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# A DIPLOMATIC *SALTO MORTALE*



Translation Trouble in Berne, 1884–1886

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When government representatives from Belgium, France, Germany, Great Britain, Haiti, Italy, Liberia, Spain, Switzerland, and Tunisia signed the Berne Convention for the Protection of Literary and Artistic Works on September 9, 1886, they instigated a framework for international copyright relations that remains influential to this day.<sup>1</sup> As formative moments go, however, it proved more than a milestone in legal history. Equally important, the convention marked formal acknowledgment that those invested in print culture—be they publishers, authors, or readers—were international by default, and that the texts they published, wrote, and read moved with ease across national and linguistic borders. Granted, all of this was old news. The fact that such movements had entered into a phase where their trajectories from now on required the governance of an international legal regime, however, was new.

At the end of the nineteenth century, the novel had triumphed, printing technology was sophisticated enough to facilitate large-scale piracy, the reading public displayed an appetite for foreign works, and European authors and publishers operated in a market Franco Moretti describes as highly uneven. Crystallized around the two narrative superpowers, Great Britain and France, was a core group of exporting nations and a very large group of importing ones.<sup>2</sup> Consequently, as Sam Ricketson and Jane C. Ginsburg put it, there were “considerable gulfs between what may be called the ‘producing’ nations—that is, those nations, such as the French, that were net exporters of literary and artistic products—and those nations, such as the Scandinavians, which were ‘users’—that is, net importers—of these products.”<sup>3</sup> Against this general backdrop, a small group of Old World diplomats, lawyers, and professors met in Berne during three diplomatic conferences in 1884, 1885, and 1886 with the aim of returning home signatories of the world’s first multilateral copyright treaty.<sup>4</sup> They had a number of problematic issues to consider, none of which would cause them as much headache as translation.<sup>5</sup> That the author’s exclusive right of translation,

the author's right to authorize translations of his or her work as well as the right of the translator to his or her translation, warranted the label "*la question internationale par excellence*"<sup>6</sup> is not surprising. Translation made new works out of old. A prerequisite for the continued circulation of texts, it was the primary vehicle by which authors multiplied their works and, even more significant, produced new readers. Yet translation was a double-edged sword, a problem in search of a legal solution. On the one hand, there was the promise of new markets and readers, but, on the other, there was the possibility that unless somehow regulated, the transformation into a new language could result in substandard or even corrupt texts that in extension alienated the author from his or her work.

The purpose of this essay is to revisit these three diplomatic conferences in order to engage further with the producer/user infrastructure and the conflicts translation triggered within that matrix. France and Sweden play an especially important part in this story. As the quotation from Ricketson and Ginsburg above illustrates, these two nations stood on opposite sides of the export/import gap, and they arrived in Berne with two incompatible views concerning the kinds of public interest translation actually served: authors' or readers'? In the following, I consider this native conflict by way of its link with three ubiquitous concerns in copyright as well as book history.

First, there is the ability of translation to call into question the very nature of the work. Translation is one of the first instances of transformative uses of cultural works and their treatment in international copyright, but it is not the last. Discussions on the legal and cultural ramifications of translation more than a century ago could shed light on how we view the instability of digital works and their relationship to authors and readers today.

Second, while authors and their relationship to readers have been and continue to be a primary focus for copyright scholars, translation, a contentious site of authorship and ownership, has not received the same attention. I am not suggesting that translation has been disregarded by intellectual property scholars, or that translation studies, "the academic discipline related to the study of the theory and phenomena of translation,"<sup>7</sup> has ignored the question of copyright.<sup>8</sup> Rather, I want to emphasize that translation offers a complementary, productive, and still largely unexplored approach to the authorship/copyright conundrum.

Finally, in her 2008 book, *International Copyright Law and Policy*, Silke von Lewinski notes that "it may be worthwhile studying whether the prevalence of the English language has had an impact on the perception of this field of law, or given rise to a possibly enhanced influence of 'copyright

thinking.”<sup>9</sup> Indeed, one can question whether the combined hegemony of the English language and English law has not led to a powerful production storyline where the empire of Anglo-Canadian-Colonial-Australian-American family relations provides an influential model for the narrative on international copyright history. No doubt this is an oversimplification in both the linguistic and legal senses, because such hegemony is neither uncontested nor all-encompassing.<sup>10</sup> Nonetheless, as conflicts between producers and users continue to this day, knowing more about the rationales of so-called user-nations like Sweden and the strategies and responses deployed by “minor” languages will add, I hope, to our understanding of international copyright history, its power relations, and even some of the hegemonic assumptions surrounding its interpretation.

## 1884

The international legal landscape pre-Berne was far from unregulated. Bilateral treaties—mostly on a regional basis, but also across continents—proliferated. Increasingly, these agreements caused a fragmentation of the legal landscape running counter to the internationalist ambitions of the time.<sup>11</sup>

France was the undisputed ruler of the bilateral universe.<sup>12</sup> By its unilateral decision in 1852 to grant equal protection to the works of all authors, regardless of nationality, France seized the moral initiative in a crucial question.<sup>13</sup> Extending the right of national treatment to foreign authors without asking anything in return was the kind of quintessential gesture of cultural supremacy that secured the French a leading role in the development toward Berne. Victor Hugo’s keynote speech on the need for an international copyright regime at the Congrès Littéraire Internationale in Paris 1878 and the subsequent creation of the Association Littéraire et Artistique Internationale (ALAI) fueled the momentum even further.<sup>14</sup> In 1883, the ALAI managed to convince the Swiss government that time was ripe for a diplomatic conference explicitly focused on creating a *Union générale pour la protection des droits des auteurs sur leurs œuvres littéraires et artistiques*. Their ultimate goal was a treaty on authors’ rights in line with the nineteenth-century explosion of multilateral treaties, conventions, and agreements.<sup>15</sup> The first such multilateral organization of note, the International Telegraph Union, had existed since 1865, and the Universal Postal Union since 1874.<sup>16</sup>

The sixteen delegates welcomed by the Conseil Federal Suisse to the first diplomatic conference on September 8, 1884, swiftly elected Numa Droz

chair.<sup>17</sup> Swiss minister of commerce and agriculture, Droz had performed the same duty at the 1883 ALAI congress and would preside again over the succeeding Berne conferences. Other participants with ties to the ALAI included the Norwegian representative, Fredrik Baetzmann (an ALAI honorary vice president), and the ALAI president, Louis Ulbach, one of two French delegates. In terms of influencing this first diplomatic conference with its agenda, the ALAI had been very successful, and it would continue to exercise authority when it came to formulating the principles of the convention.<sup>18</sup>

