

# 22 Historical Overview of Formation of International Copyright Agreements in the Process of Development of International Copyright Law from the 1830s to 1960s

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*This research aimed to clarify how the international agreements for copyright protection have been formed by tracing the debates that have been held in the process of the establishment and development of international copyright law from the 1830s when moves toward establishing international copyright law and treaties became active in Britain to 1967 when the World Intellectual Property Organization (WIPO) was established. As commonly regarded by copyright history researchers, copyright law of the 20th century and that of today heavily rely on copyright law from the 19th century, a time when copyright was established as an economic right. It was confirmed in this research that international copyright treaties developed step-by-step from bilateral treaties into multilateral treaties and acted as a driving force in raising the level of copyright protection in various countries. It was also found that, during the period until the establishment of the Berne Convention and the U.S. International Copyright Act (1891), literary authors from various countries participated directly and actively in discussions on copyright based on the awareness that policies on copyright law greatly affected the quality of the works produced and the culture of the relevant countries.*

## I Introduction: Purpose and problem awareness of the research

The purpose of this research is to clarify how the international agreements for copyright protection have been formed by tracing the debates that have been held in the process of the establishment and development of international copyright law from the 1830s to 1967—the year in which the World Intellectual Property Organization (WIPO) was established. Of the period covered by this research, the debates during the time leading up to the establishment of the Berne Convention of 1886 and establishment of the International Copyright Act of 1891 in the United States that extended copyright protection even to non-U.S. citizens who have satisfied certain requirements were the most heated debates in copyright history. For example, in this period, writers as well as artists, publishers, typesetters, printers, and bookbinders actively appealed to politicians and the

Congress or the Parliament and presented arguments on copyright protection through newspapers, magazines, books and other media.

As commonly regarded by copyright history researchers, copyright law of the 20th century and that of today heavily rely on copyright law from the 19th century, a time when copyright was established as an economic right. Indeed, the Berne Convention was drafted based on the ideas of previous bilateral copyright treaties that were concluded between various countries with the aim of resolving the problems in these treaties. Furthermore, these treaties were amended based on the Berne Convention after it was established in 1886; and such international agreements as the Universal Copyright Convention of the U.N. Educational, Scientific and Cultural Organization (UNESCO) and the TRIPS Agreement of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) of the

World Trade Organization (WTO) were formed to supplement the Berne Convention, giving consideration to the problems in the Berne Convention and responding to the changing demands of the times.

This research aims to clarify the process of development of international agreements from the 19th century to the 20th century. While this research is a historical study on the process of the establishment and development of international copyright law, it also aims to offer material for debates on whether the information that will be distributed through future information reproduction and distribution technology should be protected under the conventional copyright law.

## **II Growth of interest in international copyright in the 1830s and conclusion of bilateral treaties**

### **1 Developments in the U.K. in the 1830s**

In the second half of the 1830s, the need for agreements on international copyright protection came to be recognized in the U.K., and an international copyright bill presented to Parliament by Charles Poulett Thomson (1799-1841) was enacted at the end of July 1838. This act extended the same protection as that for works published in the U.K. to works first published overseas, as long as they were registered and their copies were deposited in the U.K. by the time limit specified by Order in Council. Although the act of 1838 could not actually serve as a basis for concluding bilateral treaties until the 1844 amendment, this act became the first British international copyright act to open up the possibility for concluding bilateral treaties on copyright protection. As a result, the U.K. concluded bilateral agreements on copyright protection with Prussia and other German states from 1846 to 1847, with France in 1852, with Belgium and Spain in 1854 and with Sardinia in 1860.

### **2 Changes in the awareness of authors**

In the 19th century, there was growing

awareness among writers to take actions on defining what copyright law ought to be, and many writers including William Wordsworth (1770-1850), Robert Southey (1774-1843), and Charles Dickens (1812-1870) actively called for revision of national and international copyright systems. They considered that the way in which copyright was protected affected the quality of the works produced, and exerted efforts to establish their own economic rights as authors and to develop the culture of their country and pass it on to future generations. From the beginning of the 19th century until the establishment of the Berne Convention, creators themselves worked most actively and directly toward revision of copyright law in the history of copyright.

### **3 Actual situation of publication of pirated copies**

Both in Europe and the U.S., publishing other countries' publications had been a common practice, so there was hardly any awareness that such an act was problematic until the 19th century. However, there had been a rise in awareness since around the 1830s that the complete lack of payment to authors for their works published in large amounts overseas was a problem. Works from the U.S. and other countries were also being published without the authors' permission in the U.K.

