

# Copyright Law, Readers and Authors in Colonial Australia

SARAH AILWOOD AND MAREE SAINSBURY

University of Canberra

## 1 Introduction

This article begins an exploration of the impact of copyright law on literary culture in nineteenth-century Australia. It focuses on the effects of imperial copyright law on colonial readers in the first half of the nineteenth century and its influence on the development of domestic copyright law in the Australian colonies. Copyright law and policy seek to strike a balance between protecting the rights and interests of authors and publishers, and the desirability of disseminating their works and knowledge throughout society. Often, due to the strength and organisation of various lobby groups, public debates in the context of copyright law reform tend to focus on the rights of authors, publishers and other creators, with little attention dedicated to public interest (Sainsbury 57–58; 73–74). This was not the case, however, in colonial Australia. Although newspapers from the era indicate support for imperial copyright law and the protections it offered British authors, in the Australian context the debate was much more focused on the impact it would have on colonial readers than on colonial authors. This focus on readers, representing the public interest, reveals much about colonial perceptions regarding the importance of literary culture and public access to literature and ideas.

Our research, which draws on primary sources including newspaper archives, statute and case law and parliamentary debates, demonstrates that overwhelmingly, Australian colonial legislatures adopted an approach to copyright law and policy that strictly adhered to British imperial interests, often to the detriment of local readers and authors and losing sight of the desirability of balancing rights and interests. Public debate in the Australian colonies throughout the nineteenth century reflects a high degree of interest in the nature of copyright and a nuanced understanding of its economic and social functions, particularly in colonies that were focused on progress and development. What we have found, however, is that support for the rights of British authors outweighed the negative effects of imperial copyright law on colonial authors and readers, particularly around the introduction of the *Copyright Act 1842* (UK). When opportunities to support these groups arose, such as in the context of the *Foreign Reprints Act 1847* (UK) and in the enactment of domestic legislation, Australian colonial parliaments chose instead to toe the imperial line rather than develop copyright law and policy suited to colonial culture and practice. This is evidenced by the fact that most colonial legislatures adopted the provisions of the *Copyright Act 1842* without any real consideration of its impact in the colonial environment.

These findings are significant for a number of reasons. First, in their commitment to the imperial copyright interests of British book publishers and retailers, the Australian colonies were unique throughout the empire. Whereas most other colonies, such as Canada and New Zealand, acted to protect the interests of authors and readers comparatively early in the nineteenth century, the Australian colonies did not enact domestic copyright legislation until the late 1860s and 1870s. We think this opens up interesting questions about how Australian lawmakers viewed their own cultural life and cultural products in comparison with Britain and with other parts of empire.

Second, our research indicates that imperial copyright law and the inaction of colonial parliaments did affect literary culture, initially in relation to the cost and availability of books and later by delaying the development of an Australian publishing industry. Although there have been several studies of the development of the Australian book and publishing industries and their relationship to literary culture, they have tended to focus on the post-federation era and so do not explore the impact of imperial law and the development of domestic colonial legislation throughout the nineteenth century.<sup>1</sup> Yet where copyright law has been linked to studies of book publishing and literary culture during this period in other jurisdictions, clear relationships between the two have been established.<sup>2</sup> This article demonstrates that copyright law and policy are significant factors to consider in investigating Australia's book and publishing history, and its relationships to literary culture. It shows that the dominance of British publishers and their commercial arrangements with colonial booksellers (Nile and Walker 31–32) was likely to have been compounded by the lack of copyright protection in the colonies before legislation was introduced. This is evidenced by the fact that the documented increase in the publication of Australian books (Bode 43) came at a time that was exactly contemporaneous with the introduction of copyright legislation in Melbourne and Sydney. This reveals a previously unexamined relationship between copyright law and publishing in colonial Australia.

## 2 Imperial Copyright Law, 1788–1842

During this period the copyright law in force in Australia was the Statute of Anne (1710),<sup>3</sup> which was imported on the colonisation of New South Wales. The Statute of Anne vested rights in the authors of books. The legislation was stated to be for the purpose of preventing printers and booksellers exploiting authors' works and to encourage 'Learned Men to Compose and Write Useful Books.' This is in line with the purposes of copyright law stated at the outset of this article. At the time the Statute was passed, copyright was largely controlled by booksellers and stationers and it was, in part, an attempt to break this dominance by inserting the author into the copyright picture. It granted the copyright owner the 'sole right and liberty' of printing the book for a period of 21 years where the book was already in print, or 14 years where the book was not yet printed or published.

The Statute of Anne was amended by the *Copyright Act 1814*<sup>4</sup> amidst much public debate and political lobbying (Alexander 56). The 1814 Act introduced two major changes that would affect copyright law in Australia and across the empire into the twenty-first century. First, it extended the copyright term to 28 years and thereafter to the remainder of the author's life, if still living. As Alexander notes, 'the lack of discussion in either House of Parliament over the introduction of a term which for the first time made copyright dependent on the life of the author is quite astonishing' (56). Second, clause IV provided that where a book was first published in Britain, the owner of the copyright was able to bring an action against

any Bookseller or Printer, or other Person whatsoever, in any Part of the United Kingdom . . . or in any other part of the *British Dominions*, [who] shall . . . print, reprint, or import . . . any such Book or Books . . . or, knowing the same to be so printed, reprinted or imported . . . shall sell, publish or expose to Sale . . . or shall have in his or their Possession for Sale.

What this meant was that copyright holders were empowered to prosecute printers and booksellers who printed, reprinted, imported or sold unauthorised copies of copyright books anywhere throughout the empire. Bently notes that debate surrounding the Act paid little

attention to this geographic expansion of copyright protection and hypothesizes that ‘the “imperialization” of British copyright law was part of a deal that was struck with booksellers to justify the retention of the deposit’<sup>5</sup> (172–73, 194–95). He describes the extension of protection for British copyright works throughout the empire as ‘a momentous move that barely went noticed’ (172).

