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As I See It! -- The Tussle Over European Rights

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R
ders may have noticed reports of
a sometimes bad tempered debate
between British and US publishers
over English language territorial rights,
and especially over their rights to sell their books
in Europe.

Traditionally, they have split the world
between them. The originating publisher has
generally licensed English language publishing
rights to the other across the Atlantic with well
defined territorial rights. The British publisher
would have “UK and Commonwealth” rights — i.e.,
all those areas on the map that in my
youth were colored red, including Australia,
New Zealand, South Africa, Canada and all the
colonies around the world; the US publisher
would have the USA and the rest of the Ameri-
cas except Canada. The only general exception
to this would be that Canada was often retained
by the US publisher if it was the originating
publisher, selling UK and Commonwealth
rights (except Canada) to a British house.

In this rather cozy arrangement, European
countries were treated as an open market,
where both the British and US publishers
could sell their editions alongside each other.
Remember that this applied only to books in
the English language. The real money would
always be in local language editions, especially
in France, German, Italian, Spanish etc. This
worked well with general books — both fiction
and non-fiction. It worked well with college
textbooks. It operated with scholarly mono-
graphs, where the US edition would often be
less expensive than the British equivalent.

What changed it? Well, it began to change
when the UK joined what was then called the
European Community in 1973. Nothing hap-
pened immediately. But the internal trading
rules of what we now know of as the Euro-
pean Union effectively made this arrangement
unenforceable. European law is quite clear;
anything that is imported into any EU member
state can be distributed quite legitimately to
within any other member state. The EU is,

after all, a “common market.” The implication
for British publishers became clear. Any book
published by a US publisher and sold under the
open market policy into a European country
could be sold or re-sold into the UK, although
a British house may have bought exclusive
UK and Commonwealth rights. The US edi-
tion would appear on the British publisher’s
home ground. The British industry’s sus-
picion was that US publishers would
set up warehouses in Europe and
actively sell their editions into the
UK, regardless of any publishing
agreements they may have reached
—and been paid for.

There is a long history behind
this. From its origins in the Ameri-
can colonies through to the mid-nineteenth
century US publishing depended on pirating
overseas — usually British — books. At the
time, US publishing was a cottage industry
of printer-booksellers. There was no enforceable
copyright law, and piracy was rife, especially
with best sellers. The founding of local com-
panies such as Wiley, Putnam and others
presaged a change into a more professional
publishing business that could exploit the
opportunities presented by improvements in
printing technology and easier distribution
made possible by the spread of the railroads
across the continent.

The creation of an international copyright
regime, the Berne Convention of 1886, and
the enactment of the Copyright Act of 1909 al-
tered the structure of US book publishing. For
the first time, national copyright laws would
provide copyright owners with protection,
as had already been provided for patents and
trademarks in the Paris Convention of 1883.
New publishers emerged. The practices of the
US industry began to look very similar to those
of the long-established British industry.

However, the USA refused to accede to the
Berne Convention until 1989. The Universal
Copyright Convention (UCC) of 1952 was
invented to bring those countries — primarily
the USA and the Soviet Union — that wanted
to participate in reciprocal international copy-
right protection but were not parties to Berne.
Although the UCC is more or less defunct, the
memory of the USA not playing its full role in
copyright protection until its own intellectual
property industries demanded it is still a real
one. The British suspicion that US publish-
ers would always keep their eye on the main
chance, whatever agreements might be in place,
colors their attitude to the European issue.

The result has been spirited discussion
between the respective trade associations and
their members about recasting the traditional
territorial division of rights. The British want
to annex all European Union countries for
their exclusive territory, so that their home
market can be fully protected. US publishers,
for their part, have refused to admit the logic
of this, or accept that EU law really does pose

a threat to British publishers’ home market
in the UK. The US view is that any threat
is hypothetical, and that no US publisher is
going to compromise its working relationship
with a British publisher by selling its own
edition in the UK via a European distributor.
The British don’t believe it. There have been
public debates in which passions
have erupted and obscured real
debate.

The vigor with which this argument has been
pursued has not, perhaps sur-
prisingly, been affected by
the consolidation within
the publishing industry that has
resulted in the emergence
of large transatlantic publishing groups.
UK and US publishing units within the same group
often share a publishing property. But many
publishing rights deals are still made with a
publisher on the other side of the Atlantic that is
entirely unconnected with the originator.
Each publishing unit is judged on its financial results,
and strives to do the best deal it can, whether
this is within the group or with an “outsider.”
Even within academic publishing, many
publishing groups have sought to maintain
different prices for the US and UK territories,
with the result that the rights argument is just
as vigorous within publishing groups
as in the academic community.

A number of publishers have been doing
deals which point the way to a new concordat.
Exclusivity in Europe for the British
publisher has been exchanged for US exclusivity
in Canada. What Canadians think of this is the
subject of a much longer article! It is worth
remembering that this concerns the English
language editions only, so it is still an open
question whether this turns out to be a fair
exchange.

However, the world has moved on. Within
the academic community, libraries have long
required their book jobbers to supply the
“cheapest edition.” International library book-
sellers sourced a title from the publisher offer-
ing the lowest price, and then re-distributed
stock to its operating units to supply that edition
to their customers, regardless of location.

But the biggest change has been the emer-
gence of Internet booksellers. Amazon is an
exemplar of massive stocks, rapid delivery,
aggressive pricing and excellent customer
service. National boundaries make no sense.
The opportunity to “buy around” territorial
obstacles is greater than it ever was. As a re-
sult, the argument over the European markets
has largely gone away as far as monographs
are concerned. Nevertheless, it remains an
important issue is general books, especially
best sellers, and in textbooks, where different
editions of the same basic book, with widely
differing prices, are designed for different ter-
ritories, upon the assumption that these various
editions will not leak into territories for which
they were not intended.

Little Red Herrings
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inexorable march of history to record whatever
its truth, whether we wished to
remember it or not. That was
before revisionist historians and
Hollywood. Now, not only can
whole lines be canceled out, but
total events can be rewritten, not
unlike those in Orwell’s 1984. It
behooves those of us who can
still remember Woodstock, vi-
cariously or otherwise, to make
certain the revisionists do not
have their way entirely.

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