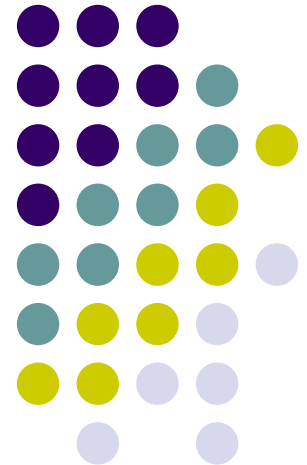


The Mechanical License and the Origins of Regulatory Copyright

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Benjamin Kaplan, “An Unhurried View of Copyright”



- “[T]he statute, like its predecessors, leaves the development of fundamentals to the judges. Indeed the courts have had to be consulted at nearly every point, for the text of the statute has a maddeningly casual prolixity and imprecision throughout.”

1909 Copyright Act §1(a)



- Any person entitled thereto, upon complying with the provisions of this Act, shall have the exclusive right:
 - (a) To print, reprint, publish, copy, and vend the copyrighted work.



1909 Copyright Act §1(e)

- Any person entitled thereto, upon complying with the provisions of this Act, shall have the exclusive right:

(e) To perform the copyrighted work publicly for profit if it be a musical composition; and for the purpose of public performance for profit, and for the purposes set forth in subsection (a) hereof, to make any arrangement or setting of it or of the melody of it in any system of notation or any form of record in which the thought of an author may be recorded and from which it may be read or reproduced: Provided, That the provisions of this Act, so far as they secure copyright controlling the parts of instruments serving to reproduce mechanically the musical work, shall include only compositions published and copyrighted after July 1, 1909, and shall not include the works of a foreign author or composer unless the foreign state or nation of which such author or composer is a citizen or subject grants, either by treaty, convention, agreement, or law, to citizens of the United States similar rights: And provided further, and as a condition of extending the copyright control to such mechanical reproductions, That whenever the owner of a musical copyright has used or permitted or knowingly acquiesced in the use of the copyrighted work upon the parts of instruments serving to reproduce mechanically the musical work, any other person may make similar use of the copyrighted work upon the payment to the copyright proprietor of a royalty of two cents on each such part manufactured, to be paid by the manufacturer thereof; and the copyright proprietor may require, and if so the manufacturer shall furnish, a report under oath on the twentieth day of each month on the number of parts of instruments manufactured during the previous month serving to reproduce mechanically said musical work, and royalties shall be due on the parts manufactured during any month upon the twentieth of the next succeeding month. The payment of the royalty provided for by this section shall free the articles or devices for which such royalty has been paid from further contribution to the copyright except in case of public performance for profit: And provided further, That it shall be the duty of the copyright owner, if he uses the musical composition himself for the manufacture of parts of instruments serving to reproduce mechanically the musical work, or licenses others to do so, to file notice thereof, accompanied by a recording fee, in the copyright office, and any failure to file such notice shall be a complete defense to any suit action, or proceeding for any infringement of such copyright.

Impetus for Mechanical License



Ever More Complex Provisions



- Mechanical License
- Jukebox Compulsory License
- Cable Television Compulsory License
- Satellite Television Compulsory License
- Audio Home Recording Act
- Digital Millennium Copyright Act
- Digital Performance Right in Sound Recordings Act

Approaches to Copyright Law



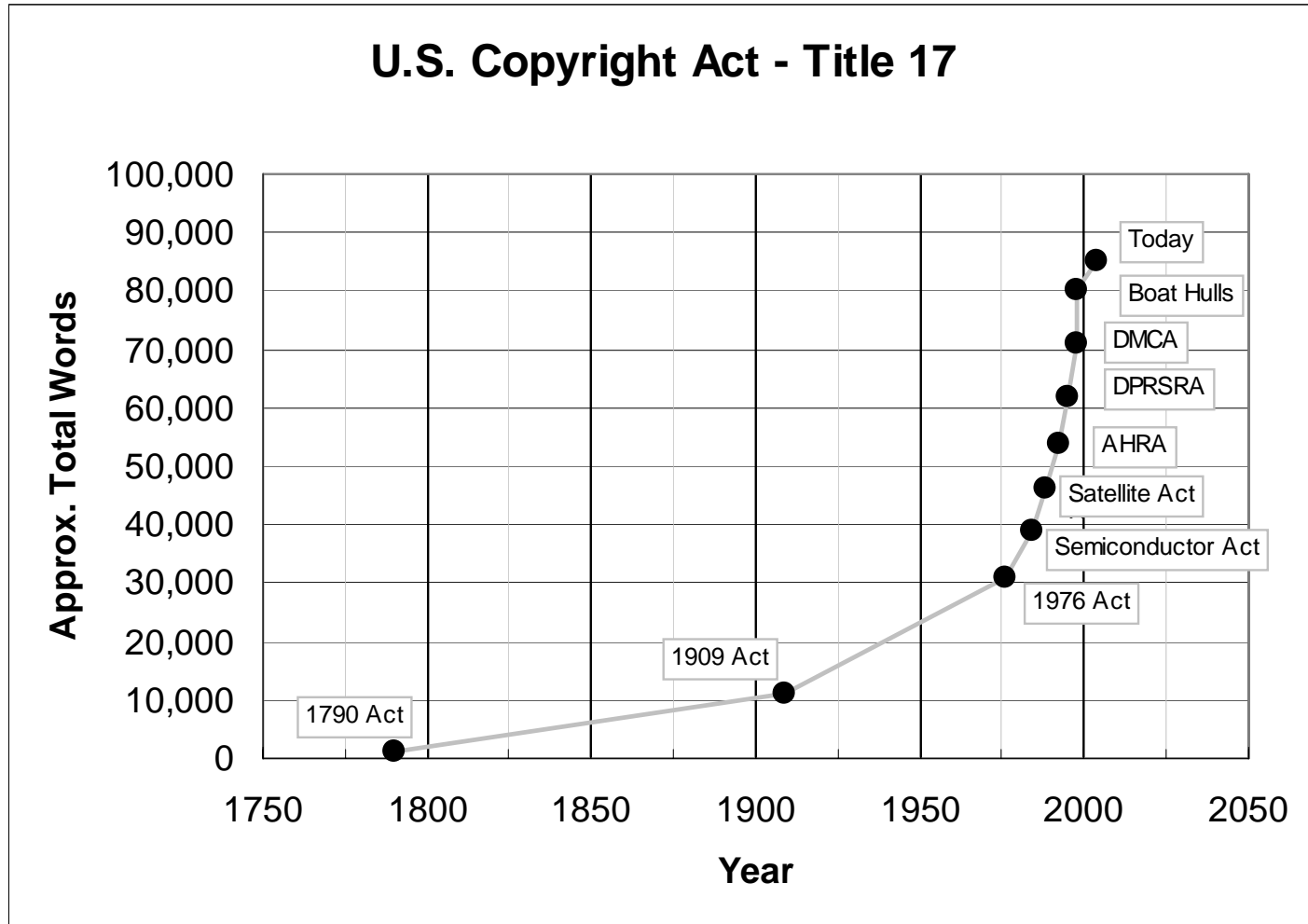
- Old

- Broad entitlement
- Industry neutral
- Technology neutral
- Large judicial role
- Limited agency role
- No price regulation

- New

- Detailed provisions
- Industry specific
- Technology specific
- Limited judicial role
- Large agency role
- Set prices

Size of Copyright Law



Benjamin Kaplan, “An Unhurried View of Copyright”



- “The administrative expedient is one that we can come to only with regret and some misgiving: for it would do away with the simplicity, one may even say the pristine innocence, of copyright law”