This was certainly the case in the Australian colonies. The Act pre-dated the emergence of print culture and bookselling in Australia, which began in the 1820s and 1830s (Crittenden 6), and there is no evidence in the early colonial press to indicate that the protection of British copyright works in the colonies was a matter of public knowledge or interest.<sup>6</sup> This attitude had changed markedly by the late 1830s, however, by which time there had been a significant increase in readership and the book trade in the colonies. Thomas Tegg, an entrepreneurial London publisher and bookseller, trained his five sons in bookselling and then sent them ‘across the world to various English-speaking cities to set up bookselling businesses’ (Crittenden 7–9), including in Dublin, Cape Town, Sydney (James) and Hobart (Samuel). The Tegg bookselling enterprise was one strategy devised by British publishers ‘for extending the sale of their work in the British colonies’ (Bently 198). Such networks meant that by 1838, almost a quarter of British books exported to the empire were bound for Australia (Bode 32).

This increasing participation in literary culture meant an increase in consumption by the colonial reader, serviced by British publishers. It is therefore not surprising that the Australian colonies were particularly interested in the copyright reforms introduced into the imperial parliament by Serjeant Talfourd in the late 1830s. The *Sydney Herald* reprinted extracts from Talfourd’s speech to the House of Commons on 18 June 1837, focusing on the entitlements of authors: ‘We are quite sure that our literary readers will not grudge the space occupied by the subjoined beautiful passages from the speech’ (20 November 1837, 3). Talfourd’s speeches were scattered with rhetoric about authorial genius and evocative examples of injustice to authors, which an extension of the copyright term would relieve.<sup>7</sup> The *Sydney Monitor* reported that the 1838 Copyright Bill would ‘secure to British authors a portion of the profits now reaped by foreign “pirates”’ and (incorrectly) ‘to authors abroad some gain from the republication of their works in England.’ The fact that the law would not prevent republication once there had been first publication in Australia was not noted. Alluding to the Bill’s failure to protect colonial authors, it noted ‘unhappily, there can be no reciprocity in this matter’ (30 July 1838, 1).

Despite general support for Talfourd’s reforms, the colonial press also reported opposition to the Bills, chiefly through the pamphleteering of Thomas Tegg, described in the *Australian* as an ‘eminent citizen of Her Majesty’s “ancient and loyal City of London” (the father of a much respected citizen of Her Majesty’s new, but equally loyal City of Sydney)’ (20 March 1838, 2). Increasing the copyright term had the potential to harm Tegg’s business model, which was based on reprinting cheap versions of out-of-copyright works for sale in the United Kingdom and distribution throughout the empire (Alexander 95; Seville 123–25), and he published several pamphlets voicing opposition to the proposed reforms, extracts of which were published in several Australian newspapers.<sup>8</sup> Tegg argued that extending the copyright term was contrary to the public interest because it would increase the price of books and restrict their availability, and the *Australian* found this argument persuasive, though it did not consider the specific consequences for the colonies: ‘It would be extremely difficult to overpower the arguments used by Mr Tegg, to prove that the interests of *the public* would be compromised by the extension of the term of copyright’ (20 March 1838, 2). The *Sydney Monitor* was also persuaded by this argument, reprinting commentary from the *Spectator* on

the withdrawal of the Bill: ‘the prolongation of copyright would be a mere deception as regards the gains of authors, while it may injuriously affect the public’ (14 November 1838, 5).

The *Copyright Act* that was eventually passed in 1842 extended the term of copyright to the life of the author plus seven years, providing for a minimum period of 42 years. Of significance to the Australian colonies was clause 15, which made it unlawful for copyright books to be reprinted in the British Dominions, or for such books to be imported and sold in the British Dominions, without the consent of the copyright holder. Clause 17 extended this prohibition to the importation, sale and hire of unauthorised reprints of copyright books outside the British Dominions, empowered customs officials to seize and destroy such books and subjected offenders to a £10 penalty if convicted by two Justices of the Peace.<sup>9</sup> Unlike its 1814 predecessor, the introduction of the 1842 Act was widely reported in the colonial press, with a particular focus on its operation throughout the empire. The Act was reported as an important measure for the protection of British authors:

The beneficial operation of the New Copyright Act is already sensibly felt at home, and will continue to be more and more perceived, for its provisions are so stringent and its penalties so severe against piracy, that those who have hitherto trafficked in it with impunity, now pause and tremble. (Hobart *Courier*, 9 June 1843, 2)

Such comments were perhaps made in response to the infringement of copyright by reproducing British works through serialisation in colonial newspapers and the production of pirated editions, as had happened to Charles Dickens’ *The Pickwick Papers* in Hobart in 1838 (Stewart). The *Courier* also seems to have been persuaded that the *Copyright Act* would improve the quality of literature, arguing that ‘the new law will tend to the publication and circulation of works of more solid merit’ and on this basis welcomed its extension to the colonies, ‘where it is of the utmost importance that it should be vigorously and faithfully carried out’ (9 June 1843, 2).

### **3 The *Copyright Act 1842* and Colonial Readers**

The *Copyright Act 1842* affected colonial readers in a number of ways, most significantly in relation to the cost and availability of books and the circulation of ideas.

#### ***(a) The cost and availability of books***

Despite initial support for the 1842 Act it quickly became clear that its prohibition on the importation of cheap foreign editions of British copyright works would have an immediate impact on colonial booksellers and libraries, and consequently on readers. In 1840 the Sydney bookseller James Tegg had advertised a supply of French editions offered ‘at about one-third of the original price of the English Editions,’ a practice that would clearly breach clause 17 of the new legislation (*Australasian Chronicle*, 5 September 1840, 4). Booksellers such as Tegg, circulating libraries and book clubs throughout Australia were exposed to liability for copyright infringement because they possessed, for sale or hire, foreign editions of British copyright works, many of which were sourced from America: ‘It is well known that most of them have for years been in the habit of obtaining and letting out to hire foreign editions of English works, infinitely to the prejudice of English authors and publishers, who are now, however, most amply protected by the Act in question’ (*Australian*, 18 January 1843, 3). As

the *Hobart Town Courier* reported: ‘Circulating libraries in all parts of the country are compelled to discontinue purchasing (even had they any longer the opportunity) and lending out a single copy of a foreign edition of an English work. *The mere having it in their possession, ticketed and marked as a library book*, exposes them to a ten pound penalty’ (original emphasis) (9 June 1843, 2). The colonial press strongly supported the measure, despite the impact on ‘many libraries, especially in the country, that keep almost exclusively such cheap and foreign editions’ (*Australian*, 18 January 1843, 3). It is well known that the *Copyright Act 1842* significantly increased the price of books in British colonies such as Canada (Bently 175; Bannerman 17–18), and Alexander argues that this increase extended throughout the empire: ‘prices for such books were beyond what the colonists could afford and they were compelled to wait until cheap editions were printed and exported’ (143).

