

Why Dickens Resumed his Association with American Publishers in 1851¹

Akiko SONODA

On return from his first American tour in 1842, Charles Dickens published a letter declaring his intention to cease negotiations with all American publishers. Dickens had asserted the importance of international copyright during his US tour from January to May, but this did not bring about any positive changes in the movement for international copyright. His statement in the letter: 'I will never from this time enter into any negociation[sic]' gives the impression that he would stick to this principle for the rest of his life, but, in fact, some ten years later he changed his mind and agreed to provide advance sheets of his forthcoming *Bleak House* for Harpers in late 1851. In this paper, I will explore the reasons why Dickens resumed his relations with American publishers by examining his decision in the context of Anglo-American copyright protection from the 1840s to the early 1850s. In these years, there were several important cases concerning whether UK copyright could be granted to foreigners, and, in the early 1850s, there were also undisclosed negotiations over the Anglo-American copyright treaty.

Keywords: copyright, Charles Dickens, 19th century

On return from his first American tour in 1842, Charles Dickens published a letter declaring his intention to cease negotiations with all American publishers. This letter was sent to writers and publishers such as Thackeray, John Murray, and William Pickering, and was printed in several periodicals including the *Morning Chronicle*, the *Athenaeum*, and the *Literary Gazette*. As he stated in the opening of his letter, Dickens had asserted the importance of international copyright during his US tour from January to May, but this did not bring about any positive changes in the movement for international copyright. On the contrary, he was criticised by American newspapers as being greedy for expecting incomes through American publications, while receiving sufficient remuneration in the UK. The crucial part of the letter dated 7 July 1842 reads as follows:

For myself, I have resolved that I will never from this time enter into any negociation [sic] with any person for the transmission, across the Atlantic, of early proofs of any thing I may write; and that I will forego all profit derivable from such a source. I do not venture to urge this line of proceeding upon you, but I would beg to suggest, and to lay great stress upon the necessity of observing, one other course of action: to which I cannot too emphatically call your attention. (*Dickens Letters*, vol. 3, 256)

Dickens did not ask other British authors to follow him, but he suggested ceasing negotiations with American newspapers, which relied on the reprinting of British works, and recommended

that authors only associate with respectable American publishing houses. As he stated, Dickens would not sign contracts with American publishers, including Lea and Blanchard. This company, previously known as 'Carey and Lea,' was a Philadelphia publishing house, which had made payments to Dickens for advance sheets since 1837.² Dickens and the publishing house were on good terms, and, in fact, Dickens was considering a contract for new books in March 1842, when he visited Henry Carey's house in Philadelphia. However, he eventually changed his mind.

The statement, 'I will never from this time enter into any negotiation', gives the impression that Dickens would stick to this principle for the rest of his life, but, in fact, some ten years later he changed his mind. At the request of Harper, Dickens agreed to provide advance sheets for his forthcoming work, *Bleak House*, for *Harper's New Monthly Magazine* in late 1851. This gap of ten years seems a short time in which to change a resolute decision based on principle, but this was significant in terms of the author's loss of potential income.

In this paper, I will explore the reasons why Dickens resumed his relations with American publishers by examining his decision in the context of Anglo-American copyright protection from the 1840s to the early 1850s. In the ten years from 1842, there were several important cases concerning whether UK copyright could be granted to foreigners, and, in the early 1850s, there were also undisclosed negotiations over the Anglo-American copyright treaty. Therefore, on both sides of the Atlantic, climate and attitudes concerning copyright and the protection of authors was dynamic. I would suggest that two circumstances contributed Dickens's change of attitude towards US publishers. The first was the issue of UK copyright concerning the protection of foreign authors, and the second was the push towards an Anglo-American copyright convention in 1851.

First, I would like to look at copyright cases from the 1840s to the early 1850s. In the mid-nineteenth century, there were important cases in law over whether the works by foreign authors would be protected in the UK. As of 1842, with the case of *Bentley v. Forster* in 1839, it was established that copyright protection would be granted for a work first published in the UK, regardless of the nationality of the author. This meant that American authors could enjoy copyright protection in Britain, if they first published their works in the UK. However, American copyright was not allowed to non-US citizens including British authors. The *Bentley v. Forster* decision was overturned by *Chappell v. Purday* in 1845, which again limited UK protection to British authors, but the *Cocks v. Purday* case reversed that decision in 1848. Thus, uncertainty about the protection of a work by a foreign author in the UK continued. Dickens, who claimed that reciprocal copyright protection should be granted between the UK and other countries, thought the unilateral protection of the works of foreigners unfair, but it seems that he did not take any particular action against this in England.