Tellingly, Numa Droz began his opening statement by crediting the ALAI for its work so far. He then made two additional comments. First, he acknowledged the validity of the ALAI's request to the Swiss government that time had now come for the international diplomatic community to shoulder the responsibility of securing a multilateral copyright treaty. The ALAI had in fact transferred the initiative from authors to an elite group of diplomats and lawyers, a group that, according to a commentator from 1892, "were better able to tackle the interests of the authors than the authors themselves."<sup>19</sup> If diplomats rather than authors were now in charge of taking the issue of international copyright further, another change of hands was also imminent. So far, the French had secured their leadership partly by relying on Victor Hugo as an emblematic symbol for authors' rights as well as the assumed universal applicability of French law and language. They appeared less interested, however, in shouldering day-to-day responsibility of the union-to-be. In contrast, one of the virtues of the host country, Switzerland, was reluctance toward international diplomacy that "made it extremely difficult to establish and justify a Swiss diplomatic service."<sup>20</sup> Curiously, it was almost as if the *absence* of such professionals on the international scene provided a clean slate at home, guaranteeing from 1893 the efficient management of the convention and union by the Bureaux Internationaux Réunis pour la Protection de la Propriété Intellectuelle (BIRPI).<sup>21</sup>

"There is hardly any aspect of the law that has such a cosmopolitan character and that lends itself better to an international codification than the one we are about to consider," Droz asserted, and yet he received a brutal wake-up call to his grandiloquent opening statement.<sup>22</sup> The *procès-verbaux* notes an avalanche of reservations following his speech: Great Britain went first, Holland followed, and then Sweden, Norway, and Austria-Hungary; one after another, the diplomats carefully hedged their presence. Under no circumstances could they enter into any kind of binding agreement. Their role in Berne consisted only of listening and reporting back home. Alfred

Lagerheim, senior official at the Swedish State Department and later foreign minister, stated that he would take part in the deliberations and the voting but that he could make absolutely no commitments on part of his government “to whatever it may be.”<sup>23</sup> For those who nursed hopes for a more optimistic tone at the outset, the Swedish stance must have been disappointing. After a brief hour of deliberation, the group ended their meeting.

The discussion resumed the following morning. As they worked their way through a questionnaire prepared by the German delegation, the delegates faced the critical seventh question: “Should the duration of the exclusive right of translation be equal to the right to the underlying work? If not, should not this duration be uniformly fixed within the Union as a whole?”<sup>24</sup> Two options were possible. First, there was the ALAI version from the 1883 conference, which completely assimilated translation into reproduction rights. Alternatively, the Swiss proposal stipulated—in line with the French—that union authors would have an exclusive right of translation during the whole duration of the original rights. Probably anticipating the conflicts that would erupt over what they knew was an unpopular stance, there was an interesting ancillary parenthesis to the Swiss proposal “(possibly adding ‘if they have made use of this right within a ten year delay.’)”<sup>25</sup>

Alfred Lagerheim quickly seized the opportunity to clarify his position. “Sweden,” he explained, “which for the present only provide[s] foreigners with a very limited translation right, would perhaps be predisposed to favor them more, but in no case could she accept that the exclusive right of translation would be protected for the same period as the original work.”<sup>26</sup> In 1876, when the Swedish Supreme Court weighed in on what the following year was to become the first Swedish copyright law, *Lag angående eganderätt till skrift*, they advised against granting translation rights too liberally.

Such a protection received its importance solely through agreements with foreign nations, and such agreements would provide the main advantages to the foreigner, while all of the disadvantages would fall on the Swedish public. For a people whose language is so small and geographically limited as the Swedish, any restriction on freedom of translation could not but have a negative impact on the dissemination of knowledge and education. The need for such a people to complete its own literature by translations of the better works from abroad is infinitely greater than what it is for people with a widespread language and considerably richer literature than the Swedish. On the one hand, one could fear that foreign authors

would regularly ask for such exorbitant fees for the rights to publish their works in Swedish translation that our domestic literature during this term of protection would lack access to many valuable foreign works, and that, on the other hand, foreign publishers would generally not extend to Swedish authors the same remuneration for the rights to translate Swedish works.<sup>27</sup>

Consequently, the principles Lagerheim defended in Berne were anchored in the experience of a “minor” rather than a “major” language. Classified as writing in dialects of the same language, Swedish, Danish, and Norwegian authors received protection against unauthorized translations for five years in the Scandinavian countries if the translation appeared within two years of the original publication. An amendment on January 10, 1883, allowed foreign authors to reserve the right of translation “to one or more named languages” in order to qualify for the same length of protection.<sup>28</sup> Lagerheim’s viewpoint compelled the German delegation to intervene. They now considered accepting the principle of assimilation, but only under the condition that all other countries did the same. Since there was little prospect of that happening—Sweden was not alone in its critique—the French request for an adjournment in the deliberations was accepted.<sup>29</sup>

On September 17, following six days of discussions, the time had come to put the question to a vote. Alfred Lagerheim now offered a Swedish counterproposal—reminiscent of the German—but with a set of further qualifications added, including a three-year deadline for the publication of an authorized translation. The French rebuttal was expected and again suggested revising the text with the aim of securing full assimilation. Referring to the work of the ALAI and the many bilateral agreements signed by France in support of his line of argument, the French delegate, René Lavollée, became increasingly confrontational. Determined to arrive at complete assimilation—a principle the French considered the ultimate proof of cosmopolitanism—Lavollée stressed that in the eyes of the French government, “the right of translation cannot and shall not be considered separate from the right of reproduction or as a special form of reproduction itself. In addition, in international relations it is almost always translation that is the standard mode of reproduction.”<sup>30</sup>

On a superficial level at least, the French appeared to view translation as nothing more than a mode of direct reproduction. The crux was that the international author-reader partnership also required the multiplication of authorship, and when the need for another author—a translator—was a prerequisite for reaching new readers, the work in question was in danger

of alienation from the author. Something happened when a text moved from one language into another, but exactly what was it? Was it reproduction only, or creation of a new work, or rewriting? The logic of assimilation relied on a language of conquest and dominance in order to assign definitive control over the work to the author, the only trustworthy guardian of the work. In French as well as in English, authorization connoted not only a more general authority but also direct legal sanction.<sup>31</sup> A sanction of this kind was perhaps on Lavollée's mind when he called attention to what he considered the undeniable right of authors to protect their works to avoid the travesty of translation. "On this last point," he noted, "the interests of the author merge with those of the public, who need to be assured of the fidelity of interpretation given to the original work."<sup>32</sup>

Alfred Lagerheim, on the other hand, reiterated the familiar Swedish position. He pointed out the specificity of the Scandinavian countries, all in a process of development but nonetheless ambitious to learn, to "appropriate the literary productions of the great nations." Any direct analogy between authorization and quality was tangential at best, and "one has to take into account the possibility that even an authorized translation can be bad." Therefore, "the public has a right not to be deprived forever of the possibility to get to know the original work in a form that corresponds best to the thoughts of the author, where the author's honor cannot but benefit from the freedom of translation given after a certain period of time."<sup>33</sup>

The interchange between France and Sweden illustrates the chasm that opened up between producer and user attitudes toward translation. On the one side was the argument for assimilation; on the other, freedom of translation. For the French, the interests of the public and the author went hand in hand. Only protection and control over the work by the author ensured a text truthful enough to the original. For Lagerheim, however, the opposite held true. If the author's control went so far as to hamper readers' access, then the public stood to lose. In the end, this would be detrimental also to the author's text, now corrupted by a substandard authorized translation standing in the way of a superior, but legally questionable, unauthorized version.

