Copyright History in the Netherlands

Copyright in the Netherlands

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IN THE NETHERLANDS IN THE 16TH-19TH CENTURY

The book as legal entity and provincial and national legislation
pages 5-83

STATE'S COPYRIGHT

IN THE NETHERLANDS IN THE 17TH-21ST CENTURY

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pages 85-190

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THE HISTORY OF
Copyright
IN THE NETHERLANDS IN THE 16TH-19TH CENTURY

The book as legal entity and provincial and national legislation

Establishing the content of a book as a legal entity – Piracy and protection beyond the borders of the Dutch Republic – Provincial and national legislation – Annexation by France

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Dates

1473/1474	Early printing in The Netherlands.
1473	Earliest printing in the Netherlands.
1517	First privilege against unauthorized printing.
1590-1702	Booksellers guilds in Middelburg, Utrecht, Haarlem, Leiden, Amsterdam, Rotterdam, The Hague.
1637	Appearance of the Authorised Version of the Bible. Privilege for fifteen years.
1652	Privilege for the Authorised Version expired. Authorised Version public domain.
1637 to 1652	Disagreements between the privileged printer and his colleagues.
1655	Resolution prescribing printing of the Authorised Version in accordance with the officially approved edition. Consent required.
1660	'The Leids Collegie', earliest known agreement between booksellers.
1669	Court of Holland: privileges granted only to prevent piracy.
1678	Ninety-six booksellers request measures against piracy.
1679	Resolution of the States of Holland concerning mandatory filing of author's copies.
1708	Sixteen booksellers ask for better regulation concerning the granting of privileges.
1710	Statute of Anne.
1710	'Willing agreement'. Fifty-five booksellers take measures against piracy.
1712	Nineteen booksellers petition the Court.
1715	June Resolution of the States of Holland making the *right of copy* (kopijrecht) the legal basis for a privilege. Reformed church and church school books public domain.
1728	*Boerhaave Resolution*. States of Holland granted certain 'copy-rights' to a group of authors.
1735	Resolution of the States of Holland ordering courts to administer justice according statutes, etc.
1752	Confirmation by the States of Holland of the public domain of officially introduced Lutheran editions of the Bible.
1795	Abolition of privileges. 155 booksellers ask for legal protection of their properties. First Book Act in Holland. Decree of

	November 1795 for the Province of Holland. No time limit.
1796	Definitive Act of December 1796 for the Province of Holland. No time limit.
1803	First national Book Act giving the *right of copy* to the creator or to whoever has legally acquired it. No time limit.
1805	Notification of December 1805. State documents covered by the Act of 1803.
1806-1810	Kingdom of Holland under *King Louis Napoleon*.
1806	Royal Decree prescribing mandatory filing of printed copies.
1808	Supplement to the Act of 1803, constituting a concession to engravers.
c. 1808	*Holtrop Bill*, referring back to the past.
1809	A 20-year privilege for the Jewish Bible. Royal Decree with stricter stipulations regarding mandatory filing.
1810-1813	French annexation. French legislation and administration. *Code Pénal (1810), articles 425/429.* *Act of 19 July 1793.* *Decree of March 1805.* *Regulation of February 1810.* *Several other decrees.*
1813	The Netherlands independent again.
1814	Kingdom of the Netherlands including Belgium under *William I*. Enactment of January 1814 for the Northern Netherlands. Enactment of September 1814 for Belgium.
1815	Supplementary decree preventing translations.
1816	The *Wenckebach/Blussé de Jonge Bill*, again back to the past. Council of State introduces its own Bill.
1817	Act of 1817 regulating printing and publishing rights for the whole of the Netherlands with time limit of 20 years.
1822	Royal Decree. State documents not free if printing and publication has been reserved. Laws, Royal Decrees and the like free for news magazines. Printers and booksellers require a license.
1830/1839	Secession by Belgium.
1840	Supreme Court decides right of copy for the State is contrary to the law.
1841	Royal Decree repeals Royal Decree of 1822.
1881	Fully renewed Copyright Act changing publisher's right into author's right. Time limit 50 years from the date of publication.

A. Establishing the content of a book as a legal entity (16th - end of the 18th centuries)

CHAPTER 1

Reprinting, arguments for and against, various terms, complications in counteracting

One of the consequences of the art of printing was printers and booksellers reprinting each other's work. Reprinting a recent, original work, for which the first printer had taken the risk and in which he had made a considerable investment, was seen as a form of piracy or theft. However, pirates pointed out that no demonstrable legal justification could be found for the protection of written documented knowledge and that the owner of a purchased book was free to do with it as he chose, which included reprinting.

Moreover, cheap reprinting was in the interest of learning and literature and it was undesirable for one person to have the monopoly on a work. The printers and booksellers of original editions, however, appealed to natural, civil and/or common law. They felt that their acquired ownership rights were infringed upon when their works were reprinted without permission.

