

# DISTRIBUTING PATRONAGE

INTELLECTUAL PROPERTY IN THE TRANSITION FROM LIMITED- TO OPEN-ACCESS ORDER

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Ryan Safner — Hood College

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History of Copyright

Literatures

The Framework

Economic History of Institutions in the Transition

## HISTORY OF COPYRIGHT

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## MAJOR RELEVANT EVENTS IN BRITISH LEGAL HISTORY

Year	Reign	Event
1403	Henry IV	<b>Stationers Guild approved in London</b>
1476	Edward IV	William Caxton's first printing press in England
1557	Mary I	Stationers Company chartered by crown
1624	James I	<b>Statute of Monopolies (Modern Patent)</b>
1641	Charles I	Habeas Corpus Act (Long Parliament)
1643	Charles I	Licensing Order (Long Parliament)
1662	Charles II	Licensing of the Press Act
1695	William & Mary	<b>Licensing of Press Act expired (<i>de facto</i> freedom of press)</b>
1710	Anne	<b>Statute of Anne (Modern Copyright)</b>
1774	George III	<i>Donaldson v Beckett</i> finds Stationers' copyright invalid

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- Hayek (2011): “[Rule of law] appeared first, as it probably always does, as a by-product of a struggle for power rather than as the result of a deliberate aim.”

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  - State has limited fiscal capacity (Crown must sell privileges for revenues)



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  - Still "patronage" to some degree (industrial organization of large publishers)



## LITERATURES

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- Literature on role of institutions in legal and economic development

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  - Lyman Ray Patterson (1968), Besen and Raskind (1991), L. Ray Patterson (1993), Landes and Posner (2003), Lessig (2004), Boldrin and Levine (2008), Kinsella (2008), Boyle (2008), Bell (2014)

## THE FRAMEWORK

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  - Constant renegotiation/revolts as underlying distribution of power changes (successful societies "wage peace")



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  - Stakes of power are low relative to non-political spheres (market and civil society)



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  - Convert *permanent* “letter patent” from *crown* for *monopoly*  $\implies$  *limited* patent from *Parliament* for *invention*

# ECONOMIC HISTORY OF INSTITUTIONS IN THE TRANSITION

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  - Both implicit and explicit use by the State (Crown and later Parliament) to censor and harass dissidents



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  - Works out-of-print for 6 months could be claimed by other Members



*"[The Stationers' Company was] in turn, an instrument of the Stuarts against the Puritans, in the early seventeenth century; the instrument of the Puritans, against their royalist enemies, when the Puritans came to power; the instrument of the royalists against the Puritans, after the Restoration; and, for a brief time, the instrument of the triumphant Whigs, after the "Glorious Revolution" of 1688. But through all these vicissitudes, the stationers themselves steadfastly remained, what they had always been, eminently practical men," Crosskey and Jeffrey (1953, 478)*

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  - Illegal to have a non-licensed press or printer



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- Long Parliament abolishes the Star Chamber in response (via *Habeas Corpus Act 1640*) - de facto abolishing censorship



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- John Milton writes *Areopagitica* against Act



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- Legality of "copyright" in the air: "battle of the booksellers"
  - Stationers assert their perpetual "common law" copyright



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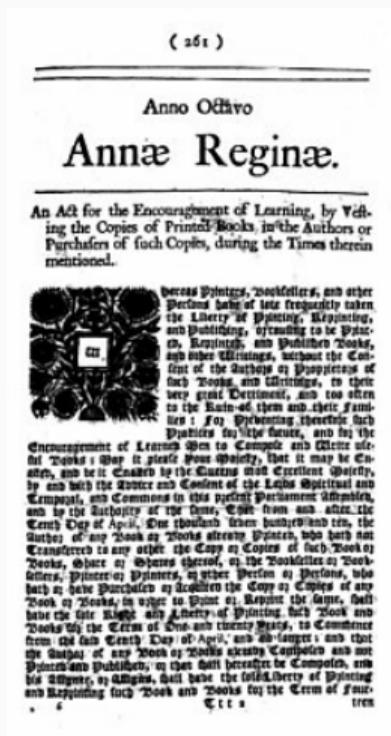
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- Statute of Anne's statutory copyright almost explicitly utilitarian, non-ideological compromise
  - Recognized as such today:

*Congress shall have the Power...To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries. (U.S. Constitution, Article I, Section 8, Clause 8)*



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