

# **The Gilded Page: How International Copyright Law Helped Create Mark Twain's International Success**

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## **Abstract**

This article explores the causes for the introduction of international copyright law at the end of the century, especially the book wars of the 1840s, and the effects it had on the publishing industry, specifically between Britain and the United States. Mark Twain's rise to prominence during this time is discussed as a by-product of the tensions caused by a relatively new American publishing industry and international book struggling to find its footing in a rapidly changing world. All of these ideas are then considered in how they set the stage for the publishing industry at the turn of the 20<sup>th</sup> century.

## **Keywords**

Mark Twain; Copyright; Book Wars; Regulation; Laws.

## Introduction

The publishing industry as we know it today is a relatively young invention. While printed and bound works have existed almost as long as the printing press, it was not until the end of the 19<sup>th</sup> century that the international industry which exists today began to take shape. In 1886, the Berne Convention established international copyright law in Britain and throughout much of the rest of Western Europe. Shortly thereafter, international copyright laws were passed in America as well, to help the American industry's authors and publishers gain an even footing in this new order of international trade.

Before these laws were passed, the publishing industry of America was so dominated by Britain's literary exports, and the production of cheap reprinted versions thereof, that it hardly had time or money to find its own cultural voice. Indeed, this focus on Britain as the font of wisdom and culture coupled with a complete lack of regulation in the new country's rapidly expanding publishing industry almost led to the industry's financial collapse several times. In that climate, it is no wonder that there was little time and space devoted to publishing new American authors – no publisher in America felt it could afford to take that risk and no publisher in Britain would lower its standards to publish an American author. And yet, it was in this precise climate that Mark Twain began his career as an author and found much acclaim on both sides of the Atlantic.

The first part of this article will investigate the development of the international book trade between America and Britain in the 19<sup>th</sup> century, and the effects the trade had on the American publishing industry. It will culminate in a discussion of the passage of America's first international copyright law in 1891, which would set the stage for the American publishing industry to develop an individual and separate culture beginning at the turn of the century.

The second part of this article will seek to explain how Samuel Clemens, as Mark Twain, was able to achieve so much success as an American author in both America and Britain during a time of such turmoil in the international publishing industry. It was not despite but because of the situations created by a lack of any real, enforceable regulation within the trade, coupled with Twain's affable and infectious spirit, that Mark Twain was propelled to a place of literary regard on both sides of the Atlantic when no other American author had truly been able to reach that height.

### **Part 1 – Growing Pains of a Burgeoning International Trade**

From its outset, the relationship between America and Britain was strained—understandably so after the long, bloody war fought between them. But despite America's newfound independence, the infant country still looked to Britain for cultural guidance and maintained strong trade ties with its former coloniser. The influence Britain continued to exert over America was especially apparent in the new country's burgeoning publishing industry. Many of the cultural elite who controlled America's publishing industry had ties to the former mother country “so close and profitable that the British hold on American intellectual life” required sweeping legislation in the 1890s, more than a century after American independence was first declared, to break it (McVey 1975, 68). The legislation that passed was the advent of international copyright law and brought some much-needed regulation to an industry that was eating itself alive in the free market.

Throughout much of the 19<sup>th</sup> century there was virtually no regulation in the publishing industry. In addition to that, Americans also suffered from a feeling of cultural inferiority and “continued to esteem English writing long after they had ceased to be British subjects”

(Madison 1966, 7). Many publishers in America took advantage of the lack of regulation and the demand for British literature that stemmed from this inferiority complex. They sought to make their fortunes by reprinting cheaper copies of books, usually unauthorised, from Britain without paying any sort of royalties to either the author or the original publisher. In this way, reprinters were able to undercut authorised publishers by selling their reprints at much lower prices than the publishers could afford to charge for their well-produced, imported books.

Now, this practise is referred to as piracy, but considering that some of the first international copyright laws were not ratified until 1886 at the Berne Convention, it would be disingenuous to imply that these publishers were doing anything illegal in the early years (Rukavina 2010, 56). It was, perhaps, immoral – they were pointedly circumventing traditional means one would pay authors for their work just to produce their copies more cheaply, but it was not illegal. The practice did, however, force elite publishers to lower their prices to try and compete with the reprinters (McVey 1975, 72).

As one with even a limited knowledge of economic forces will understand, this practice was not sustainable. In the short run, it led to the Book Wars of the 1840s, with everyone in the industry racing to the bottom to sell the most books at the lowest prices. This eventually meant that “a number of American reprinters were selling books for less than the cost of publication” and the only way they could recoup any of their losses and see a profit was by selling “substantial quantities of their publications” (Rukavina 2010, 76).