Although it is impossible to determine with certainty, newspapers from the period indicate that in terms of the cost and availability of books, the impact of the 1842 Act on the Australian colonies was similar to other parts of the empire. While they rarely provide details as to the source and price of books, newspaper advertisements do reveal the volume of books available and strategies used to market them to colonial readers. In her ground-breaking study of the colonial book trade, Elizabeth Webby reveals that in 1843, fewer books were sold at auction in Sydney and Melbourne than the previous year, and the number of volumes did not return to 1842 levels for another six years (73–79). While Webby attributes the 1843 fall to economic depression, it is probable that the new restrictions on book imports also played a role. As the legislation had been under consideration in one form or another since 1838, American and other non-British publishers had plenty of notice of this diminution in their markets and may have offloaded stock to the Australian colonies before the Act took effect, resulting in a spike in book sales in 1842. Alternatively, with the withdrawal of these exporters from the market, the drop in sales in 1843 may indicate that London publishers were not equipped to meet colonial demand.

Newspaper advertisements also reveal a new price-consciousness following the commencement of the 1842 Act. Prior to 1842, prices were generally absent from James Tegg’s newspaper advertisements.<sup>10</sup> After the commencement of the Act, however, Tegg’s advertisements adopt a different tone, becoming dominated by headlines such as ‘Cheap List of Books’ and ‘Cheap Books’ (*New South Wales Examiner*, 16 April 1842; *Sydney Morning Herald*, January 14, 1843). Interestingly, the years following the introduction of the 1842 Act also saw an increase in advertisements for second-hand books throughout the Australian colonies, perhaps suggesting that the combination of rising demand for reading material, a shrinking supply and increasing costs created new markets for second-hand books.<sup>11</sup>

### **(b) *The circulation of ideas***

Colonial newspapers of the 1840s and 1850s reveal increasing concern regarding the impact of the 1842 Act on Australian literary culture. The Act confined reading material in the Australian colonies to books sourced from British publishers, which in itself would restrict the range of works, ideas and information available in the colonies. Although Bently argues that ‘there was no grand vision in relation to intellectual property,’ and that copyright in literary works was an exception to this rule to support British booksellers sustain their imperial economic networks (162, 198), there is also evidence to indicate that restricting the availability of books throughout the empire to British publications was a strategy designed to sustain imperial ideology. London publishers such as John Murray, motivated by both economic and ideological interests, quickly capitalised on the opportunity by producing cheap

and condensed editions of English copyright works for export to the colonial market. Murray described his Colonial Library as

a work I have commenced in the hope of offering a substitute to the Canadas and other colonies for the Yankee publications hitherto poured into them and which besides damaging the copyrights of British Authors by the piracies of their works are sapping the principles and loyalty of the subjects of the Queen by the democratic tendency of the native American publications. (Quoted in Johanson 140–41)

For Murray, the Colonial Library was a means of facilitating compliance with copyright law, protecting his interests as a copyright owner and exporting imperial values. Yet the *Sydney Morning Herald* attributed to Murray the benevolent motives of ensuring ‘that the colonies should gain and not suffer by this cessation of the supply of a large portion of cheap literature’ and hoped that ‘our fellow-colonists will assist him by purchasing his work, which we presume our booksellers will import’ (15 May 1844, 2). Mirmohamadi and Martin’s recent study of Charles Dickens reveals the ideological power of the circulation of English fiction in the Australian colonies. They argue that ‘Dickens’s novels played a key role in the transmission of English and Englishness that was at the centre of the imperial project’ (24) and that Australians reading Dickens ‘constantly drew out the similarities and differences between their new place and Britain, in a way that reflected and enacted their multiple identities as global urbanites, simultaneously British and Australian, imperial agents and colonial subjects’ (23). This effect may well have extended beyond Dickens to the colonial consumption of other British authors, and under imperial copyright law such works dominated literary culture throughout the empire.

#### **4 The Foreign Reprints Act 1847**

Attempts by Murray and other British publishers to fulfil colonial demand were arguably inadequate in Australia, and clearly insufficient throughout the empire. In response to sharp increases in the price of books, particularly in Canada, the imperial parliament passed the *Foreign Reprints Act* in 1847. This Act permitted a colony to import non-British editions of British copyright works, or to reprint British copyright editions, if the colony applied for and was granted a licence under which the British copyright holder would be reimbursed. It was an attempt to maintain control over British copyright books throughout the empire, and licences were issued to several colonies even though, as Johanson notes, ‘it was impossible to police collection of the revenue’ (141). The result of this licensing arrangement was that ‘colonial readers could obtain (unauthorized copies of) books from the U.S., at considerably below the published price (of authorized copies) in Great Britain’ (Bently 176).

The Australian colonies stood alone throughout the empire in their failure to act on the legislative opportunity provided by the *Foreign Reprints Act*, a point noted in 1881 by Walter Arthur Copinger: ‘all the important colonies with the exception of Australia’ had obtained licences under the 1847 Act (quoted in Bently 176). The failure of any Australian colony to legislate for a licence should not, however, be interpreted as demonstrating a lack of awareness of this possibility, lack of interest in the cost and availability of books or universal consent to go along with the imperial agenda. Throughout the 1850s tensions emerged, in parliamentary and public debate, between support for the protection of British authors and a conviction that preventing the lawful reproduction, import and sale of cheap foreign editions of British copyright works stifled intellectual engagement and social progress in the colonies.

This tension came to a head with two attempts to obtain colonial licences under the *Foreign Reprints Act 1847*.