### **4 Mutual international copyright treaty with Prussia**

While the British Copyright Act was established in 1709, German writers could not enjoy statutory copyright system for more than one century after that. However, Prussia took the initiative to conclude treaties on copyright protection with the other states of the German Confederation from 1827 onward, and in 1846, it concluded an international copyright treaty with the U.K. Due to the negotiations in concluding this treaty, the subject matter protected under the U.K. International Copyright Act was further expanded to cover artistic works, in addition to literary works.

## **5 Bilateral agreement with France**

Although treaties with Prussia and other German states turned out to be concluded earlier, it was in fact France that first proposed a bilateral agreement on copyright protection to the U.K. When concluding an international copyright treaty with France in 1852, revisions were made to the U.K. Copyright Act on the handling of translations. The handling of translations and adaptations was the focus of the negotiations in concluding the treaty.

## **6 Summary**

Development of the international copyright act can be regarded to have been in three phases. The first phase was when law was developed to unilaterally recognize national copyright protection for people of other countries as well, as long as they satisfied certain requirements, without specifying the other country, such as the 1838 International Copyright Act of the U.K. The second phase was when bilateral treaties were concluded, such as between the U.K. and Germany, and between the U.K. and France. This was followed by the third phase where multilateral treaties were concluded, as represented by the Berne Convention.

Bilateral international copyright treaties had a large influence on the U.K. national copyright law. The 1838 International Copyright Act was amended to extend copyright protection not only to literary works, but also to artistic works in order to conclude a treaty with Prussia; and some provisions of the 1844 International Copyright Act were abolished to recognize protection for translations that satisfy certain requirements as well, as a result of negotiations with France. Also, the process of learning about the level of protection of other countries' copyright laws and recognizing the low level of protection within the U.K. contributed to raising the level of copyright protection within the U.K.

## **III Developments toward the establishment of the International Copyright Act in the U.S.: Focusing on domestic circumstances and situations**

### **1 First moves in the 24th Congress, 2nd Session, U.S. in 1837**

Almost simultaneous to the moves toward establishment of international copyright law in the U.K., Senator Henry Clay made the first proposal to the U.S. Congress to establish an international copyright law on February 2, 1837. A select committee was formed in response to his proposal, and a bill was presented, but the bill could not proceed to the third reading during the session of the Congress.

Given that it took more than 50 years from then for the act commonly known as the Chace Act of 1891 to be established in the U.S., it is very unlikely that international copyright law would have been established in the U.S. at that point even if the Congress session had ended on a later date.

### **2 Movements in the 25th Congress**

Soon after the 2nd session of the 25th Congress started on December 4, 1837, Senator Clay presented a copyright act amendment bill again to the Senate on December 13. The bill was read twice and was referred to the Committee on Patents and the Patent Office. However, starting with a petition from Philadelphia citizens opposing the bill on January 15 of the following year, many petitions opposing the international copyright bill were presented both to the Senate and the House of Representatives.

When the International Copyright Act of 1838 was established in the U.K., the U.K. government sent this act to the U.S. through Andrew Stephenson, the U.S. Ambassador to London, for preliminary negotiation. However, this did not lead to any substantial developments.

### **3 Petition from Washington Irving et al.: 27th Congress**

In the 2nd session of the 27th Congress (December 6, 1841 to August 31, 1842), a petition by 24 U.S. citizens including Washington Irving (1783-1859) seeking establishment of an international copyright treaty was presented to the House of Representatives and the Senate, prompted by the visit of Charles Dickens to the U.S. In response, a select committee was organized in the House of Representatives.

Dickens had high expectations for the conclusion of a copyright treaty with the U.S., but the impression that an international copyright agreement would not be concluded easily was already starting to pervade in the U.S.

### **4 Establishment and development of the reprint market**

The period from 1800 to the 1860s was referred to as the "Great Age of Piracy," in which foreign works were published without the consent of the authors or paying them manuscript fees. In the first place, there was the Enlightenment idea that both U.S. independence and the French Revolution were realized because information and thoughts were freely distributed between people. So in the U.S., there seemed to be hardly any feeling of resistance against reprint itself. The recession beginning in 1837 also contributed to the active publication of British works in the U.S.

The primary reason that the U.S. did not consent to international copyright agreements including those on a bilateral basis and those on a multilateral basis such as the Berne Convention was that it was extremely difficult to predict the impacts of these agreements on U.S. industry.