The British book industry operated under a few more self-imposed regulations than the American industry. Listed as the Booksellers’ Regulations, a quorum of the London trade formed in 1828 under the name of the Committee of London Booksellers and Publishers and

agreed to control industry prices by promising to boycott any retailer caught selling books to the public at too steep a discount (Sutherland 1981, 97). Despite this publishing cartel, the allure of price cutting and large sales, like the American industry was seeing concurrently, proved too strong for the British publishers and they jumped into the competitive price fray as well.

However, the obscene pricing competition and a lack of enforceable regulation in the market began to take its toll, and the publishing industry “was facing ruin as a result of [its] refusal to recognize the rights of foreign authors” by 1843 (McVey 1975, 72). It was at this point that publishers on either side of the Atlantic Ocean realised their own greed and competitive spirit were close to collapsing the entire industry.

Afraid of something like this occurring again, publishers introduced the idea of “courtesy of the trade” agreements between America and Britain as a way of imposing some form of international trade regulation within the industry. More of a cure for a symptom and not the disease, trade courtesy agreements led to British publishers selling advance sheets to American publishers to reprint in the US as “a way to make an unearned profit while protecting their own domestic market” and helped eliminate a significant amount of the British cheap book trade that had sprung up in the early 1840s (McVey 1975, 73). These agreements ensured that publishers on both sides of the Atlantic, at least the more reputable ones, would work to protect their mutual interests instead of racing to their mutual destructions.

It was also around this time that authors, and some publishers, began calling for the institution of international copyright laws to protect the rights of authors and the publishing industry as a whole when the unfairness and unsustainability of piracy became clear.

Numerous copyright bills were brought before Congress, only to be rejected time and again because the largest publishers continued to lobby against them (Madison 1966, 57-59).

Not until the mid-1880s, after another disastrous round of books wars, did all American publishers finally understand the need for international copyright laws. Then they all joined forces to make it happen. They formed the American Publishers' Copyright League 1887, following in the footsteps of American authors who had formed the American Copyright League several years earlier (Madison 1966, 60). The object of both organizations was to lobby on behalf of their members for the passage of a fair international copyright law.

With the passage of the Chace International Copyright Act in 1891, the American publishing industry could breathe a sigh of relief – it finally had an international copyright law on the books. This law was protectionist in its nature: it was designed to “ensure that books copyrighted in America were typeset and printed there” though it also did a small bit to relieve the grievances of British authors in the process (Feather 2006, 136). It was not a perfect law – merely “a revision of existing American copyright statutes” that only applied “to countries with which the United States had made specific agreements by separate treaties” but it was enough to ease the minds of people in the publishing industry at home and abroad (McVey 1975, 78).

After nearly a century of ups and downs in the publishing industry, brought on by a lack of regulation and the perpetuation of an unsustainable reprinting culture, the American publishing industry finally had author and publisher protections codified into law with the passage of the International Copyright Act. This law, while intended to protect the rights of American authors and the international publications of their work while cutting down on the reprinting trade, also had the happy coincidence of opening the market to American

authors. This paved the way for the cultivation of a distinct literary identity: indeed, “before 1891, 70 percent of the books published in the United States were of foreign origin; after 1891, the figure was reversed, and 70 percent were by native authors” (Rukavina 2010, 78). The Copyright Act also “effectively allowed for the creation and protection of a complex web of rights which related to where a book was published, where it was printed, and whereby it could be sold” (Feather 2006, 136). This laid the groundwork for the creation of subsidiary rights, the trading of which gained importance to publishers throughout the next century and beyond.

## **Part 2 – Mark Twain’s Rise to Fame**

It was in middle of the 19<sup>th</sup> century, a time during which the author notoriously lost out in the publishing industry, that Samuel Clemens, under the pseudonym Mark Twain, incredibly made a name and successful career for himself in both America and Britain. A self-made man from rural Missouri, Twain was able to succeed where numerous other authors could not and did not. Despite beginning his career as a writer in America when it was cheaper and more profitable for publishers to simply issue reprints of popular British books, Mark Twain captured the spirit of the time in his writings in such a way as to become one of the first great American novelists. This success, though not an accident, was very much a product of the publishing industry climate and Twain owes his career to the right mixture of timing, legal requirements, and personality.

Book piracy and reprinting, though clearly a detriment to the publishing industry and an infringement on the rights of authors, was a swift democratiser of literature in its heyday. At its core, reprinting was about selling as many copies of a popular book as possible by undercutting the other publishers who were offering the same title at a higher price point.

Ultimately, this practise brought the industry to the verge of collapse on several occasions. However, it also brought cheap literature to the masses who would not have been able to afford it otherwise and “stimulated the development of a global book economy” along the way (Rukavina, 81). And while the cheap reprints might have hurt the American author and significantly delayed the development of a distinctly American literary culture, they also helped cultivate “a relatively large audience for new books” (Madison 1966, 45). It was this new audience for books that Twain was able to enchant and enthrall.

