

THE CATO 100

ACCORDING TO STEPHEN MOORE and the late Julian Simon, the graph on the previous page – one of many in their book, *It's Getting Better All the Time: 100 Greatest Trends of the Last 100 Years* – shows that OSHA and other government agencies “have had almost no impact on the trend toward greater safety.” Their reasoning seems a little sloppy, but it is refreshing to read something filled with good news for once.

Stephen Moore & Julian Simon, *IT'S GETTING BETTER ALL THE TIME 174-75* (Cato 2000).

PIRATES OF COPYRIGHT

IN THE FIFTH EDITION of his *Copyright Book*, William S. Strong extols the virtues of today's vigorous international copyright protection scheme: “As international trade in copyrights becomes more and more valuable – in science, software, and entertainment – this system will likely prove to have been not merely fair-minded but foresighted as well.” As Strong reports, however, the United States has only lately become the Pooh-Bah of intellectual property protection. Today, the U.S. objects strongly to the injustice of uncompensated use of intellectual property and struggles mightily to overcome the irresponsibility of governments that fail to vigorously protect the value of American brainpower. But for most of the past two centuries it was Uncle Sam who was the international copyright scofflaw-in-chief.

Edward Samuels of New York Law School has a new book, *The Illustrated Story of Copyright*, that captures the villainous performance of the U.S. as the Napster of the 19th century. With the aid of a 1944 Magnavox advertisement commemorating Gilbert and Sullivan, Samuels recalls their infuriation with Yankee pirates:

The entire English-speaking world surrendered to *H.M.S. Pinafore*. In 1879 an American newspaper reported, “At present, there are forty-two companies playing *Pinafore* about the country. Companies formed after 6 p.m. yesterday are not included.”

Yet from this unprecedented American success, not one penny of profit came to Gilbert and Sullivan. In the absence of an international copyright law, any unscrupulous producer could “pirate” the words and music.

To overcome this situation, the famous partners came to the United States and staged an “Authorized Version.” With Sir Arthur Sullivan conducting the orchestra, and William Gilbert directing the performance, the official *Pinafore* received an ovation from music lovers of old New York.

Samuels continues the story with Gilbert's return a few years later to conduct the American premiere of *The Mikado*, including the composer's entreaty to the audience at the end of the show:

The talented ladies and gentlemen who form this company have worked with an enthusiasm and good-will impossible to praise too highly and difficult to acknowledge as we would wish. We should have been grieved indeed, had you received your first impressions of our opera from a spurious imitation ... in which the music from having been made up from a pianoforte arrangement must necessarily be mutilated and be a misrepresentation of the meaning of the composer. ... It may be that some day the legislators of this magnificent country, which I have lately traversed from East to West, may see fit to afford the same protection to a man who employs his brains in literature and art that they do to one who invents a new beer tap or who accidentally gives an extra turn to a screw, doing away with the necessity of boring a hole first. In that day those unfortunate managers and publishers who, having no brains of their own, are content to live by – well, annexing the brain property of others, will be in an embarrassing and pitiable condition, and I for one will promise them my warmest sympathy. But even when that day comes, as I hope and believe it will come, we,

the authors and creators, shall still, as we do now, trust mainly to the unerring instinct of the great public for what is good, right, and honest, and we shall still be deeply grateful, as I am tonight to you, ladies and gentlemen, for your cordial appreciation, your quick sympathy, and your generous recognition of our efforts to interest and entertain you.

At the time, the *New York Times* editorialized its contempt for Gilbert's complaint. Nowadays, the *Times* objects to the tendency of U.S.-based British correspondents to "borrow" large chunks of American journalistic

work product and publish it as their own in their hometown papers. *Brill's Content* quotes the deputy foreign editor of the *Times* describing the practice as "bordering on theft." The original Pooh-Bah had the right retort, "It revolts me, but I do it" – for the money.

William S. Strong, *THE COPYRIGHT BOOK* 298 (MIT 5th ed. 1999); Edward Samuels, *THE ILLUSTRATED HISTORY OF COPYRIGHT* 235-36 (St. Martin's 2000); *International Quote-Lift*, *BRILL'S CONTENT*, Apr. 2001, at 36; William S. Gilbert & Arthur S. Sullivan, *THE MIKADO*, Act I (1885). 