

CONFEDERATE COPYRIGHT

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INTRODUCTION

- Confederate Copyright Act of 1861
 - Genesis
 - International copyright debates in Congress: 1790-1837
 - Confederate diplomatic strategies: beyond King Cotton
 - Features
 - International copyright protection – with formalities
 - 30 years before Chace Act
 - Copyright as property
 - Effect
 - Approval, but not recognition
 - Minimal codification of Southern culture

US COPYRIGHT LAW: 1790

- the Author of any Book or Books already Printed, who hath not Transferred to any other the Copy or Copies of such Book or Books, Share or Shares thereof, or the Bookseller or Booksellers, Printer or Printers, or other Person or Persons, who hath or have Purchased or Acquired the Copy or Copies of any Book or Books, in order to Print or Reprint the same . . .
 - Statute of Anne, 1710, 8 Ann., c. 19 (Eng.).
- the author and authors of any map, chart, book or books already printed within these United States, being a citizen or citizens thereof, or resident within the same, his or their executors, administrators or assigns, who halt or have not transferred to any other person the copyright of such map, chart, book or books, share or shares thereof; and any other person or persons, being a citizen or citizens of these United States, or residents therein, his or their executors, administrators or assigns, who halt or have purchased or legally acquired the copyright of any such map, chart, book or books, in order to print, reprint, publish or vend the same . . .
 - 1 Stat. 124 (emphasis added).

US COPYRIGHT LAW: 1831

- Sec 8. *And be it further enacted*, That nothing in this act shall be construed to extend to prohibit the importation or vending, printing, or publishing, of any map, chart, book, musical composition, print or engraving, written, composed, or made, by any person not being a citizen of the United States, nor resident within the jurisdiction thereof.
 - 4 Stat. 436.

US COPYRIGHT LAW: 1837

**24th CONGRESS,
2d Session.**

[134]

PETITION

OF

**THOMAS MOORE, AND OTHER AUTHORS OF GREAT
BRITAIN,**

*Praying Congress to grant to them the Exclusive Benefit of their Writ-
ings within the United States.*

FEBRUARY 2, 1837.

Referred to a select committee, consisting of Messrs. Clay, Preston, Buchanan, Webster,
and Ewing of Ohio, and ordered to be printed.

*Address of certain Authors of Great Britain to the Senate of the United
States in Congress assembled,*

US COPYRIGHT LAW: 1837

- Twice as many literary authors in England as in the United States, while the United States published “three or four books” for every one published in England
- 4 arguments:
 - Profits from British works “wholly appropriated” by US booksellers
 - Mutilation/alteration, w/retention of author’s names
 - **American authors undercut**
 - American public suffers from uncertainty of accuracy of foreign works

US COPYRIGHT LAW: 1838

- Committee on Patents, June 25, 1838:
 - Copyright “has never been regarded as property standing on the footing of wares or merchandise”
 - “international copyright, in strict sense, has no existence.”
 - “worthless books . . . would, from their comparative cheapness, find their way into every hamlet and cottage in the country, while more useful and valuable books, in the hands of monopolizing publishers, would, from their very high price, have but a restricted sale.”
 - “It is quite apparent that all unfavorable competition is between American and British publishers, and that it does not exist, certainly to any considerable extent, between American and British authors.”
- Recommendation against passage, which killed the bill

CONFEDERATE COPYRIGHT: 1861

- Confederate Constitution: February 8, 1861
 - Identical IP Clause
- Most Southerners “expected that other countries, especially Great Britain, the primary consumer of the South’s primary source of wealth, cotton, would immediately recognize the Confederacy as an independent nation.”
 - Melissa J. Homestead, *American Women Authors and Literary Property, 1822-1869*, at 200 (2005).

CONFEDERATE COPYRIGHT: 1861

- March 7, 1861:
 - Whereas Great Britain, France, Prussia, Saxony, and other European powers have passed laws to secure to authors of other States the benefits and privileges of their copyright laws, upon condition of similar privileges being granted by the laws of such states to authors, the subjects of the powers aforesaid: Therefore be it

Resolved by the Congress of the Confederate States, That the President be, and he is hereby, authorized to instruct the commissioners appointed by him to visit the European powers, to enter into treaty obligations for the extension of international copyright privileges to all authors, the citizens and subjects of the powers aforesaid.

