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THE FOUNDERS' CONSTITUTION



Article 1, Section 8, Clause 8

Document 3

William Blackstone, Commentaries 2:406

1766

Now the identity of a literary composition consists intirely in the *sentiment* and the *language*; the same conceptions, cloathed in the same words, must necessarily be the same composition: and whatever method be taken of conveying that composition to the ear or the eye of another, by recital, by writing, or by printing, in any number of copies or at any period of time, it is always the identical work of the author which is so conveyed; and no other man can have a right to convey or transfer it without his consent, either tacitly or expressly given. This consent may perhaps be tacitly given, when an author permits his work to be published, without any reserve of right, and without stamping on it any marks of ownership: it is then a present to the public, like the building of a church, or the laying out a new highway: but, in case of a bargain for a single impression, or a sale or gift of the copyright, the reversion is plainly continued in the original proprietor, or the whole property transferred to another.

The Roman law adjudged, that if one man wrote any thing, though never so elegantly, on the paper or parchment of another, the writing should belong to the original owner of the materials on which it was written: meaning certainly nothing more thereby, than the mere mechanical operation of writing, for which it directed the scribe to receive a satisfaction; especially as, in works of genius and invention, such as a picture painted on another man's canvas, the same law gave the canvas to the painter. We find no other mention in the civil law of any property in the works of the understanding, though the sale of literary copies, for the purposes of recital or multiplication, is certainly as antient as the times of Terence, Martial, and Statius. Neither with us in England hath there been any direct determination upon the right of authors at the common law. But much may be gathered from the frequent injunctions of the court of chancery, prohibiting the invasion of this property: especially where either the injunctions have been *perpetual*, or have related to unpublished manuscripts, or to such antient books, as were not within the provisions of the statute of queen Anne. Much may also be collected from the several legislative recognitions of copyrights; and from those adjudged cases at common law, wherein the crown hath been considered as

invested with certain prerogative copyrights; for, if the crown is capable of an exclusive right in any one book, the subject seems also capable of having the same right in another.

But, exclusive of such copyright as may subsist by the rules of the common law, the statutes 8 Ann. c. 19. hath protected by additional penalties the property of authors and their assigns for the term of fourteen years; and hath directed that if, at the end of that term, the author himself be living, the right shall then return to him for another term of the same duration: and a similar privilege is extended to the inventors of prints and engravings, for the term of fourteen years, by the statute 8 Geo. II. c. 13. Both which appear to have been copied from the exception in the statute of monopolies, 21 Jac. I. c. 3. which allows a royal patent of privilege to be granted for fourteen years to any inventor of a new manufacture, for the sole working or making of the same; by virtue whereof a temporary property becomes vested in the patentee.

The Founders' Constitution

Volume 3, Article 1, Section 8, Clause 8, Document 3

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Blackstone, William. *Commentaries on the Laws of England: A Facsimile of the First Edition of 1765--1769*. Chicago: University of Chicago Press, 1979.



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