**(a) The British Authors Bill 1850 (NSW)**

In 1850 Terence Aubrey Murray, member for Southern Boroughs, introduced the first Australian copyright legislation into the New South Wales Legislative Council. Titled the 'British Authors Bill' it was a measure designed to promote the interests of colonial readers by obtaining a licence for New South Wales under the *Foreign Reprints Act 1847*. The Bill sought to render it 'lawful for any person to import into this Colony, from any other country or place, and sell or let out to hire Foreign reprints of books composed, written, printed, or published in the United Kingdom and entitled to Copyright therein' on payment of a duty of 75%, two-thirds of which would go to the copyright holder, and one-third to the public treasury (*Sydney Morning Herald*, 24 August 1850, 2). Murray felt that the measure 'would enable the colony to enjoy the advantages of cheap literature': 'In England, on the Continent, and in America, cheap editions of works were published to the infinite intellectual advancement of their countries. But in this colony, where cheap education was especially desirable, it was unattainable' (*Sydney Morning Herald*, 24 August 1850, 2).

Murray's motivations for introducing the Bill may be deduced from his educational and family background. He was an autodidact who had arrived in the colony and assumed responsibility for a farm in Collector in 1829, at the age of 19. His sister was Anna Maria Bunn, author of the first novel published in the Australian mainland, and his regard for learning led him to assume positions of responsibility with the local constabulary, and ultimately to be elected to the Legislative Council and then to the Legislative Assembly. He favoured the introduction of a migration program for the English middle classes, arguing that grazing was profitable but unlikely to develop 'the active powers of the human mind' (Wilson). Clearly, Murray believed that obtaining a licence under the *Foreign Reprints Act* would increase the accessibility of books, and this would be a positive measure for colonial intellectual and social progress.

Yet Murray received little support for the Bill in either the press or the Legislative Council. Newspaper editors were scathing in their attack on the Bill and on Murray for introducing it, repeatedly expressing outrage at what they saw as a legalisation of piracy in New South Wales. The *Argus*' Sydney correspondent was incredulous at Murray's motion to introduce the Bill, describing the *Foreign Reprints Act* as an 'obscure Act of Parliament which expressly provides that in colonies where provision is made for the protection of English authors, "pirated" editions of their work may be introduced. What this means I cannot divine' (17 July 1850, 2). Taking up Murray's example of Macaulay's *History of England*, the *Geelong Advertiser* wrote:

[I]f this means anything, it means that a New York publisher robbed Macaulay of his time, talents, and expense of education, and filched his copyrights, and that in return for the display of such amiable characteristics, the colonies should be thrown open to him and his like . . . We see no reason why America should rob England, for the benefit of these colonies. (20 July 1850, 2)

The Bill was also opposed by colonial booksellers, who stood to lose their monopoly on legally imported British copyright works should the Bill be passed and a licence issued to permit their importation from other countries, chiefly the United States. Colonial booksellers

used the rhetoric of British authorship to protect their own commercial interests. William Piddington, for example, published a letter in the *Sydney Morning Herald* steadfastly opposing the Bill, suggesting that its ‘real title’ was ‘A Bill to legalise the sale of pirated editions of British Authors in the colony of New South Wales,’ and expressing confidence that ‘so long as there is a *veto* in the home Government on the proceedings of these gentlemen, the objectors to the measure need not be under any apprehension of its becoming law’ (26 August 1850, 2). In a further letter Piddington attacked the *Foreign Reprints Act*, emphasising its quick passage through the imperial parliament and asserting that ‘this cruel injury to the poor author was literally smuggled through all its stages of both Houses of Parliament [illegible] and without discussion!’ (*Sydney Morning Herald*, 27 August 1850, 2).

This public protest against the Bill seems to have swayed the Legislative Council, whose enthusiasm for the idea waned between its introduction in July and its debate in September. Several members opposed the Bill for reasons that clearly emerge from imperial ideology, and the language used to express their opposition indicates that they were not only concerned with an express accord with imperial policy, but also with the appearance of conformity with imperial law and interests. John Dunmore Lang, for example, argued: ‘If such a Bill was passed, it would be regarded at home as a characteristic of the place from whence it came. It would be called a Botany Bay Bill’ (*Sydney Morning Herald*, 7 September 1850, 2). His views were elsewhere reported as denouncing the Bill as a “Swindling Botany Bay Bill”, disgracing the Council that had allowed it to be placed on its paper, and calculated to bring the colony into contempt in England’ (*Goulburn Herald and County of Argyle Advertiser*, 14 September 1850). Murray repeatedly stressed that the Bill was responding to ‘an Act of Parliament, which held out a direct encouragement for the passing of such a measure’ (*Sydney Morning Herald*, 24 August 1850, 2) but did not cite any of the other colonies that had passed similar legislation and obtained licences. By 1850, licences had already been granted to New Brunswick, Nova Scotia, Prince Edward Island, Barbados, Bermuda, Bahamas, Newfoundland, St. Christopher and Antigua, generally with payment of 20% to the copyright holder—much less than the 75% proposed in New South Wales.<sup>12</sup> Indeed, this information was entirely absent from debate in the Council and in the press, leaving the impression that New South Wales was the first colony to act on what was considered an obscure piece of legislation.

The lack of imperial context within public and parliamentary debate suggests that there was little communication between legislators and government officials throughout the empire at this time, or at least between the Australian and other colonies. Instead, the piracy of British copyrights in the United States provided the context for the Bill, a practice which was repeatedly described as morally repugnant to the interests of British authors and presenting an example that New South Wales should avoid, not follow (*Sydney Morning Herald*, 24 August 1850, 2; 7 September 1850, 2).

### **(b) The Sale of British Copyright Publications Bill 1858 (Vic)**

A further attempt at obtaining a licence under the 1847 Act was made in Victoria in April 1858. John Hood, Member for Central, introduced to the Legislative Council ‘a Bill to Regulate the Sale of British Copyrights in Victoria, and to Protect the Sale of them’ (*Argus*, 14 April 1858, 5), to obtain a licence that would allow Victorian booksellers to import foreign editions of British copyright works. It soon transpired that the Bill should have been introduced into the Legislative Assembly, and as no one in the lower house wished to pursue it, the idea lapsed. Like Murray before him, Hood received little support in the colonial press.

