

AFD Ep 414 Links and Notes - You Wouldn't Steal a Book [Rachel/Bill] - Recorded Feb 20, 2022

Until nearly the end of the 19th century, the whole English-language publishing industry was basically Napster for Books as soon as they hit an international border where copyright protections ended. This week we're talking about literary publishing in the US in the late 19th Century, and how rampant book piracy in both the United States and the United Kingdom led to the passage of the International Copyright Act of 1891, also known as the Chace Act. In the era that follows, we see the formative mergers of the dominant corporate publishing houses that are still around today, much like the other industry titans of the period we've explored in other episodes, probably most comparably [our March 2021 music industry episode](#). We'll also discuss one of the most famous authors of the time, Mark Twain, and how piracy affected him, as well as the role of typographical unions in the passage of the Act, and how they affected American sales of British authors.

https://en.wikipedia.org/wiki/International_Copyright_Act_of_1891 (the first U.S. congressional act that extended limited protection to foreign copyright holders from select nations. Many of these nations entered mutual copyright protection agreements with the US.)

- *Background: During the time when the United States was just beginning to develop its own literary tradition, the nation refused to protect foreign works. As a result, American works were unprotected abroad and domestic publishers had to compete with each other for cheap editions of foreign works. Prior to the International Copyright Act, the first national copyright law was passed in 1790 and provided a copyright protection for 14 years, but only for authors who were citizens or residents of the United States. In order to get copyright protection in the rest of the world, American authors were required to gain residency in the country in which they desired copyright protection. For example, Mark Twain obtained residency in Canada to protect his publication of *The Prince and the Pauper*.*
- *To protect foreign literature in the United States, British authors would have an American citizen serve as a collaborator in the publishing process, and then have the book registered in Washington, D.C. under the collaborator's name. It was not until the 1830s that the pressure to extend American copyright to foreign authors first developed. Both American and British authors and publishers joined forces and pushed for a bilateral treaty between the United States and England. Famous authors such as Charles Dickens came to the United States to show their support for international copyright. Their biggest problem was American printers that already were protected by a high tariff on imported works, and who had no wish to pay royalties to English writers or publishers.*
- *The United States discussed international copyright with Great Britain over the years. Congress requested correspondence to this effect in 1842. There was a proposed treaty in 1853 under Millard Fillmore, and consideration of its ratification continued into an extension provided during Franklin Pierce's presidency in 1854.*
- *Nonetheless, in the United States, only works published in the United States could be restricted with copyright. Authors including Mark Twain, Louisa May Alcott, Edward Eggleston, and Bill Nye wrote letters in the mid-1880s to the Century requesting international copyright. These letters to the journals had a strong effect on this issue, as did the American Copyright League that was formed in 1883. The League was a great supporter of an International Copyright Act and, at the Madison Square Theater in 1885, the League sponsored readings by American authors in aid of the League's cause.*
- *In 1885, United States Senator Joseph Roswell Hawley introduced a bill aimed at extending copyright to foreign authors for consideration by Congress. A chief difference between the Hawley Bill and the eventual Chace Bill was Hawley's removal of publisher and book-sellers' interests in the copyright process. It was ultimately unsuccessful,*

though Mark Twain involved himself in the lobbying process and influenced President Grover Cleveland's thinking on the matter. Cleveland asked Congress for legislation to this effect in his State of the Union address that December.

- There's sort of a mythology that Mark Twain was bankrupted by pirated sales costing him revenue, especially by Canadian printers who could also get copies into US markets. While it's true he did lose a significant amount of royalties that way, he actually went into bankruptcy because he was a horrible investor and lost all his money (and his wife's!) on a couple pretty bad bets related to the publishing industry. So, had he received those royalties, he probably would have lost those, too. He did get involved in the issue to some degree before the 1891 act, including making visits to Canada specifically for the purposes of in-person registration of his copyrights there to try to reduce piracy by Canadian printers that often shipped royalty-free copies to the northern US:
https://en.wikipedia.org/wiki/Mark_Twain#Canadian_visits We probably discussed on a different episode at some point Twain's period of trying to straighten out his finances with the help of the guy from Standard Oil. But that bankruptcy happened after the 1891 legislation.

<https://www.uspto.gov/learning-and-resources/newsletter/inventors-eye/mark-twains-copyright-fight>