Although the first case tried under the Statute of Anne (1710) did involve translation and might therefore lend support to its central role in authorship/ownership claims, few nineteenth-century courts had actually considered the question.<sup>34</sup> One exception was *Stowe v. Thomas* (1853), Harriet Beecher Stowe's case against the publisher F. W. Thomas's unauthorized German translations of *Uncle Tom's Cabin* published in *Die Freie Presse*, a

Philadelphia newspaper.<sup>35</sup> Stowe went to court to defend the translation she had authorized from Thomas's competing unauthorized version. However, as Melissa J. Homestead notes, critical of what they interpreted as Stowe's attempts to control the text at the expense of the readers, the German-language press accused the authorized translation of being filled with "entirely un-German expressions, grave language mistakes, or other irrefutable flaws" on "every page."<sup>36</sup> As Thomas's lawyer, Charles Goepf, insisted, Stowe's sales suffered not from piracy, but because she had relied on a translation that simply had "less genius than ours."<sup>37</sup>

While Stowe's lawyer argued that the "translator is wholly dependent on that which is the author's," and that the author was injured in sales by a perfect translation and hurt in reputation by a bad,<sup>38</sup> Goepf disagreed: "A translation of a romance . . . depends entirely for its success upon its individuality, and for that reason, it is original with the translator."<sup>39</sup> As the translation enhanced the value of the original, no injury had taken place. Judge Robert C. Grier ruled in favor of Thomas and emphasized, "To call the translations of an author's ideas and conceptions into another language, a copy of his book, would be an abuse of terms, and arbitrary judicial legislation."<sup>40</sup>

Another female author, Selma Lagerlöf, Nobel Prize winner in 1909 and one of the most popular Swedish authors in the United States at the turn of the century, chose an alternative strategy. She allowed her authorized translators, Jessie Bröchner and Velma Swanston Howard, to work directly with her manuscripts in order to circumvent pirated editions.<sup>41</sup> Her tactic may or may not have curtailed piracy, but indicated nonetheless that the threat of unauthorized translation also could function as a creative boost, generating new collaborative authorship strategies that questioned the limits of both authorship and ownership.

Although the 1884 conference issued a general *vœu* in favor, France, Haiti, and Switzerland were nonetheless defeated in their quest for assimilation. In his closing statement on September 18, Numa Droz concluded that the conference had achieved almost all of the ALAI's requests, with the exception of the most coveted one, the assimilation of translation.<sup>42</sup> It was a close call, but translation had not, as the German delegate, Reichardt, at one point feared, proved to be a fatal "*salto mortale*," undoing the success of the union.<sup>43</sup>

## 1885

The second diplomatic conference took place almost exactly a year later, this time including several nations that had not attended the previous meeting. Most notable was the United States, represented by Boyd Winchester, minister resident and consul general to Switzerland. Winchester would go on record stating that while the U.S. Congress was not yet ready to commit fully to an international convention, he believed that his government was favorably disposed toward the basic principles of the union and that it was only a matter of time before the United States would fall into line.<sup>44</sup> He was off the mark by more than a century: the United States remained outside the Berne Convention until March 1, 1989.<sup>45</sup>

But Winchester was right to suggest that, for quite some time, international copyright had been a matter of interest for both Congress and the American people.<sup>46</sup> Beginning with Henry Clay's bill in 1837, those in favor of international copyright spoke of fairness and underlined how cheap imports hurt the chances of developing an American literature and contributed to the import of "foreign" ideas. Henry Cary's 1853 *Letters on International Copyright* epitomized the resistance. Opposed to rewarding authors (especially foreign) at the expense of domestic printers and publishers, Cary championed the dissemination of texts to the benefit of the reading public.<sup>47</sup> On balance, nineteenth-century American copyright was more protectionist than internationalist and heavily weighted in favor of the interests of the publishing industry. Meredith McGill suggests that successful lobbying on part of the printing trade cannot alone account for the tenacity with which Congress resisted international copyright. Instead, she interprets the opposition as "strong evidence of an alternate system of value in tension with the whole notion of authors' rights."<sup>48</sup> This alternate system rested significantly, but not exclusively, on a "culture of reprinting." Although English made the reprinting culture possible, it is important not to underestimate how crucial translation was to the dissemination of literature within the United States, where large immigrant groups depended on access to reading material in a wealth of other languages. As Colleen Glenney Boggs underscores in reference to the Stowe case, any theory relating the novel to the formation of an essentially monolingual nation-state underestimates the importance of translation to the multilingual American reading public at the time.<sup>49</sup>

British and American authors intensely engaged with transatlantic piracy and in many cases lobbied for securing U.S. compliance with international copyright. Dickens issued antipiracy declarations during his American lec-

ture tour in 1842, which some claim did him and the cause more harm than good.<sup>50</sup> Harriet Beecher Stowe, James Fenimore Cooper, Joseph Conrad, Mark Twain, and Walt Whitman all took an interest in the promotion of international copyright.<sup>51</sup>

When Harriet Beecher Stowe went to court trying to extend her copyright to include translation, she did so as a well-known and commercially successful author. By effacing those pecuniary interests and presenting herself and *Uncle Tom's Cabin* as vessels of a greater good, she balanced a fine line between claiming and disavowing authorship. Stowe spoke of God, Whitman of Everyman. Both authors had to navigate the apparent contradiction of claiming property rights in texts that were, by their own accord, not really theirs. Whitman's textual ideologies placed him on a direct collision course with copyright, and yet he managed both to criticize Dickens's critique of the United States while lauding British novelists' call for international copyright as "wise and righteous."<sup>52</sup> According to Martin T. Buinicki, Whitman saw copyright as a way of ensuring that piracy did not corrupt his relation with the reader.<sup>53</sup> He was delighted to give his permission for a Russian translation of *Leaves of Grass* sent to him in 1891, the year of the U.S. International Copyright Act (commonly known as the Chace Act):

And as my dearest dream is for an internationality of poems and poets binding the lands of the earth closer than all treaties or diplomacy—As the purpose beneath the rest in my book is such hearty comradeship for individuals to begin with, and for all the Nations of the earth as a result—how happy indeed I shall be to get the hearing and emotional contact of the great Russian peoples!<sup>54</sup>

When copyright deliberations resumed in Berne 1885, however, it would still be an elite European diplomatic corps that represented the interests of publishers, authors, and readers.<sup>55</sup> Whitman's utopian individual connection gave way to the Realpolitik of nation-states. When the general discussion began at the second diplomatic conference, Alfred Lagerheim reported that nothing had changed in the Swedish position. To accept the French proposal would mean the automatic exclusion of Sweden and Norway from the union. He addressed himself directly to the French in the hope that they "would make the reform of the Scandinavian countries' legislation easier, and not ask of them a sacrifice that they most likely would be unable to make," and he ended his plea by "appealing to the French spirit of broad-mindedness and equity."<sup>56</sup>

Negotiations were deadlocked when the discussion resumed the following day. Possibly provoked by French criticism that his earlier position on assimilation was inconsistent, the German delegate, Reichardt, claimed that this critique was unfair. If the principle of assimilation had prevailed it would have meant the exclusion of several nations from the projected union, and, for Germany, he added, the project as a whole was more important than the principle of complete assimilation. Lavollée quickly retorted that to resolve this question, the more developed nations had to take the lead without waiting for others to fall in line.<sup>57</sup> Germany continued to seek consensus. So did the Swiss, who strongly favored the French proposal but, as hosts, were aware of their responsibility to break the stalemate and reach a compromise.