As with William Piddington in Sydney, the bookseller George Robertson in Melbourne published a letter protesting the Bill before it had even been read:

Mr. Hood is attempting to foist into the colonial statute-book a measure, the direct aim of which is to legalise the importation into this colony of foreign piratical editions of British copyright works . . . its title, in order to be consistent, should have been ‘a Bill to Injure the Sale of British Copyright Publications and to Plunder the Owners thereof. (*Argus*, 28 April 1858, 6)

The *Argus* opposed the measure as punishing authors:

Authors have an absolute right to enjoy the fruits of their intellectual labor. And they may fairly claim to be specially protected against piracy in those colonies where the love of English letters co-exists with imperfect facilities for gratifying it . . . It is proper that he should derive an advantage from every copy that is sold of a work that has cost him intellectual labor, and is the fruit of his creative genius. (*Argus*, 28 April 1858, 6)

It also expressed the view that there was no need for the Bill:

We are suffering no famine of literature. It is consigned to us in sufficient quantities from the home market to save us from the evils of scarcity and to protect us from the temptation of piracy. We have monthly well-furnished parcels of English books. The colonist enjoys almost as many facilities for becoming acquainted with the last new novels of Dickens and Thackeray, or the last volume of Macaulay, as the subscribers to a home book club. The book trade has undergone a marked development during the last three or four years. And colonial readers may supply themselves with copies of the latest publications of their favourite authors at a far less cost probably than the same could be furnished from our local printing offices (27 April 1858, 4–5).

Attempts to obtain licences for New South Wales and Victoria to lawfully import foreign reprints of British copyright works expose the strong bias of both the colonial legislatures and the press in favour of supporting imperial interests to the detriment of literary culture in the colonies. Yet these Bills represent early attempts to liberalise the book trade in Australia. They demonstrate that the domestic political and public sensitivity concerning Australia’s position within the Anglophone publishing industry and book trade, which most recently arose in relation to a Productivity Commission Report, *Restrictions on the Parallel Importation of Books* in 2009, can be traced back to tensions between imperial and domestic interests in the copyright law and policy of the 1840s.

### **(c) A black market in books?**

Although the *Argus* was of the view that Victoria was well supplied with affordable books from Britain, there is evidence to suggest that colonial Australians were prepared to act in their own interests to access cheap literature, despite the illegal nature of their activities. Piecing together some evidence from the period, an impression forms that a trade in American reprints persisted despite its prohibition by the 1842 Act. In 1854 William Howitt wrote to the *Athenaeum* of his travels through the Australian colonies:

Everywhere I have been, in Victoria, New South Wales and Van Diemen's Land, American reprints abound. I have never seen or heard of any attempt on the part of Custom-House officers to prevent their introduction . . . In fact, all these Colonies consider it in their interest to admit freely as many cheap books as possible. (Deazley)

American booksellers and agents operated in the Australian colonies throughout the nineteenth century, and there are occasional reports of them offering for sale not only American titles but also reprints of British copyright works (Hubber 19–22). It is of course impossible to determine the extent of this trade, its very illegality meaning that foreign reprints were neither advertised in newspapers nor recorded in the catalogues of booksellers or libraries.

### 5 The *Literary Copyright Act 1842* and Colonial Authors and Publishers

The *Copyright Act 1842* did not only have the potential to affect colonial readers, although this interest group vastly dominated public discussion of copyright law and policy throughout the nineteenth century. It also affected authors, specifically by denying them its stated purpose: 'to afford Encouragement to the Production of literary Works of lasting Benefit to the World.'<sup>13</sup> Rights granted under the Act did not extend to authors in Australia, the Dominions or anywhere outside the United Kingdom; they were only granted to the authors of works that were first published in the United Kingdom. In *Routledge v Low* (1868 LR 3 HL 100) the House of Lords confirmed that a work published in the colonies did not receive any copyright protection under the 1842 Act. Nor did authors who originally published their works in the colonies and later published them in the United Kingdom receive protection. In the absence of colonial legislation, these works would have been able to be freely copied anywhere in the world. This meant that when Marcus Clarke published *For the Term of His Natural Life* in Victoria in 1874, he received no copyright protection when it was subsequently published in London.<sup>14</sup> As the press reporting of the Act's commencement indicates, there was strong support for the protection of British authors but piecemeal consideration of its failure to extend rights to authors outside Britain. It is possible that the public did not feel that the colony had produced any literary works worthy of protection, an arguably misplaced conclusion evidenced, for example, by remarks published in the *Sydney Morning Herald*:

Very few . . . attempt to write anything in the shape of a connected work, calculated either to instruct or amuse—which may be accounted for partly by the want of ability, partly from the heavy expense of printing in Sydney, and partly from the great apathy of the public, which in the few cases where parties have 'written a book,' has left the whole edition upon the shelves of the bookseller. (19 April 1842, 3)

From the mid-1840s there were, intermittently, calls for the introduction of legislation protecting the rights of local authors and artists. There was some discussion around a colonial copyright bill to protect authors in the debates over the British Authors Bill in the New South Wales Legislative Council in 1850, but no such Bill resulted (*Argus*, 3 September 1850, 2; *Geelong Advertiser*, 4 September 1850, 2). The *Morning Chronicle* expressed support for such a law in February 1845, remarking that there were 'several ingenious Artists now in this colony, who have at considerable expense and loss of time succeeded in completing most useful discoveries, inventions and improvements in various branches of trade' and noting that

they were ‘deterred from introducing them publicly, for want of protection by Statute or Patent.’ The same, the paper alleged, applied to authors: ‘We should imagine no measure would be more popular or useful than the encouragement of colonial genius, whether artistical or mental’ (19 February 1845, 2). The *Adelaide Observer* supported the initiative: ‘if any degree of protection can be afforded in cases of priority of colonial invention, or authorship, a great boon would be conferred on a most deserving and useful class of men’ (14 May 1845, 3). Two years later a meeting was held in Melbourne ‘where it is proposed to determine the course to be adopted for obtaining a law protective of the natural and original rights of colonial authors, artists, and inventors’ (*Melbourne Argus*, 23 February 1847), which was quickly followed by a report of an act of piracy where ‘an industrious man, who has spent several months in the compilation of a work of great utility, has had the reward of his labour snatched from him by an envious and vindictive opponent’ (*Colonial Times*, 8 March 1847). The circumstances of this case led to the conclusion that at least some of the provisions of the law of copyright ought to be embodied in legislation to protect colonial authors.