- *In 1885 Clemens's [i.e. Mark Twain's] Hartford, Connecticut, neighbor, Senator Joseph Roswell Hawley, introduced a bill that would extend copyright protection to foreign authors—another aspect of the issue that American authors believed would protect them from being undercut by foreign publications. The bill ultimately failed, but not before Clemens, who had testified in its favor before the Senate Committee on Patents, had enlisted the aid of President Grover Cleveland. Clemens wrote the president: "Although a most worthy cause has failed once more we who are interested have one large consolation: that the country has at last had a resident who appreciated its importance."*
- Even after the passage of the Chace Act, Twain still lobbied for the extension of copyright, both in the UK and the US. *In 1900 Clemens actually appeared before a committee of Britain's House of Lords to testify in favor of copyright protection, as he told the story later during his 1906 "white suit" speech:*
- *"When I appeared before that committee of the House of Lords the chairman asked me what limit I would propose. I said, "Perpetuity." I could see some resentment in his manner, and he said the idea was illogical, for the reason that it has long ago been decided that there can be no such thing as property in ideas. I said there was property in ideas before Queen Anne's time; they had perpetual copyright. He said, "What is a book? A book is just built from base to roof on ideas, and there can be no property in it." I said I wished he could mention any kind of property on this planet that had a pecuniary value which was not derived from an idea or ideas."*
- *By December 1906, Clemens was willing to settle for less than perpetuity. Speaking in his glowing garb before the Committee on Patents of the Senate and the House, he hoped to see the 42-year copyright period extended "to the author's life and fifty years afterward."*
- *Four years later, in 1910, Clemens was out of the struggle. By then he had seen and praised the passage of the Copyright Act of 1909, which allowed for renewal of copyright, bringing it to a total of 56 years. It was*

not until 1976 that American authors were finally granted Mark Twain's "life and fifty years afterward."

The 1891 International Copyright Act: Lobbying Behind the Scenes by James J. Barnes, [The Papers of the Bibliographical Society of America Volume 115, Number 3 September 2021](#)

- Prior to the Act getting passed, authors and publishers on both sides of the Atlantic were anxious to get some form of copyright protection passed. Despite the urgency from the publishing industry, Congress wasn't moved by their pleas: *Two Anglo-American copyright treaties were introduced in the US Senate in 1853–54 and 1880–81 where they had the advantage of not requiring approval by both houses of Congress but only two-thirds of the members of the Senate; however, neither succeeded. Additionally, eleven bills granting international copyright were introduced between 1843 and 1886, but all failed to rally sufficient support.*
- Piracy was rampant. Americans pirated nearly all of Charles Dickens's work, while British people were reading pirated editions of American authors, such as James Fenimore Cooper and Washington Irving. *Especially noteworthy was the wholesale reprinting in Britain of more than a million copies of Harriet Beecher Stowe's Uncle Tom's Cabin.*
- Meanwhile, many European nations were signing agreements that set up reciprocal copyright protections. *In 1886 the United States sent an observer to Berne, Switzerland, where ten countries (Great Britain, France, Germany, Belgium, Spain, Switzerland, Italy, Haiti, Liberia, and Tunisia) met and agreed to establish mutual copyright protection, but Congress showed little interest in joining the Convention.*
- American authors and publishers formed a lobbying group in 1883 with the goal of getting a law passed. They called themselves the American Copyright League, and many prominent authors joined. Two bills that the League gave their support to were Connecticut Senator Joseph Roswell Hawley's (introduced January 6, 1885) and Rhode Island Senator Jonathan Chace's (introduced January 21, 1886). *Both bills, Hawley's and Chace's, were referred to the Senate Committee on Patents, widely acknowledged as a legislative graveyard. Surprisingly, they were given joint hearings on 28–29 January, 12 March, and 11 April 1886, and the Chace bill was recommended, whereas the committee was mute concerning the Hawley bill.* The League ultimately gave their official endorsement to the Chace bill due to its inclusion of a manufacturing clause (where any copyrighted work had to be printed in the United States), which the League recognized as crucial to the bill's passing because the backing of the typographical unions was needed.
- Although it took several years, and a couple reintroductions, Chace's Act finally passed March 3, 1891, and went into effect July 1, 1891.

https://archive.ph/20121212232001/http://etext.virginia.edu/etcbin/toccer-sb?id=sibv045&image_s=bsuva/sb/images&data=/texts/english/bibliog/SB&tag=public&part=16&division=div THE CHACE ACT AND ANGLO-AMERICAN LITERARY RELATIONS by James L. W. West III, *Studies in Bibliography*, Volume 45 (1992)

- (Some effects of the Chace Act on Anglo-American Publishing)
- *The practical effect of the Chace Act was to require American publishers to decide, early in the game, whether they wished to issue a British title in a copyrighted edition in the States. If a British book were apt to do well on the American market, it was necessary to protect it by copyright; this meant that the American publisher had to invest his own capital and have the book manufactured by domestic typesetters and printers. If a British book were expected to sell only moderately well in America, copies could still be imported from the British publisher (or, less frequently, plates could be sent over), but the book, when issued, would be in the public domain. This made both British and American*

publishers hesitate over marginal titles. The effect over the long term, according to British publisher Stanley Unwin, was that only about five percent of the books published in Great Britain, exclusive of fiction, were also published and copyrighted in separate editions by American publishers. Consignments of other British books, printed from type set in Great Britain, were handled by American publishers and distributors in small quantities, but the numbers were not significant enough to make a very great difference to British houses. Thus the American printing industry was protected from British competition, and the American book market remained relatively inaccessible to British publishers.

