

copyrights have ever since been closely associated in law and lawyers. Indeed, it looks as if copyrights were the precipitating origin of patents, and the similarity and difference of the twin institutions reveal why copyrights are in full vigor and expanding to this day, while patents are declining and under heavy attack. The two are alike in granting a monopoly for a main purpose of rewarding creativity, and a minor purpose of saving overhead through concentration of manufacture. (§ 156ff.) (Patents have additional minor motives also, such as obviating secret working.) The two institutions are also alike in their drawbacks; monopoly, interference with the public's freedom and its possibly important interest; and the difficulties of defining the protected matter, determining its true author, and protecting it from copiers. All these difficulties are graver for patents than for copyrights, and have been becoming still more so for the last century; and secret working has probably become less possible. Later chapters will support these statements, and also mention that copyrights may shortly face new and notable difficulties. (§ 35.)

[28] The original Venetian patent law of 1474, above copied, is the gist of American patent law today, with only the following changes of any importance:

1. A complete description of the invention has come to be required, and began to be published about 1710.
2. Patenting has been changed from a duty, later a privilege, to a right; i.e., an inventor can sue to force grant of a patent.
3. The requirement of usefulness has been reduced to mere operability, by American practice in spite of American statute law.⁵
4. A shift in emphasis, from introduction into the realm, to invention in the modern sense.
5. The patent term has been lengthened somewhat, from 10 years in the Venetian original to 14 or 15 commonly, and in America to 17 from the date of grant. This in turn starts (in the U.S.) 1 to 10 or even 20 years after the date of application, according to delays arising in the Patent Office and/or fostered by the applicant, the average delay being today nearly four years. Another year may be added, of publicity or use before application, making a total of 18 to 30 years or so, of patent coverage (the average 21) determined by chance or lengthened by scheming.

[29] In its earlier history the patent system often took on the functions of encouraging the importation of foreign industries, or of serving the king's purse; but these excrescences have been sloughed off, and a modern one of industrial monopoly often added. Hulme,⁶ from his study of patent statistics (from which we have compiled table 1) observed that some growth of patents from 1660 to 1700 was not

⁵ Since Justice Story "useful" has been taken to mean not mischievous, immoral nor inoperative. Stocking & Watkins, N 253.

⁶ "The Patent Office does not pass judgment on the utility of the patents it grants." F. B. Jewett, president of Bel Tel. Labs., quoted by Wilson, N 201, his p. 181.