Yet despite this early interest in enacting copyright protection for Australian authors, no such legislation was forthcoming in the colonies until the late 1860s. By imperial standards, this is very late in the nineteenth century. Such legislation was passed by Lower Canada in 1832, Nova Scotia in 1839, New Zealand in 1842, and India in 1847 (Bently 176–77). One possible explanation for the late implementation of copyright legislation in the Australian colonies may lie in the absence of a significant industry-based lobby group to petition for law reform. Although booksellers such as William Piddington and George Robertson were vocal in relation to copyright issues, they had no real incentive to lobby the legislatures for copyright protection for local authors. Their businesses were based on the importation and sale of British copyright books; the printing and publication of works by local authors was incidental to their core business. Even if copyright protection were introduced, it would not be recognised beyond the borders of the colony itself, let alone throughout the empire, so protection would only have been available in a very small market. In the United Kingdom, by contrast, industry-based lobby groups including printers, publishers and booksellers were critical to the creation and reform of copyright legislation throughout the eighteenth and nineteenth centuries (Seville, Chapters 4–7).

Copyright Acts protecting the rights of colonial authors and other copyright holders were eventually passed by colonial legislatures in Victoria (1869), South Australia (1878), New South Wales (1879), Queensland (1887) and Western Australia (1895).<sup>15</sup> Although New South Wales, Victoria, South Australia and Tasmania did not establish self-governing legislatures until the 1850s, after the Imperial Parliament passed the *Australian Colonies Government Act 1850*, this circumstance does not explain the failure of the colonial Legislative Councils to afford copyright protection to colonial authors. Legislative Councils were established to advise the Governor, but even in the absence of self-government there was interest in intellectual property matters. The New South Wales Legislative Council, for example, debated the British Authors Bill in 1850 and enacted legislation to protect patents in 1852,<sup>16</sup> before the self-governing New South Wales Legislature was established in 1856. It is not clear exactly what motivated the introduction of laws when they were eventually introduced, but the mounting public pressure and desire of the legislatures to toe the imperial line may have been factors. With the exception of Queensland, in all colonies the text of the legislation, the language of parliamentary debates and commentary in the newspaper press reveals that this legislation was profoundly influenced by the 1842 Act, and that adaptation to local conditions was piecemeal at best (Ailwood and Sainsbury). The only meaningful distinction between imperial and colonial copyright law was the geographic extent of its

jurisdiction: whereas authors who published in Britain were protected throughout the empire, authors who published in a colony were only protected within the colony itself. Although the press and parliamentary debates in each of the colonies reveals a clear sense of grievance over the lack of protection for colonial authors, there is little discussion of what the particular circumstances were which led to the introduction of legislation in each colony (Ailwood and Sainsbury). Rather, the introduction of copyright legislation was justified by the fact that it simply replicated the imperial law, a common practice among colonial legislatures that were strongly influenced by ‘a desire to be English or the idea that British was best’ (Kercher 125).

## 6 Colonial Copyright Law and Literary Culture

Recent empirical studies of the development of Australian book and publishing industries and their relationship to literary culture invite analysis of the role played by the introduction of copyright protection in the Australian colonies in the latter decades of the nineteenth century. Accounts of the development of an Australian national literature during this period have tended to focus on the dominance of British publishers as both exporters of books to Australia and publishers of Australian works, although Bode argues that this focus has been to the neglect of the vital role played by colonial publishers, the importance of journals and periodicals and the strong interest among Australian readers for local material (27–29).

The dominance of British publishers and their commercial arrangements with colonial booksellers is frequently linked to the failure of the local publishing industry to flourish. As Nile and Walker argue, the commercial realities of the colonial book trade ‘meant that it was simpler and more economical for the local trade to organise itself to be importers and retailers rather than publishers with an eye for local literary talent and new forms of literary expression’ (8). Bode attributes this want, particularly up to the 1860s, in part to the financially risky nature of book publication for Australian publishers, who were usually also printers, booksellers, stationers, newsagents and librarians among other commercial pursuits. The risk involved in investing in a book publication meant that authors were often required to contribute to the cost of publication (31–32). The lack of copyright protection would have compounded the financial risk in book publication for both authors and publishers: there was no law whatsoever to prevent another publisher or printer from reproducing a book and no avenue for compensation for the author or publisher. Although such accounts of the colonial publishing industry are cognisant of the *Copyright Act 1842* as underpinning the commercial and imperial power of British publishers, they do not consider the effect of the absence of local copyright protection on colonial literary culture.

In *Reading By Numbers*, Katherine Bode identifies a marked increase in the number of Australian novels which were published as books in Australia (rather than being serialised in journals or periodicals), noting an increase from 17% in the 1860s to 34% in the 1870s and 37% in the 1880s (43). For novels that were not serialised before publication as books, these figures increase to 36% for the 1870s and 41% for the 1880s. Although Bode does not explore the circumstances that may have contributed to this trend, the increase she notes in the publication of novels as books is exactly contemporaneous with the introduction of copyright protection in Australia’s two centres of book publication: Melbourne in 1869, and Sydney in 1879. Using data from Austlit, it is possible to break down the number of novels published as books by jurisdiction, as illustrated in Figure 1.

