

Copyright Beyond the Right to Copy
Translations, Adaptations and Creative Reworking in 19th Century Law
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The conceptual extension of copyright beyond the mere right to forbid copying and reproduction of the author's work is a long run process that lasted throughout all the 19th Century. This process was not achieved until the 1908 revision of the Berne Convention, where acts such as translating and making adaptations were eventually elevated to the status of exclusive rights of the author, and were thus wholly assimilated to the basic right to copy in terms of scope and duration. This 'upwards harmonization' of all different author's rights was a major step in the making of the current copyright regime, as characterized as a bundle of property rights.

However, if we look back at the copyright statutes and doctrines of the 19th Century, we find many examples of legislation in which acts such as translating, adapting and making derivative works were left wholly or partially outside the control of their authors. Ranging from liability rules (giving the right to be remunerated for, but not to forbid translations and adaptations) to opt-in systems (exclusive right granted only if expressly reserved) and including a variety of hybrid mechanisms, the legislative landscape of the 19th Century copyright presents many attempts to provide the public at large with the positive right of creating upon existing works. Significantly enough, such a 'right to create upon' was justified both under the utilitarian paradigm and the personality rights approach, as ultimately grounded in the aesthetical discourse of the independence of arts – whereby translating a work into another form of art (e.g. a poem into a song or a sculpture into a painting), or into another language, represents an original and entirely new creative act.

The paper analyses the functioning and the rationale behind this defunct "right to create upon" in both European-continental and Anglo-American legislations of the 19th Century, and explores the process that brought about the general "proprietaryization" of author's rights. It contextualizes such process in the cultural and economic environment of the 19th Century. It finally addresses the question of how a non-proprietary approach to translations, adaptations and creative reworking could be proficiently restored in today's copyright policy.

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