

# INTRODUCTION

Of life impatient, into madness swells;  
Or in dead silence wastes the weeping hours.  
These, and a thousand mixed emotions more,  
From ever-changing views of good and ill  
Formed infinitely various, vex the mind  
With endless storm; whence, deeply rankling, grows  
The partial thought, a listless unconcern,  
Cold, and averting from our neighbor's good;  
Then dark disgust, and hatred, winding wiles,  
Coward deceit, and ruffian violence:  
At last, extinct each social feeling, fell  
And joyless inhumanity pervades  
And petrifies the heart.  
(from James Thomson's "Spring" in *The Seasons*)

Copyright is not perpetual—that was the historic decision handed down in the case of *Donaldson v. Becket* on 22 February 1774 in the House of Lords in what is today the Westminster Palace in London. Massive wooden beams soared over the ladies and gentlemen wearing colorful hats and fine clothing in the vast medieval hall. The galleries were filled with prominent authors and cultural figures. Tension and anticipation hung in the air. On one side was Alexander Donaldson (?–1794) and his son James Donaldson (1751–1830) of Edinburgh—the so-called pirate publishers. On the other was Thomas Becket (d.u.) and fourteen other London booksellers determined to protect the monopolies they believed they held on the books they sold.

The case focused on the copyright of *The Seasons*, a book by Scotland-born poet James Thomson (1700–1748). Donaldson asserted that *The Seasons* was “out of copyright,” and that therefore anyone was free to publish it. Becket and his side declared that they possessed the copyright “in perpetuity.”

Eighteenth-century England had the world's first copyright law, enacted in 1710 and known officially as “An Act for the Encouragement of Learning, by Vesting the Copies of Printed Books in the Authors or Purchasers of Such Copies, During the Times Therein

Mentioned.” Adopted during the reign of Queen Anne (1665–1714; r. 1702–1714), it was more commonly known as the “Statute of Anne.”

The Donaldson publishing house had built up a fair business by printing popularly read books in Edinburgh, where costs were low, and selling them cheaply in London. The books they printed were those for which the period of protection of copyright stipulated in the Statute of Anne had expired. Some of these books, however, were titles that printers and booksellers of London believed were their exclusive right to sell. The London printers and booksellers had long kept the prices of books high through their membership in the venerable guild called the Stationers’ Company and by respecting each others’ “copyrights.” They denounced Donaldson’s moderately priced books as “pirate editions.”

The *Donaldson v. Becket* case established the rule that copyright is not perpetual but of limited duration. As this rule is now practiced throughout the world, the case is significant to our concerns about copyright and fair use today. In 1774, the House of Lords decided in favor of the “pirate publishers”; it declared that books for which the copyright had expired could be freely copied/printed by others. The right of anyone to print and sell such books, without concern for the rights of the original printer or publisher of the book, had been recognized. The House of Lords was the highest court of Great Britain until 2009. By rejecting “perpetual copyright,” did the judiciary recognize the unjust act of “piracy”?

So what, we might ask, is “piracy” in publishing? In the true sense of the term an “act of piracy” would be the publication, without permission by someone other than the publisher holding the copyright, of a work that was protected by law. Rights holders, however, have often been inclined to cast the stigma of “pirate” over anyone who threatens their vested interests. They may not seriously consider whether the other has truly committed an illegal act or not. The claim of “piracy” has often been used as a political slogan to protect vested interests.

The London booksellers argued that books represented the efforts of high-minded authors, and recognition of such authors’ perpetual publishing rights was equivalent to protection of their human rights. The Donaldsons, for their part, declared that to monopolize the fruits of an author’s god-given talent is, on the contrary, a violation of his/her human rights. The London booksellers’ assertions, of course, had their own artful logic. Even today there are many who would say that copyright protection is protection of human rights. Almost two hundred forty years after the *Donaldson v. Becket* case, people still seek to defend their own interests by citing the rights of the author. But the question of whether any sort of perpetual monopoly on the publishing of books is really for the betterment of society is one that should be addressed.

The Donaldsons’ rebuttal hit on some very important points. It observed that culture is born anew through the development of the culture of the past. To claim that someone

holds exclusive possession of works that have spread and become thoroughly familiar in society over many years is unnatural. Works that have circulated over a certain number of years should be free for anyone to access—like the air we breathe. If there is no common and shared culture, how can creative endeavors freely develop and unfold?

Imagine that in the case of *Donaldson v. Becket*, the London booksellers had won the day and copyright had been pronounced “perpetual.” How would our culture today be different? Likely the contents of only a few books that could be sold profitably would circulate and their prices would probably be quite high. Works for which the copyright owner was unknown or older works for which sales were not promising would probably be neglected and not again see the light of day. Collections of art, because of the high costs of handling rights, would doubtless cost several times what they do today. There would be no performances of classical drama. Countries where there is no tradition of citizen support for the arts, as in Japan, would not be able to sustain orchestras specializing in classical music. There would be no cheaply available DVDs of the old masterpieces of film. And there would be no ventures, like “Project Gutenberg,” that are making available online the classics of literature in digital files.

The decision made by the English House of Lords in the eighteenth century carries great significance. It denied perpetual monopoly over works and recognized the rule—so distasteful to those concerned with their vested interests—that after a certain number of years had passed following the death of an author, anyone could copy his or her works and sell them.

Was the decision not to recognize perpetual copyright damaging to the human rights of authors? It is my belief that the decision worked, quite to the contrary, to their benefit. The linkage of the term of publishing rights to the life of the author has the effect of stressing the identification of the author with the work. The rule that copyright would eventually expire helped to defend the vital link between the life and rights of the author and his/her work, and it was the role of publishing that had been castigated as “piracy” that ironically led to the adoption of that rule.

Why did Donaldson have to defend his case in court? What made this bookseller based in Scotland—then a place quite remote from London—decide he had to take a stand? What was going on in publishing in eighteenth-century Scotland? What can we today learn from the *Donaldson v. Becket* case? Research about what lay behind the scenes of the struggle over “perpetual copyright” reveals a complex and intertwined human drama. Through the events leading up to the case, we see the conflicts arising from the merging of the kingdoms of England and Scotland, the raw realities of the exploitation of culture, the struggles between early versus late starters in the publishing industry, rivalries for influence among members of the nobility, and the pride and envy that reigned among lawyers.

Today the idea that copyright eventually expires—that works of literature and the

arts can become the common property of all—is gradually being eroded. Rights holders have acted repeatedly to secure extensions of the term of copyright. Moves to strengthen intellectual property rights as a means of invigorating industry have gotten underway largely without criticism. How should we understand such realities? This book explores the keys to answering this question.