First privilege in the Netherlands

Books were printed in the Netherlands as early as 1473. In 1516 the first privilege preventing unauthorized reprinting was issued in the Northern Netherlands. It was not until a century after the art of printing was invented that the Northern Netherlands, or the Dutch Republic, could be said to have a network of printers and booksellers.

There were 151 printers and booksellers trading in large or small firms in 30 towns around the year 1600. Another hundred years later this number had increased to 526 in 48 towns, many of which were engaged in reprinting previously published works.

Misunderstanding and confusion

There was considerable confusion in terminology and no uniform interpretation over what could and could not be considered a pirated copy. The terms *Nachdruck* and *nadruk* were used in the German territories and in the Netherlands. In France, the practice was known by the term *contrefaçon*, from the word *contrefaire*, to reproduce, a term which had a broader meaning, while in England the usual terms were *piracy, reprinting* or *printing another man's copy*.

Attempts were made to distinguish between permissible and not-permissible reprinting or piracy. Not-permissible reprinting was taken to encompass different types of unfair competition and unfair acts towards those in the same profession. The pirate appealed to the myth of original creation, claiming that this had not produced anything new and would then attempt to show that his reprint was permissible because it had been published in a different size or with

a different type face, that different paper had been used and that improvements or additions had been made.

Due to a lack of a clear agreement on the meaning of the term piracy reprinting remained a problem for centuries. Governments were faced with the necessity of taking decisions about matters which were causing discussions and disputes with demands for the protection of the acquired ownership of original editions and complaints about unfair competition, about the disastrous effect on prices and about the haste and inaccuracy with which reprints were made. Because there were so many types of reprints it was very difficult to distinguish what was permissible from what was not.

Printers and booksellers whose products had been pirated demanded that their governments take measures, as did the authors, including Erasmus, Luther and Boerhaave, who objected to the uncontrolled distribution and distortion of their works. Governments hesitated out of a desire not to frustrate the book trade, since the matter in question called for consideration on a case-to-case basis and it was difficult to legislate between what was permissible and what was not.

Competition, piracy and agreements

Combating piracy was hampered by the swift dispersion of printing over dozens of cities, with little hindrance being provided by borders between countries or language barriers. People came in touch with piracy within their own cities or counties, within departments, districts or states comprising one language region, within one language region which covered multiple jurisdictions and within one or more judicial systems covering multiple language regions.

Agreements between the different jurisdictions could only function properly if they were reciprocal, especially with regard to sanctions and enforcement. Economic, political, social, cultural and legal factors resulted in a great deal of time elapsing before such agreements came into existence.

This book deals with the manner in which the booksellers secured the literary rights for themselves. The first privilege against piracy was granted in 1516 while in 1817 one central act governing the printing and publishing of books was passed, which applied to the Northern and Southern Netherlands and remained in force until 1882. In the scope of this work one may speak of almost four centuries of 'kopijrecht', which in fact was a publisher's right.

CHAPTER 2
Weapons against piracy: compensation, cooperation, arrangements, censorship, government-interference, book or printing privileges, distinction, grantors, attache, consent, haskama(h), printer's and engraver's mark, letter of protection

The simplest way to combat piracy was to make a retaliatory reprint. Another way was for parties to come to an arrangement which resulted in standard practices and agreements limiting reprinting to affiliated members of the profes-

sion. There was also a third possibility. After the invention of the printing press, ecclesiastical and secular governments had immediately recognised that unrestricted printing and publication of writings could endanger the order and unity of their Church or State, that harmful disputes could arise between printers and booksellers which could endanger the order in that branch of trade and that unwanted activities in the printing industry had to be prevented.

For this purpose the Emperor, the Pope, the feudal lords and the magistrates utilised the possibilities afforded to them by the *ius regale*, from which they derived their prerogatives, the power and the authorization to ban certain publications, but also to extend printing and book privileges prohibiting piracy of a work during a certain period of time under penalty of sanctions. This practice started in Venice as early as 1469.

Privileges in the Netherlands – No arbitrary favour

Due to the opportunistic application of the system of privileges, book privileges, which were considered a part of one's property undeservedly, began to take on the nature of favours or arbitrarily extended privileges. As more privileges were granted customs developed around them as well. They could be transferred, sold, split up, lent, distributed, etc. Also, it became customary to allow the other party some time before reprinting a work after a privilege had expired.

Because stocks had not been sold out or because there was a desire to put to press a new, possibly revised or supplemented version, printers and booksellers began asking for an extension of privileges. Even though it was considered reprehensible to pirate original works which were not protected by a privilege little could be done against this. Because of the costs and time involved privileges were requested mainly for works for which this would be profitable. Usually a privilege also prohibited pirated works from being imported.