### **5 The U.S. Constitution and copyright**

Article 1, Section 8 of the U.S. Constitution provides for the handling of intellectual property, and the U.S. first federal copyright act was established as early as May 30, 1790. In this manner, protection of copyrights and patents had been taken into

consideration in the U.S. since the time of its foundation. However, its primary purpose was to provide people an incentive to make cultural and industrial contributions that are necessary for the young country to achieve development, rather than to protect the rights of authors and inventors.

### **6 Establishment of American literature and international copyright law**

The main forces supporting international copyright law in the U.S. were writers. Publishers, which were only able to make small profits under the recession, were reluctant to publish the works of U.S. writers by paying copyright royalties. U.S. writers considered that such a situation was extremely detrimental to the U.S. in forming its own culture.

### **7 American Authors and British Pirates: Brander Matthews and Mark Twain**

In 1888, Brander Matthews and Mark Twain held a public debate in the *New Princeton Review* on the necessity for an international copyright law. Twain argued it was the author's fault for not taking the step to acquire copyrights in the U.K. and its colonies when the copyrights could have been acquired by publishing the work in the U.K. a day prior to its publication in the U.S., and staying in Canada, which was a British colony, on that day. Meanwhile, Matthews sought establishment of a completely reciprocal international copyright treaty. Their ideas were thus in clear contrast. Matthews thought that the establishment of a fair copyright protection system between the U.K. and the U.S. would free U.S. writers from the excessive competition with British writers, and would allow more U.S. writers' works to be published and read within the U.S.

### **8 Establishment of the 1891 International Copyright Act**

Although a large number of petitions in favor of international copyright law and those opposing it continued to be presented to the U.S. Congress from 1842 onward, none

led to concrete moves toward establishment of international copyright law. A change occurred in the movement toward establishing international copyright law when Harper & Brothers began to support international copyright law in the second half of the 1870s. Harper & Brothers judged it to be wiser to prevent other publishers' publication of reprints through an international copyright agreement with the U.K. than fighting a price competition with emerging publishers in the Midwest region.

The stagnant moves toward establishing international copyright law in the U.S. were stimulated by publishers' active attitude toward the idea, which began to be observed from around 1880, as well as acceleration of the moves toward establishment of multilateral international copyright law under the initiative of the Association Littéraire et Artistique (ALAI) in 1881. The bills were presented by Harper & Brothers, William Dorsheimer, Joseph R. Hawley and Chase, and these bills were deliberated. Finally, in March 1891, an international copyright law was established in the U.S.

## **9 Summary**

The U.S. was basically a user of intellectual property produced overseas at the time the moves toward the establishment of an international copyright law started in the 1830s. However, after undergoing the American Renaissance in the mid-19th century, which is said to indicate the U.S.' literary independence, the country achieved growth toward the 20th century, and transformed itself into an exporter of intellectual property in the field of not only literature, but also film and music by the 20th century. Just as writers including Matthews, Irving and Whitman had asserted, establishment of international copyright law was deeply related to the establishment and development of U.S. national literature and culture.

## **IV Establishment of the Berne Convention**

### **1 Initial moves toward establishment of multilateral treaties**

A considerable number of bilateral treaties had been concluded since the 1830s, but as Sam Ricketson points out, they were far from being systematic. In such a situation, moves toward the establishment of a multilateral international copyright treaty started in the mid-19th century under the French initiative.

The Congress on Literary and Artistic Property was held in Brussels in September 1858, drawing 300 participants, and discussions were held to consider the problems experienced in bilateral treaties. The resolution in this congress had a more idealistic color than the Berne Convention, but its content generally coincided with the matters that were subsequently stipulated in the Berne Convention.

### **2 Moves observed in the U.K.**

In 1875, the Royal Commission on Copyright was appointed to investigate desirable copyright law. Three years later, in 1878, the commission completed a report of more than 300 pages, which summarized the results of investigation and analyses on the U.K., colonial and international copyright. The report included recommendations on the protection of plays and music as well as the commission's view of desirable international copyright rules. The report indicated more realistic forms of copyright protection and treaty as well as concrete measures for simplifying or improving the procedures, showing effective countermeasures for the copyright-related problems at the time.

### **3 Establishment of the ALAI**

As a result of a conference hosted by *Société des Gens de Lettres* of France for 12 days starting June 17, 1878, Association Littéraire et Artistique (English name: International Literary Association; later renamed the Association Littéraire et Artistique Internationale [ALAI] in 1883)

was established.

Later, the association held a meeting in London in 1879, Lisbon in 1880, Vienna in 1881, and Rome in 1882 and held repeated discussions on a desirable international copyright treaty.