The final article 6 in the 1884 Draft Convention contained a number of detailed requirements. Most important, it gave union authors the exclusive right of translation for ten years after the original date of publication. "To benefit from this provision, the authorized translation must appear no later than three years after the original work."<sup>58</sup> France urgently wanted to remove this caveat, and, just as urgently, Sweden wanted to preserve it. Although he addressed himself to the entire assembly, Lavollée's next statement was clearly intended for Swedish ears: "the delegates from countries where literature is poorly developed and which need to borrow from producing nations."<sup>59</sup> Freedom of translation was an illusory freedom, he argued, that could prove damaging for the development of a national literature.

Lagerheim again repeated the basic difference between producer nations and the Scandinavian countries, which published far more translations than they provided to other nations. When time came for the vote, Great Britain offered a counterproposal, which left it up to individual countries to decide the length of the protection for an authorized translation. Belgium, Sweden, and Norway seconded the proposal, but all other nations voted against. Five countries, led by France, cast their votes for full assimilation. Although the French could not rally enough support for complete assimilation, they were defeated by one vote only. Sweden was just as unsuccessful, unable to secure the three-year limitation for an authorized translation by a similarly narrow margin.<sup>60</sup>

Lavollée may have lost the battle, but he was convinced that he would win the war. For the time being he accepted the ten-year protection for translation in order to secure a more important goal: having Great Britain sign the Draft Convention.<sup>61</sup> Great Britain brought into the union an entire

empire, an empire where not all dominions viewed Berne in a favorable light and some even advocated leaving the union.<sup>62</sup> Alfred Lagerheim, on the other hand, had to admit defeat: Sweden and Norway had now made the maximum number of concessions regarding translation that they were prepared to make.<sup>63</sup>

## 1886 (and beyond)

As a result of what had transpired the year earlier, Sweden and Norway were absent from Berne during the third and final diplomatic conference in September 1886. This was not the time for additional confrontation or further debate but for fine-tuning the results from 1884 and 1885 into an actual convention. The final article 5 of the 1886 convention stipulated that union authors had the right to translate themselves or authorize a translation of their works within ten years of the first date of publication in a union nation. Article 6 protected authorized translations as original works.

In 1891, the ALAI published a brief status report on the failure of the Scandinavian countries to come into compliance with Berne, written by Fredrik Baetzmann. The Norwegian representative at the 1884 and 1885 diplomatic conferences, Baetzmann had then been confident that Norwegian adherence was imminent. Now he was forced to conclude that the Scandinavian countries had not displayed much interest in adapting their national laws so that they could join the union. Positive signs from Norway had come to nothing because of a change in government. While Denmark had showed some interest in a common Scandinavian initiative, Sweden “seemed to have lost interest in the question.”<sup>64</sup> Swedish reticence toward Berne would be a recurring source of irritation to the official BIRPI organ, *Le Droit d’auteur*, which complained in 1892 that “the Swedish attitude” was “almost expected.”<sup>65</sup>

That same year, *Le Droit d’Auteur* reported on the Swedish Supreme Court’s decision in *Rundqvist v. Montan*. After what had transpired between Lagerheim and Lavollée in Berne, it was somewhat ironic that the case concerned the translation of a French book, Léon de Tinseau’s 1890 novel, *Sur le Seuil*. Rundqvist had purchased the translation rights from the publisher Calmann-Lévy, but between February 20 and March 31, 1890, Erik Wilhelm Montan published an unauthorized Swedish translation as installments in *Stockholms Dagblad*, of which he was editor-in-chief. Rundqvist sued Montan for infringement and asked for damages and a fine calculated

on every copy sold of the journal. Montan, however, argued that while de Tinsseau had “*Droits de reproduction et de traduction réservés*” printed on the title page, he had not expressly mentioned *Swedish* as one of the languages for which he reserved this right. Required by Swedish law, both Svea Hovrätt (the lower court) and the Swedish Supreme Court sided with Montan.<sup>66</sup> An amendment from May 28, 1897, removed the prerequisite to state the language to secure protection, and all rights reserved became linguistically all-inclusive. However, because the translation had to appear within two years in order to qualify for protection during the following eight, Sweden remained barred from joining Berne. Successful Swedish authors who sold well abroad—primarily in Germany—but did not enjoy protection for their works, soon made their voices heard, and lobbying from publishers and other invested parties escalated around the turn of the century.<sup>67</sup> Still, not until a new law of July 8, 1904, removed all formal obstacles regarding translation could Sweden sign the convention. Eight years after Norway and one year after Denmark, Sweden was no longer “*terra clausa* in respect to international protection.”<sup>68</sup>

The French crowned their long-standing ambition to see translation completely assimilated into reproduction rights with success at the 1908 Revision Conference in Berlin. This was the development France and the ALAI had fervently desired for so long, and at least on the surface it was a complete victory for the expansion of authorial rights. However, for the continuing history of translation in international copyright, another Berlin development was even more significant. From 1908, translations were to be protected as original works *without prejudice* to the underlying work. Speaking on behalf of the German hosts, Albert Osterrieth seconded the need for assimilation and then went on to explain:

In article 6 you will find the proposal to protect *translation*, whether authorized or *unauthorized*. If it seems necessary to reserve for the author the exclusive right of translation, it is not less true that the simple fact of making a translation is not a blameful or disloyal action. The translator, who adapts a work in a foreign language to the genius of his own, creates an individual work still worthy of protection. If the translation has been made without the authorization of the author, the translator has no right to publish it. But why give away the unauthorized translation to the author of the original work, who, by the fact of having his or her rights infringed, has not acquired any particular merit; why give it away to the public domain, when the rights of the original will come to an end?<sup>69</sup>

Translators—historically relegated to membership in what Emily Apter terms the “literary proletariat”<sup>70</sup>—were now for the first time mentioned on par with authors. Conspicuously absent during the 1884–1886 diplomatic conferences, translators were even capable of the same kind of “genius” as the original authors. That the day would come when translators received legal autonomy must have been the last thing on Stuttgart publisher Robert Lutz’s mind when he published a brief note in *Le Droit d’Auteur* on December 15, 1900. Distraught over the lack of understanding and respect showed by a group “who are mostly women, primarily old school teachers or governesses,” Lutz complained that these translators “have no knowledge of international arrangements for the protection of literary property or are not particularly careful to observe them.” Forced to confront two female translators infringing on his rights as publisher, Lutz lamented their disregard for the law and cared little for the excuses they made, one woman translating for pocket money and the other, a widow, to support her children. He considered the widow incapable of producing her own unique work (and hence equally incapable of feeding her own children). She could only trespass on the work of others by hiding the name of the author and referring to her translations as “adaptations.”<sup>71</sup>