The case of *Boosey v. Jeffreys* followed in 1851, which again concluded that works of foreign authors were protected even when they did not reside in the UK at the time of publication. This decision had a considerable influence on the publishing business, especially on the publication of American works in the UK. However, it also upset British authors who thought the incentive for Anglo-American copyright in the US would be diminished. After the decision, Bulwer Lytton held a meeting on 1 July 1851 and the attendees resolved to seek

an adjustment of the decision in *Boosey v. Jeffreys* by raising public subscriptions for funding as follows:

That this meeting considers the subject of great national interest and importance and that the expense of determining the meaning of the law thereon ought not to devolve on a private individual. That, therefore, a society be formed to consider and adopt the necessary steps to obtain a satisfactory adjustment of the law, as well as to provide, by public subscription for the requisite expenditure. (*The Times*, 3 July, 1851)

Dickens did not attend the meeting, but he had a strong views on the matter and wrote to Bulwer Lytton on 4 July, regretting that the initiative did not receive the expected support:

I am exceedingly sorry that you were not better supported at the Copyright meeting. I have seen no one who has failed to render justice to your own exertions and intentions, though there is (and I think with reason) a strong prejudice against the putting forward of Bohn in such a matter. I am quite sure your brother would do more than any fifty other Ministers—but I doubt the Americans being honest for years and years to come, mainly because the interest at stake is not the interest of authors or publishers in America, but the interest of the Newspapers—than which the earth knows nothing more profoundly blackguard, or before which the free and independent more submissively crouch. (*Dickens Letters*, vol. 6, 421)

Here, Dickens expressed his distrust of American newspapers, one of the most powerful opponents of an Anglo-American copyright treaty. He was pessimistic about the possibility of international copyright protection in the US. In addition, he mentioned that Henry George Bohn (1796–1884), who was the vice-chairman of the meeting, was an inappropriate person for this position. Bohn was the publisher who reprinted the works of Washington Irving without the author's consent. He conflicted with John Murray who paid 10,000 pounds for the right to publish Irving in the UK and was regarded to have exclusive rights to Irving's works.³ After the *Boosey v. Jeffreys* decision, Bohn's publication of Irving's works was regarded as illegal piracy, and his participation in the advocacy to overturn the decision compromised public perception of the group's motivation. With all these considerations and conflicts of interest, it seems that Dickens could not expect that the Anglo-American copyright treaty would be made in the near future.

Though the decision of *Boosey v. Jeffreys* was reversed in 1854, in 1851, the outcome of the case was extraordinarily disadvantageous to those pursuing a reciprocal copyright treaty. By this time, an increasing number of American works with a wider British readership were being published in the UK. This period was later referred to as the 'American Renaissance', and American authors would benefit from this decision by the British court. British authors feared that the *Boosey v. Jeffreys* decision would reduce the incentive for Anglo-American copyright law by authors in America. This concern is also considered to have influenced Dickens's decision to resume negotiations with American publishers privately.

By the middle of the nineteenth century, Harper was one of the biggest publishing houses in the US, but they were among publishers who reprinted British works without the consent of

authors, because, in the absence of a copyright treaty, reprinting British works was legally not piracy. Harper had been publishing Dickens' works since 1842 without his approval. However, they changed their principles in 1851 because in the deregulated US market, competition for UK authors was intense, and those first to market with a new work had a competitive advantage. In order to compete with *International Monthly Magazine*, which announced it had received a promise for advance sheets of Dickens's next work, Harper sent an agent to Dickens and secured his agreement for his next novel, promising to pay 2,000 dollars for it.⁴ The exact date of the agreement is not clear, but it is likely to have been early or mid-November 1851. Dickens's letter to Thomas Noon Talfourd, dated 17 November 1851, referred to a recent request from America:

I want to ask your kind advice in reference to a re-publishing offer I have received from America; my acceptance of which would endanger (as I apprehend) my copyright here. Will you let me know at what hour I can come round to you at home with the least inconvenience to yourself. (*Dickens Letters*, vol. 6, 542.)

Talfourd, a lawyer and a former MP who played a leading role in the amendment of the UK copyright act in 1842, was a specialist in copyright law and related business matters. Dickens' letter reveals he had thought about the Harper offer seriously.

That Dickens's sought private negotiations 1851 shows that he was not optimistic about the Anglo-American treaty even though the current negotiations were one of the most significant attempts since the initial efforts of 1837. Again, Bulwer Lytton took a lead in this matter. He sent his son, Robert, to Washington and attempted to negotiate with the help of John Crampton, the British Minister at Washington, and a lobby group called 'The Organization'. Through Crampton, Lytton also obtained the approval of the British government. According to 'The Organization', if British authors and publishers could collect a pool of 2000 dollars, they would arrange for a treaty to pass in Congress. In May of 1852, at the request of Bulwer Lytton, Dickens contributed 100 pounds for this purpose and held a meeting to discuss the matter at his house. He also called for subscriptions from booksellers such as Richard Bentley and F. M. Evans.⁵

Despite these actions, as Robert Lytton observed, Dickens was sceptical about the success of the scheme from the start. In a letter to Crampton, Lytton wrote as follows:

Dickens, who from the first had hung fire, ... now threw cold water upon the thing. He said that he did not believe either in the good faith of the American 'Organization,' or in their power to oppose successfully the cry of the small publishers and especially the newspaper press, which would be certain to do all they could to prevent the passage of such a measure. (*Dickens Letters*, vol. 6, 675)

Dickens's attitude towards the negotiation for an Anglo-American copyright treaty was somewhat distant and pessimistic from the start. When he declared his intention of not negotiating with American publishers in 1842, he might have expected his act would bring some changes to the copyright situation. However, his works continued to be reprinted in the US as before. By the early 1850s, he had learned from his own experience that American

opposition to Anglo-American copyright protection, especially on the part of the American press, was intense, and this would not change in the near future.

