

VICTORIAN COPYRIGHT LAW REFORM AND THE ROYAL COMMISSION ON COPYRIGHT

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Abstract

Nineteenth century English copyright was a controversial and unresolved area of law, ‘wholly destitute of any sort of arrangement, incomplete, often obscure’, according to the Royal Commission on Copyright. Even after Parliament passed the 1842 Copyright Act (5 and 6 Victoria c 45), stakeholders continued to cry for further reform and clarification of the law, which became further confused with each new sui generis statute or contradictory holding. Rampant American piracy of English works and Canadian trade in unauthorized American copies added to the problems, and recent scholarship has provided excellent insight into the ‘internationalization’ of copyright law in the nineteenth century. Still, British domestic law remained an area of active debate throughout the nineteenth century: some argued for broadening protection and extending term—others recommended outright abolition. Under pressure to address these issues, the government assembled a Royal Commission on Copyright in 1875; it was re-formed in 1876, after the death of the first Chair. The Royal Commission, which was composed of prominent members from varied backgrounds, including politician Lord John Manners, economist Sir Louis Mallet, composer Sir Julius Benedict, jurist and journalist James Fitzjames Stephen, and author Anthony Trollope, conducted lengthy hearings before producing an 1878 report. In addition to considering colonial complications and ‘The American Question’, it addressed and dismissed the Board of Trade’s forceful case for copyright abolition, producing a strong dissent by the Cobdenite Mallet. Altogether, it was a particularly thorough and well-considered inquiry, with a diverse, informed, and largely independent membership taking into account legal, philosophical, economic, public policy, and practical issues, as well as their own personal experiences.

This paper will briefly discuss my research on the Royal Commission on Copyright, focusing on the background of the Commission’s formation and the individuals involved. I have taken a wide legal historiographical approach to a relatively narrow topic—also considering the political, popular, and personal spheres affecting, and affected by, 19th-Century copyright law. The worlds of the Victorian political, legal, and artistic elite were small and often overlapping. Without an awareness of this, legal subtleties may be lost. Although British copyright did not undergo major reform until 1911, I contend that the Royal Commission, described by Mathew Arnold as ‘a great battle’, was significant to the subsequent development of the law and reflects a noteworthy chapter in the ongoing debate over the theoretical foundations of copyright law, a useful empirical inquiry into the practical effects of copyright legislation on the marketplace, and an example of a 19th-century legal reform and codification movement.