

**ON INTERNATIONAL  
COPYRIGHT, IN A LETTER  
TO THE HON. WILLIAM  
C. PRESTON, PP. 3-65**

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On International Copyright, in a Letter to the Hon. William C. Preston, pp. 3-65 by Francis Lieber

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**FRANCIS LIEBER**

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ON

**INTERNATIONAL COPYRIGHT,**

**IN A LETTER**

TO THE

**HON. WILLIAM C. PRESTON,**  
SENATOR OF THE UNITED STATES.

SOUM CUIQUE.

BY FRANCIS LIEBER.

**WILEY AND PUTNAM,**  
BROADWAY, NEW-YORK,  
AND  
PATERNOSTER ROW, LONDON.

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STANFORD LAW LIBRARY

TO THE

HON. WILLIAM C. PRESTON.

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DEAR SIR,

IN addressing to you this letter on a subject, on which I know full well that I am unable to communicate to you any material information, I feel that I stand in need of your indulgence. My only reason for taking this liberty, is the desire of expressing a grateful acknowledgment, due from every one who considers our national honor and interest to be involved in the question of international copyright, to you, and to all who take an active part in bringing about a law which the plainest justice seems strongly to demand; and who are not disheartened by repeated failures from persevering in this just cause. I thank you most sincerely for your promise to persevere until justice shall have received its due. Perhaps I have been prompted, likewise, by the desire of inviting through your name, that degree of attention at the hands of the public, which it otherwise might not have felt inclined to bestow upon these fugitive lines.

The subject of an international copyright law does not appear to attract that general attention in our country, which fairness, justice, expediency, our own advantage and our reputation, nevertheless, call for, and which, it cannot be doubted, they would command, were the subject more widely and more thoroughly understood. It is my intention, therefore briefly to exhibit the most important points connected with it in as clear and popular a manner as the character of the subject may admit.

By international copyright is understood copyright, acknowledged and mutually protected by various independent nations, so that a copyright having originated in one nation, is of equal legal value among the people living under a different independent government; and by copyright is understood the exclusive right of multiplying compositions and conceptions, which are represented upon paper, in other words of multiplying original books, music, maps and engravings.\* This ex-

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\* The term copyright has not yet been extended, in England or the United States, to statues, pictures, &c., and casts or copies of them on canvass, &c. In several other countries the corresponding term comprehends the right of multiplying by way of copy (whether in the same dimensions or not) any work of science or the fine arts, and, moreover, whether this multiplication be in or upon materials, or not. Thus the Prussian law secures the author of a dramatic composition against its unauthorized performance for gain; for, this performance is justly considered a *publication* or multiplication of the original. The same is the case in France.

clusive right of multiplying the copies of a composition or conception is at least by far the most essential part of that "property which an author, or his assignee, has in a literary work," as Blackstone defines the term Copyright; and the only one of great importance in political or civil intercourse. Wherever laws have been enacted to acknowledge copyright internationally, they are founded upon the principle of reciprocity, that is, a state says: Such is the protection which I grant to literary property of authors subject to my government, and likewise to that of all foreign authors, whose government grants to my citizens all the protection it affords to its own respecting literary property. By an act of parliament, 1 Victoria, c. 59, (July 31, 1838,) "protection is afforded within her majesty's dominions to the authors of books first published in foreign countries, and their assigns, in case, where protection shall be afforded in such foreign countries to the authors of books first published in her majesty's dominions, and their assigns." The last paragraph of the Prussian copyright law of June 11, 1837, the most comprehensive law of the kind, I believe, in existence, runs thus: "This whole law shall have force respecting works first published in a foreign state, if the laws of that state grant all the rights established by them



respecting works first published there, likewise to works first published in our dominions."

We cannot correctly understand the question of international copyright, if we do not first clearly present to our minds the nature of literary property in general, on which, therefore, a few remarks will be offered, before we proceed to the main subject. Probably there exist, respecting no species of property, so radically erroneous notions, as those entertained with regard to literary property, partly because it is incorporeal,\* as the law term is, and the foundation for the title of this property was for a long time imagined to exist where it actually does not exist; partly owing to other circumstances, peculiar to this species of property, as we shall presently see. It was, perhaps, natural that the human mind should not at once distinguish between the following several, nevertheless, totally different things; the property in the individual book, consisting of paper, the print upon it, and the binding; secondly, the possession and ownership of a manuscript; thirdly, the copyright, or, in other words, the exclusive right freely to dispose of the conditions on which the composition or literary work shall be published, that is, multiplied;

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\* 2 Blackst. 4.

and, lastly, the thoughts contained in the compositions, and conveyed by the signs or characters printed (in colored ink) upon (white) paper. Hence the many erroneous arguments, which we find in the history of literary property, drawn from the false position, that by the very act of publication the author deliberately resigns any particular right in his manuscript, except in the material itself; or those arguments drawn from the mere possession of a manuscript, which, however, as we all know, may be purchased, for instance at auction, by a collector of autographs, without acquiring in any degree the right of publication, that is, of multiplying the work; or those arguments drawn from the perfect freedom of mind and thought, defying all limitation and circumscription by laws of property; or, lastly, those derived from the rightful possession of the book, that is, a single copy, the purchase of which, it was maintained, establishes a perfect right for its owner, of doing with it whatever he chooses, and, consequently, also that of transcribing, reprinting, or multiplying it in any way he thinks fit. It will presently be seen how untenable all these arguments are, because they are founded upon a false original view of the subject.

Whatever origin of individual property and its

rightfulness speculative philosophy may establish, all those who maintain the justice and necessity of individual property, and the actual impossibility of eradicating it, who form the overwhelming majority of mankind, from its rudest wandering stage to its existence in broadly organized states and refined societies, and from whom religious fanatics, shallow reasoners or enthusiastic philosophers only, have formed, from time to time, comparatively speaking, inconsiderable exceptions—all agree, however unjust many specific titles, and doubtful in their character others may be, that the most undeniable title to individual property has ever been established, and must for ever be so, by personal, individual production, that is changing by personal labor, skill, ingenuity or pains, with the aid of natural agents, the shape or substance of what exists, or giving value, that is utility or desirableness, to what had none before, or increasing their degree of desirableness. The idea that the first individual of a future nomadic tribe, who catches an animal, tames it and makes it subservient to his peculiar wants, should not have the right to say that this is peculiarly his own, because he has had all the trouble of catching and taming, feeding and taking care of it; that the milk of the mare does not exclusively belong to him who caught and domesticated her;