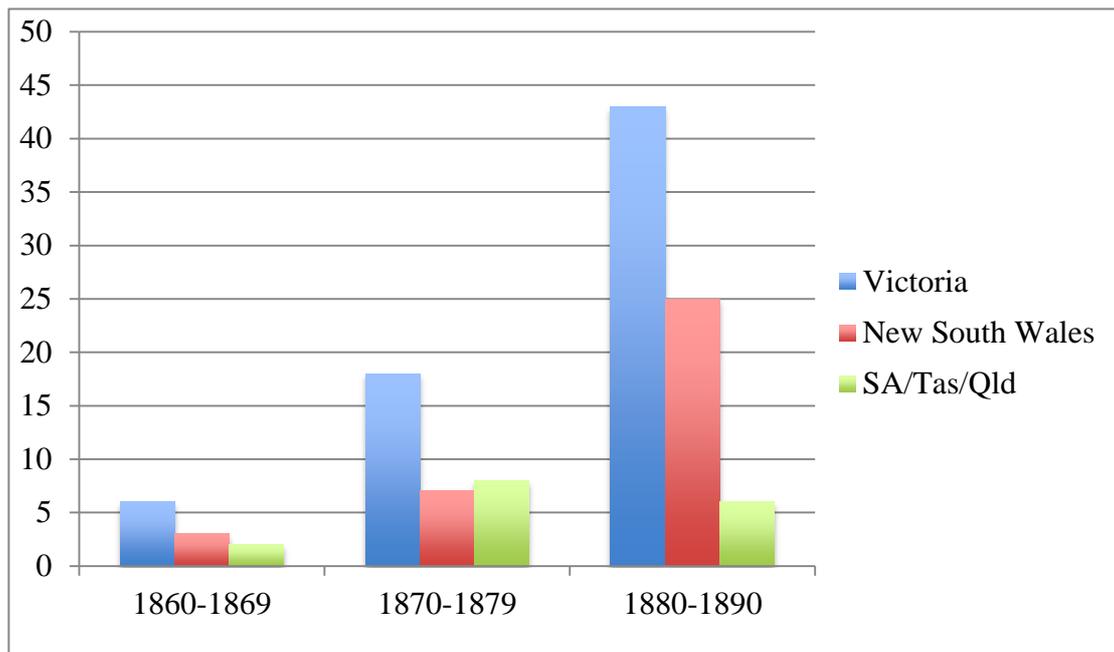


Figure 1. Novels published as books by jurisdiction.

Figure 1 indicates that Victoria experienced a clear increase in the number of novels published as books in the 1870s, the decade following the introduction of copyright protection in 1869. A similar increase occurred in New South Wales in the 1880s, following the introduction of copyright protection in 1879. Figure 1 demonstrates a connection between the introduction of copyright protection for colonial authors (or publishers as copyright holders) and a distinct increase in the number of novels published as books. This points to a relationship between the existence of copyright protection, growth in the Australian publishing industry and the fostering of this aspect of Australian literary culture. At the very least, it is arguable that those who supported the introduction of colonial copyright legislation because it would offer protection to authors and publishers, and prevent piracy of their work, were correct in their assumption that its introduction would foster the development of literary culture in Australia. It is also arguable that despite the dominance of British publishers in the Australian book trade, the local publishing industry may have flourished earlier had copyright protection been introduced in the 1840s, as it was in other parts of the empire. Conversely, copyright may also have been protected earlier than the 1870s if colonial booksellers had a greater commercial incentive to source books locally, rather than relying almost wholly on the established system of the imperial book trade.

## 7 Conclusion

This article commences an investigation into the impact of copyright law and policy on literary culture in colonial Australia. It demonstrates that imperial and domestic copyright laws are an important consideration in accounts of the development of Australian literary culture throughout the nineteenth century. Clearly, the adherence of lawmakers to imperial copyright law and ideology had an adverse impact on readers and authors in colonial Australia, by stifling the availability of books and the circulation of ideas, and by denying authors the protections available to their counterparts in Britain and throughout the empire. While this article has focused on books, we believe that further investigation is required to explore the impact of copyright protection (or lack thereof) on journals and periodicals, particularly regarding the publication of fiction, and also on dramatic works, to provide a

more complete picture of the relationship between copyright and Australian literary culture throughout the nineteenth century. Furthermore, the link we have established between the introduction of colonial copyright legislation and an increase in the number of novels published as books needs to be expanded to incorporate the uses made of copyright law by authors and publishers, work already commenced by Paul Eggert in relation to Angus and Robertson's publication of Lawson's *While the Billy Boils*. We believe that further investigation of such uses of copyright law—in publishing agreements, registration practices and litigation—will expand our understanding of relationships between copyright law and the growth and development of Australian literary culture.

## NOTES

<sup>1</sup> See for example *A History of the Book in Australia 1891–1945: A National Culture in a Colonised Market*. Eds. Martyn Lyons and John Arnold. St Lucia, U of Queensland P, 2001; *Resourceful Reading: The New Empiricism, eResearch and Australian Literary Culture*. Eds. Katherine Bode and Robert Dixon. Sydney: U of Sydney P, 2009; and Jason Ensor. *Angus and Robertson and the British Trade in Australian Books, 1930–1970: The Getting of Bookselling Wisdom*. London: Anthem Press, 2012.

<sup>2</sup> See for example Eli MacLaren's *Dominion and Agency: Copyright and the Structuring of the Canadian Book Trade, 1867–1918*. Toronto: U of Toronto P, 2011.

<sup>3</sup> 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, 1710, 8 Anne, c.19.

<sup>4</sup> An Act to amend the several Acts for the Encouragement of Learning, by securing the Copies and Copyright of Printed Books, to the Authors of such Books or their Assigns, 1814, 54 Geo.III, c.156

<sup>5</sup> That is, the publisher's obligation under law to deposit copies of the copyright work with a number of libraries. This was viewed as an onerous obligation.

<sup>6</sup> See Querypic 'copyright,' <http://wraggelabs.com/shed/querypic/?q=copyright|aus|exact>. Accessed 5 May 2013.

<sup>7</sup> For a discussion of Talfourd's speeches and the campaign to reform copyright see C Seville, *Literary Copyright Reform in Early Victorian England* and Alexander, *Copyright Law and the Public Interest*.

<sup>8</sup> Extracts of Tegg's pamphlets were reprinted in several colonial newspapers throughout the period: 'Literature—Authors' Copyrights', *Australian*, 20 March 1838, 2; 'Literary Property', *Hobart Colonial Times*, 1 October 1839, 5–6; 'Authors' profits', *South Australian Register*, 3 June 1843, 4.