#### **4 ALAI conference in 1883**

In 1883 when the Paris Convention, a multilateral treaty on industrial property rights, was concluded, the moves toward establishment of an international copyright treaty also stepped up to a new phase on receiving Schmidt's proposal at the previous year's Rome meeting. In response to a request by a committee of the ALAI, the Swiss government agreed to holding an international conference in Switzerland. Numa Droz (1844-1899) was appointed as the person responsible for the conference.

After three days of discussion, a draft treaty consisting of 10 articles was created. Although this draft had some problems including a lack of provisions on the term of protection and on the limitation of the right of reproduction regarding adaptation and reproduction of artistic works, it became the basic foundation for creating the Berne Convention.

#### **5 International conferences from 1884 to 1886**

At the first diplomatic conference that started on September 8, 1884, delegations from 10 countries participated, and they attended the conference taking a cautious stance. Although Germany argued that there was the need to codify unified rules that the member countries should observe, and opposed protection of the works of authors who were not citizens of the member countries, Switzerland and other participating countries showed a negative view on this out of concern that this would make it more difficult for the countries to reach a general agreement on an international copyright treaty. Opinions were also divided on whether (i) the term of protection under the law of the country of origin should be applied, or (ii) the term of

protection under the law of the country in which protection is sought, but the conference decided on adopting the treatment referred to in (i). Discussions were also held on the procedure to receiving protection and how translations and adaptations should be protected, and a provisional text of the treaty was developed.

In 1885, 26 delegations from 16 countries, including the new participants—the U.S., Italy and Spain—attended the conference. The conference was held in Berne, Switzerland, and the provisions of the treaty to be signed in 1886 as the Berne Convention were drafted.

Countries had their respective opinions, such as Germany insisting on setting certain conditions that should be uniformly applied to all member countries, and France arguing that translations should be protected in completely the same manner as the original works. However, consideration was given so as not to hinder future accession to the treaty by countries with a low copyright protection level.

#### **6 Establishment of the Berne Convention**

The conference, held on September 6, 1886, was attended by 12 countries including the U.K., France, Germany and Switzerland. Japan and the U.S. also participated as observers. The Berne Convention was signed on September 9, 1886 by 10 countries.

The Berne Convention, which was established under the initiative of France, Germany and the U.K., was born in the old world and incorporated the values of the old world, and it undeniably lacked universality in the true sense. Nevertheless, this treaty, which was established after five years of careful discussion considering the problems involved in the bilateral treaties in the past, still remains to be one of the important basic agreements on international copyright today while undergoing regular revisions.

## **V International Copyright Law after Establishment of the Berne Convention**

### **1 The U.K. Copyright Act of 1911**

The Copyright Act, which was revised for the first time in about 70 years since 1842, indicated that the times of distributing information only through paper and performance were over. The act stipulated that copyright holders had monopolistic rights over publication and reproduction of their works, and had rights on dramatizing a novel or novelizing a drama. In addition, the term of copyright protection was stipulated as the author's lifetime plus 50 years after his/her death, in compliance with the Berne Convention as revised at Berlin.

### **2 The U.S. and the Berne Convention**

The establishment of the Berne Convention applied pressure onto the moves toward establishment of the International Copyright Act in the U.S. in 1891. However, even after the establishment of the International Copyright Act, the U.S. continued to refuse to join the Berne Convention. The reason is considered to be that the U.S. copyright law and the Berne Convention differed with respect to important features including the need for registration, protection or otherwise of moral rights, and the term of protection.

Nevertheless, even before the U.S. accession to the Berne Convention on March 1, 1989 (agreed on November 16, 1988), U.S. works were protected by the provisions of the Berne Convention in the convention's member countries including Canada and the U.K., as long as they were published in these countries at the same time as in the U.S. The fact that the U.S. was relying on the Berne Convention while not joining the Berne Convention itself generated conflict between the U.S. and the Berne Convention's member countries.

In light of this situation, the U.N. Educational, Scientific and Cultural Organization (UNESCO) established the Universal Copyright Convention in 1952 in

order to allow the U.S. and other non-members to the Berne Convention to participate in a basic agreement on international copyright protection.

### **3 Overview of revisions of the Berne Convention**

The Berne Convention has been amended seven times since its establishment in 1886, in Paris (1896), Berlin (1908), Berne (1914), Rome (1928), Brussels (1948), Stockholm (1967) and Paris (1971). The major trend was an increase in the number of member countries, expansion of the protected subject matter, and lengthening of the term of protection.