Nonetheless, in 1908 this individual emerged as a holder of rights separate from those of the original author. Significantly, these rights were now even given to the spinsters, widows, and governesses Lutz accused of being unprofessional and ignorant of (or unwilling to comply with) the international agreements now in place. The Berlin text, paragraph 2 of article 2, protected translations (together with adaptations, arrangements of music, and compilations) as “original works, without prejudice to the rights of the author of the original work.” Separated from their original source, translations fell under the author’s exclusive rights and simultaneously, “without prejudice,” liberated from it. Read against the stipulation that translation now gained status as an independent work protectable in its own right, the convention implemented a paradox. On the one hand, the rights of the author included translation, but on the other, the translation emerged as a separate work. This begs Salah Basalamah’s question, “how can the original remain present within the translation, when the change in language constitutes a major change in form, and it is the form alone—the expression—which is protected under copyright?”<sup>72</sup>

From the end of the nineteenth century until today, translation has highlighted the multifaceted legal dimensions associated with the inherent in-

stability of cultural works, the proliferation of authorship, and the tensions between major and minor languages, producers and users, and import and export. Rather than evolving on separate tracks in copyright history, these crucial elements were intertwined then and continue to be so today.

Translation questions the dichotomy between original and copy. And when authors face the prospect of a wider dissemination of their work and the exponential growth of readers in other languages, the stakes are exponentially higher. Reprinting is one thing, translation quite another. The risk of losing linguistic control over the work provides an even stronger incentive to emphasize the inherent value of the original source-language text and the need for a controlled conversion into a faithful target-language copy. Anxieties regarding the stability of the work coalesced in the question of whom translation really “belonged to”: the author or the reader. In the United States, Henry Carey thought translation rights belonged to the public, rather than to the author.<sup>73</sup> Alfred Lagerheim expressed a similar perspective in Berne when he argued that authorized translations could be detrimental to both authors and readers and that it might be in both their interests to embrace freedom of translation. Conversely, the French claimed that to speak for authors is also to speak for readers.

Translation sets in motion a contradictory and ongoing expansion of authorship. Translators, editors, and indexers are now authors, and because they are, they help destabilize the traditional view of authorship and the fixity of the work. At the same time, they expand the scope of what copyright protects, which creates as many problems as it solves.<sup>74</sup> The most obvious “author/owner” of all, the translator, remained invisible at the diplomatic conferences until 1908, when he or she was no longer only a tool for the original author, but became an independent creator in his or her own right. At this stage, the translator was often a “she,” autonomous in one respect, yet resolutely pushed into the background in others.

The disagreement between France and Sweden on the topic of assimilation versus freedom of translation illustrates the investments and expectations of a major language as opposed to that of a minor. As a report to the French Senate on the successful termination of the convention stated, “the French produce, the other nations consume,”<sup>75</sup> succinctly summarizing the impetus behind the French insistence on assimilation. Articulating the needs of Sweden, a user-nation, Alfred Lagerheim promoted freedom of translation as a prerequisite for national welfare and indirectly as a form of resistance. In that sense the Swedish “culture of translation” resembled the American “culture of reprinting” described by Meredith McGill. Behind the

rhetoric of the public interest in the dissemination of knowledge lurked a protectionist policy favoring printers and publishers. Piracy within the same language—for instance, in the American-British reprinting culture—was clearly the site of controversy and conflict. Translation, however, seemed to generate a set of different and even more acute concerns in the relationship between authors and readers regarding authorization and control vis-à-vis the work itself.

The interdependency between old and new works was at the core of the debate on translation in the diplomatic conferences in Berne and remains one of the contentious issues in the present framework of copyright and digitization. “Mashing-up,” “taking a digital media file containing any or all of text, graphics, audio, video and animation drawn from pre-existing sources, to create a new derivative work,” and “sampling,” “the act of taking a portion, or sample, of one sound recording and reusing it as an instrument or a different sound recording of a song,” are two cases of “appropriation,” “the use of borrowed elements in the creation of new work,” an activity with a long and illustrious history.<sup>76</sup> Borrowing, adapting, abridging, translating, appropriating, and even copying—these transformative practices are historically, linguistically, and legally situated. They have migrated from the printed page to digital space, but we still struggle with the question of how to understand the original/copy division, continue to take an interest in authorship and its relationship to ownership, and do so while the conflicts between developed and developing nations continue to mount in today’s global negotiations on copyright and intellectual property.

## Notes

1. Of course, in an essay concerned with translation, the use of the term “copyright” is itself slightly problematic. The Berne Convention can be described as the result of a historical negotiation between legal systems, between copyright and *droit d’auteur*, between civil law and common law traditions. Put simply, I use the word “copyright” because I am writing this essay in English. It is a practical rather than ontological choice. Anyone interested in the history of the Berne Convention cannot do without Sam Ricketson and Jane C. Ginsburg, *International Copyright and Neighbouring Rights: The Berne Convention and Beyond*, 2 vols. (Oxford: Oxford University Press, 2005); and Silke von Lewinski, *International Copyright Law and Policy* (Oxford: Oxford University Press, 2008). Published at the time of the convention centennial, Organisation Mondiale de la Propriété Intellectuelle (OMPI), *La Convention de Berne Pour la Protection des Œuvres Littéraires et Artistiques de 1886 à 1986* (Geneva: Bureau international de la propriété intellectuelle, 1986), also contains useful information. When it comes to translation and the Berne Convention, Salah Basalamah, *Le droit de traduire: Une politique culturelle pour la mondialisation* (Ottawa: Les Presses de l’Université d’Ottawa, 2009), is a must. Research on this essay was made possible by a grant from the Swedish Research Coun-

cil (2008–5015). The author would like to thank Maurizio Borghi, Marianne Dahlén, Bo G. Ekelund, and Annika Olsson for valuable comments on earlier drafts and to Ylva Lindberg for double-checking my translation of the original French quotes. Any errors in these, as in the translations from Swedish, are of course my own and stand perhaps as testament to the complexities of the subject matter at hand.

2. Franco Moretti, *Atlas of the European Novel, 1800–1900* (London: Verso, 1999), 184, 74. On the importance of translation to the novel/nation-state matrix during the eighteenth century, see Mary Helen McMurrin, “National or Transnational? The Eighteenth-Century Novel,” in *The Literary Channel: The Inter-National Invention of the Novel*, ed. Margaret Cohen and Carolyn Dever (Princeton, N.J.: Princeton University Press, 2002), 66.

3. Ricketson and Ginsburg, *International Copyright*, 1:67.

4. September 8–19, 1884, September 7–18, 1885, and September 6–9, 1886.

5. In his well-known division into three main types of translation, Jakobson includes “intralingual translation or *rewording* (the interpretation of verbal signs by means of other signs of the same language); interlingual translation or *translation proper* (the interpretation of verbal signs by means of other signs of the some other language); and finally intersemiotic translation or *transmutation* (the interpretation of verbal signs by means of signs of nonverbal sign systems).” Roman Jakobson, “On Linguistic Aspects of Translation,” in *The Translation Studies Reader*, ed. Lawrence Venuti (1959; repr., London: Routledge, 2000), 114.

6. Louis Renault, “Rapport présenté au nom de la commission par la délégation Française,” “Actes De La Conférence Réunie À Paris 1896,” in *La Convention de Berne*, 168.