Since, in principle, it was possible for anyone in the Dutch Republic to apply for a privilege obtaining one was not considered to be special or a favour. The authorities who granted privileges copied from each other as to how and in what form privileges were granted thus creating a certain uniformity of phrasing. Whether a printer or bookseller could successfully take action against a violation of his privilege depended on the current legislation, on precedent, case law and whether the judicial authorities possessed the necessary expertise and were prepared to take action.

Privileges separate from censorship in the Dutch Republic

The system of privileges was commonly linked to censorship which was quite limited in the Dutch Republic. There, the book privilege was primarily intended to regulate trade and to counteract unfair competition. Various types of privileges existed such as privileges of commission, general privileges protecting a specific category of books, accreditive privileges attaching an assignment to the protection of a written work or an illustration and privileges for a specific work or for the collected works of one author.

The duration of the protection, which initially differed considerably, was slowly extended and from around 1650 amounted to a standard period of fifteen years. The costs attached to a privilege varied considerably, though it is difficult to find exact information about this. Between 2500 and 3000 privileges were granted in the Dutch Republic in the 17th and 18th centuries but these covered no more than approximately one percent of all publications. The printing and book privilege played a more important role in France, England and in some German states than it did in the Dutch Republic.

Book privileges of limited importance – Attache

From the number of privileges granted, it appears that in the Dutch Republic the privilege was of limited importance as a method of counteraction. In cases where piracy led to prosecution, the number of actual sentences passed was limited because charges were quite often declared inadmissible on the advice of the directors of the guilds or parties settled out of court. Because the States General and the Provincial States disagreed over competence for a time it was decided that it would be more practical for the Provincial States not to ignore or overrule a privilege issued by the States General but rather to confine themselves to formally recognising it. Thus, from 1642, the *attache* became an official document recognising protection of a work granted a privilege by the States General.

Consent

The *consent* was introduced as a result of the desire of the Reformed Church to prevent the publication of dissident bibles. It was an official declaration by the Reformed Church stating that the work in question was a correct translation of the Bible. Printers and publishers came to see the *consent* as an indirect weapon against piracy because it prevented city magistrates and States from issuing privileges for pirated copies of works published under a *consent* elsewhere. It was deemed that that which was introduced for churches or schools on public authority ought to be free, provided that a *consent* had been issued for the publications in question.

While the *consent* applied to Reformed publications, a *nihil obstat* was needed for Roman Catholic publications and a *haskama* for Jewish publications, all of these certifying approval and at the same time helping to counteract piracy.

Printer's and engraver's marks against piracy

The *printer's and engraver's marks* were also used to prevent piracy. These were not only meant to guarantee the authenticity of an original work but were used as a mark of legality which could be authorized by the State thus giving them legal force and allowing pirates and forgers to be prosecuted. This occurred in France and England, for instance. The printer's mark was also of significance in the Dutch Republic, even though it carried no weight for the purposes of legal protection, except during the period of the French annexation.

During the 16th and 17th centuries *letters of protection* were commonly encountered in the Holy Roman Empire. They were comparable to the *letters patent* in England and the *lettre-patente* in France and were privileges, sometimes in the form of an open letter. As well as Privilegien, *Schutzrechte, Schutzbriefe* and *Gnadenbriefe* were also in use in German speaking countries.

CHAPTER 3

Copyright in the Dutch Republic becomes publisher's right

The authorities realised that an answer had to be found to the question why a printer needed protection from piracy and what the injustice against him consisted of and that there had to be a legal basis for this. This was found in *kopijrecht* (right of copy), a right that existed as a *custom* giving the rightful possessor of a manuscript the right to have it appear in print. The owner of the right of copy had reasonable grounds on which to fight a pirating printer from printing his work.

Once acquired the right of copy was no longer connected with the author but with activities of the printer or bookseller. The term *kopijrecht* was considered synonymous with a complete right of ownership without any nuances and with foreign terms such as *copyright*, *droit de propriété* and *Verlagseigentum*, even though each of these terms had a different meaning. The status of copyright *(kopijrecht)* was linked to ideas of natural law, common law and custom.

Despite the attempts of the authorities to distance themselves from the ideas of ownership on the part of the booksellers, the latter so adamantly insisted on their rights that ordinances, enactments and laws began to reflect their views which led to some customs becoming part of written law. The only examples hinting at an early form of author's copyright date from 1710 and 1728. They were cases involving a general privilege for an author and a resolution of the States of Holland concerning a group of authors.

The Ordinance of 1715

A result of the ordinance of 1715 was that a right of copy – *kopijrecht* – was henceforth regarded as evidence of full ownership. This made the right of copy the basis for a privilege from 1715 until 1796 (for the Province of Holland) and an object governed by law under positive law in the Netherlands from 1803 until 1882.

Preferential rights

Anything which could be printed could be made subject to right of copy. This could refer to one single book, to bulk printed matter, complete funds, stock, blank sheets, works in the making, but also privileges or parts of privileges, translations, etc. In practice, the right of copy developed from a substratum into an all encompassing general right which could be traded, transferred or shared with third parties.