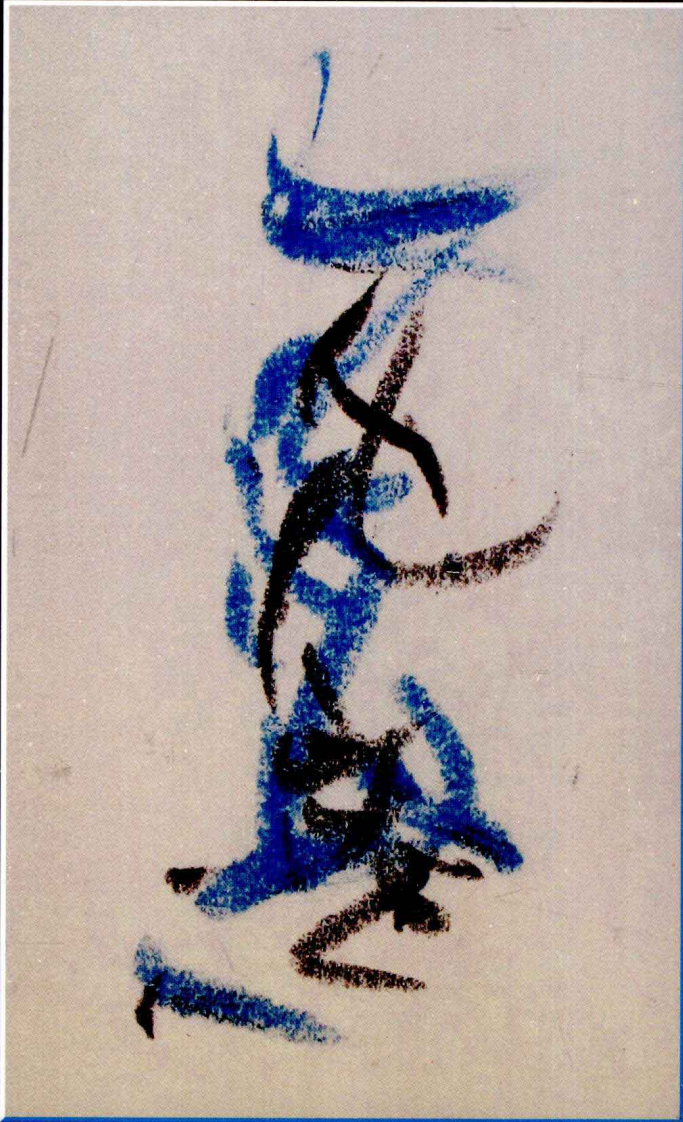


# Global Copyright

THREE HUNDRED YEARS SINCE THE  
STATUTE OF ANNE, FROM 1709 TO CYBERSPACE



EDITED BY

Lionel Bently, Uma Suthersanen and Paul Torremans

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Three Hundred Years Since the Statute of  
Anne, from 1709 to Cyberspace

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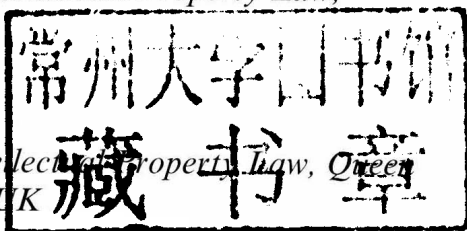
*Edited by*

Lionel Bently

*Herchel Smith Professor of Intellectual Property Law,  
University of Cambridge, UK*

Uma Suthersanen

*Professor in International Intellectual Property Law, Queen  
Mary, University of London, UK*



Paul Torremans

*Professor of Intellectual Property Law, School of Law,  
University of Nottingham, UK*

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# Contributors

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**Lionel Bently**, Herchel Smith Professor of Intellectual Property Law, University of Cambridge, UK

**June M. Besek**, Executive Director, Kernochan Center for Law, Media and the Arts, Columbia University Law School, USA

**Dame Lynne J. Brindley**, Chief Executive, The British Library, UK

**Trevor Cook**, Partner, Bird & Bird, UK

**William Cornish**, Herchel Smith Professor of Intellectual Property Law emeritus, University of Cambridge, UK

**Ronan Deazley**, Professor of Law, School of Law, University of Glasgow, UK

**Joris Deene**, Faculty of Law, University of Ghent, Belgium

**Christophe Geiger**, Associate Professor and General Director and Director of the Research Laboratory, Centre for International Intellectual Property Studies (CEIPI), University of Strasbourg, France

**Ysolde Gendreau**, Professor of Law, Faculty of Law, Université de Montréal, Canada

**Jane C. Ginsburg**, Morton L. Janklow Professor of Literary and Artistic Property Law, Columbia University School of Law, USA

**Willem Grosheide**, Professor of Intellectual Property Law, Center for Intellectual Property Law (CIER), Molengraaff Institute for Private Law, Law Faculty, Utrecht University, The Netherlands

