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As I See It! — The Tussle Over European Rights

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Readers 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 Americas 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 cosy 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 French, 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 monographs, 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 happened immediately. But the internal trading rules of what we now know of as the **European 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 or 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 edition would appear on the British publisher’s home ground. The British industry’s suspicion 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.

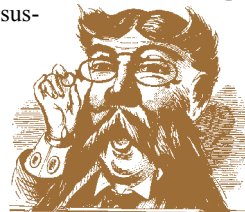
There is a long history behind this. From its origins in the American colonies through to the mid-nineteenth century US publishing depended on pirating overseas — usually British — books. At the time, US publishing was a cottage industry of printer-booksellers. There was no enforceable copyright law, and piracy was rife, especially with best sellers. The founding of local companies 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 altered 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 copyright 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 publishers 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 surprisingly, 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.

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 booksellers sourced a title from the publisher offering 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 emergence 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 result, the argument over the European markets has largely gone away as far as monographs are concerned. Nevertheless, it remains an important issue in general books, especially best sellers, and in textbooks, where different editions of the same basic book, with widely differing prices, are designed for different territories, upon the assumption that these various editions will not leak into territories for which they were not intended. 🌱

Little Red Herrings from page 75

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 entire events can be rewritten, not unlike those in **Orwell’s** 1984. It behooves those of us who can still remember **Woodstock**, vicariously or otherwise, to make certain the revisionists do not have their way entirely. 🌱