The important points of the revisions in Paris were: that protection of rights in translations and serial works was strengthened, and the possibilities for copyright protection were opened up for authors of non-member countries as well; and that conversion from a novel to a drama and from a drama to a novel was made subject to protection. Also, in order to make it easier to accede to the convention, accession to part of the convention was allowed in addition to accession to the entire convention.

With the revisions at the following Berlin conference, it was once again clearly indicated that original literary works, dramatic works, and artistic/musical works were to be protected by copyright, be they published or performed works, and that translations, adaptations, and musical arrangements were to be protected as original works. It was also provided that architecture, choreography, and pantomimes were subject to protection, new media such as automatic pianos (pianolas), gramophones, and cinematographs were covered as well, and in contrast to newspaper articles that could be freely reprinted unless the reprinting was clearly prohibited, articles of periodicals could not be reprinted without the authorization of the author. Above all, the most important change was that the term of copyright protection was stipulated to be at least 50 years after the death of the author.

At the Berne conference in 1914, a

stipulation was made to cancel protection for authors of any non-member countries that did not appropriately protect the works of member countries, as a measure against the situation where authors of the non-member U.S. were benefiting from the Berne Convention.

At the next Rome conference in 1928, five sectional meetings discussed the following topics: moral rights; radio broadcasting; right of automatic copying and compulsory license; cinematographic and photographic works; and industrially applied artistic works. Discussions were also held on the pros and cons of allowing partial accession to the convention, but in the end, the policy to allow partial accession was maintained.

At the conference held in Brussels in 1948, it was decided to set the term of copyright protection at 50 years after the death of the author, and to include cinematographic works, photographic works, and industrially applicable artistic works in protectable subject matter.

At the Stockholm conference in 1967, representatives of many developing countries participated, and presented the problems these countries were facing in enjoying the benefits of intellectual property. As a result of discussions, a protocol on copyright protection in developing countries was created. In addition, establishment of the World Intellectual Property Organization was decided, while the term of protection for cinematographic works was changed from 25 years to 50 years.

In the revisions at Paris in 1971, the provisions stipulating protection in developing countries that had been created as a protocol at the previous Stockholm conference was incorporated as an appendix to the main text of the convention.

#### **4 Establishment of the World Intellectual Property Organization**

Establishment of WIPO was decided at a conference held in Stockholm in July 1967. WIPO stipulates its objectives to be to promote the protection of intellectual property through cooperation among states,

collaboration with any other international organization, and administrative cooperation among the unions established under the conventions that are managed and run by WIPO. WIPO became a specialized agency of the United Nations in 1974. The purpose was to draw developing countries into the system of intellectual property. Although hardly any developing countries were members of the BIRPI, 47 developing countries, accounting for 57 percent of the member countries of the Paris Convention and the Berne Convention, had joined WIPO by 1970.

## **VI Conclusion**

From the 19th century until today copyright law has developed in the direction of strengthening the protection of authors. In the U.K., for example, it was in 1842 that the law stipulated copyright protection for 42 years from the first publication or for the lifetime of the author plus seven years, whichever was longer. Before that, the term of protection was 28 years from the first publication or for the lifetime of the author, whichever was longer, according to the 1814 Copyright Act. In addition, large amounts of pirated copies were published overseas at low prices without the consent of the authors. In those times, when authors' rights were much weaker than now, Wordsworth, Dickens and other writers insisted on an extension of the term of copyright protection. Their objectives were to secure economic rights in the outcome of their intellectual/spiritual activities, and to establish a copyright law that would provide an incentive to people to create works that could be called cultural contributions of true value, which would take time to be appreciated by the general public.

There were also developments where the national copyright laws of various countries underwent revisions in line with the conclusions of bilateral or multilateral treaties on copyright protection or negotiations for such treaties, which had taken place since the 19th century. One factor behind the revision of the U.K.



Copyright Act in 1842 after five years of discussion from the first presentation of the amendment bill was the government's wish to raise the U.K.'s low level of copyright protection, which had been a barrier in concluding a bilateral treaty with Prussia. After that, many more bilateral and multilateral international copyright treaties were concluded, with countries strongly asserting points that mainly involved their own interests (such as protection of artistic works in the case of Germany and protection of translations in the case of France) and making efforts to compromise on points that were of relatively low priority for them. In this process, the countries revised their copyright laws to comply with the international copyright laws, and this trend has continued until today. This research confirmed that international copyright laws have raised the standards of various countries' national copyright laws and acted as a driving force to strengthen copyright protection in these countries.

The author hopes that this report will prove to be helpful for future discussions on the move toward extending the term of copyright protection from the creator's lifetime plus 50 years to the creator's lifetime plus 70 years and how digital contents should be protected.