- *Journal of the Provisional Congress of the Confederate States of America*, at 118 (Mar. 7, 1861).
- May 18, 1861: Confederate Copyright Act passed (enacted May 21)

CONFEDERATE COPYRIGHT: 1861

- Substantially similar in form and substance to the copyright act of the Union at that time:
 - Same general formalities
 - Same term (28 years, plus a 14 year renewal term)
 - Same scope of protection (maps, charts, books, musical compositions, prints, and engravings)
 - Same enforcement provisions

CONFEDERATE COPYRIGHT: 1861

Provision	US Copyright Act (1831)	Confederate Copyright Act (1861)
Authors & their executors have sole copyright for 28 years	Sec. 1	Sec. 1
Renewal of privilege for 14 years	Sec. 2	Sec. 5
Publication of renewal	Sec. 3	Sec. 6
Formality requirements – deposit	Sec. 4	Sec. 2, Sec. 4
Formality requirements – notice	Sec. 5	Sec. 3
Fees due to Clerk of Court	None	<u>Sec. 8</u>
Recordation of transfers	None	<u>Sec. 7</u>
Penalty for infringement in books	Sec. 6	Sec. 10
Penalty for infringement in prints, maps, musical compositions	Sec. 7	Sec. 11
Privilege Restricted to citizens	Sec. 8	Sec. 12
Privilege Extended to non-citizens	None (see Sec. 8)	<u>Secs. 18-19</u>
Publication of manuscripts without consent	Sec. 9	Sec. 13

CONFEDERATE COPYRIGHT: 1861

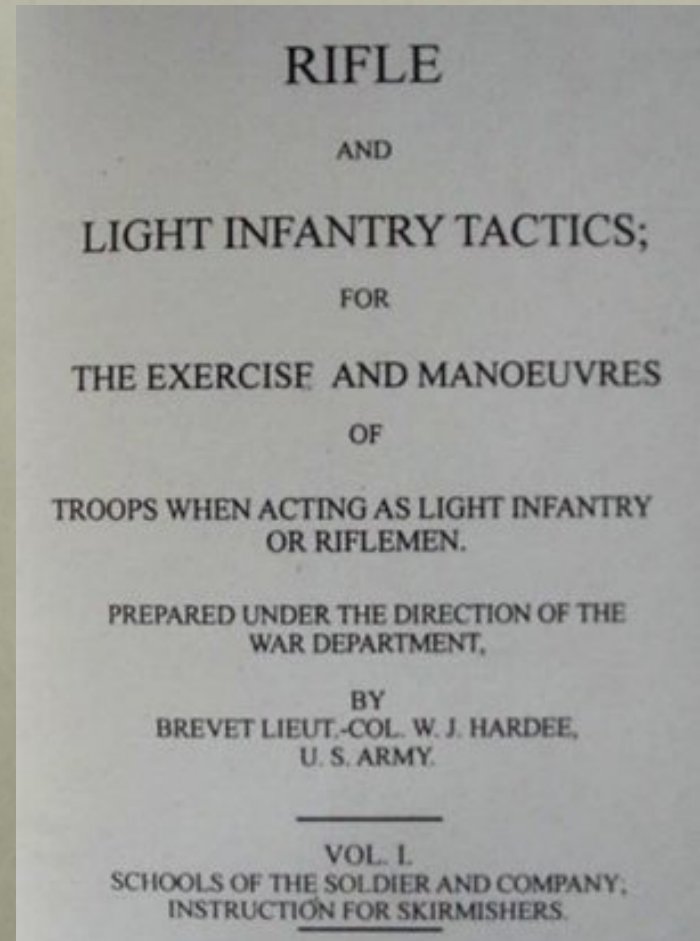
Provision	US Copyright Act (1831)	Confederate Copyright Act (1861)
Jurisdiction of the district courts to grant injunctions; writ of error or appeal	None	<u>Sec. 9</u>
General issue (court formalities)	Sec. 10	Sec. 15
Penalty for false entry of copyright	Sec. 11	Sec. 16
Costs	Sec. 12	None
Statute of Limitations	Sec. 13	Sec. 17
Repeal of Copyright Act of 1790 & 1802 Amendment	<u>Sec. 14</u>	None
Extension of Act to existing copyrights	<u>Sec. 15</u>	None
Extension of term of pre-existing copyrights	<u>Sec. 16</u>	None
Copyright extended to representation of dramatic compositions, damages for infringement	US Copyright Act Amendment, August 18, 1856	Sec. 14