7. Jeremy Munday, *Introducing Translation Studies: Theories and Applications*, 2nd ed. (London: Routledge, 2008), 1. For an introduction to the field see Venuti, *Translation Studies Reader*; for a personal account, see Mary Snell-Hornby, *The Turns of Translation Studies: New Paradigms or Shifting Viewpoints?* (Amsterdam: John Benjamins, 2006).

8. Because he combines both fields, Salah Basalamah is perhaps the most notable exception to the rule. See, for instance, his *Le Droit de Traduire* and “Aux sources des normes du droit de la traduction,” in *Beyond Descriptive Translation Studies: Investigations in Homage to Gideon Toury*, ed. Anthony Pym, Miriam Schlesinger, and Daniel Simeoni (Amsterdam: John Benjamins, 2008), 247–64. In law, see Lionel Bently, “Copyright, Translations, and Relations between Britain and India in the Nineteenth and Twentieth Centuries,” *Chicago-Kent Law Review* 82, no. 3 (2007): 1181–240; and Pierre Legrand, “Issues in the Translatability of Law,” in *Nation, Language, and the Ethics of Translation*, ed. Sandra Bermann and Michael Wood (Princeton, N.J.: Princeton University Press, 2005), 30–50. In translation studies, see Lawrence Venuti, *The Scandals of Translation: Towards an Ethics of Difference* (London: Routledge, 1998), 47–66.

9. Von Lewinski, *International Copyright Law and Policy*, vii.

10. The experiences of Canada and Australia as narratives of resistance come to mind. On Canada, see Sara Bannerman, “Canada and the Berne Convention: 1886–1971” (Ph.D. diss., Carleton University, 2009); and Meera Nair, “From Fair Dealing to Fair Duty: The Necessary Margins of Canadian Copyright” (Ph.D. diss., Simon Fraser University, 2009). On Australia, see Benedict Atkinson, *The True History of Copyright 1905–2005: The Australian Experience* (Sydney: Sydney University Press, 2007).

11. For an overview of the bilateral agreements of the era, see von Lewinski, *International Copyright Law and Policy*, 14–23; and Ricketson and Ginsburg, *International Copyright*, 1:27–40. Interestingly enough, von Lewinski argues that bilateral agreements have enjoyed a renaissance within the current trade-dominated intellectual property regime, especially on part of the United States. Von Lewinski, *International Copyright Law and Policy*, 350–352.

12. Ricketson and Ginsburg, *International Copyright*, 1:40.

13. Rapport et Décret sur la Contrefaçon d’Ouvrages étrangers (1852). French International Copyright Act (1852), *Primary Sources on Copyright (1450–1900)*, ed. L. Bently and M. Kretschmer, www.copyrighthistory.org.

14. Although there is no doubt that Hugo in that keynote address advocated the party line and argued for the importance of an international agreement on copyright, in the discussions that followed during the rest of the conference he very vocally came to the defense of *le domain public*. For more on Hugo and his position on international copyright, see chapters 1 and 5 in Eva Hemmungs Wirtén, *No Trespassing: Authorship, Intellectual Property Rights, and the Boundaries of Globalization* (Toronto: University of Toronto Press, 2004). One of the few who notes the importance of Hugo's position on the public domain is Catherine Seville, who writes that "Hugo seemed more preoccupied with the public domain than with perpetuity." Catherine Seville, *The Internationalisation of Copyright Law: Books, Buccaneers and the Black Flag in the Nineteenth Century* (Cambridge: Cambridge University Press, 2006), 59n.42.

15. Beginning with the Treaty of Westphalia, October 24, 1648, 32 multilateral agreements were signed during the seventeenth century, 68 during the eighteenth century, and 425 during the nineteenth century. This is my own best estimate based on the information in Christian L. Wiktor, *Multilateral Treaty Calendar 1648–1995* (The Hague: Martinus Nijhoff, 1998).

16. On the global intersection of technology, politics, and media of the time, see Dwayne R. Winseck and Robert M. Pike, *Communication and Empire: Media, Markets, and Globalization, 1860–1930* (Durham, N.C.: Duke University Press, 2007).

17. The sixteen delegates present represented Germany, Austria-Hungary, Belgium, France, Great Britain, Haiti, Holland, Sweden, Norway, and Switzerland. To my knowledge, not much has been made of these congresses in scholarship on copyright history. For an exception, see José Bellido, "Copyright Law in Latin America: Experiences of the Making (1880–1910)" (Ph.D. diss., Birkbeck College, University of London, 2008), esp. chapter 4. See also Bannerman, "Canada and the Berne Convention"; and with respect to the ILO, see Marianne Dahlén, *The Negotiable Child: The ILO Child Labour Campaign 1919–1973* (Uppsala: Department of Law, 2007).

18. As Bellido points out, there was a significant interchange of people between the ALAI and the Berne framework. Bellido, "Copyright Law," 186. The same observation holds true for contacts with the International Publishers Association (IPA, founded in 1896). Fernando Guedes, *International Publishers Association: The First Century* (Madrid: Federación de Gremios de Editores de Espana, 1996).

19. Bellido, "Copyright Law," 173.

20. Claude Altermatt, "On Special Mission: Switzerland and Its Diplomatic System," in *The Diplomat's World: A Cultural History of Diplomacy, 1815–1914*, ed. Markus Mösslang and Torsten Rlotte (Oxford: Oxford University Press, 2008), 317.

21. The 1886 Berne Convention explicitly mentions the formation of a bureau to handle administrative tasks. Modeled on an already existing such entity formed three years previously with the Paris Convention, the two officially merged on November 11, 1892, and became the Bureaux Internationaux Réunis pour la Protection de la Propriété Intellectuelle (BIRPI), situated in Berne. In 1960, BIRPI moved to Geneva, and as part of the revision conference in Stockholm 1967, BIRPI became the World Intellectual Property Organization (WIPO)/Organisation Mondiale de la Propriété Intellectuelle (OMPI). In 1974, WIPO became an organization within the United Nations. <http://www.wipo.org>. Compare also the discussions regarding setting up the Bureau of the International Publisher's Association at the fourth congress in 1902, where Leipzig lost to Berne, partly because Berne was considered more international and partly because of the proximity to BIRPI. See Guedes, *International Publishers Association*, 141–149.

22. Numa Droz, opening address, September 8, 1884. "Il n'y a guère, Messieurs, de matière du droit qui ait un caractère aussi cosmopolite et qui se prête mieux à une codification internationale que celle qui va nous occuper." *Actes de la Conférence Internationale pour la Protection des Droits d'auteur Réunie à Berne du 8 au 19 Septembre 1884* (Berne: Imprimerie K.-J. Wyss, 1884), 21. Hereafter *Actes 1884*.

23. Lagerheim, September 8, 1884. "En quoi que ce soit." *Ibid.*, 23.

24. “La durée du droit exclusif de traduction doit-elle être égale à celle du droit de l’auteur sur l’œuvre original? Si non, cette durée ne doit-elle pas être fixée uniformément pour toute l’Union?” *Ibid.*, 31.