The middle of the 19<sup>th</sup> century was a rather grim time to be American. Still a country in its infancy, America was beginning to face its first real challenge as a nation, a challenge that could tear it apart before it ever really had a chance to begin: “Civil War threatened to divide the country South from North” and “migrations into distant geographical frontiers threatened to divide it East from West.” But humour, pointed out gently and genially, was “the clay that could cement the union once the union learned to laugh at itself” (Carleton 1978, 57). Mark Twain, a true man of the people whose humour, with a penchant for parody, was able to reach “literally through all classes of society” (Britannicus 1910, 826). He was the perfect author and humourist to help the country learn to “chuckle at its own foibles” and begin to heal in ways only shared cultural identity can (Carleton 1978, 58).

But it was not only Americans who found Twain’s humour charming and infectious – Britain came to love the author’s biting wit and playful humanity nearly as much as Americans did. From the publication of his earliest book, *The Celebrated Jumping Frog of Calaveras County, and Other Sketches* (1867), Twain’s renown steadily grew until he became known in Britain as “the supreme example of humor in its most piquant, most American form, and the unrivalled guardian, since Charles Dickens died, of the sources of deep, human, elemental laughter” (Britannicus 1910, 822).



It was through his spirited way of poking fun at human nature that Mark Twain “conquered the world and fairly enslaved the English-speaking peoples” (Britannicus 1910, 825). His humour may have meant different things to his American and British readers – helping to heal a hurting young nation in one regard and filling the void left by a cherished writer of the human experience in another – but either way Twain’s writing brought light and laughter to his readers, all of whom needed it in one way or another.

In a happy turn of events, Twain loved England just as much as England loved him. Prior to the passage of international copyright laws at the end of the 19<sup>th</sup> century, British copyright law “made the pilgrimage to the font of English culture mandatory” for any American author wishing to secure international protections and payment for their work (McVey 1975, 75). It was for this reason that Mark Twain originally travelled to Britain in the fall of 1872; he needed to “protect *Roughing It* (1872) from literary pirates by obtaining a British copyright” and wanted to collect material for a satire of the English at the same time (Baetzhald 1956, 328).

However, Twain came to love England as his second home and travelled there as often as he could manage, often to secure copyrights for his latest novel but sometimes if only to visit. Throughout his life, he held a high place in England “as a writer and a man in the heart of the nation” and even towards the end of his life, the welcome he would receive by the English was “one continuous ovation” (Britannicus 1910, 825-826).

Though he came onto the literary scene after the first of the book wars, when publishers were slightly more wary of what cheap reprinting could do to the stability of the industry but strict regulations had yet to be put in place, Twain was remarkably adept at making a

name for himself at home and internationally as an American author. Much of that success was a by-product of the times: the reprinting industry had created a demand for literature on a scale as yet unseen by the young nation, and Twain was more than willing to supply his writings to meet the demands of the time. He was also helped on his road to success by his wit and good humour. A sharp man, who could critique the human condition in a genial and funny yet still biting way, he made friends wherever he went and inspired loyal followers in them all.

### **Conclusion**

The publishing industry was at a crossroads in the 19<sup>th</sup> century – technology had allowed for mass production of books but laws and regulations hadn't yet adapted to keep up with the rapidly changing pace the new technologies allowed for. That, coupled with an American sense of cultural inferiority to that of Britain, created a vacuum which reprinters were eager to fill. They would quickly produce poor-quality copies of the latest popular books Britain was exporting and sell them for far cheaper than any traditional publisher could manage. In doing so, these reprinters upset the balance of the burgeoning international book trade between Britain and America, and sent the industry into financial chaos on several different occasions. In doing so, they exposed the need for codified international copyright laws, as "trade courtesy" agreements between publishers only worked for so long.

By the end of the 19<sup>th</sup> century, industry members banded together to lobby governments in their respective nations to pass laws protecting the rights of authors and publishers internationally and at home. With the signing of the Berne Convention treaty in 1886 by much of Western Europe, and the passage of the Chace Act in 1891 by the American Congress, the publishing industry demonstrated their strength when working together and paved the way for a much more stable and profitable industry in the 20<sup>th</sup> century.

Few American authors were able to gain success in this time of turmoil within the industry, but Mark Twain took full advantage of the new mass market readership the reprinters had cultivated when they began selling literature at a price point everyone could afford. Twain also took full advantage of his charm, wit, and humorous outlook on life to inspire a devoted following wherever he went, including England. He managed to fill a void readers on both sides of the Atlantic were not aware needed filling, and he filled it with the best of spirits. After all the ups and downs of the 19<sup>th</sup> century, the modern publishing industry was born and, with the new international copy right acts and treaties signed into law, a new American literary tradition was ready to begin at the dawn of the 20<sup>th</sup> century.

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