**Takeshi Hishinuma**, Visiting Scholar, Institute of Intellectual Property (IIP) of Japan, Japan

**Lord Hoffmann**, Honorary Professor in Intellectual Property Law, Queen Mary, University of London, formerly Lord of Appeal in Ordinary, UK

**Tarja Koskinen-Olsson**, Honorary President of IFRRO, Finland

**Delia Lipszyc**, Professor of International Law and UNESCO Chair of Copyright and Related Rights, School of Law, University of Buenos Aires (UBA), Argentina

**André Lucas**, Professor of Law, Faculté de Droit, Université de Nantes, France

**Pierre-Emmanuel Moyse**, Assistant Professor, McGill University, Canada

**Victor Nabhan**, Chairman, ALAI

**Harjinder Obhi**, Senior Legal Counsel, Google, UK

**Marybeth Peters**, Register of Copyright, United States Copyright Office, USA

**Gunnar Petri**, Chairman of the STIM Board, Sweden

**Marco Ricolfi**, Professor of Law, Faculty of Law, University of Turin, Italy

**Mark Rose**, Prof.Em., English Department, University of California, Santa Barbara, USA

**Pierre Sirinelli**, Professor of Law, Université Paris-I (Panthéon – Sorbonne), France

**Christian Sprang**, Justiziar/Senior Legal Counsel, Börsenverein des Deutschen Buchhandels, Germany

**J.A.L. Sterling**, Professorial Fellow, Queen Mary Intellectual Property Institute, Centre for Commercial Law Studies, Queen Mary, University of London, UK

**Michael F. Suarez, S.J.**, Professor of English, University Professor, & Director of the Rare Book School, University of Virginia, USA

**Uma Suthersanen**, Professor in International Intellectual Property Law, Queen Mary, University of London, UK

**Tomasz Targosz**, Institute of Intellectual Property Law, Jagiellonian University, Kraków, Poland

**Paul Torremans**, Professor of Intellectual Property Law, School of Law, University of Nottingham, UK

**Stef van Gompel**, Institute for Information Law, University of Amsterdam, The Netherlands

## Preface

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The first modern copyright law was enacted by the British Parliament in 1709 and came into force in 1710. This was the Statute of Anne: an

Act for the Encouragement of Learning, by Vesting the Copies of Printed Books in the Authors or Purchasers of such Copies. . .

The Act proved to be a catalyst and was soon followed by other copyright legislation, the most influential being the French *droit d'auteur* decrees passed in 1791 and 1793. For more than a century all efforts remained focussed at a national level, but increasingly this territorial approach became a problem.

Consequently, the International Literary and Artistic Association (ALAI) was founded in Paris in 1878, with Victor Hugo as its honorary chairman. Its main objective was to promote an international agreement to protect authors of literary, scientific and artistic works. The association achieved this with the adoption on 9 September 1886, of the Berne Convention for the Protection of Literary and Artistic Works. This was the culmination of 175 years of modern copyright laws. The Convention recognised and developed legal principles that were first forged under national systems. In essence this is still the copyright system as we know it.

The ALAI 2009 London Congress celebrated the tercentenary of modern copyright law. It explored the various principles set out in the Statute of Anne, such as the right of printing and publishing, the notion of libraries as repositories of knowledge, the right of authors to control the importation of books, and the question of formalities. The discussion then moved on in a second stage to the ways in which these historic issues manifest themselves in the era of Cyberspace: online digital libraries, illegal downloading and distribution of protected works, authors' contracts and the economic impact of copyright. In a third stage the current globalised context that puts fundamentally into question the basis of modern copyright, that is national systems with an international top layer based on national treatment, was examined from the angle of international exhaustion and the renewed interest in formalities.

This volume is in essence the crystallisation of these debates during the

**Martin Vogel**, European Patent Office, Germany

**Andreas Wiebe**, Chair for Intellectual Property Law, University of  
Göttingen, Germany

**Raquel Xalabarder**, Universitat Oberta de Catalunya, Spain

Congress. Three stages have become the three main parts of the book. Each of these topics is analysed in depth by those who presented their papers at the Congress and those who participated in the panels. Each stage is also introduced by one of the editors to show its place in the wider picture, as well as the links between the various contributions.

We have also retained the symbolism of the Congress in this volume. The journey started at Stationers' Hall, a place with a strong historical link to copyright and the first stage of the debates of the Congress, before ending at Lincoln's Inn, a place linked to modern law as we know it. The volume opens with the opening speech of Victor Nabhan, President of ALAI, and it ends with his closing speech that rounded off the work of the Congress, followed by Lord Hoffmann's dinner speech at Lincoln's Inn. We hope that in this way not only the scientific content of the Congress, but also its atmosphere finds its way into this volume. This also emphasises the dual role of the book. On the one hand it forms the conference proceedings for those that shared these three memorable days in London in June 2009 and on the other hand it provides an in depth scientific analysis of the legacy of the Statute of Anne and modern copyright 300 years on from its origins.