25. (Eventuellement, ajouter: “s’ils ont fait usage de ce droit dans un délai de dix ans”). *Ibid.*, 11.

26. Lagerheim, September 9, 1884. “La Suède, qui actuellement n’accorde aux étrangers qu’une protection très-restreinte contre la traduction, serait peut-être disposée à les favoriser dans une plus large mesure; mais en aucun cas elle ne pourrait admettre que le droit exclusif de traduction fût protégé pendant la même durée que l’œuvre originale.” *Ibid.*, 31.

27. Högsta domstolens protokoll, November 22, 1876. “Ett sådant skydd finge sin egentliga betydelse endast genom öfverenskommelser med främmande länder, och vid dessa öfverenskommelser skulle de öfvervägande fördelarna komma utlänningen till godo, men olägenheterna falla på den svenska allmänheten. För ett folk, hvars språkområde vore så inskränkt, som det svenska, kunde icke ett band på öfversättningsfriheten undgå att verka hämmande på spridning af kunskap och upplysning. Behovet för ett sådant folk att fullständiga egen litteratur med öfversättningar från utlandets bättre verk vore oändligt mycket större, än det som förefunnes hos folk med vidsträckt språkområde och betydligt rikhaltigare litteratur, än den svenska; och det kunde befaras å ena sidan, att de utländska författarna skulle icke sällan fordra så höga arvoden för rättigheten att i svensk öfversättning utgifva sina arbeten, att vår inhemska litteratur komme att under skyddstiden sakna mångt värdefullt utländskt arbete, och å andra sidan, att de utländska förläggarna i allmänhet icke skulle bjuda de svenska författarna någon motsvarande godtgörelse för rättigheten att öfversätta svenska arbeten.”

28. For an overview of the Swedish position on translation rights, see Gösta Eberstein, *Den Svenska Författarrätten*, 2 vols. (Stockholm: P. A. Norstedt & Söner, 1923), 1:79–87. For a more recent study on the history of Swedish copyright more generally, see Martin Fredriksson, *Skapandets rätt. Ett kulturvetenskapligt perspektiv på den svenska upphovsrättens historia* (Stockholm: Daidalos, 2009). One of the reasons why the United States was late coming into Berne was the fact that formal registration was required for U.S. copyright, whereas Berne was based on nonformalities. However, recent critics of copyright expansionism suggest that registration and other forms of requirements may help limit the damages of too broad and easily obtained copyrights. See, for instance, Lawrence Lessig, *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity* (New York: Penguin Press, 2004).

29. *Actes 1884*, 32.

30. “A ses yeux, le droit de traduction ne peut et ne doit être considéré que comme un démembrement du droit de reproduction ou comme une forme spéciale du droit de reproduction proprement dite. Bien plus, dans les rapports internationaux, c’est presque toujours la traduction qui est le mode normal de reproduction.” *Ibid.*, 48.

31. “Authorisation,” in *OED*, “the conferment of legality; formal warrant, or sanction. In *Le Robert*, “Autoriser,” “rendre licite.”

32. “A ce dernier point de vue, son intérêt se confond avec celui du public, qui a besoin d’être assuré de la fidélité de l’interprétation donnée à l’œuvre originale.” *Actes 1884*, 48.

33. “Mais il faut aussi avoir égard à la possibilité que la traduction autorisée soit mauvaise. En ce cas, le public a un droit de n’être pas à jamais privé de tout moyen de prendre connaissance de l’œuvre originale dans la forme qui répond le mieux à la pensée de l’auteur, et l’honneur de l’auteur même ne pourrait que gagner à la liberté de traduction donnée après un certain laps de temps.” *Ibid.*

34. As *Burnet v. Chetwood* concerned the unauthorized translation of the public domain *Archaeologiae Philologicae*, no living author was compromised. See Jody Green, *The Trouble with Ownership: Literary Property and Authorial Liability in England, 1660–1730* (Philadelphia: University of Pennsylvania Press, 2005), 147–149. Meredith McGill notes that only

a handful of the more than 120 copyright cases tried in the United States between 1840 and 1880 concerned authors of books; many instead involved playwrights and other categories of authors. Meredith L. McGill, "Copyright," in *A History of the Book in America*, Vol. 3, *The Industrial Book, 1840–1880* (Chapel Hill: University of North Carolina Press, 2007), 169. This does not preclude translation from being considered, but from her list of selected cases, 1834–1880 (170–172) only *Stowe v. Thomas* appears to concern translation directly. In France, see *Rosa v. Girardin*, Rouen Court of Appeal, November 7, 1845, [Court of Appeal on translations (1846)], in *Primary Sources on Copyright (1450–1900)*, ed. L. Bently and M. Kretschmer, www.copyrighthistory.org.

35. *Stowe v. Thomas*, 23 Fed. Cas. 201 (1853). For a longer discussion on the case, see Colleen Glenney Boggs, *Transnationalism and American Literature: Literary Translation 1773–1892* (New York: Routledge, 2007), 127–149; and Melissa J. Homestead, *American Women Authors and Literary Property 1822–1869* (Cambridge: Cambridge University Press, 2005), 105–149.

36. Otto Reventlow quoted in Homestead, *American Women Authors*, 127. In the case of Harriet Beecher Stowe and Calvin Stowe, Colleen Glenney Boggs notes their interest and proficiency in foreign languages, Boggs, *Transnationalism*, 131.

37. *Stowe v. Thomas*, 206.

38. *Ibid.*, 203.

39. *Ibid.*, 205.

40. *Ibid.*, 207.

41. Johan Svedjedal, *Bokens Samhälle: Svenska Bokförläggareföreningen och Svensk Bokmarknad, 1887–1943*, 2 vols. (Stockholm: Svenska Bokförläggareföreningen, 1993), 1:211.

42. *Actes 1884*, 68.

43. *Ibid.*, 49. In the final vote, three favored the French proposal (France, Haiti, Switzerland), six voted against (Germany, Austria, Hungary, Costa Rica, Sweden, and Norway), with Belgium, Great Britain, and Holland abstaining. Six nations voted in favor of the suggested article 6 in its entirety (Germany, Costa Rica, France, Sweden, Norway, and Switzerland), with three against (Austria, Hungary, and Haiti) and three abstaining (Belgium, Great Britain, and Holland).

44. *Actes de la 2me conference internationale pour la protection des œuvres littéraires et artistiques réunie a Berne du 7 au 18 Septembre 1885* (Geneva: Imprimerie K. J Wyss, 1885), 61 (hereafter cited as *Actes 1885*).

45. For an overview of this process, see Jane C. Ginsburg and John M. Kernochan, "One Hundred and Two Years Later: The US Joins the Berne Convention," *Columbia-VLA Journal of Law and the Arts* 1, no. 13 (1988–1989): 1–38.

46. *Actes 1885*, 60.

47. The history of the international dimension of Anglo-American copyright relations has been discussed in detail by Zorina B. Khan, *The Democratization of Invention: Patents and Copyrights in American Economic Development, 1790–1920* (Cambridge: Cambridge University Press, 2005), 222–287; and Meredith L. McGill, *American Literature and the Culture of Reprinting, 1834–1853* (Philadelphia: University of Pennsylvania Press, 2003), 76–108. For a useful comparison of the major copyright enactments in the United States and Great Britain, 1790–1981, see McGill, "Copyright," 160–163.