Dickens and Bulwer Lytton were popular novelists in both the UK and the US, and they often collaborated for the improvement of working conditions of writers, international copyright protection, and for the establishment of the Guild of Literature and Art. However, they disagreed on some issues as well. For instance, in early 1843, Bulwer Lytton was gathering signatures for a warning notice to circulating libraries that held and lent foreign reprints of British works. In a letter to Frederick Marrayat, Dickens stated that he would not sign the notice, because he was offended that Bulwer Lytton did not take any notice of his letter on international copyright.⁶ Here, Dickens is likely referring to his letter on international copyright quoted at the beginning of this paper. Though Dickens stated that he did not expect other British authors to break with American publishers as an expression of their shared discontent, he would have expected some sympathy from his British counterparts. However, it seems that no author, including Bulwer Lytton, who had a contractual agreement with Harper since 1836, changed existing relations with American publishers.

Concerning the secret negotiations over the Anglo-American copyright treaty from 1851 to 1854, and the reaction to the *Boosey v. Jeffreys* case, Dickens was much less enthusiastic and involved than Lytton. By 1851, he would have been thinking about resuming an association with the Americans and the request from Harper was timely.

A Treaty 'for the Establishment of International Copyright' was signed by Edward Everett, American Minister of State, and J. F. T. Crampton, British Minister at Washington, on 17 February 1853. However, the agreement was overturned at the last stage. This probably did not surprise Dickens who was sceptical about its success from the beginning. As usual, numerous petitions against the treaty were presented to Congress, and some were led by Harper.

It is ironic that the two publishers with whom Dickens had contractual relationships were vigorous opponents against an international copyright treaty. Henry Carey, the first American publisher to pay for the advance sheets of Dickens, wrote an influential pamphlet, 'Letters on International Copyright', in 1853 that articulated a powerful argument against the initiative. Later, in 1872, Harper changed their attitude in favour of international copyright, but both their decisions—payment to British authors like Dickens, and the support for international copyright—were based on commercial interests rather than fair treatment of foreign authors.

Dickens changed his publisher from Harper to Ticknor and Fields in 1867. As Harper paid more than three thousand pounds for Dickens's works, they claimed they should be regarded as his official publisher. However, in the absence of international copyright treaty, American publishers could not obtain copyright from British authors. Therefore, Dickens could legally move to Ticknor and Fields, who promised payments based on a royalty system. After 1851, following a decade of protest against American publishers, Dickens began to make the most of the absence of an international copyright treaty.

Notes

- 1 This article is based on a paper read on 17 July 2010 at the *Material Cultures* conference, University of Edinburgh, UK.
- 2 The company published all the works of Dickens, *The Pickwick Papers* (1837), *Oliver Twist* (1838), *Nicholas Nickleby* (1839), *The Old Curiosity Shop* (1841) and *Barnaby Rudge* (1841), until the author's visit to the US.
- 3 Seville, 177.
- 4 Bracher, 326
- 5 *Dickens Letters*, vol. 6, 675 and vol. 6, 713.
- 6 *Dickens Letters*, vol. 3, 428–29.

Bibliography

- Bracher, Peter S. 'Harper and Brothers, Publishers of Dickens'. *Bulletin of the New York Public Library*. 79 (1976): 365–76. Print
- Dickens, Charles. *American Notes*. Ed. Patricia Ingham. London: Penguin, 2004. Print
- . *The Letters of Charles Dickens*. Eds. Madeline House, Graham Storey, Kathleen Tillotson. 12 vols. Oxford: Clarendon P, 1965–. Print
- Exman, Eugene. *The House of Harper: The Making of a Modern Publisher*. New York: Harper, 2010. Print
- Kaser, David. *Messrs. Carey and Lea of Philadelphia: A Study in the History of the Booktrade*. Philadelphia: U of Pennsylvania P, 1957. Print
- Library of Congress (Prepared by Thorvald Solberg, Register of Copyright). *Copyright in Congress 1789–1904*. Washington: Government Printing Office, 1905. Print
- McGill, Meredith L. *American Literature and the Culture of Reprinting 1834–1853*. Philadelphia: U of Pennsylvania Press, 2003. Print
- Seville, Catherine. *The Internationalisation of Copyright Law: Books, Buccaneers and the Black Flag in the Nineteenth Century*. Cambridge: Cambridge UP, 2006. Print
- Welsh, Alexander. *From Copyright to Copperfield: The Identity of Dickens*. Cambridge: Harvard UP, 1987. Print