CONFEDERATE COPYRIGHT: 1861

- Sec. 18. *Be it further enacted*, That all the rights and privileges allowed by this act to authors, composers, and designers, citizens of the Confederate States, be and are hereby extended to authors, composers, and designers, citizens or subjects of any foreign State or power, by whose laws like rights and privileges are granted to the citizens of this Confederacy, on the following conditions, viz.: *First*, that copy-rights shall be applied for in this Confederacy within four months from the time of the publication of the original in the foreign State to which the applicant owes allegiance. *Second*, that the actual and *bona fide* publication of the book or other thing for which copy-right is sought, shall be commenced within the limits of this Confederacy within six months from the date of the granting of such copy-rights. On failure to comply with either of these conditions, all the rights and privileges attaching to the copy-right granted, shall cease and be of no effect.
- Sec. 19. *Be it further enacted*, That all reprints or publications of books, maps, charts, musical and other compositions and designs, for which copy-rights may be granted under the provisions of the foregoing section, made or had in any State or country, denying the privilege of copy-right to the author, composer or designer thereof, shall not be introduced for sale into the Confederate States; and any person introducing or selling such reprints, shall be liable to all the penalties herein before prescribed for a violation of copy-rights.

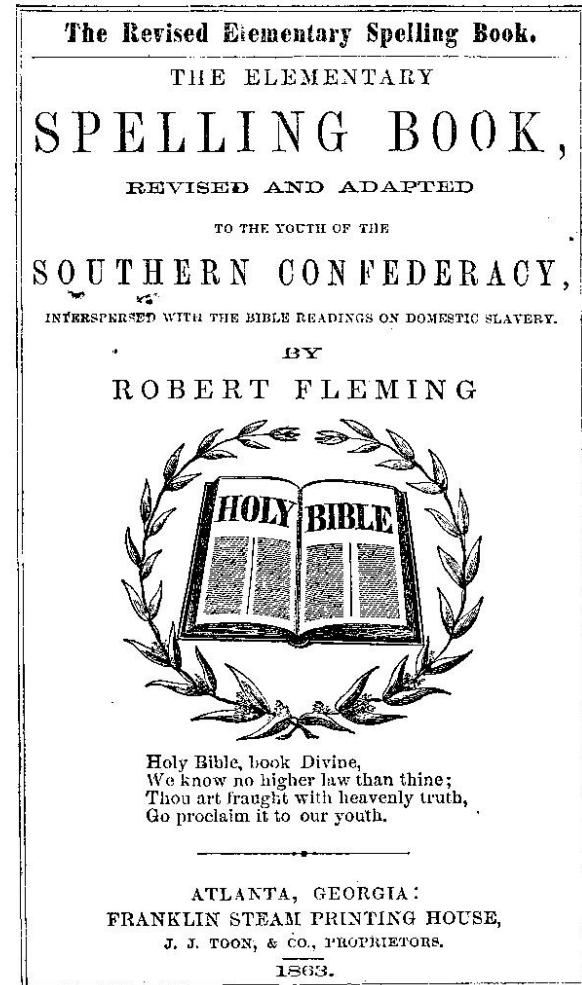
CONFEDERATE COPYRIGHT: 1863

- Amendment to Copyright Act:
April 18, 1863
 - Extended Confederate copyright protection to works originally registered in the North
 - Granted full authorship rights to a Confederate co-author or co-owner, where the primary owner of the work was a citizen of the North
 - Applied prospectively
- *Goetzel v. Titcomb*



EFFECTS

- 122 titles registered from May 4, 1961 and March 30, 1965
 - Patriotic musical compositions
 - Fictional works about the Civil war
 - Nonfiction works about the Civil war (histories, biographies, etc)
 - Schoolbooks for the Confederate schoolchild



EFFECTS

- Britain remained neutral, though mostly due to the failure of King Cotton diplomacy and Confederate military defeats



EFFECTS (LONG-TERM)

- International copyright protection would finally be adopted in the US in 1891 (Chace Act)
- All 122 titles registered under the Confederate Copyright Act were transferred to the US Copyright Office in 1870
 - Technically in contravention of *Williams v. Bruffy* 96 U.S. 176 (1878)

LESSONS