publishing business.

More authors write books because copyright exists, and a greater variety of books is published; but there are fewer copies of the books which people want to read. Whether successful authors write more books than they otherwise would is a question of "the elasticity of their demand for income in terms of effort"—they may prefer now to take more holidays or retire earlier. Some of them are in any case well advised to write different books—instead of writing what they would otherwise want to say or have to say, they find it more remunerative to write the sort of thing for which the demand conditions are most appropriate for ensuring the maximum monopoly profit.

The expectation of higher profits from book publishing as the result of copyright tends to increase the number of publishers in the business. Keen competition between publishers will enable the authors, whose copyright monopoly they are anxious to share, to make better bargains; with the result that the remuneration of publishers will tend to fall to the market rate of return on their capital and skill in other fields. Apart, however, from the increased volume of unpleasant "remainders," the prices of books will remain above the competitive level so long as copyright subsists.

There is, of course, no system of economic calculus which supports the contention that output of the type which monopoly induces is "preferable" to that which emerges from the different disposition of the same scarce productive resources resulting from the competitive bidding of the open market. One special weakness of copyright monopoly as an administrative device is the *non-discriminatory* nature of the encourage-

ment it affords to ventures which are too risky to be embarked upon in a free market. It is not difficult to imagine particular cases in which literary effort might well be specially encouraged on public grounds. Large undertakings involving many expert contributors and expensive illustrations might not invariably find sufficient backers and "advance subscribers," in view of the large capital outlay to be made by the first publishers, to make them commercial propositions. Yet if there were public reasons for financing particular ventures of this sort, subsidies provided from general taxation have more to commend them than a copyright monopoly; and if that system were politically impossible, it would surely be better that copyright monopoly be limited to such enterprises, by some such system as that in which the Comptroller of Patents is at present authorised to grant *exclusive* licences to manufacturers to exploit inventions which "cannot be . . . worked without the expenditure of capital for the raising of which it will be necessary to rely on the patent monopoly" (Patents and Designs Act, 1907, as amended, Section 27 (3), (c)). It is, however, a far cry from hard cases of this sort to a comprehensive system of copyright for *all* new books. To the economist who studies the statements of the case for and against the copyright system as we know it, there is no document more satisfying in its logic than the minority report in which Sir Louis Mallet, a member of the Royal Commission on Copyright of 1876-8, stated the arguments against the continuance of the monopoly. His conclusion was that in the absence of copyright "it will always be in the power of the first publisher of a work so to control the value, by a skilful adaptation of the supply to the demand, as to avoid the risk of ruinous competition, and secure ample remuneration both to the author and himself."<sup>1</sup>

<sup>1</sup> The uniformly high quality of reasoning in Sir Louis Mallet's minority report can be appreciated only if it is read as a whole, but a small extract may perhaps be quoted with advantage:

" . . . Property exists in order to provide against the evils of natural scarcity. A limitation of supply by artificial causes, creates scarcity in order to create property. . . . It is within this latter class that copyright in published works must be included. Copies of such works may be multiplied indefinitely, subject to the cost of paper and of printing which alone, but for copyright, would limit the supply, and any demand, however great, would be attended not only by no conceivable injury to society, but on the contrary, in the case of useful works, by the greatest possible advantage. . . . The case of a book is precisely analogous to that of a house, of a carriage, or of a piece of cloth, for the design of which a claim to perpetual copyright has never, I believe, been seriously entertained."

15. *A practical proposal*

In 1878, however, the abolition of copyright was to Sir Louis Mallet "a question of the future." That is still true. As he observed, "in a matter which affects so large and valuable a property, and so many vested interests as have been created under copyright laws, it would be both unjust and inexpedient to proceed towards such a change as has been foreshadowed, except in the most gradual and tentative manner." By a very simple change in our copyright legislation, the next important step forward might now be taken. It is practicable, in that it merely changes the date at which part of the already existing and tested administrative machinery set up under the Copyright Act of 1911 comes into operation in the case of every copyrighted book; and, further, in that the price policy already adopted by many publishing houses for their most successful books already conforms very closely to that which the simple change would ensure for all books which are reprinted after the first edition. As long ago as 1771, David Hume wrote to his publisher William Strahan: "I have heard you frequently say, that no bookseller would find profit in making an edition which would take more than three years in selling." In 1876, John Blackwood told the Copyright Commission: "Every publisher now is aware from actual experience that in order to reap the full benefit of a book, he must work it in a very cheap form as well as an expensive one." In our own day, it is surely the common practice of publishers to issue a cheap edition of successful books very promptly after the first expensive issue has served its purpose with the circulating libraries. If the now existing compulsory licence or royalty system (Copyright Act, 1911, Section 3) were made to operate a few years—say five years—after first publication, instead of being delayed as at present until twenty-five years after the death of the author, security for publishers against competition would be preserved until their first editions were either disposed of or "remaindered," remuneration for authors would continue on all sales throughout the full copyright period, and the public would no longer have to wait more than five years for cheap copies of the books they wish to buy. The first edition might still be issued by the publisher at the price which best suited his pocket under conditions of monopoly, but if he wished to retain the whole of the business the compulsory licence system would then

compel him to follow the present practice of many publishers and reissue his successes before the end of the five-year period at a price low enough to deter competitors. There is, of course, nothing to prevent the successful sale, side by side, of a number of editions by various publishers at different prices and in different formats; and in many cases the author's remuneration from his 10 per cent. royalty under the compulsory licence system would be greater than it is at present. There remains the theoretical objection, which we have already noticed in connection with the existing royalty provision, to fixing one percentage of royalty for all books and to giving authors a share in the value added by paper-makers and printers and binders to the more expensive editions; but their practical significance can hardly be deemed to outweigh the obvious public advantage to be derived from the change. The most widely read authors would still secure the greatest royalties from books selling at the same price, and something can even be said for allowing authors additional remuneration if their books are capable of sale in expensive as well as cheap editions. The change would, of course, tend to reduce the volume of risk-taking on purely speculative publications—a consequence which, it has already been argued, is hardly likely to involve any considerable impoverishment of our literary heritage. Particular cases might still form the subject of special provision. The objection might be raised that academic texts and scientific treatises, which undergo constant revision for each edition, might then be reissued in obsolete condition; but with the adoption of the system, authors would surely see the wisdom of permitting the necessary alterations to be made to keep reprinted editions up to date. Drastic modifications would no doubt be made to an increased extent in the form of entirely new works—a development which indeed from other points of view has much to commend it. There cannot be any question that it would be in the public interest to ensure low prices for books as early as possible after the fate of the first edition has revealed that a demand exists for them; and it is an important feature of the proposed amendment that it involves no new administrative principle, that it enables the continuance of, if not indeed an increase in, the remuneration of authors whose books the public want, and lastly that it simply confirms and extends throughout the book-publishing business the price policy which successful publishers already pursue in their own interests.