This book is published in conjunction with the website of Blaca, which contains additional material. This includes the replies to the questionnaire sent in ahead of the Congress by the national groups of ALAI, as well as the original language versions of the papers that were not submitted in English and translations into French and Spanish of a number of key papers. The website, which can be found at [www.blaca.org](http://www.blaca.org), and the book should be looked at together as a joint publication.

Professor Paul Torremans  
Professor Lionel Bently  
Professor Uma Suthersanen

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# Opening speech

**Victor Nabhan\***

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Ladies and Gentlemen,

Dear Friends,

In 1812 a book was published, the title of which is very telling. It was called 'Calamities and Quarrels of Authors'. In this book, the author, Isaac Disraeli, draws a rather bleak picture of the situation of authors.

'In all nations of Europe, [he asserts] authors, though they have been the most honored, were nevertheless the least remunerated.'

'Authors continue poor', he goes on, 'and booksellers become opulent'. 'They are heirs to fortunes, but by a strange singularity they are disinherited at their birth; for, on the publication of their works, these cease to be their own property.'

'Most of them close their lives in apathy and despair, and too many live by means which few of them would not blush to describe.'

This dramatic description is well portrayed by a poem attributed to a mendicant author:

Forgive me, God, although I curse my birth,  
And ban the air wherein I breathe a wretch!  
For misery hath daunted all my mirth —  
In some far land will I my griefs rehearse,  
England, adieu! the soil that brought me forth!  
Adieu, unkinde! where skill is nothing worth!

Despite this rather dramatic depiction, Disraeli finds, however, some reason for solace. In a chapter entitled 'The Suffering of Authors' he refers to 'That Act of Anne which confers on them some right of property, acknowledges that works of learned men have been carried on too often to the ruin of them and their families.'

300 years later, or rather 299, as the Statute of Anne was enacted in 1710, the chance could not be missed to reflect on the importance of this historical event and to put it in proper historical perspective as well as in

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\* ALAI Chairman

current context. Our friends from BLACA have wonderfully grabbed this opportunity by organizing this Congress.

In terms of history, the Statute of Anne was the first enactment ever to spell out the basic components that were to form the common structure of future copyright laws, that is providing for (1) exclusive rights to (2) authors, with respect to (3) a subject matter and (4) for a limited time. These are the backbones of any copyright legislation, anywhere in the world.

However, it would seem that not everybody agrees with this fact. Some even beg to differ. For example President Sarkozy emphatically stated last year, and I quote, that 'France has invented Copyright' ('La France a inventé le Copyright'). I must say that this somewhat puzzling statement was made in the aftermath of the European Football Games competition during which the French national team did not fare exceedingly well, and from which the English team was excluded. This might explain that, perhaps.

Put into historical perspective, the Statute of Anne was only but the beginning of an exponential development of copyright laws all over the world that were to provide for (1) more rights applying to (2) more subject matter and for (3) a longer period of time.

But we are witnessing now a time of profound turbulence. One may even refer to a backlash of sorts. Copyright is pointed at with an accusing finger. To such an extent that a political party running under the name of the Pirate Party, has succeeded in having one representative elected to the European Parliament. Its program is quite simple: free use of works on the net and a much shorter term of protection in general. On the other hand, active lobbying from developing countries and consumer groups requires that free use of works be expanded, and that compulsory exceptions be provided for in future treaties.

As we are in a country where understatement is a way of life, it would be fair to say that Copyright is at a crossroads. In the mind of many, at present, Copyright is not very likely to win a popularity contest. As a matter of fact, and for some, one wonders which, between swine flu and copyright, is perceived as the more hazardous! Never before, have the stakes been so high nor Copyright a more controversial topic.

The conference is thus highly, hugely timely. The topics that it will address are very relevant and quite inspiring. And speaking about inspiration, allow me to quote an extract from a poem by James Thomson, a Scot. It is entitled 'The Seasons'. Even though pompous at times it is one of the finest nature poems in English literature. And one of the longest too, as it runs over 200 pages. It has also given rise to a formidable and very long legal dispute and to two important well known court decisions: *Millar v.*

*Taylor and Donaldson v. Beckett*. In this poem Thomson describes creativity in the following terms:

Come, Inspiration! from they hermit-seat, By mortal seldom found: may Fancy dare, From they fix'd serious eye, and raptured glance Shot on surrounding Heaven, to steal one look Creative of the Poet, every power Exalting to an ecstasy of soul

Drawing on this poem, I trust that this meeting will be a source of inspirational and inspired debates. And I hope that these debates will be exalting in a way that might lead to an ecstasy of our souls. Or at least, the legally inclined side of our souls!

It is thus with the utmost pleasure that I have the honor and privilege to declare open the ALAI Congress in London, to celebrate a unique and historical event: the almost tercentennial advent of the Statute of Anne.



## PART I

The Statute of Anne and its role in the world  
of copyright