- *The only British publishers to benefit markedly from the Chace Act were those who had offices on both sides of the Atlantic. For example, John Lane, founder of The Bodley Head, used the new law to considerable advantage. He opened a New York branch in 1896; thereafter, any of his titles with potential for both the British and American markets were manufactured in the United States and copyrighted in Washington, while overrun sheets were sent to England, bound there, and copyrighted for the British market. Lane thus avoided the expense of a separate British typesetting.*
- *A somewhat less severe effect of the Chace Act was to impose a modified system of British spelling on many books that were manufactured in the United States. American readers, as a rule, seem not to have been particularly sensitive to British orthography and usage. Thus it appears to have had little effect on the reception or sales of a book in America if it were printed from British plates or were composed of overrun British sheets. (Such books were not protected by U.S. copyright, as noted earlier.) The reverse, however, was not true: British reviewers and readers apparently did complain if books with American spelling and usage were sold to them in British bookstores. American literary agents, who did a good bit of transatlantic business, were very much aware of the problem. New York agent Paul Revere Reynolds, writing to publisher Henry Holt in March 1897, for example, specified that a book destined for joint American/British publication "must be set with English spelling." Reynolds added, "This is absolutely essential as Heinemann is not willing to take a book except on those conditions. Otherwise English reviewers slash a book and hurt its sale.*
- *The British authors most seriously damaged by the manufacturing clause were young writers who were as yet without reputation in America. In order to secure U.S. copyright for the books of these authors, American publishers ideally had to decide before publication to have the texts set and printed in the States. For unknown authors, however, this was impractical and financially risky. If, therefore, a book blossomed late in England and an author's potential on the American market were consequently recognized only after a small consignment of British-set copies had been imported and sold in the States, then there was no way ever to secure copyright for that writing in America. The author's early work was in public domain, available to any publisher. Even if the author had a subsequent copyrighted success in the U.S., his early writing remained unprotected and was sure to be pirated.*
- The following is a timeline of presidents granting copyright recognition to other countries under the terms of the new 1891 legislation:
 - July 1, 1891: Belgium, France, Switzerland, Great Britain and its colonies by Benjamin Harrison
 - April 15, 1892: German Empire by Benjamin Harrison
 - October 31, 1892: Italy by Benjamin Harrison
 - May 8, 1893: Denmark by Grover Cleveland
 - July 20, 1893: Portugal by Grover Cleveland
 - July 10, 1895: Spain by Grover Cleveland
 - February 27, 1896: Mexico by Grover Cleveland

- May 25, 1896: Chile by Grover Cleveland
- October 19, 1899: Costa Rica by William McKinley
- November 20, 1899: The Netherlands by William McKinley
- November 17, 1903: Cuba by Theodore Roosevelt
- July 1, 1905: Norway by Theodore Roosevelt
- [Bill] This article includes a table of origins for the major publishing conglomerates, some of which are American and some of which are British, and in many cases exist as mergers of companies in both countries to facilitate control of the markets and rights in both centers of the English-language world. These companies originate in either the early 19th or early 20th centuries. Basically there was one wave of companies that began in the First Industrial Revolution period, like the 1810s to 1840s or so and then merged to form modern multi-state or multinational corporations around the time of the international copyright reforms. Then there was another wave of companies formed in the 1920s or 1930s alongside further evolutions of the industry and mass-market production of written consumer goods beyond books and newspapers. (Note: The article was written before two more of them recently merged.)
<https://www.laurentaylorshute.com/letters-from-the-editor/everything-you-need-to-know-about-the-history-of-publishing-in-5-minutes>
- Additional materials:
 - https://en.wikipedia.org/wiki/History_of_copyright
 - https://en.wikipedia.org/wiki/Copyright_law_of_the_United_States

Speculation from Bill: We've talked a lot in past episodes about the rise of the modern corporation in the environment of the post-Civil War United States where corporations existed across state lines and then across national borders, as transportation and communication costs as well as legal and financial reforms made these reorganizations possible for the first time – and these titans proceeded to drive the competition out of business or buy it up, following [the Standard Oil model](#). For this industry, copyright/anti-piracy reforms are presumably one big key to allowing formation of the modern, recognizable big corporate publishing houses that still exist to present. And of course the urgency for those reforms got greater and greater as the physical production/materials costs continued to drop with the mid-19th century invention of cheaper paper and the 1880s invention of Linotype machines, and so on. (In terms of market demand, literacy would have been quite widespread already of course in the US but still growing, and consumer advertising was taking off, as we discussed in [our canned foods episode](#).) This new focus on copyright law reform tracks with the overall trend over several centuries where unauthorized copying books effectively didn't happen or (due to vanishingly low volume) didn't matter until the printing press and then mattered more and more as costs kept dropping. (See also: the chapter on the printing industry of the Renaissance in Patrick Wyman's "The Verge")

Another thing to consider or speculate on: Did the 1891 law's timing after many failed attempts for decades stem from the Cleveland vs Harrison/McKinley battles of the late 1880s and 1890s over whether or not to finally lower or end the federal protective import tariff, which had previously somewhat shielded US printers from foreign competition?

https://en.wikipedia.org/wiki/Tariff_in_United_States_history#Cleveland_tariff_policy