48. McGill, *American Literature*, 82.

49. Boggs, *Transnationalism*, 127. See also her interesting discussion on U.S. linguistic politics, 148–149.

50. For an extensive discussion of Dickens and his U.S. tour, see McGill, *American Literature*, 109–140.

51. For a comprehensive overview of the interests of Dickens and other British authors and publishers in relation to the United States at this point, see Seville, *Internationalisation of Copyright Law*, 146–252. On Conrad, see Shafquat Towheed, “Geneva v. Saint Petersburg: Two Concepts of Literary Property and the Material Lives of Books in *Under Western Eyes*,” *Book History* 10 (2007): 169–191. On Whitman and Twain, see Martin T. Buinicki, *Negotiating Copyright: Authorship and the Discourse of Literary Property Rights in Nineteenth-Century America* (London: Routledge, 2006).

52. Martin T. Buinicki, “Walt Whitman and the Question of Copyright,” *American Literary History* 15, no. 2 (Summer 2003): 251.

53. *Ibid.*, 258.

54. Whitman quoted in Buinicki, *Negotiating Copyright*, 130.

55. Markus Mösslang and Torsten Riotte, “Introduction: The Diplomats’ World,” in *The Diplomats’ World: A Cultural History of Diplomacy, 1815–1914*, ed. Markus Mösslang and Torsten Riotte (Oxford: Oxford University Press, 2008), 12–14. Compare Homestead’s discussion of Carey’s view of treaty-making as favoring “presidential powers” at the expense of the “people’s representatives in Congress.” Homestead, *American Women Authors*, 116.

56. “Il espère donc que la France voudra bien faciliter aux pays scandinaves la réforme de leur législation, et ne leur demandent pas un sacrifice qu’ils seraient très-probablement dans l’impossibilité de faire. En terminant, il fait appel à l’esprit de largeur et d’équité de la France.” *Actes 1885*, 20.

57. *Ibid.*, 26. “Lorsqu’il s’agit de réaliser un progrès, les pays avancés doivent donner l’exemple, sans attendre que les autres se soient mis à l’unisson.”

58. *Actes 1884*, 78.

59. “S’adressant, d’ailleurs, aux Délégués des pays dont la littérature est peu développée, ou qui ont besoin de faire des emprunts aux nations productrices, M Lavollée exprime la crainte que la liberté des traductions ne soit fatale au développement de la littérature nationale.” *Actes 1885*, 28.

60. Belgium, Spain, France, Haiti, and Tunisia voted for complete assimilation; Germany, Honduras, Italy, Sweden, Norway, and Switzerland against. Sweden, Norway, Germany, Spain, and Honduras were in favor of keeping the three-year rule, and lost by only one vote to France, Belgium, Haiti, Italy, Switzerland, and Tunisia. *Ibid.*, 44.

61. *Ibid.*, 62.

62. Both Canada and India opted out of Berne. On Canada, see Meera Nair, “The Copyright Act of 1889: A Canadian Declaration of Independence,” *Canadian Historical Review* 90, no. 1 (March 2009): 1–28; and Seville, *Internationalisation of Copyright Law*, 78–145. On India, see Bently, “Copyright, Translations.”

63. “En allant ainsi au devant du désir de la France, les pays scandinaves ont atteint le maximum des concessions sur ce point que leur situation particulière leur permet de faire quant à présent.” *Actes 1885*, 63.

64. “Semblait s’être absolument désintéressé de la question.” Fredrik Baetzmann, “De l’état de la propriété littéraire dans les divers pays, notamment dans ceux qui n’ont pas adhéré à la convention de Berne. De la nécessité du maintien des conventions existantes,” in *Congrès de 1891* (Paris: Association Littéraire et Artistique Internationale, 1891), 7.

65. *Le Droit d’auteur*, no. 9 (1892): 115–118.

66. Högsta domstolens protokoll, 22 July 1892. Reported in *Le Droit d’auteur*, no. 2 (1895): 27.

67. According to a calculation from 1901, Germany was by far the most important market for Swedish authors in translation. Svedjedal, *Bokens Samhälle*, 191; Eberstein, *Den Svenska Författarrätten*, 85–86. For a general overview of the Swedish trajectory toward Berne, see Svedjedal, *Bokens Samhälle*, 190–213.

68. *Le Droit d’auteur*, no. 2 (1895): 118.

69. Par contre, vous trouverez à l'art. 6 la proposition de protéger *la traduction*, qu'elle soit licite ou *illicite*. S'il paraît en effet nécessaire de réserver à l'auteur le droit exclusif de traduction, il n'en reste pas moins vrai que le fait seul de faire une traduction n'est pas une action blamable ou déloyale. Le traducteur, qui adapte un ouvrage de langue étrangère au génie de sa langue, crée une œuvre personnelle, toujours digne de protection. Lorsque la traduction aura été faite sans l'autorisation de l'auteur, le traducteur n'aura pas le droit de la publier. Mais pourquoi livrer la traduction non autorisée à l'auteur de l'original, qui par le fait d'avoir subi une atteinte à ses droits, n'a pourtant pas acquis un mérite particulier; pourquoi la livrer au domaine public, lorsque le droit sur l'original se sera éteint? *Actes de la conférence réunie à Berlin du 14 octobre au 14 novembre 1908*, (Berne: Bureau de l'Union Internationale Littéraire et Artistique, 1909), 166–167.

70. Emily Apter, *The Translation Zone: A New Comparative Literature* (Princeton, N.J.: Princeton University Press, 2006), 10. Even if I subscribe to the general accuracy of this designation, the status of the translator varies and is sometimes on par with the author translated. Gayatri Chakravorty Spivak's translations of Derrida come to mind. Gayatri Chakravorty Spivak, "The Politics of Translation," in Venuti, *Translation Studies Reader*. For an insight into the histories of individual translators, see Jean Delisle, ed., *Portraits de traducteurs* (Ottawa: Les Presses de l'Université d'Ottawa, 1999); and Jean Delisle, ed., *Portraits de traductrices* (Ottawa: Les Presses de l'Université d'Ottawa, 2002).

71. *Le Droit d'auteur*, no. 12 (1900): 156.

72. Salah Basalamah, "Translation Rights and the Philosophy of Translation: Remembering the Debts of the Original," in *In Translation: Reflections, Refractions, Transformations*, ed. Paul St-Pierre and Prafulla C. Kar (Amsterdam: John Benjamins, 2007), 122.

73. See Homestead, *American Women Authors*, 115.

74. For an illustrative example, see the controversy over the Dead Sea Scrolls: Timothy H. Lim, Hector L. MacQueen, and Calum M. Carmichael, eds., *On Scrolls, Artefacts and Intellectual Property* (Sheffield: Sheffield Academic Press, 2001).

75. "Les Français produisent, les autres nationaux consomment." Quoted in Baetzmann, "De l'état," 11.

76. All definitions from [www.wikipedia.org](http://www.wikipedia.org) (accessed August 22, 2010).