<sup>9</sup> These sections were reprinted and distributed through the colonial press: 'New Law of Copyright Extending to the Colonies', *Sydney Morning Herald*, February 2, 1843; *South Australian*, February 21, 1843; *Launceston Examiner*, March 18, 1843; *Geelong Advertiser*, August 16, 1843; 'Government Notice No. 244', *Hobart Courier*, October 13, 1843.

<sup>10</sup> See for example advertisements published in the *Sydney Gazette*, January 30 and May 23, 1840; *Sydney Herald*, October 8, 1841; *Australian*, November 18, 1841.

<sup>11</sup> See querypic search 'second-hand books': <http://wraggelabs.com/shed/querypic/?q=%22second-hand%20books%22|aus|exact>

<sup>12</sup> St Lucia and Canada would follow by the end of the 1850 and eight others by 1857. See R Deazley, 'Commentary on *Foreign Reprints Act 1847*' (2008) in *Primary Sources on Copyright (1450–1900)*. Eds. L. Bently and M. Kretschmer. [www.copyrighthistory.org](http://www.copyrighthistory.org).

<sup>13</sup> An Act to amend the Law of Copyright A.D. 1842, 5 & 6, Victoria 404.

<sup>14</sup> For extensive discussion of copyright issues surrounding Clarke's *For the Term of his Natural Life*, see Catherine Bond "'Curse the Law!': Unravelling the copyright complexities in Marcus Clarke's *His Natural Life*". *Media and Arts Law Review* 15 (2010): 452; Catherine Bond, "'The Play Goes on Eternally': Copyright, Marcus Clarke's Heirs and *His Natural Life* as Play and Film Part One". *Intellectual Property Journal* 23 (2011): 267; Catherine Bond "'The Play Goes on Eternally": Copyright, Marcus Clarke's Heirs and *His Natural Life* as Play and Film Part Two". *Intellectual Property Journal* 24 (2011): 61.

<sup>15</sup> For an extended discussion of the development and implementation of copyright law in the Australian colonies, see Sarah Ailwood and Maree Sainsbury 'The Imperial Effect: Literary Copyright Law in Colonial Australia'. *Law, Culture and Humanities*, first published online 27 May 2014 as doc 10.1177/1743872114533871. <http://intl-lch.sagepub.com/content/early/recent>.

<sup>16</sup> An Act to authorize the Governor General with the advice of the Executive Council to grant Letters of Registration for all inventions and improvements in the Arts or Manufactures to have the same effect as Letters Patent in England so far as regards this Colony, Act No. XXIV, 6 December 1852

## WORKS CITED

- Ailwood, Sarah and Maree Sainsbury. 'The Imperial Effect: Literary Copyright Law in Colonial Australia'. *Law, Culture and Humanities*, first published online 27 May 2014 as doc 10.1177/1743872114533871. <http://intl-lch.sagepub.com/content/early/recent>.
- Alexander, Isabella. *Copyright Law and the Public Interest in the Nineteenth Century*. Oxford: Hart Publishing, 2010.
- Bannerman, Sara. *The Struggle for Canadian Copyright: Imperialism and Internationalism, 1842–1971*. Vancouver: U of British Columbia P, 2013.
- Bently, Lionel. 'The "Extraordinary Multiplicity" of Intellectual Property Laws in the British Colonies in the Nineteenth Century'. *Theoretical Inquiries in Law*. 12 (2011): 161–200.
- Bode, Katherine. *Reading by Numbers: Recalibrating the Literary Field*. London: Anthem P, 2012.
- Crittenden, Victor. *James Tegg: Early Sydney Publisher and Printer*. Canberra: Mulini Press, 2000.
- Deazley, Ronan. 'Commentary on *Foreign Reprints Act 1847*'. In *Primary Sources on Copyright (1450–1900)*. Eds. L. Bently and M. Kretschmer. [www.copyrighthistory.org](http://www.copyrighthistory.org).
- Eggert, Paul. *Biography of a Book: Henry Lawson's While the Billy Boils*. Sydney: Sydney UP, 2013.
- Hubber, Brian. 'A "Free Trade" in the Antipodes: American Reprints in the Australasian Colonies'. *Bibliographical Society of Australia and New Zealand Bulletin* 16 (1992): 19–22.
- Johanson, Graeme. *A Study of Colonial Editions in Australia, 1843-1972*. Wellington: Ellibank Press, 2000.
- Kercher, Bruce. *An Unruly Child: A History of Law in Australia*. St Leonard's: Allen & Unwin, 1995.
- Mirmohamadi, Kylie and Susan K. Martin. *Colonial Dickens: What Australians made of the World's Favourite Writer*. North Melbourne: Australian Scholarly Publishing, 2012.
- Nile, Richard and David Walker. 'The "Paternoster-Row Machine" and the Australian Book Trade, 1890–1945'. *A History of the Book in Australia 1891–1945: A National Culture in a Colonised Market*. Eds. Martyn Lyons and John Arnold. St Lucia: U of Queensland P, 2001. 3–18.
- Sainsbury, Maree. 'Context or Chaos: Statutory Interpretation and the Australian Copyright Act'. *Statute Law Review* 32 (1) (2011). 54–75.
- Seville, Catherine. *Literary Copyright Reform in Early Victorian England: The Framing of the 1842 Copyright Act*. Cambridge: Cambridge UP, 1999.
- Stewart, Ken. 'Britain's Australia'. *The Cambridge History of Australian Literature*. Ed. Peter Pierce. Cambridge and Port Melbourne: Cambridge UP, 2009. 7–33.
- Webby, Elizabeth. 'Literature and the reading public in Australia, 1800–1850: a study of the growth and differentiation of a colonial literary culture during the earlier nineteenth century'. Unpublished PhD thesis. University of Sydney, 1974.
- Wilson, Gwendoline. 'Murray, Sir Terence Aubrey (1810–1873)'. *Australian Dictionary of Biography*. National Centre of Biography, Australian National University. <http://adb.anu.edu.au/biography/murray-sir-terence-aubrey-2498/text3369>.